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## Transport Safety Commission inquiry: Who is Responsible?

### RoadPeace response

September 2014

RoadPeace, the national charity for road crash victims, was founded on the basis of road danger reduction which is concerned with the wider effects of excessive and inappropriate use motor vehicles. Many of its members are bereaved and our work focuses on supporting the bereaved and campaigning for an improved post crash response by the justice system. This has included the establishment of an All Party Parliamentary Group for Justice on Our Roads.

#### Key points

- Road safety is a multi-disciplinary problem with the police, CPS and other justice organisations having key roles in reducing road danger.
- Yet too many in our criminal justice system (CJS) still see road crashes as “accidents” with road crime not treated as real crime. It is excluded from crime statistics and crime strategies, and its victims left uncounted and unsupported.
- But our CJS has shown a multi-disciplinary approach to tackling crime and anti social behaviour is possible, e.g. End Violence against Women and Children, and domestic violence/abuse
- A road danger reduction approach would ensure transport safety objectives were better aligned with sustainability and public health objectives.
- Commitment to a Vision Zero or Safer System approach is long overdue in Britain.
- A safer culture would be promoted by adopting presumed liability, revising the Highway Code to increase a driver’s duty of care around pedestrians and cyclists, greater use of driving bans and black boxes and also revising charging standards and driving offences so that drivers are held accountable for their actions with the consequences (casualties) mentioned in the charge.
- Average cost of prevention should be adjusted to reflect under-reported collisions with additional funding possible via NDORS and the MIB levy.
- Road safety is not being championed as active travel is, despite road safety being a prerequisite for active travel.
- Speed compliance is a good indicator of safety, as is perception of safety of cycling.
- Collision investigation is the cornerstone of justice and prevention and deserves much greater priority. At present it lacks transparency and consistency as well as investment.

## 1 Introduction

RoadPeace, the national charity for road crash victims, welcomes this inquiry on the management of transport safety. RoadPeace was established in 1992 after its founder, a bereaved mother, was shocked and outraged at the complacency over road danger in the criminal justice system. At that time, those killed by careless driving were not allowed to be mentioned at court (and it was the magistrates court) and the offender allowed to plead guilty in the post and be given a few penalty points and a small fine. Twenty two years on, this remains the case for those permanently disabled by careless driving. Hence, our response focuses on road safety and the lack of responsibility by the justice system.

Our dismay at the lack of progress led to the establishment of the APPG for Justice on Our Roads. This was launched in June 2014 by Baroness Jones of Moulsecoomb, with the aim of improving the response of the justice system to road crashes and road crime. It is coordinated by RoadPeace.

Our response is written by Amy Aeron-Thomas, RoadPeace Executive Director, who previously worked for the Transport Research Laboratory where she was in their international division. Her work included reviewing road safety management for the Global Road Safety Partnership. At RoadPeace, she has undertaken a Cochrane review into red-light cameras and was a community representative on a NICE working group on preventing unintentional injury to the under 15s. She has represented RoadPeace on a Home Office Working Group on Road Crash Victims and is on the DfT Justice for Vulnerable Road Users Working Group as well as TfL's Safe Streets for London's Steering Group and the Enforcement sub-group.

## 2 Inquiry questions

This inquiry posed several key questions.

### **Q1. Leadership, responsibility and coordination: Are there clear lines of responsibility? Is national leadership evident?**

Road safety is a multi-disciplinary area but it is not unique in this. What is unusual, RoadPeace believes, is how road crime and its victims are marginalised within the justice system.

And we do not believe that roads can be made safer without support from the justice system. But examples of how the justice system refuses the responsibility for road crime include:

1. Road crime is largely excluded from police recorded crime and the Crime Survey of England and Wales. Both these data sources exclude all summary motoring offences (e.g. drink/drug driving, careless driving, speeding, hit and run, etc). They include statistics on shoplifting and theft from vehicles but not serious injuries caused by impaired drivers. Likewise no information on traffic law enforcement is included on the police comparison website ([www.police.uk](http://www.police.uk)).
2. Incidence of road crime is not estimated. Whilst the justice system has been able to estimate the number of domestic violence incidents occurring behind closed doors, it has made no effort to estimate the incidence of drink driving or that of dangerous or careless driving on our public roads. Our understanding of the extent of speeding is due to DfT efforts, not the Home Office.
3. Victims of road crime go uncounted. There are no statistics collected on the number of people killed or injured by law breaking on our road. Whilst there is data on the number of drivers prosecuted and convicted of causing a death, the number of those killed in crashes where the driver died or was unidentified is not known. RoadPeace expected this to change with the introduction of the new causing death by driving charges in 2008. It wasn't.

4. Victims of road crime go unsupported. A national support service is provided to families bereaved by homicide but not to those bereaved by law breaking drivers. Support services to those bereaved in culpable crashes is to be determined at the local level, with inconsistency in provision inevitable.
5. Victims of road crime are not kept informed. Those injured by summary motoring offences do not qualify for the services under the Code of Practice for Victims of Crime. The Victims Code can be extended to these victims and Northamptonshire Police and Crime Commissioner was the first to confirm that they would treat victims of road crime equally and fairly.
6. Victims of road crime are neglected. Whilst the government has put “improving the experience of victims and witnesses at the heart of its strategy for the CJS” (MOJ, 2014), this does not include road crime victims. The government’s 2013 Transforming Criminal Justice Strategy prioritises improving the response to victims who have been systemically neglected. But this is defined as victims of sexual/domestic violence, hate crime and gun/knife crime, not road crime.

And whilst the justice system has denied the problem of road crime, it has done much better with other types of crime, including those which require cultural change such as domestic violence and hate crime. Lessons can be learned from how the government has coordinated a cross departmental strategy to tackling Violence against Women and Girls (VAWG). See Appendix A for more information on how national leadership has been combined with local accountability and partnership working with non governmental organisations.

**Q2. Objectives and targets—What results currently being sought? How can transport safety be aligned with other objectives such as sustainability and public health and active travel?**

The Department for Transport (DfT) currently has a Road Safety Strategic Framework with key outcome indicators, of which eight are enforcement related with another on remedial driver training. The enforcement related indicators pertain to impaired driving, speeding, seat belt wearing, and driving offences.

Road safety would be better aligned with sustainability and public health and active travel by adopting a road danger reduction approach. Danger should be controlled at source (in the motor vehicle) and a greater duty of care should be placed on those that pose the greatest threat (e.g. motor vehicle drivers and owners). And it must be recognised that collisions are not the only problem - excessive and inappropriate motor vehicle use reduces the quality of life and harms the environment.

Instead of focusing exclusively on road traffic mortality/injury, we should also consider total traffic morbidity and include the loss of life and life years due to such related causes as lack of physical activity and motor vehicle generated air pollution. Just as WHO and other public health authorities refer to tobacco related morbidity (rather than just lung cancer from smoking), we need to talk about the total traffic toll. RoadPeace argued for this in our 2010 response to WHO’s draft Decade of Action road safety plan.

Progress is being made. In February 2013, DfT established a Justice for Vulnerable Road Users (VRU) working group, with the MOJ, Home Office, CPS, ACPO, British Cycling, CTC, and RoadPeace. The Sentencing Council has since joined.

In London, last June, TfL launched their Safe Streets for London, based on the safer systems approach, which aims for streets free from death and serious injury. TfL’s Health Action Plan, the world’s first such plan and published in Spring 2014, is a great example of tackling traffic related diseases together (TfL, 2014).

But if road danger reduction is to be promoted effectively, a comprehensive shift is required at the heart of DfT and the MoJ.

### Q3. Perceptions and culture—how a greater culture of safety be achieved?

Our top five suggestions include

1. Introducing presumed liability (previously referred to as stricter liability)
2. revising the Highway Code
3. monitoring driving through use of black boxes
4. increasing use of driving bans, especially short term bans
5. revising driving offences with dangerous/careless driving charging standards and having the consequences (casualties) mentioned in all driving offences.

Adopting a presumed liability civil compensation system would spur much needed debate about the duty of care owed vulnerable road users, especially those young, old and with disabilities. Presumed liability, the civil compensation system common in the rest of the world, reverses the burden of proof of fault in collisions with pedestrians and cyclists. Compensation is presumed to be owed to them unless there is evidence that they caused the collision.

Whilst this reform is often associated with cyclists, it should be noted that those who would gain the most would be children, elderly and those with disabilities as they would be compensated for their injuries regardless of their contributory actions. They are more likely to be pedestrians than cyclists.

According to DfT research, almost half of all drivers (48%) believe the *“the driver is always at least partly to blame if they knock over a pedestrian”* (BMRB Report: THINK!-pre stage Speed campaign, 2009). RoadPeace has requested DfT conduct further research on the perceived duty of care and how it varies by vulnerable road user (child, elderly, etc), by driver type (commercial, professional) and by location (speed limit, town centre, near school, etc)

RoadPeace has supported civil liability reform since our start and included it in our 1997 Parliamentary manifesto. With road danger reduction, it was our key recommendation to PACTS Beyond 2010 consultation. More information about it can be found on our website.

[\(http://www.roadpeace.org/change/fair\\_compensation/stricter\\_liability/\)](http://www.roadpeace.org/change/fair_compensation/stricter_liability/)

The Highway Code needs to be revised with a higher duty of care required of drivers around pedestrians and cyclists. Drivers and vulnerable road users share the road but they hardly share the risk . DfT statistics for 2012 show that, in urban areas, a pedestrian involved in a collision with a motor vehicle is 246 times more likely to be killed or seriously injured than an occupant of the vehicle; for cyclists, the figure is 91 times more likely. A North London coroner has suggested the Highway Code be amended to require a driver to slow down if a pedestrian is in the road.

Greater use of black boxes would result in reduced risk. If drivers knew their driving behaviour was being monitored and they would be held accountable for their actions, they would take fewer chances. As reported at PACTS meetings, use of black boxes with young drivers has achieved very high speed limit compliance.

Fourthly, driving bans have been rightfully described by the DfT as the key penalty. But they need to be used much more widely, including for short periods. At present, only 3% of those convicted of Driving without Due Care and Attention are banned. Drink driving convictions account for two thirds of all bans. Sober drivers need to fear being banned. For more information on driving bans, see our briefing [http://www.roadpeace.org/resources/RoadPeace\\_Driving\\_bans\\_-England\\_and\\_Wales\\_2013.pdf](http://www.roadpeace.org/resources/RoadPeace_Driving_bans_-England_and_Wales_2013.pdf)

And lastly, RoadPeace believes that revised driving offences would help. We have argued that it is dangerous to be careless around a vulnerable road user, given the potential devastation. Charging standards need to be revised and this will be part of the upcoming review of driving offences. In addition, we would argue that driving offences should mention if someone was seriously or even slightly injured. At present there is no charge that mentions when someone has been seriously injured by careless or drink driving or any offence that mentions slight injury by driving. Whilst sentencing should still be based on culpability, rather than consequences, the fact that bad driving resulted in an injury should be acknowledged.

#### **Q4. Funding appropriate?**

DfT is to be commended for estimating the total cost of crashes (£34b), and not just those reported to police (£15b). But when it comes to funding road safety improvement, the average value of prevention is based on that reported to the police. RoadPeace believes that this should be adjusted for under-reporting, thus increasing the case for funding.

As seen by the cuts in traffic law enforcement, including with roads policing and safety cameras, funding is a problem. RoadPeace would like to highlight two possible sources of funding:

1. National Driver Offender Retraining Scheme and Victim Surcharge. Whilst those convicted at court are required to pay a minimum £20 Victim Surcharge, no such surcharge is imposed on those sent to attend a retraining course. This would help to reinforce the connection between bad driving and consequences, if the surcharge was extended to those attending NDORS courses.
2. Motor Insurance Bureau (MIB) levy. All insured drivers contribute to the Motor Insurance Bureau so that those injured in hit and run collisions or by uninsured drivers can be compensated. This is reported to be approximately £30 per premium. Uninsured driving and associated crashes are on the decrease. In 2013, MIB had a surplus of almost £27million. It should be possible to add a safety surcharge to the levy that would fund both support services for victims and also collision investigation research.

#### **Q6. Monitoring and evaluation: case for an independent road safety/collision investigation unit?**

This is much needed. The Stats 19 database is based on data collected soon after a collision has been reported and often before the investigation has really started. This is the equivalent of the triage stage and data collection should not stop here. Contributory factors are misleading as they are collected prematurely with police understandably reluctant to record factors yet to be proven.

And whilst collision investigation is the cornerstone to both justice and prevention, it is no-one's priority. There has been investment in expediting collision investigation with the use of 3D scanners in order to minimise collision related road closures. Yet the cost of road collisions does not include the cost of congestion, and is thus an underestimate of the true cost.

Even amongst roads policing, it does not receive due priority, as can be seen with both the ACPO/Police Federation and TISPOL annual conferences. The Metropolitan Police Service, who are believed by ACPO to represent good practice, reported that they allocate 12 times as much to a homicide investigation than to a road death investigation (MPS letter to Jenny Jones, April 2013).

There are no nationally agreed good practice (or even minimum) standards for a road death investigation nor any transparency with resources, procedures or outcomes. ACPO's Road Death Investigation Manual was replaced last year with much shorter guidance from the College of Policing.

The first ever review into road death investigation and prosecution by the HM Inspectorate Constabulary and the HM CPS Inspectorate is due to report shortly. Whilst the HM CPSI has reviewed road death prosecution in 2002 and 2008, the HMIC had never before reviewed road death investigation. RoadPeace urged the review to define good practice and enable communities to monitor if local police and CPS efforts were good enough. RoadPeace believes that this would include a commitment to prevention with the necessary training and resources, just as has already occurred with VAWG.

As noted above, we believe a MIB surcharge could pay for a collision investigation unit. This unit should not be restricted to fatal collision investigation as these are not representative of collisions or collision investigation. It should review some serious and slight injury collisions to help improve collision investigation and data collected from all reported crashes.

**Q7. Research: What provision is made for keeping abreast of effective global practice?**

Through our involvement with the Cochrane Collaboration Injury Group, we are aware of the lack of dissemination of evidence regarding road safety countermeasures. Whilst there is much attention paid to learning from Denmark and the Netherlands about promoting cycling, we are unaware of any other lessons coming from outside Britain.

We are also aware of the inconsistency in evaluation. Whilst safety cameras are put to the highest standard of evaluation, with much focus on before after time periods and regression to mean, their alternatives including remedial training and vehicle display signs, are not held to the same standard. Trixi mirrors have only had to show they did not increase the risk. Public education campaigns have even lower standards.

In London, RoadPeace, along with Living Streets, London Cycling Campaign, CtC and Sustrans, have all called for Transport for London to document the evidence for their actions. With ongoing cuts, there is even greater need for best use to be made of the limited resources available.

## **Appendix A: Violence against Women and Girls campaign progress**

In November 2010, the government launched a Call to End Violence against Women and Girls (VAWG) with an action plan that is reviewed annually. Its principles are focused on prevention, provision of services, partnership working and justice outcomes and risk reduction. Activity is coordinated by an Inter-Ministerial Group chaired by the Home Office. Actions have included:

- Ring fenced funding for specialist VAWG services
- This is Abuse campaign
- Domestic violence disclosure scheme (Claire's Law)
- HMIC review of police response to domestic violence
- Encouraging employers to sign a pledge with the Public Health Responsibility Deal (<https://responsibilitydeal.dh.gov.uk/>)
- Published a "lessons learned" document based on the findings of the Home Office Domestic Violence Homicide reviews
- Proposed legislation to criminalise forced marriage
- Six point plan to investigate the fall in referrals from the police to the CPS, including establishment of National Scrutiny Panel
- Awareness raising project on female genital mutilation
- Training package on stalking
- VAWG fact pack and PCC conference on commissioning VAWG services, including how to develop local standards framework.
- National Group on Violence against children and Vulnerable People
- Young People Advocates programme

The latest Action Plan review highlighted next year's priorities to be early intervention, supporting effective local approaches, driving a culture change, join up with other Government programmes, better data and outcomes, with a review scheduled for March 2015.