

Road Justice

September 2023



A dark green rectangular box containing three white elements. On the left is the 'appg' logo, which includes a crown icon above the text 'appg'. To the right of the logo are two white icons: a bicycle and a stylized human figure walking, representing cycling and pedestrian safety.



Foreword from our Co-Chairs

In 2017 the All-Party Parliamentary Cycling Group conducted a significant inquiry looking at cycling and the justice system. With active travel more important than ever on the policy agenda, we felt it prudent to revisit that inquiry and provide this updated report. It includes ten key recommendations and a summary of progress on those from the previous inquiry, and will form the basis of our campaigning on this important issue in Parliament.

Our work as a cross-party group is to promote all forms of cycling and walking, working in Parliament, with support from representatives of organisations in the private, public and third sectors that share our vision. In the past couple of years we have welcomed ambition from the Government to see half of all journeys in towns and cities walked or cycled by 2030 - yet there is much to be done to see that become reality.

Running through the majority of our meetings and events is the common thread of concerns around safety for those cycling, walking or wheeling. It is one of the key barriers to seeing the significant modal

shift that we need in order to meet decarbonisation targets. The perception that our roads may not be safe is founded both in lived experience, and a near constant stream of news stories to which we have become tragically accustomed to.

It is far too common to hear of an appalling case of road violence in which one or more people have either lost their lives or suffered life changing injuries - only for the perpetrator to receive a shockingly low sentence and / or driving licence penalty. It is this imbalance between the action and the consequences that requires correcting in order to see true road justice. Some of the case studies included in this report highlight that inequity.

We owe it to the victims of road violence and their families to do everything we can to ensure that the system that allowed those tragic events to happen is improved and updated, to prevent them from happening in the future. Following the publication of this report, we will be doing just that: meeting with Ministers, lobbying for a Parliamentary debate, and identifying opportunities to highlight this issue wherever we can.

“It is essential that the systems to achieve safe travel are fit for purpose and vulnerable road users are given the greatest protection.”



Ruth Cadbury is the Labour MP for Brentford and Isleworth, and has been an MP continuously since 7 May 2015. She currently undertakes the role of Shadow Minister (International Trade).



Selaine Saxby is the Conservative MP for North Devon, and has been an MP continuously since 12 December 2019.



Leigh Day



Foreword from our sponsors

As co-sponsors, British Cycling and Leigh Day Solicitors are pleased to present the second All Party Parliamentary Group for Cycling and Walking road justice review report. The report follows on from the APPGCW's 2017 Justice Review – Cycling and The Justice System – and considers key areas where improvement is required to deliver justice for the most vulnerable road users.

Much has changed since 2017, notably the incorporation of walking and wheeling into the activities of the APPGCW, and last year's release of the updated Highway Code, which for the first time introduced the concept of the hierarchy of vulnerable road users.

Over the last six years there have been developments in infrastructure; technology; modes of transport; as well as an increased recognition of the safety needs of vulnerable road users and the ability to report road offences to the police. There have also been significant changes to sentencing guidelines and offences, most notably the offence of Causing Serious injury by Careless or Inconsiderate Driving, which is of particular relevance to vulnerable road users who are sadly prone to suffering serious injuries in road collisions.

While we welcome these changes, it is clear that more still needs to be done. Collisions wreck lives and victims need to be truly treated as victims of crime, with sentencing levels to reflect this.

The statistics on road collisions involving cyclists and pedestrians demonstrate that there is no room for complacency. This latest review considers the evolution of the 2017 recommendations and changes implemented since then, and focuses on the continued need for improvement to protect pedestrians and cyclists.

The report has been researched and compiled by Dr Tom Cohen, specialist in transport policy and active travel at the University of Westminster. Evidence was obtained in writing and orally from key experts and stakeholders representing the various interested groups, including the police, lawyers, cycling and walking groups and road safety organisations. Representatives from both co-sponsors were privileged to provide their evidence in their respective areas of expertise.

The report identifies 10 key areas for review, and these are broken down into two categories: the first being ambitions for the future, and the second being potentially achievable changes now. These 10

recommendations consider the safety needs of those walking, wheeling and cycling, as well as considering the current road justice system, from roadside police attendance all the way to court when the worst-case scenario happens – and crucially how improvements are needed throughout that process.

With the increased uptake in active travel since the last report in 2017, the ever-increasing need for more sustainable methods of transport to combat climate change, and research showing the biggest barrier to increased active travel being safety concerns, it is essential that the systems to achieve safe travel are fit for purpose and vulnerable road users are given the greatest protection.

Our thanks to Tom Cohen and his team, all those who gave written and oral evidence to the inquiry, and finally to the work of the secretariat of the APPGCW.



Caroline Julian, External Affairs Director, British Cycling



Rory McCarron, Senior Associate Solicitor, Leigh Day



Introduction

The case for walking, wheeling and cycling is overwhelmingly positive; it is also extremely well-established. To quote Chris Boardman, the Active Travel Commissioner for England, “name any crisis: active travel helps”¹. We therefore take it as read in this report.

But, despite walking, wheeling and cycling being a miracle cure for so many of our ills, we are currently going in the wrong direction. The optimism that accompanied big increases in walking and cycling during the COVID-19 pandemic proved premature: cycling remains above pre-pandemic levels but continues to decline from the peak witnessed during the lockdowns². Walking has on average been falling over the last 20 years³. There are many reasons for this. One of them is safety, both perceived and objective. And safety is a function of how people behave. It is also a function of what is done in response to poor behaviour.

The UK is a car-driving nation. This is not to say that everyone drives or even wishes to – far from it. But there is a strong tendency to see car ownership and use as normal and desirable; as right. And, by implication, walking, wheeling and cycling as

unimportant or even eccentric. Our built environment is full of signals that confirm this, such as the pelican crossing, where the walker/wheeler must request permission to interrupt the flow of vehicular traffic. This stands in contrast with rhetoric about these modes becoming “the natural first choice”⁴.

We look to the justice system to help correct these distortions. People’s conduct on the road may reflect our car culture, but the law will, we expect, treat people equally regardless of their mode of transport. We may even hope that it will give preferential treatment to those who face disproportionate risk on our roads, as implied by the Highway Code’s hierarchy of responsibility. We call this road justice.

Some progress has been made, as explained below. But do walkers, wheelers and cyclists feel safe? Are they safe? Not yet. They may be getting safer in objective terms but their perception is that safety is worsening. We argue that this is partly because road justice is still largely an aspiration. So there is much still to do. This report contains ten recommendations which, if implemented, would represent a significant step towards making road justice a reality for those walking, wheeling and cycling.

1. Speech at Cycle County Active County, Oxford, 5th July 2023

2. <https://www.gov.uk/government/statistics/cycling-index-england/cycling-index-england>

3. Department for Transport Table NTS0303 - Average number of trips, stages, miles and time spent travelling by mode: England, 2002 onwards. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147041/nts0303.ods

4. Gear Change (Department for Transport, 2020), p12 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904146/gear-change-a-bold-vision-for-cycling-and-walking.pdf

The state of play



It is widely accepted that we need significant growth in walking, wheeling and cycling if the UK is to achieve its transport decarbonisation targets. This remains the case despite some optimistic forecasts concerning the uptake of electric vehicles and the source of the energy they will use. Climate change is of course only one of the challenges we face; more walking, wheeling and cycling would also help us to address problems of physical inactivity, air quality, and so on. The Government recognised this in setting its target of half of all journeys in towns and cities being cycled or walked by 2030⁵.

Recent research conducted for the Department for Transport is not encouraging. It confirms that the shares of people travelling by these modes have declined in England since the pre-pandemic period: “The proportions walking (68%) and cycling (26%) in November 2022 remained a little (sic) below the levels reported for the pre-pandemic period (79% and 31%).” There is better news with respect to frequent cycling:

“In November 2022, 19% of people cycled at least once a week which was significantly higher than the proportions doing this in November 2021 (12%) and in the period immediately before the pandemic (13%)”⁶. But frequent walking declined over the same timescale, with the proportion who walked or wheeled to a destination at least once a week falling from 61 per cent pre-pandemic to 58 per cent in November 2022. Attitudes to active travel also appear to be going in the wrong direction, according to the same report. For example, asked whether they would be willing to walk and/or cycle more in the future to reduce their contribution to climate change, the proportion agreeing fell from 57% in November 2021 to 53% in November 2022.

Attitudes to active travel also appear to be going in the wrong direction, according to the same report. For example, asked whether they would be willing to walk and/or cycle more in the future to reduce their contribution to climate change, the proportion agreeing

fell from 57% in November 2021 to 53%.

There are many reasons why people do not walk, wheel or cycle. Perceived danger is only one, but it is a very important one. It consistently tops the list of reasons why people do not cycle. The National Audit Office’s rather sombre assessment of active travel in England underlines this:

“In 2021, around half of respondents to a DfT survey stated that safer roads would encourage them to cycle (53%) and walk (45%) more. Data from DfT surveys show that, between 2017 and 2020, the proportion of existing cyclists who agreed that it is dangerous to cycle increased from 48% to 57%.”

It is particularly striking that the final statistic above relates to existing cyclists, suggesting that experience on the road deteriorated significantly over that time. Whilst the perceived safety of walking, wheeling and

cycling appears to be in decline, it is ironic that cycling and walking have both been getting objectively safer. Last year marked a 30-year low in fatalities per mile cycled⁸, whilst fatalities per mile walked have declined steadily over the last 15 years⁹.

So we have a paradox: it is becoming safer to walk¹⁰ and cycle but people feel it is becoming less so. Why is this? We suggest that the lack of road justice provides some of the answers. The perception of those who walk, wheel and cycle is shaped by what they see and hear. They see examples of bad driving (whether or not these result in physical harm) and they hear of a justice system that is, we argue, too forgiving of bad driving. Those who drive impatiently, discourteously or, worse, maliciously, need more reason to believe they cannot do so with impunity. And those who are at greatest risk of injury need to have more confidence that bad driving will not be tolerated.

5. Gear Change, p12.

6. Our Changing Travel (Ipsos UK for Department for Transport, 2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165693/our-changing-travel-how-people-s-travel-choices-are-changing.pdf, pp 5, 7.

7. Active Travel in England (National Audit Office, 2023), <https://www.nao.org.uk/wp-content/uploads/2023/06/active-travel-in-england.pdf>, p25.

8. <https://www.cyclinguk.org/press-release/cyclist-fatalities-british-roads-2022-hit-lowest-number-30-years>

9. <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-pedestrian-factsheet-2021/reported-road-casualties-great-britain-pedestrian-factsheet-2021>

10. The safety of wheeling is not yet covered by National Statistics.



The inquiry

This inquiry revisits the work of the APPG's Cycling and the justice system, published in 2017. That inquiry held five oral evidence sessions and in addition received written submissions from a wide variety of stakeholders. Its report¹¹ included 14 recommendations. These all remain as relevant and important as they were in 2017. Some progress has been made against them (see Appendix 2). In particular, we were delighted to see the revised version of the Highway Code last year, including many changes for which we had campaigned. There is now a hierarchy of road-user responsibility; the Code specifies a safe distance for passing cyclists; and rules for priority junctions are both fairer to walkers and wheelers and clearer for all. We also welcome the expansion of close-pass operations beyond the West Midlands area, and some improvement in communication with victims and their families during crash investigations. But, for each recommendation on which there has been progress, there is another for which there is nothing to report and we will continue to lobby on these important issues.

Things have also moved on since 2017, not least in expansion of the APPG's remit to include walking. It therefore was appropriate to return to the issue of justice.

Given this is a follow-on inquiry, we have taken a "light touch" approach. We held a hearing on 22nd May 2023 at the House of Commons, where we received evidence from eight experts:

Callum Coleman, Public Affairs Coordinator, Living Streets

Duncan Dollimore, Head of Campaigns, Cycling UK

Nick Chamberlin, Policy Manager, British Cycling (now working at Active Travel England)

Rory McCarron, Senior Associate Solicitor, Leigh Day

Victoria Lebec, Collision Investigation Campaign Co-ordinator, Action Vision Zero

Daniel Sawyer, Barrister and Recorder

Chief Superintendent Andy Cox, OCU Commander - Strategy & Transformation, Metropolitan Police Service

Professor Sally Kyd, Head of Leicester Law School

We also conducted numerous informal interviews with relevant stakeholders and sought contributions from others, including the Magistrates' Association and the Crown Prosecution Service. The various material gathered led to the recommendations which are presented throughout.

¹¹ <https://allpartycycling.org/wp-content/uploads/2017/05/appcg-justice-report-2017.pdf>

The contributions of a broad range of stakeholders naturally result in a long list of possible recommendations. To distil that list to the ten set out here, we felt recommendations should:

- Bring significant benefits in terms of a) the objective safety of those walking, wheeling and cycling, b) the perceived safety of those walking, wheeling and cycling, and/or c) the experience of victims and their families.
- Span the justice process, from prevailing law, through what happens at the roadside and subsequent investigations, to the conduct and outcomes of trials.
- Be sufficiently specific to enable their implementation (or not) to be readily tracked.

In addition, we put the recommendations into two groups. Group A consists of ambitious (but, we believe, feasible) recommendations that have large potential benefits, though they may depend on significant enabling action, such as legislative change. Those in Group B are relatively uncontroversial and could be implemented fairly rapidly, at least in principle, given the necessary political will.

All our recommendations apply to the United Kingdom as a whole, but the complex governance of the UK means that not all of them could be implemented “once and for all”. At certain points, we refer to arrangements and actions in England, in England and Wales, or in Great Britain. It can be safely assumed that similar arrangements and actions would apply in other parts of the UK.

A1 Escalating penalties for repeated offences

There are several traffic offences which certain individuals commit repeatedly. For example, analysis of Police data from 2014-17 revealed that 47 per cent of those convicted for driving whilst disqualified had at least one previous conviction for the offence; 30 per cent had two or more¹². We note that this is comparable with serial contempt of court, something for which the justice system ordinarily shows little tolerance. These offenders are clearly not deterred by the penalties they face and they continue to pose a danger to other road users. Whilst sentencing guidelines for most traffic offences include relevant previous convictions as an aggravating factor, there is not currently a means for penalties to increase in steps. Instead, the magistrate or judge is limited to the same maximum penalty that applies to a first offence. The roads would be made safer if serial offenders were less able repeatedly to contravene the law. **We therefore recommend the Government consider the introduction of escalating penalties for repeat traffic offences.**

Such penalties should, we suggest, span the range of relevant punishments, including bans, vehicle confiscation, fines and community and custodial sentences. This recommendation would rely on legislative change and would fall to the Ministry of Justice. We note in passing that the idea of escalating penalties is not new: for example, the “three strikes” rule applies to drug dealing and domestic burglary¹³ in England and Wales.

12. Data from the Police National Computer, shared by Chris Miller

13. Sections 311-315 of the Sentencing Act 2020

14. <https://www.sentencingcouncil.org.uk/news/item/sentencing-guidelines-for-motoring-offences-published/>

A2 Compulsory re-testing

Many traffic offences are committed by people who are not competent to drive. A generous explanation is that it is some time since they passed their test and certain crucial lessons have been forgotten. If so, re-testing is a suitable response, as it will enable those lessons to be re-learned and establish whether the individual is fit to continue driving. In the case of those who habitually drive badly, re-testing can prove a highly effective way of keeping them off the roads, protecting other road users in the process.

Re-testing is an established intervention in traffic law – it is compulsory for those convicted of dangerous driving and many graver offences, if they wish to recommence driving having served their ban. But the latest sentencing guidelines¹⁴ do not include it for causing serious injury by careless or inconsiderate driving or for driving or attempting to drive with a specified drug above the specified limit. It is not clear why this is the case. **We therefore recommend that the Government seek consistency by requiring re-testing for anyone wishing to drive following any period of disqualification.**

The implementation of this recommendation once more relies on legislative change, which would be led by the Ministry of Justice. We suggest that the extended re-test should be used in the more serious offences and following longer bans; a standard re-test may be sufficient in other cases.



A3 Increased maximum sentence for dangerous driving and fuller use of Police bail powers

Crimes are often divided into two categories: outcome crimes and conduct crimes. Outcome crimes are so called because of the harm that is done (the “outcome”). Conduct crimes, instead, are considered crimes because of the potential for harm to arise from the conduct. Recent changes have improved our management of outcome crimes: there is the new offence of causing serious injury by careless driving, which fills a significant gap in traffic law. Despite this, courts are limited to a two-year sentence.

There has been less progress with conduct crimes. Strictly speaking, dangerous driving is both a conduct crime and an outcome crime because it can be used in cases of collisions involving “slight” injury and/or property damage. But we have picked it out because it is the most serious conduct crime in traffic law. Despite this, when dangerous driving occurs, magistrates and judges are limited to a two-year sentence.

In addition to being a very useful tool, a car has the potential to be a lethal weapon. And those who drive dangerously (as defined by the offence) are effectively wielding a lethal weapon. The maximum sentence for having an offensive weapon (or bladed article) in a public place without good reason or lawful excuse is currently four years.

We recommend that the Government increase the maximum sentence for dangerous driving to four years.

Changes in maximum sentences require an Act of Parliament which would be led in this case by the Ministry of Justice.

Whilst the offence of dangerous driving carries an automatic ban of at least a year, there is great frustration that, until convicted, drivers are typically able to retain their licence. There are numerous associated examples of drivers causing harm at the wheel whilst awaiting trial for serious traffic offences. Both the courts and the Police have the power to require a suspect to stop driving¹⁵ but we understand it is very rarely exercised. **We recommend the National Police Chiefs’ Council (NPCC) guide police forces to bail drivers whom they arrest for dangerous driving with a condition not to drive**, except where there is clear evidence to the contrary. Given that drink and drug-driving pose a similar danger to other road users, it would make sense for the NPCC’s guidance to extend to these offences.

We acknowledge this is a complex issue and that it would be necessary to provide safeguards against people wrongfully losing the right to drive. This may mean that, alongside the NPCC guidance, there would need to be satisfactory processes to enable people to challenge such bail conditions.

A4 Exceptional hardship to be truly exceptional

Approximately 23 per cent of those who amass 12 penalty points successfully argue against disqualification on grounds of exceptional hardship¹⁶. Despite revised guidance¹⁷, magistrates and judges continue to treat sympathetically defendants’ claims of reliance on driving. This is clearly a paradox – if nearly one quarter of any group is treated as exceptional, there is something wrong with either the definition of the term or its application. The consequence is that many drivers who should be serving a ban are instead allowed to continue driving. This is unacceptable, first because they may pose a threat to other road users and, second, because it sends a signal that the totting-up disqualification can be circumvented. We need to be especially vigilant about the justice system falling into disrepute, which is a significant risk here. **We therefore recommend that the Sentencing Council revisit its 2020 guidance on the totting-up disqualification, to reinforce that exceptional hardship should only be granted in truly exceptional circumstances.**, to ensure that offenders escape disqualification only where there are exceptionally good reasons for this.

Various approaches to the reform of exceptional hardship have been discussed. The option we favour would be to remove the possibility for magistrates to grant it: those reaching 12 points would automatically receive a ban. If they wished to appeal against it, this would have to take place in the Crown Court. But, whatever the approach taken, those adjudicating on this matter must be given precise guidance concerning the circumstances in which a ban may be either reduced or withheld.

A5 Removal of tolerances in speed enforcement

This is a long-standing issue and the arguments on both sides are familiar. But it is still the case that there is a strong positive correlation between vehicle speed and severity of injury sustained in a crash. And speeding remains extremely widespread. For example, in 2021, 51 per cent of cars and 52 per cent of light commercial vehicles exceeded 30mph limits; 18 per cent of cars and 19 per cent of light commercial vehicles exceeded these limits by 5mph or more¹⁸. As things stand, a driver will not ordinarily be charged with speeding in a 30mph zone unless travelling at 35mph or more. If drivers exceed posted speed limits, their capacity to avoid collisions reduces and the gravity of any collision increases. Moreover, if the working assumption is that one can speed (to an extent) with impunity, this fosters a belief that traffic law does not need to be taken seriously. We hold the view that speed limits and their enforcement represent the foundation of road justice because speeding accounts for the lion’s share of offences committed on the roads. And public opinion is consistent with a firm line on speed enforcement: 82 per cent of people think it is not safe to speed even slightly in residential streets, as compared with eight per cent who believe the opposite¹⁹.

We therefore recommend that tolerances in the enforcement of speeding be removed.

The prevailing guidance on tolerances relating to speed limits was released by the predecessor of the NPCC in 2013²⁰. It would now fall to the NPCC to issue revised guidance (though we are aware that certain forces have set local enforcement rules). Without entering a debate about whether the removal of tolerances would be fair or feasible, we point out that mechanisms for measuring speed are now both more sophisticated and more accurate than they were when guidance was last revised.

15. The rules relating to Police bail (under which this action would fall) are covered by the Police and Criminal Evidence (PACE) Act 1984.

16. On the basis of two FOI requests, it was established that 8,358 people successfully pleaded exceptional hardship per year on average (2011-2020), whilst 28,455 were disqualified for totting up per year on average (2017-2021). 8,358 as a proportion of the annual sum (36,813) is 22.7 per cent.

17. <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/road-traffic-offences-disqualification/3-totting-up-disqualification/>

18. Department for Transport Table SPE0111: Vehicle speed compliance by road type and vehicle type in Great Britain.

19. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810908/national-travel-attitudes-study-2019-wave-1.pdf

20. <https://library.college.police.uk/docs/appref/ACPO-Speed-Enforcement-Guidance.pdf>



B1 Consistently thorough investigation of serious collisions

The variability of crash investigation was mentioned extensively by stakeholders. Issues include the threshold for the involvement of serious collision investigation units (and their equivalents), and the wide range of rigour and professionalism of investigation both between and within Police forces. This seems a function of policy, leadership, resourcing and individual aptitude. How an investigation is conducted is hugely important, not simply because a good investigation is likelier to result in safer roads and a fairer deal for victims. Also, the way victims and their families are themselves treated during an investigation has a major impact on their well-being. So there is a compelling case for promoting best practice. **We therefore recommend the development of guidance based on best practice, with the intention that it is adopted as widely as possible by Police forces.**

Existing guidance by the College of Policing²¹ represents a sensible starting point. We recommend an interdisciplinary working group is convened under the leadership of the NPCC, including voices from road-safety and active-travel campaign organisations. The group would review the existing guidance to ensure that it represents best practice, especially with respect to those walking, wheeling or cycling. On completion of the review, the NPCC would commend the revised guidance to all forces for adoption. We note that recent announcements concerning the investigation of rape allegations provide an example of the scope for change²².

B2 Standardising third-party reporting systems

The Police cannot be everywhere, and evidence collected by citizens can make a major contribution to reducing road danger. In some parts of the UK, it is straightforward to submit evidence from helmet- and dashboard-cameras, and large numbers of prosecutions result. For example, over 12,000 notices of intended prosecution were issued in London in 2022 on the basis of public report²³. In other areas, the process is unwieldy or worse. And Police Scotland does not have a reporting portal at all. **We therefore recommend the implementation of a standardised system across police forces for submission and processing of third-party reporting, based on best practice and supported by adequate resourcing.** Submission would be made simple and easy; there would be standard rules for assessing and acting on evidence (as prosecution rates currently vary widely across forces), and for the ongoing provision of information to witnesses.

The NPCC released useful guidance on this matter²⁴, which would be a good starting point. We are aware that police forces argue resource shortages prevent them from taking action on third-party reporting, so we place responsibility for this recommendation with the Home Office (and its equivalents in the devolved administrations). It can provide the necessary funds, exploit the economies of scale that would come from co-ordinated activity, and require forces either to adopt the system or to explain their reasons for not doing so

B3 A UK Commissioner for Road-Danger Reduction

A recurring theme in the evidence we received was that the various parts of the justice system in relation to road safety are not joined up. In England, responsibility is shared by the Department for Transport, the Home Office and the Ministry of Justice, which presents real difficulty when co-ordinated action is needed. The links between the Police, the Crown Prosecution Service, magistrates and judiciary could all be much stronger. Similar problems are seen in all countries of the UK. There is no easy solution, but more collaboration would help. This is likeliest to happen if introduced at the highest level. **We therefore suggest that the Government appoint a UK Commissioner for Road-Danger Reduction.** Whilst appointed by government, the post-holder would be independent and would hold all relevant parties to account for their performance in reducing road danger.

The Commissioner's role would include measuring road danger, proposing targets for its reduction, working in conjunction with relevant stakeholders, notably the emerging Road Safety Investigation Branch, and evaluating the performance of the various organisations involved in the effort. Given the cross-departmental and pan-UK nature of the topic, we suggest they should report to the Cabinet Secretary and liaise with the devolved governments. They would be supported by a small team of analysts and assessors.

B4 Treating crash victims as victims of crime

The Victims' Code accords victims certain standard rights relating to submitting and receiving information, receiving support etc. Whilst by not perfect, it provides a useful performance baseline for the organisations involved. In principle, a victim is well defined: "a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence... [or] a close relative...of a person whose death was directly caused by a criminal offence"²⁵. In practice, crash victims are rarely granted the status of victims (as defined in the Code), despite the large number of people emotionally harmed, physically injured or killed as the result of an offence. As with the previous recommendation, according crash victims basic rights would help them to process the trauma and distress of their experience.

We therefore recommend that Police and Crime Commissioners should consider all crash victims as victims of crime (except where there is clear evidence to the contrary).

Police and Crime Commissioners head the list of organisations required to deliver the Rights under the Victims' Code, so it is appropriate to remit this recommendation to them on the assumption that they will liaise with their Chief Constables. They are best placed to delegate duties to other relevant organisations and stakeholders as necessary. Equivalent arrangements would be required in Scotland and Northern Ireland.

21. Investigation of fatal and serious injury road collisions (College of Policing, 2023), <https://www.college.police.uk/app/roads-policing/investigation-fatal-and-serious-injury-road-collisions>

22. <https://www.gov.uk/government/news/overhaul-of-criminal-justice-system-delivers-significant-improvement-for-rape-victims>

23. Figures taken from <https://tinyurl.com/mss3ucun>

25. Code of Practice for Victims of Crime in England and Wales (Ministry of Justice, 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974376/victims-code-2020.pdf, p3.

B5 Widen understanding of the Highway Code

The 2022 version of the Highway Code was hard-won and very welcome. But it represents the beginning of a process rather than the end. And, whilst we recognise the Department for Transport's efforts in publicising the changes²⁶, it was clear from their modest scale that their effect would be limited. **We therefore recommend the Government launch a very extensive and ongoing communications campaign designed to increase greatly both understanding of and compliance with the changes.**

This task would fall to the Department for Transport. We suggest that its Behavioural Insights Team could play a very useful role in defining an approach likely to achieve a good return on investment. We also strongly recommend engaging the range of road-user groups in the planning process.

²⁶ <https://www.think.gov.uk/campaign/travel-like-you-know-them/>





Alongside the recommendations

In 2014, the then justice secretary, Chris Grayling, said that the Government would carry out a “full review of all driving offences and penalties”²⁷. This would presumably include investigating the relationship between careless and dangerous driving, one of recommendations of our 2017 inquiry. In 2021, the government restated this undertaking, saying that work had commenced on launching a call for evidence²⁸. At the time of writing, this call has not been launched and there is no further news on the review. Many of our recommendations would naturally fall under such a review, were it to take place. We remain hopeful that it will.

Of our long-list of possible recommendations, one deserves specific mention because recent changes will, with luck, make it unnecessary.

Sentences for driving offences to reflect vehicle weight

In keeping with the Highway Code’s hierarchy of road-user responsibility, we argue that those in charge of vehicles with the greatest capacity to do harm should face greater penalties for not taking the requisite care. Vehicle weight is a contributing factor to the severity of a collision, so we contemplated making a recommendation along these lines. But sentencing guidelines that came into effect on 1st July for a range of serious traffic offences include as aggravating factors: “victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc” and “driving a LGV, HGV or PSV etc”²⁹. This is an encouraging development though it could go further: passenger cars vary greatly in weight so the aggravating factors should, we argue, also take this into account. Nevertheless, we shall be monitoring progress closely, to see whether sentences consistently reflect those aggravating factors where they apply.

27. <https://www.gov.uk/government/news/justice-for-victims-of-banned-drivers>

28. <https://www.cyclinguk.org/blog/government-finally-thinking-about-tackling-road-injustice#Update>

29. See, for example, <https://www.sentencingcouncil.org.uk/offences/crown-court/item/causing-death-by-dangerous-driving/>

Case Studies



Case Study 1

Yair Shahar, a father of three young children and a digital photography consultant was cycling along a main road in north London as part of his training for a big charity ride. He was in a designated right-turning box, waiting for the traffic to clear, when a motorist pulled out from the side road, ignoring Yair's right of way. He drove directly into and over Yair and stopped with a wheel resting on Yair's pelvis. Yair received life-saving treatment at the roadside and was airlifted to hospital but sustained life-changing orthopaedic and internal injuries affecting his mobility, bladder and other functions. He remained in critical care for several weeks and in hospital for several months.

Over subsequent years he had numerous further periods in hospital because of infections and complications requiring emergency treatment. Despite officers from the Serious Collision Unit (SCIU) attending the scene of the crash and HEMS doctors declaring at the roadside that the incident had involved life-threatening injuries, the investigating officer drew the opposite conclusion and moved the investigation to borough officers. These officers then transferred the case to the traffic prosecutions team and certain police documents went astray in the process. Instead of being prosecuted for a driving offence, the driver was given the option of an awareness course which he duly accepted. Given the seriousness of his injuries, Yair had had little interaction with the Police at the time of the incident or when in hospital, but he also heard almost nothing from them as he began to recover. He was only notified of the charging decision seven months after the collision - too late for the matter to be re-opened.



A complaint was made to the Metropolitan Police about the handling of the matter and the failure to prosecute. Following an investigation, the Police acknowledged they had made a mistake and the driver should have been prosecuted for a more serious motoring offence, but said it was too late to reopen the case.

Case Study 2

Haneen Khreis was crossing a side road at a designated crossing in London with other pedestrians ahead of her. As she was over halfway across the road, a motorist attempting to enter the side road failed to slow or stop for her and drove into her right leg and body, throwing her to the floor and causing her to sustain serious lower leg fractures requiring extensive surgery and subsequent rehabilitation. The motorist just missed the other pedestrians ahead of Haneen, but the pedestrians stayed at the scene to help her along with other road users.

Police attended the scene and despite the witnesses still being present, they failed to take any statements from witnesses and apparently no CCTV was available, therefore no action was brought against the driver. The driver advised she saw the other pedestrians but did not see Haneen despite her being well established on the road. Haneen was in no position to take the details of the witnesses herself given the serious condition she found herself in at the scene and was reliant on the police to obtain these for her.



Case Study 3

James Davis, with 35 previous convictions including drink-driving, was speeding and most likely using his phone when he crashed into 18-day-old Ciaran Morris in Brownhills in the West Midlands. Just 15-seconds prior to the collision, he was travelling at 67mph on a 30mph road.

Davis was uninsured and under the influence of cannabis. He fled the scene and told a passer by he “had killed a baby and was going down for a long time.” Rather than going down for a long time, however, he was jailed for just six and a half years. This length of sentencing is not uncommon despite the maximum penalty for Causing Death by Dangerous Driving being – at the time – 14 years, now recently increased to life.

Mayor of the West Midlands Andy Street wrote to the Attorney General, then Suella Braverman MP, who referred the case to the Court of Appeal. Following this, the court reviewed the sentence and increased his jail time to 10 years in prison. Charities like RoadPeace have supported longer custodial sentences for the worst offenders like these. In addition, they have campaigned for Unduly Lenient Sentencing to be extended to Causing Death by Careless Driving.



Case Study 4

When Christopher Gard appeared before Aldershot magistrates in June 2015, he had amassed 12 points for mobile phone use whilst driving; this was his eighth conviction for the offence. Gard had twice avoided a conviction and points in the past by attending a driver awareness course. Gard, a self-employed plasterer, told the magistrates that, if disqualified, he would lose his living and his young son and the boy's mother, his former partner, would suffer financially.

The magistrates allowed Gard to keep his licence on grounds of exceptional hardship. He promised to lock his phone in the boot while driving thereafter. Just over six weeks later, Gard was texting at the wheel again, when he ploughed into the back of cyclist Lee Martin on the A31 near Bentley, Hampshire. Lee, 48, a father of two, was thrown onto the front windscreen and killed. Gard tried to cover up his mobile use by deleting the text messages. In September 2016, Gard was jailed for nine years at Winchester Crown Court for causing death by dangerous driving, and banned from driving for 14-and-a-half years. An appeal to have his sentence cut was dismissed in January 2017.



Case Study 5

In February 2018, 80 year old great grandfather, Hopton Gayle, was on a pelican crossing in Wolverhampton, when Rabin Mahmood drove into him at over 60 mph. The limit on the Stafford Road was 40 mph. Hopton died at the scene. Mahmood attempted to push out the dent to his bonnet then drove away; he dumped his vehicle on a nearby industrial estate and removed the licence plates. Some hours later, he handed himself in to Police. Mahmood admitted causing death by dangerous driving, as well as failing to stop and driving without insurance.

In 2019 he received a custodial sentence of three years and nine months and was banned from driving for four years. Hopton's daughter, Mandy, said "Four years is nothing especially when he killed my dad. Because of him, he's dead. I would love to know how he, and his family, are dealing with the consequences of what he's done because our consequences are never-ending. We miss Christmas, birthdays...every day I think of my dad."



We are very grateful to the following individuals who gave their time and expertise to assist this inquiry:

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- Callum Coleman (Living Streets)
- Chris Miller, Consultant in road safety
- Daniel Sawyer, Barrister and Recorder
- Duncan Dollimore (Cycling UK)
- Chief Constable Jo Shiner (Sussex Police)
- Keir Gallagher (Cycling UK)
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- Sara Dowling (RoadPeace)
- Nick Chamberlin (formerly British Cycling, now Active Travel England)
- Roger Geffen (Cycling UK)
- Rory McCarron (Leigh Day)
- Professor Sally Kyd (Leicester Law School)
- Sally Moore (Leigh Day)
- Stephen Edwards (Living Streets)
- Tanya Braun (Living Streets)
- Victoria Lebrec (Action Vision Zero)
- Laura Laker, Journalist

Appendices

Appendix 1: lead responsibility for implementing recommendations

The following table summarises which body/bodies³⁰ would take or share primary responsibility for implementation of our recommendations.

Institution/stakeholder	Recommendations
Cabinet Secretary	B3
Department for Transport	B5
Home Office	B2
Ministry of Justice	A1, A2, A3
National Police Chiefs' Council	A3, A5, B1
Police and Crime Commissioners	B4
Sentencing Council	A4

Appendix 2: progress against recommendations made in the 2017 report, *Cycling and the Justice System*

Recommendation	Progress
<p>1. The Highway Code should be revised to give clearer priority to cyclists (and other vulnerable road users), particularly with regard to the issue of close overtaking and the need to give way to cyclists and pedestrians at side road crossings, which would support the introduction of new cycling infrastructure.</p>	<p>The revised Highway Code was published in January 2022 but the changes have been inadequately publicised so far.</p>
<p>2. The driving test must be changed to help improve driver behaviour towards cyclists, including questions about overtaking distances and advice on adopting safe methods of opening car doors. This is particularly important for those attending an extended retest following disqualification.</p>	<p>No progress</p>
<p>3. Professional drivers should be retested more frequently, with better testing of skills and eyesight. Being able to drive should not be considered as a right - it should be seen as a responsibility and privilege that can easily be forfeited, particularly for those whose jobs require them to use a vehicle.</p>	<p>No progress</p>
<p>4. Specialist roads policing has greatly reduced in recent years, with a 37% reduction in officer numbers over 10 years. Roads policing should be given a higher priority by police forces, Police and Crime Commissioners and Her Majesty's Inspectorate of Constabulary. Effective deployment and use of surveillance technology should be used to support the reduced manpower and to enhance productivity and public awareness that road policing remains a priority. Only through adequately resourced roads policing will bad drivers - and bad cyclists - be apprehended and cycling feel safer.</p>	<p>It is encouraging that, in 2020, HMICFRS carried out a review of roads policing. It is hoped that roads policing will be included in its police effectiveness, efficiency and legitimacy (PEEL) inspections.</p> <p>The Home Office added roads policing to the <i>Strategic Policing Requirement</i> in February of this year which should mean that police forces and PCCs now start giving roads policing greater priority. It was included as a cross-cutting capability rather than as one of the seven core themes, with emphasis more on the crimes which driving facilitates than driving offences themselves.</p>

30. For the sake of simplicity, the table is based on the largest jurisdictional unit in each case - England, England & Wales, etc.

Appendix 2: progress against recommendations made in the 2017 report, *Cycling and the Justice System.* (Cont.)

Recommendation	Progress
<p>5. Large vehicles present a disproportionate risk to cyclists. In London, TfL, the DVSA, the Police and other enforcement agencies work together to target illegal freight operators. The Government and other local authorities should adopt similar partnerships in other parts of the country to counter the risk posed by illegal freight operations. Stronger sanctions are needed to tackle the offending associated with some commercial operators.</p>	No progress
<p>6. We welcome the focus some police forces are showing towards close passing of cyclists, particularly the West Midlands Police. Close passing by drivers not only represents a significant danger, it also makes cycling feel unsafe and risky. More police forces should adopt close passing enforcement practice on a wider scale, and the NPCC should clearly endorse this approach.</p>	A growing number of police forces are conducting Close Pass operations (compared with 2017, when almost all activity was taking place in the West Midlands). This is being coordinated by the National Roads Policing Operations and Intelligence (NRPOI) unit. But participation is sporadic.
<p>7. There appears to be systematic under-reporting of all road casualties, especially those of cyclists, both in terms of severity, and in number, which is presenting an inaccurately favourable picture of the decline in road crashes. The Department for Transport and Ministry of Justice should research the growing discrepancy between road casualty figures, and track those cases through the justice system.</p>	No progress
<p>8. The police must ensure that a higher standard of investigation is maintained in all cases where serious injury has resulted. This includes eyesight testing, mobile phone records, assessment of speed, drink and drug driving. We have received many examples of the police failing to investigate properly or even interview victims or witnesses. Too often weak investigations have undermined subsequent cases.</p>	Little evidence of improvement

Recommendation	Progress
<p>9. Police forces should ensure that evidence of common offences submitted by cyclists, or other witnesses, using bike or person mounted cameras or smart phones is put to use, and not ignored. The confidence of cyclists that their safety is a priority of the police will be undermined if this evidence is dismissed and no action is taken. In some cases just a written warning may be enough to change behaviour.</p>	<p>Most forces now have online dashcam / helmet-cam reporting portals and some are doing excellent work, though Police Scotland is a notable exception.</p> <p>The new London Vision Zero Enforcement dashboard shows that over 1,000 offences a month reported online in 2022 by the public resulted in a Notice of Intended Prosecution (NIP).</p>
<p>10. The length of time required by the Police to serve a Notice of Intended Prosecution for a road traffic offence is currently just 14 days and must be extended. This period is too short to enable many cases to be adequately processed and in some cases may enable offenders to escape justice.</p>	No progress
<p>11. Confusion and overlap between 'careless' and 'dangerous' driving means that often bad driving does not receive the level of punishment that the public feel it should. New offences introduced over the last few years have started to plug some of the gaps in the legislation, but many problems remain, particularly where cyclists are the victims. The Ministry of Justice should examine in more detail how these offences are being used, including the penalties available for offences of careless and dangerous driving.</p>	In December 2021, the Government recommitted to review road traffic offences, a commitment initially made in 2014. The review still has not commenced, however.
<p>12. The police and CPS should ensure that victims and bereaved families are always kept adequately informed throughout the process of deciding charges. While in many cases this is done, we have heard of victims being ignored and only informed at a much later date that cases have been dropped or guilty pleas for lesser offences accepted.</p>	There has been encouraging progress at the local level, with local support projects commissioned by Police and Crime Commissioners, including in West Mercia (involving RoadPeace) and Warwickshire (involving Brake). Not all forces assign family liaison officers to life-threatening injured/families. People bereaved through road crime are still not classified as homicide bereaved.

Appendix 2: progress against recommendations made in the 2017 report, *Cycling and the Justice System*. (Cont.)

Recommendation	Progress
<p>13. The number and lengths of driving bans appears to have declined, with a 62% fall in driver disqualifications over the last ten years, double the fall in convictions for driving offences. Furthermore, very large numbers of drivers are escaping disqualification upon reaching 12 points or more. The Ministry of Justice should examine the reasons behind the decline in the use of the penalty of disqualification, and in particular the effect of the ‘exceptional hardship’ scheme.</p>	<p>The Sentencing Council made amendments to the definition of exceptional hardship in 2020. This seems to have prompted some magistrates to enable offending drivers to avoid reaching the 12-point total by giving them a shorter discretionary disqualification instead – effectively, a loophole within a loophole.</p>
<p>14. <i>The Soft Tissue Injury Reforms</i> - the ‘whiplash reforms’ - should not include injuries to cyclists or pedestrians, whose cases should be subject to the small claims limit of £2000, rather than £5000. These cases are more complex, more often contested, and are therefore much more likely to require the assistance of legal representatives which would be impossible to obtain under the small claims limit.</p>	<p>Following a co-ordinated campaign, cyclists’ and pedestrians’ injuries were excluded from the ‘whiplash’ reform, thereby protecting vulnerable road users from a move that would have placed them in a weaker financial position in the event of injury.</p>

**All Party Parliamentary
Group for Cycling & Walking
Road Justice Report 2023**

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