

How to help your constituents after road death or injury

A Guide for MPs

RoadPeace the national charity for road traffic victims



RoadPeace Guide for MPs

RoadPeace services

- | Information and support on our helpline –
7 days a week, 9am to 9pm
- | Support network and local groups
- | Written information and advice, from the
victims' perspective
- | Advocacy and representation of
victims' interests
- | Campaigns to improve justice for victims
- | Referrals to relevant specialists
- | Research, consultations, publications
- | Seminars, conferences, training for agencies
- | Strategies for reducing road danger and impact
on victims
- | Public awareness raising, including:
 - observance of an annual Remembrance Day
 - observance of August as National Road
Victim Month
 - planned erection of a National Memorial
to Road Traffic Victims



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*Designed by Rachel Hedley
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Dear Member of Parliament,

If you have not yet been contacted by a constituent affected by a road death or injury, you are the exception. With 3,500 road deaths annually and 500,000 road injuries, added to the hundreds of thousands from previous years, it is an issue which affects us all.

Yet road victims have been neglected for many years and RoadPeace is the only specialist charity for bereaved and injured road traffic victims. RoadPeace has a helpline, which is open seven days from 9am to 9pm; a network of local contacts and groups; a Lawyers' Group and a Parliamentary Group for Justice. RoadPeace also has mutual cooperation with 35 road victim organisations, all members of the European Federation of Road Traffic Victims, with a common agreement to offer assistance to road victims abroad.

RoadPeace has 12 years experience of supporting road victims and acting as advocates for their issues. We are offering this Guide to help you to help road victims in your own constituency. Mindful of the heavy workload and diversity of issues, which we know you have to face, this Guide is as brief as possible, but you can always contact us for more detailed information. We also offer an array of briefing sheets on all relevant issues and you can visit our website.

There are three sections:

- u Background**
- u Timescales for the procedures following a death or serious injury**
- u Some likely problem areas and suggested solutions**

Background

Societal response

Road death and injury are treated by society as an accident and not as the violent, needless death of a loved and valued human being and member of society, or the destruction of quality of life of someone seriously injured. This means that the resources put into the investigation and prosecution of a road death or injury are minimal in comparison with a death/injury by knife or gun or in a train or aeroplane crash.

Legal response

The most frequent charge – ‘Driving without due care and attention’ or ‘Careless driving’ – is heard in a Magistrates Court and does not even refer to the death or injury caused. Nor do Magistrate Courts keep a record of ‘Careless driving’ cases involving death or injury. Families are appalled both by the casual treatment of death or life changing injury and by sentences of a fine of a few hundred pounds and licence points for someone whose negligence and irresponsibility had caused a terrible death or injury.

Inquests, currently the subject of a Review, are also often experienced as failing to deliver a meaningful enquiry or to introduce necessary measures for preventing similar deaths, so that families and the public could see that lessons are learnt from preventable tragedies.

Impact on families

The inappropriate, dismissive response to their tragedies leaves families feeling let down and disillusioned, which is compounded by lack of adequate information. There is also often real financial hardship caused by cost of funeral, loss of paid work and medical and other costs.

What happens?....

Timescale after a death

First 24 hours

Police will inform family, arrange for identification, provide contact details, appoint Family Liaison Officer. They should also inform family of helping organisations, in particular RoadPeace, the only specialist charity for road traffic victims, and of their helpline number, **0845 4500 355**.

A Coroner’s Officer should also contact the family and provide the Home Office leaflet *The Work of the Coroner*.

Organ Donation – some organs, eg heart valves, may be donated up to 24 hours after the death.

Hospital Bereavement Support

Many NHS Trusts offer help after bereavement, including practical support with registration of death, etc.

Funeral

Families should be informed that they are able to play an active part in arranging the funeral. They should also be made aware of other choices and costs. RoadPeace can

offer some advice. The Co-op Funeral Service offers free funerals for children up to age 16.

Help from Departments of Social Security and Health

Booklet D49 – *What to do after a death in England and Wales* – is a guide to what needs to be done and to the help that is available. *A Guide for Disabled People and Carers* can be obtained from the DoH on 08701 555455

Post Mortem

The Post Mortem (PM) is normally carried out within days. The bereaved may send a medical representative or ask for a second PM, but are not normally informed of this right. The Post Mortem Report should be made available to families soon after the PM is completed, but this rarely happens.

Instructing a lawyer

The choice of the right lawyer is vital, since having an inex-

perienced or insensitive lawyer can add to the trauma. People tend to consult a lawyer very early on and it is always problematic to change. They should be expert personal injury lawyers, experienced in road traffic cases, and RoadPeace can offer advice on choosing a lawyer.

Victim Personal Statement (VPS)

This recently introduced scheme involves the police taking early statements from victim families about the effect on them of the crime, to be included with other witness statements in the documents available to the defence. RoadPeace has reservations about this and had been asking for 'Victim Impact Statements' to present a balance to the defendant's 'Plea in mitigation' at the end of a trial, before sentencing. RoadPeace also believes that these Victim Statements should be written by the victims themselves, with legal advice.

Police Investigation

Separate files are prepared for the Coroner and any criminal proceedings. A Collision Investigator's Report will give a technical reconstruction of the crash, with computer generated plan and photographs.

Charges

The police charge normally, but not always, after consulting with the CPS. 'Driving without due care and attention', a summary charge and the most likely charge, must be brought within six months of the crash; 'Dangerous driving' is an either way offence and charges for indictable offences, like 'Causing death by dangerous driving' and 'Causing death by careless driving under the influence of drink or drugs' can be brought at any time.

CPS review

CPS review the charge and decide whether or not to prosecute, and whether to prosecute themselves or employ agents to do so. Changes in the system are still in progress but there are two units: Criminal Justice Units for summary – Magistrate Court – offences, where police and CPS work together, and Trials Units, where the indictable – Crown Court – offences are processed.

Inquest

An Inquest should take place within three to four months, so that summary charges can still be made within the six months limit, on the basis of evidence emerging at the Inquest. Where indictable charges are brought, there will be no Inquest, as the hearing will take place in lieu of the Inquest

It is advisable for victim families to be legally represented at inquests. There is no legal aid available for inquests but some lawyers from the RoadPeace Lawyers' Group offer pro bono representation.

In cases where no charges are being brought, there is the

option of a private prosecution, which for a 'Driving without due care and attention' charge has to be initiated within six months of the death.

CRIMINAL HEARINGS

Magistrate Court Hearings

Magistrate Court Hearings should take place within six to 12 months of the crash. A guilty plea, which is common/usual, can take minutes and families are often shocked at the sentence, but Magistrates can only give licence points or disqualifications (they should use their power to ban more) and a fine for 'Driving without due care and attention', and their guidelines limit them further.

Crown Court Hearings

Crown Court Hearings will take longer and last about one week, unless there is a 'guilty' plea, when the hearing will also be brief. New Sentencing Guidelines have been issued in May this year.

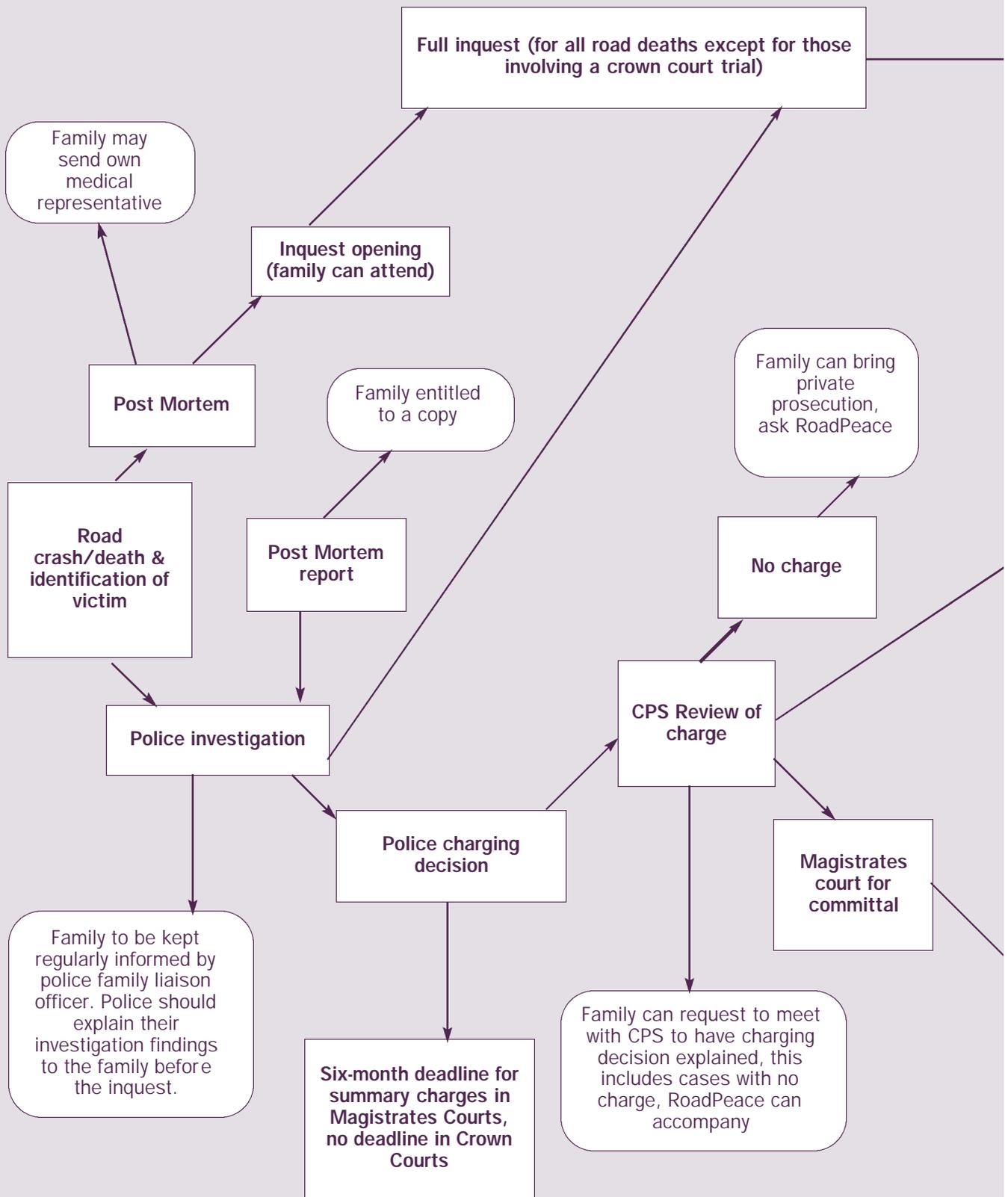
The Police Report

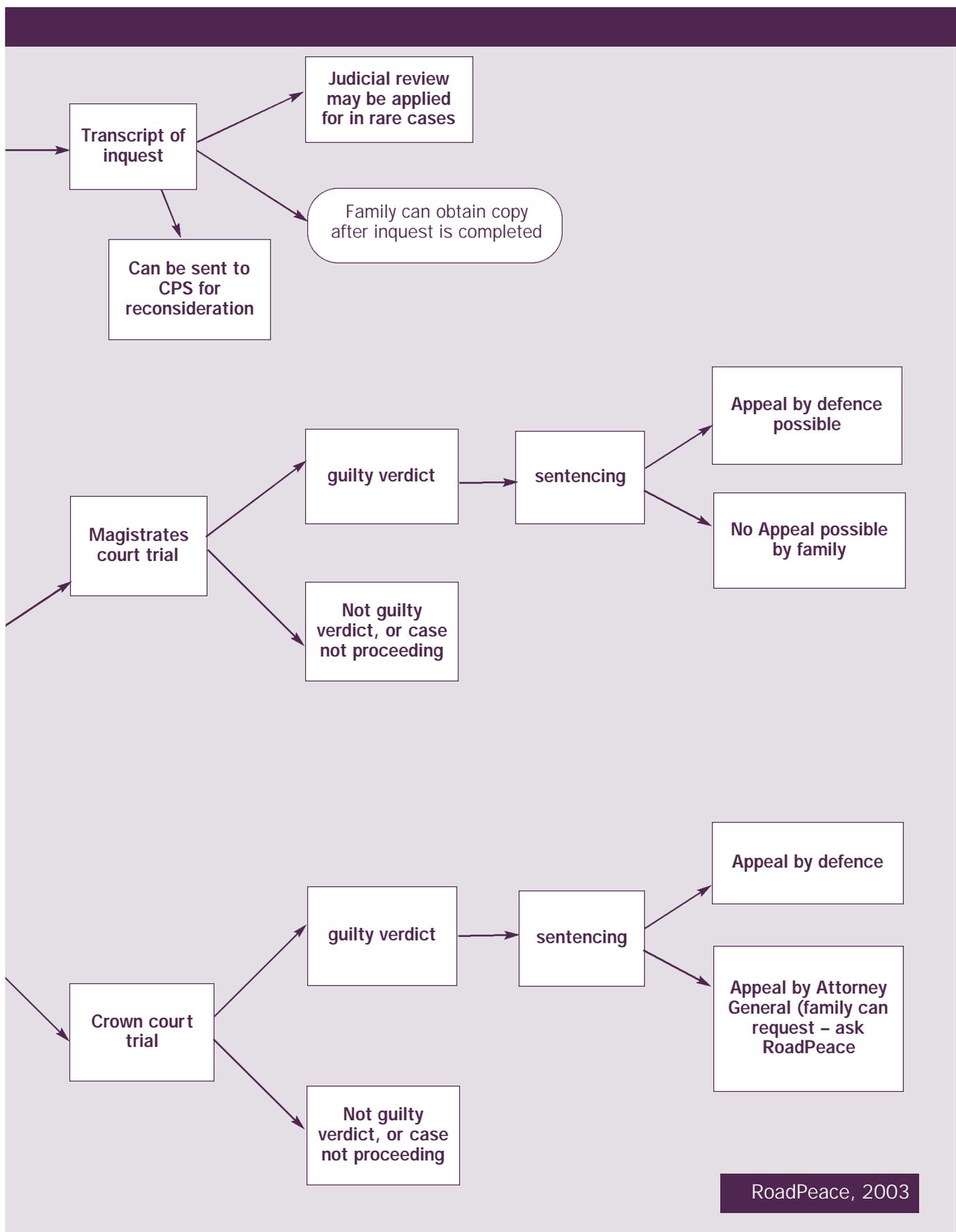
The Police Report can be purchased after proceedings are finished. The charges, which are often high, may be waived in the case of hardship and **free copies are made available to MPs**. ACPO recommend that charges should reflect only the cost of reproducing the paperwork and not the cost of the investigation.

Civil Proceedings

Civil Proceedings **MUST** be commenced within three years of the crash. Liability /fault must be established, which is often difficult when no charges have been brought. The statutory Bereavement damages of £10,000 are only paid for spouses and children under 18, this payment should be made early. Civil claims for the death of a child over 18 are normally restricted to funeral costs. Claims for psychological damage are only possible in limited circumstances.

Road death investigation and prosecution flowchart





No. Event/action	Note
1. Road crash/death & identification of victim	Family needs to identify victim at the mortuary. They should be allowed to say goodbye 'properly', i.e. see and touch their loved one (this is not the same as disturbing or interfering with the body). Some families might wish to take the body home, especially if a child has been killed. Coroner's officers should explain procedures.
2. Post Mortem	Family is allowed to appoint a doctor to represent their interests at the Post Mortem.
3. Opening of the inquest	Formal procedure only, but families may find it useful to attend, if they can.
4. Police investigation	The police will examine the vehicle and road environment, as well as interview the drivers and/or victims and witnesses to determine what had caused the crash. Specialist collision investigators should be assigned to each case, as should specialised witness statement takers.
5. Police meeting with family	It is good practice for the police to meet with the family before the inquest to discuss the police report, although the Police Family Liaison Officer should have been in regular contact with the family from the time the death message was delivered.
6. Full inquest	Inquests are held in over 90% of road deaths. Only deaths involving a Crown Court trial do not have an inquest. The Coroner courts are independent, they are not criminal courts and there is no required training for coroners. Inquests should be held within four months of the death, to allow for action before the expiry of the six-month limitation period for bringing summary charges. Inquests should at all times precede Magistrates Court hearings. The most common, almost routine verdict after a road death is 'accidental death', even for those deaths where there is a prosecution. Inquests are to be held with a jury if the death involved the police and some other circumstances. The Coroner service is currently under review.
7. Inquest transcript and recommendations	Coroners can make recommendations to the relevant authorities if they feel that the circumstances, which led to the death, posed a risk to other road users and that further deaths could occur. This is rarely done and when it is, there is no monitoring of whether the recommendations have been carried out.
8. Charging by police	Based on the evidence, the police will decide if a charge applies. Guidance is provided in the Road Death Charging Standard, agreed between the Association of Chief Police Officers and the Crown Prosecution Service. 'Driving without due care and attention' ('careless driving') is considered to be driving below a reasonable standard, whereas 'Causing death by dangerous driving' supposes a driving standard <i>far</i> below of what is considered reasonable. Please note: The current Charging Standard includes 'acts of driving caused by more than momentary inattention and where the safety of road users is affected', under the summary charge of 'Driving without due care and attention'. Examples include driving through a red traffic light, emerging from a side road into the path of another vehicle, turning into a minor road and colliding with a pedestrian, using a hand held mobile phone, reading a map, driving while tired or with a leg or arm in plaster' (ACPO, 2001).
9. CPS's review of charges	All police charging decisions are passed to the CPS for review. The CPS will decide whether a charge should proceed, according to the agreed Charging Standard, on the basis of the evidence and the public interest criteria laid down by Government.
10. CPS meeting with family	CPS will meet with the family to explain the charging decision. This is not known to have led up to now to any change in charging decisions, but it allows families to voice their views and hear an explanation of the CPS position.

No. Event/action	Note
11. No charge	In over 70% of fatal road crashes, no charge whatsoever is brought against a driver/rider (See TRL's Dangerous Driving and the Law, January 2002)
12. Magistrates Court proceedings	All proceedings start in the Magistrates Court, including those to be heard in the Crown Court.
13. Magistrates Court hearings	Of those fatal crashes involving a prosecution, two-thirds are heard in the Magistrates Court, where the most common charge is that of Driving without Due Care and Attention. Sometimes 'Dangerous driving', an either way offence, is also brought following a road death. Please note that neither mention the death involved, which is, understandably, offensive to many families. Until 2000, road deaths were not allowed to be mentioned during 'careless driving' hearings, now a mention is possible but not mandatory (TRL, 2002). Road death cases heard in the Magistrates Courts should be assigned a CPS lawyer and not a case worker or agent.
14. Not guilty verdict	Case is dismissed and there is no appeal possible.
15. Guilty verdict/sentencing	According to the Home Office publication 'A guide to the criminal justice system in England and Wales', over 90% of defendants charged with summary offences plead 'guilty' (note: this refers to all offences). Sentencing can be done immediately after conviction or it can be adjourned until further information is provided (plea in mitigation, etc.). The current maximum penalty for 'Driving without due care and attention' is £2500, although the government is proposing to double it. Guilty pleas result in an automatic one-third reduction in sentence.
16. Appeal	The defendant can appeal if the sentence is thought to be too harsh, but the CPS (or bereaved family) cannot appeal if the sentence is thought to be too lenient.
17. Crown court trial	In 2000, 185 drivers were charged with 'Causing death by dangerous driving', 53 with 'Causing death by careless driving while under the influence of alcohol or drugs', and 9 with 'Aggravated vehicle taking causing death' (Sentencing Advisory Panel, July 2002).
18. Not guilty verdict	No appeal by prosecution is possible.
19. Guilty verdict/sentencing	When 'guilty' pleas are accepted, no evidence will be heard and the family will only learn of the circumstances from the police report, which they can purchase. According to ACPO, the cost of police reports should only cover cost of copying the documents. The average prison sentence for crown court offences is 26 months (TRL, 2002). The Government has recently announced that drivers convicted of 'Causing death by dangerous driving' will be given a minimum sentence of 12-18 months (Guardian, 2003).
20. Appeal	The bereaved family can ask the Attorney General to appeal against an unduly lenient sentence within 28 days of sentencing and ask the CPS to forward the case papers to the Attorney's office. The appeal process can go right up to the House of Lords and to the European Court of Human Rights.

Timescale after injury

Investigation

In the case of a slight injury, there will be no investigation, unless the police suspect that a crime was committed. If there is a serious injury, the police will attend the scene, but witnesses will often only be contacted by post with questionnaire type forms to be completed and returned. This will also apply to the driver and victim. There is also unlikely to be a technical, Collision Investigator's Report.

Charges

There are no indictable offences relevant to road injury and the most serious cases will be dealt with by 'Dangerous Driving', an either-way offence, and the others by 'Driving without due care and attention' (see ante). Statistically, prosecutions following injuries are rarer than for deaths, especially in the case of pedestrian or cyclist injuries.

Families are also usually unable to think at this stage of anything other than saving the life or stabilising the condition of the victim. It is only later, when it is usually too late, that they question whether justice was done.

Civil Justice

The lack of a full report or of a criminal prosecution will make it difficult and sometimes impossible to claim damages. This will mean that long term care, perhaps for life, will be more basic and paid for by state benefits or the family. Claims are based on financial loss. Proceedings must start within three years of the crash, and may be possible even if victims are partially responsible. RoadPeace can offer advice on choosing a specialist solicitor.

Typical problem areas

Information

1. Lack of information on victims' rights and organisations that can help.

Contact RoadPeace. RoadPeace's national helpline is available seven days, from 9am to 9pm, offering immediate and long-term support. Local call rate number 0845 4500 355

2. Lack of information on the case itself, lack of police contact during the course of the investigation.

Contact Family Liaison Officer (FLO) or if this is impossible or unsatisfactory, senior officer at Traffic Base.

For the injured there is no FLO, victims are sent questionnaires to complete.

Inquest

3. Delay of Inquest, lack of information from Coroner and his officers.

Contact Coroner, contact the RoadPeace helpline.

4. Right order – inquest must come **before** hearing.

5. Difficulties with access to police report prior to inquest, with obtaining transcripts and the high cost of transcripts.

MPs can help get report for families and ask for correct procedures.

Prosecution

6. Dissatisfaction with the charge or lack of a charge.

Ask for a meeting with CPS as soon as possible. RoadPeace can often offer an escort to support the family, which has been agreed by CPS headquarters.

7. Failure to charge because six-month deadline for bringing summary offences has passed.

No action possible.

8. Dissatisfaction with CPS handling in court.

Complaint through CPS Complaint Procedure.

Sentence

9. Dissatisfaction with sentence.

There is no appeal against sentence in Magistrates Court, but in Crown Court cases, the Attorney General may appeal against an over lenient sentence within 28 days. Write to him, giving reasons, immediately, and write to CPS with request to forward documents to Attorney's office.

Please note

u MPs can help greatly by writing supporting letters with all letters from victims to the various authorities, to ensure speedier and more satisfactory responses, also in cases of difficulty with interim payments – civil claims last on average four to six years, access to rehabilitation, etc.

u RoadPeace is particularly concerned about the lack of access to compensation for children, elderly and ethnic minorities, as they are not aware of their rights.

u There is no legal aid for inquests, nor for civil claims following injury or bereavement. Claims under the 'No win, no fee' scheme will involve expenses.

u Cases involving uninsured drivers and 'hit and run' are handled by the Motor Insurers Bureau (MIB), Milton Keynes, Tel 01908 240 000

u Financial plight of victims – Citizen Advice Bureaus can offer financial advice and the Social Security booklet D49 lists help available following bereavement.

u *A Practical Guide for Disabled People and Carers*, in braille, audio cassette, disk, large print and other languages has been published by the Department of Health in 2003 – for a free copy telephone 08701 555 455.

Basic needs of trauma victims

Full and accurate information

Upholding of their human rights

Acknowledgement of their loss and suffering by society,
government and the judicial system

Denial of these basic needs, so frequently experienced by road traffic victims, who make up a huge group of trauma victims, makes many unable to benefit from help, including counselling and even causes psychological harm.

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