



Shakespeare Business Centre
245a Coldharbour Lane
London SW9 8RR

info@roadpeace.org
www.roadpeace.org
Tel: 020 7733 1603

Transforming the CJS

Government's Strategy and Action Plan to reform the Criminal Justice System *Implications for road crime and road crash victims*

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Key points

- The government's strategy and action plan to reform the criminal justice system (CJS) is intended to ensure a common set of outcomes.
- A cross departmental Criminal Justice Board has developed the strategy and action plan, and is responsible for delivering it over two years.
- Its 64 actions are organised into six areas:
 1. A digital CPS
 2. Faster and right the first time
 3. Transparent and responsive
 4. Care and consideration for victims
 5. The right response to crime
 6. Working in partnership
- The overall focus is on expedition and reducing costs, through early guilty pleas, fewer cases being tried in the Crown Court and "proportionate case build".
- Road crime is still seen as a mere summary offence, rather than a leading cause of wrongful death, injury and intimidation.
- Victims perceived to have suffered systemic neglect are prioritised. These include victims of violence against women and girls and child sexual abuse, hate crime, and gun and knife crime.
- Victims of road crime are systemically neglected. They are uncounted and suffer from lack of support and information. The real challenge is that this neglect is intentional as seen by the new Victim's Code exclusion of all victims of summary motoring offences. This includes those injured, including grievously, by drink/drug driving, careless driving, speeding, hit and run, etc.
- The planned review of the strategy and action plan in summer 2014 offers a key opportunity to redress this discrimination against road crime victims.

1 Introduction

In June 2013, the Lord Chancellor and Secretary of State for Justice presented to Parliament a strategy and action plan to reform the CJS. They were based on a simple premise—“that all parts of the CJS should be working towards achieving the same set of outcomes”, which were to:

- reduce crime;
- reduce re-offending;
- punish offenders;
- protect the public;
- provide victims with reparation;
- increase public confidence, including among victims and witnesses; and
- ensure the system is fair and just.

A Criminal Justice Board was established to ensure clear cross-CJS leadership for the development and delivery of both the strategy and action plan. Board members include a representative of Police and Crime Commissioners, the College of Policing, the Victims’ Commissioner, and leaders of CJS departments and agencies. The Senior Presiding Judge attends as an observer and provides a link to the Criminal Justice Council which provides advice to the Board.

The 64 actions are organised by six key areas discussed in subsequent chapters.

1. A Digital CPS
2. Faster and right the first time
3. Transparent and responsive
4. Care and consideration for victims
5. The right response to crime
6. Working in partnership

Each action in the plan is owned by a member of the Board who is responsible for delivering it within the agreed two year timeframe. The deadlines and lead individuals for each action are specified in the plan (but not shown below). The Board is to “refresh” the action plan in summer 2014 with an update on progress and further actions to be delivered.

2 A Digital CJS

Table 1: CJS Action Plan: A Digital CJS

No.	Action
1	Begin a wider, rolling programme of reform, which will see the introduction of a simplified file for each crime type, ensuring that the streamlined digital file is established as the norm in criminal justice proceedings.
2	Test a simplified file and app-based approach for traffic and shoplifting cases.
3	Continue to promote the take-up of secure email by the defence to enable the digital service of case material from the CPS ahead of the Legal Aid Agency requiring defence practitioners to have and use secure email from October 2014 as prescribed in the new criminal legal aid contract.
4	Deliver digital by default courtrooms in magistrates’ and Crown Courts that enable all parties to operate effectively without using paper.
5	Increase the use of video across the CJS by encouraging the utilisation of existing video equipment by prioritising the use of video for prison to court video links so that movement of defendants in and out of prisons is reduced.

A single information management system is to be developed which allows for evidence and case information to be shared across the CJS. One of the first actions to be undertaken was the testing of a simplified case file for traffic and shoplifting cases (Action 2). Shoplifting rarely involves any injury, whereas the majority of traffic cases are believed to involve an injury.

RoadPeace comment

At present, no data is collected on the number of victims of road crime. The MOJ does not collate data on the number of people injured or even killed by dangerous drivers or drink drivers. Any reform to case file and information management must ensure information is collected on the victim.

3 A CJS which is faster and right the first time

Table 2: CJS Action Plan: A CJS which is faster and right the first time

No	Action
6	Following the judicially-led disclosure review in magistrates courts, review training materials and roll out refresher training if necessary, to increase expertise in dealing with disclosure.
7	From April 2013, the CPS began handling all appropriate charging advice requests 24 hours a day, seven days a week through CPS Direct (the CPS dedicated charging service). The CPS will work to ensure that these new arrangements facilitate more consistent charging advice.
8	Establish whether existing guidance, training and awareness on preparation standards and proportionate and timely file build meet current requirements; and Monitor and improve quality and compliance with those requirements.
9	a) Implement a single traffic court in each police force area (and explore the possibility of further centralisation of traffic courts in London); and b) Legislate to allow the majority of high volume, low-level, ‘regulatory’ cases to be dealt with away from traditional magistrates’ courtrooms.
10	Encourage an increase in the national take-up of police-led prosecutions for uncontested traffic and other specified offences, following an evaluation of the pathfinder areas in the summer, reducing cost and inter-agency handovers, and freeing up CPS time to concentrate on more serious and contested cases.
11	Further increase the number of cases which the police can prosecute without requiring CPS involvement, by legislating to make shoplifting a summary-only offence where the stolen goods are valued at £200 or less. This would mean that the great majority of shoplifting cases that are already dealt with in magistrates’ courts would be subject to more efficient procedures, although it would still be open to defendants to elect a Crown Court trial.
12	a) Ensure the police and CPS do more to identify, and prepare appropriately, cases where there is an anticipated guilty plea; and b) Ensure that such cases are prioritised for early preparation and, where possible, for early hearing.
13	Ensure more hearings go ahead on the day planned by focusing resources on making first hearings as effective as possible in cases that are likely to go to trial.
14	Set up a working group to provide guidance on the application of the Criminal Procedure Rules in summary proceedings with a view to making preparation simpler and more proportionate.
15	Support the Senior District Judge (Chief Magistrate) and His Honour Judge Kinch QC in their review of magistrates’ courts disclosure rules to ensure they are proportionate and effective.
16	Make better use of agent prosecutors in magistrates’ courts by ensuring that they are either able to pick up and prosecute floating and back up cases when their allocated cases vacate, adjourn or finish earlier on the day.

17	Each member of the Criminal Justice Board has committed to supporting the judicially-led refresh of the Stop Delaying Justice! initiative. We will set up a working group – reporting to the Senior Presiding Judge – that will provide a coherent package of actions, expectations and guidelines for CJS agencies, defence practitioners and magistrates and will ensure that its delivery is a local priority.
18	Each member of the Criminal Justice Board has committed to making the Early Guilty Plea scheme a success.
19	<p>Actions to support the implementation of the Case Management initiative:</p> <p>Develop arrangements for formal plea reviews between the CPS and defence to take place in all cases, including those not eligible for the Early Guilty Plea Scheme.</p> <p>Introduce a simple set of non-exhaustive criteria for prosecutors to use in identifying the sort of case in which a timetable may be appropriate, and where appropriate to make an application and provide an agreed draft at the Plea and Case Management Hearing.</p> <p>Review reasons for non-compliance with the Criminal Procedure Rules, Practice Directions and Local Practice Guidance Notes in Crown Court cases and take action to drive up performance.</p>
20	For paper-heavy cases, the Senior Presiding Judge will oversee the implementation of the recommendations from his review of disclosure. The Senior Presiding Judge will test a tailored approach in four court centres (Birmingham, Manchester Crown Square, Kingston upon Thames, and Southwark) before rolling this out across all courts.
21	<p>Identify, reform, and then monitor compliance with the Criminal Procedure Rules, Practice Directions, and judges’ orders:</p> <p>a) Work with local areas over the remainder of this year to identify, and where possible address, the reasons why Criminal Procedures Rules and Practice Directions are not followed in both magistrates’ court and Crown Court cases;</p> <p>b) Identify any barriers to compliance which cannot be overcome by changes to guidance, culture or practices and work with the Criminal Procedure Rule Committee to simplify criminal procedure rules if applicable; and</p> <p>c) Identify baseline data on compliance where possible and put in place the appropriate measures to monitor how well the CPS and defence comply. (As an example the CPS have set a level of expectation for areas in respect of compliance with judges’ orders in the Crown Court of at least 75% in 2013/14 with the anticipation that this will rise to 90% in 2014/15.)</p>
22	Make compliance data available to CJS practitioners so that individuals can see and understand the impact of their performance, as well as making local level data available to the public so the CJS can be held to account.
23	Work with the defence community on how to better prepare defendants for first hearings, including how to maximise the effectiveness of duty solicitors.

This section of the plan focuses on reducing errors in the CJS, with four priorities identified:

1. Improving the quality of file preparation

A review of traffic (and shoplifting) cases has already been conducted and has *“identified the potential to strip out a significant portion of information that is currently routinely included and exploit digitisation to make the amount of time the police have to spend on file preparation and will enable the use of mobile devices in future.”*

RoadPeace comment

Less information being provided on traffic cases suggests less evidence being collected.

2. Transforming summary justice, so that it is simpler, faster and more proportionate

We focus our limited resources on the cases that need them—dealing more proportionately with simple summary cases. (p6)

Summary cases are by their nature among the most simple that come before the courts. But they take too long, are frequently over-complicated, routinely involve a disproportionate amount of resources, and too often are not adequately prepared, which can lead to re-work and unnecessary adjournments.

RoadPeace comment

Summary cases are those heard in the Magistrates Courts and traffic offences account for many summary cases. Careless driving that causes a death is an either way offence whilst careless driving which “only” injures or intimidates is a summary offence. Speeding offences were singled out and noted to account for 9% of all court convictions in 2012, or over 110,000 prosecutions (virtually all of these occurred in the Magistrates Court).

Action 9 includes establishing *a single traffic court in each police force area (and explore the possibility of further centralisation of traffic courts in London)*, whilst Action 10 is to *encourage an increase in the national take-up of police-led prosecutions for uncontested traffic and other specified offences*. Thus police are to be responsible for both investigation and prosecution, at least with guilty pleas. The government is also proposing the use of single magistrates.

3. Tackling inefficiency in the Crown Court

The CPS cost in a Crown Court trial was stated to be more than three times that in a Magistrates Court trial. Thus reducing the number of Crown Court trials is a priority for the government and the case mix between the two courts is being reviewed.

The Early Guilty Plea scheme is heavily promoted and includes a focus on “proportionate file build”.

- *Early identification of Crown Court cases likely to result in a guilty plea and early communication with the defence about the potential for a guilty plea or plea to an alternative charge. Weak cases identified at this stage should be stopped or summary-only charges substituted.*

RoadPeace comment

Again, there is a danger of explicit or implicit pressure to downgrade more serious driving offences. Dangerous driving is already an extremely rare charge. This could make it rarer.

4. Making sure performance measures are aligned and encourage the right behaviours.

RoadPeace comment

It should be possible to hold the CJS to account for how well it reduces road danger. But this will require greater transparency so that it is possible to see how often a driver is prosecuted for injuring someone, and if it is a vulnerable road user.

- *as part of our commitment to being transparent about our performance, making this data on compliance (with the Criminal Procedure Rules and Practice Directions) available to CJS practitioners, so that individuals can see and understand the impact of their performance, as well as making local level data available to the public so the CJS can be held to account.*

4 A Transparent and Responsive CJS

Table 3: CJS Action Plan: A Transparent and Responsive CJS

No.	Action
24	Publish more data on the performance, expenditure and priorities of the CJS so that members of the public can better understand criminal justice services in their area and how they compare with others – starting with more information on case timeliness on police.uk
25	Work with local partnerships to help establish what information they need to plan effectively and monitor performance.
26	Provide the Criminal Justice Board with the right information, working with it to align performance measures across the CJS and enabling it to monitor progress towards the CJS shared outcomes and improved effectiveness and efficiency.
27	Explore effective mechanisms for sharing user satisfaction data to ensure that the way in which services are provided is improved.

Much reference is made to public confidence and informing and empowering citizens so that they can hold the CJS to account. The strategy states that:

The public will only have confidence in the system if they understand how it works, what they can expect, and how it is performing.

We want to give people information to understand how their local system is doing, and clear ways for them to engage. And we want people to know that justice is being done, making it easy to obtain information about justice outcomes.

RoadPeace comment

Thus there is much potential, in theory, for local communities, to ask for more information and proof that the CJS is responding to the threat of road crime with proper priority. But this requires data on the number of drivers being prosecuted for injuring others and which road users are being hurt. At present, the police.co.uk website does not include any information on driving offences.

5 Care and consideration for victims and witnesses

Table 4: CJS Action Plan: Care and consideration for victims and witnesses

No.	Action
28	Ensure that the witnesses who are most at risk of dropping out of the proceedings are effectively supported by reviewing current arrangements and, subject to findings, consider introducing a risk management process to target those likely to drop out.
29	Make it easier for witnesses, including expert witnesses and police officers, to give evidence through video link.
30	Develop an effective nationally commissioned court-based Witness Service that works closely with Witness Care Units to provide minimum standards of treatment, provision of information, and support before and at court.
31	Explore how to provide better information for victims about the CJS, and about the progress of their case, building on the information already available on police.uk, and looking into extending the successful <i>Track My Crime</i> system developed by Avon and Somerset Constabulary.
32	Work with the Victims' Commissioner, Baroness Newlove, to ensure that arrangements for victims to be informed when an offender is to be released from prison best meet victims' needs.
33	Improve feedback mechanisms, complaints and redress for victims by including in the revised Victims' Code an improved complaints process so that victims know who to contact and what to expect if things go wrong.
34	Look at the case for an independent complaints ombudsman for the whole of the CJS to investigate and report on complaints made by victims, either locally or nationally.
35	Increase meaningful reparation to victims by establishing what works in helping them to cope and recover, and setting out how we will work towards this.

The strategy stresses how:

We aim to improve victims and witnesses' experience of the CJS both as an end in itself and to increase participation in the CJS process (p24)

We will explore how to provide better information for victims about the CJS and the progress of their case, building on the information already available on police.uk and looking into extending the successful Track My Crime system developed by Avon and Somerset Constabulary. (p26)

RoadPeace comment

But those injured by law breaking drivers are not seen as crime victims with the vast majority of them excluded from the new Victim's Code. Only those injured by dangerous drivers, and those bereaved, qualify for the services of the Victims Code.

Track My Crime was introduced several years ago and RoadPeace called for it to be extended to Track My Crash. This has yet to happen.

6 The right response to crime

Table 5: CJS Action Plan: The right response to crime

No.	Action
36	Analyse how victims of sexual violence experience their contact with the CJS. We will do this work with rape support groups and other stakeholders, and use the information gathered to establish an evidence base. This will inform improvements to the CJS response which are focused on the victim.
37	Use the work described in Action 36, and the other reviews into the way sexual offences are investigated and prosecuted, to identify what further action is required to improve the CJS response to these crimes.
38	Consider the responses to the revised Victims' Code consultation on the proposals to provide an enhanced service to victims of sexual violence, domestic violence and human trafficking (as well as an enhanced service to those under 18) by the CJS agencies.
39	Improve the consistency and take-up of special measures for vulnerable and intimidated witnesses.
40	Pilot Section 28 of the Youth Justice and Criminal Evidence Act 1999, which provides for pre-recorded cross-examination of a vulnerable witness in three courts - Leeds, Liverpool and Kingston-upon-Thames - starting in late 2013.
41	Review the way in which victims being supported by services (under future national commissioning arrangements) are informed about their rights and expectations of the CJS.
42	Consider the extent to which extra or reserve jurors could be used in these cases to take the place of any jurors who have to be discharged during the trial, so as to minimise the risk of having to stop and begin again.
43	Review how we might reduce the distress caused to some victims by cross examination, particularly where there are multiple defence barristers.
44	Assess how disability hate crime cases have been handled in 11 police force areas.
45	Work with the courts to improve our information on the use of enhanced sentencing for hate crimes.
46	Consider the responses to the consultation on extending enhanced entitlements under the Victims' Code to victims of hate crime.
47	Consider the recommendations of the Law Commission's review, 'Hate Crime: review of aggravated offences and stirring up of hatred offences'.
48	College of Policing will review its central response to internet hate crimes during 2013–14
49	Encourage the wider use of community impact statements, which the police, CPS and courts have found effective in providing the court with information on the impact of gun crime on a community and local services.
50	Consider how information sharing can be improved to ensure that appropriate security measures are put in place to manage gang members or violent offenders at court.
51	Consider whether and how we could improve processing for firearms offences, looking at a number of possible causes of delay, including forensics.
52	Ensure the Criminal Justice Board takes a leading role in driving improvements in performance to ensure equality of treatment for everyone who comes into contact with the CJS. This will include: <ul style="list-style-type: none"> a) examining experiences of the CJS and exploring why there is over-representation of some groups (especially those with a protected characteristic (e.g. race, sex) as defined by the Equality Act 2010); and b) where we have evidence of inequality in the CJS, put in place a plan to tackle it.
53	Ensure the Criminal Justice Board takes a leading role in promoting diversity of the CJS workforce to ensure it better represents the population it serves. It will do this by: <ul style="list-style-type: none"> a) acting as a strong advocate for diversity across the CJS; b) reviewing workforce statistics and other evidence to identify barriers to diversity and areas for improvement; and

	c) taking action to tackle the underrepresentation at all levels across the CJS.
54	Hold a number of events to be led by the Minister for Policing and Criminal Justice to discuss and debate equality issues and concerns openly with a range of stakeholders, particularly voluntary sector organisations representing service users. These will inform the work of the Criminal Justice Board and wider policy development.
55	Work closely with the Youth Justice Board to ensure a joined-up approach to improving equality across the adult and youth systems, with an initial focus around ensuring greater racial equality.

Whilst Police and Crime Commissioners (PCC) are responsible for setting local priorities, the strategy acknowledges that:

However, there are also crimes where either there is evidence of systemic failure in how the CJS tackles them, or they have a particularly devastating effect on victims, either due to the nature of the crime or the vulnerability of the victim or witness. Such crimes require us to consider nationally how the CJS is responding and take action to improve performance where necessary. (pg 27)

The strategy identifies three such crimes:

- violence against women and girls and child sexual abuse;
- hate crime; and
- gun and knife crime.

No mention is made of road crime victims, despite many more people being killed and injured by law breaking drivers than by gun and knife crime.

But lessons can be learned from the approach taken towards tackling violence against women and girls and child sexual abuse. The strategy included a review of the progress made in the past decade:

- Specialist police units staffed by specially trained officers
- Specialist CPS prosecutors
- Specialist Rape and Sexual Offending Units
- Network of rape and child sexual abuse coordinators
- Specialist domestic violence courts
- Cross-Government A Call to End Violence against Women and Girls Action Plan 2013
- National Panel to review past allegations of No Further Action where victim was not satisfied
- National Group to tackle sexual violence against children and vulnerable persons

But the strategy acknowledged that more was needed and declared that *“The specific role of the Criminal Justice Board will be to make sure the CJS response to these crimes is improved from start to finish.” (pg 28)*

Actions include a review of the CJS experience of sexual violence victims , how sexual offences are investigated and prosecuted, and how victims can be better supported with an enhanced service.

RoadPeace comment

Similar actions are proposed for the other two priority crime types of hate crime and gun and knife crime. But these are also needed for road crime. Transport for London has conducted research on the CJS experience of cyclists killed and seriously injured in London (TfL, 2013). And whilst this was pioneering, it was also a very small sample size. And whilst the first ever joint inspectorate review of road death investigation and prosecution is currently underway, no such review has ever been conducted on injury collision investigation and prosecution.

The Ministry of Justice has decided that support services for road crash victims was to be determined locally by the PCCs. Minimum standards have not been set. And the new Victims' Code, introduced at the end of 2013, sent a strong message that the CJS still did not view those injured by summary motoring offences as victims of crime.

Whilst the strategy is prioritising victims of crimes that have been systemically failed by the CJS, it continues to design in neglect and discrimination of road crime victims.

7 Working in partnership

Table 6: CJS Action Plan: Working in partnership

No.	Action
56	Use the leadership of the Criminal Justice Board to address barriers that currently prevent integration, clearing the way for transformative IT programmes.
57	Develop a transparent approach to all CJS contracts in the procurement pipeline to provide new opportunities for collaboration.
58	Draw up criteria against which all CJS contracts can be assessed with a view to identifying opportunities for join-up between criminal justice agencies, and cost savings.
59	Communicate the Criminal Justice Board's priorities to local partnerships and provide them with a channel through which they can feed back to the Board.
60	Work with practitioners at a national and local level to ensure that each part of the CJS is clear about their role in achieving the shared outcomes.
61	Identify good practice to be shared between local areas and promote ways of sharing information online, such as POLKA hosted by the College of Policing.
62	Explore different approaches to national-local working to inform how we will work in the future and ensure that lessons learned are shared across the system. We will start this work with the Mayor of London's office and other criminal justice partners to agree a CJS response to theft from the person in the capital.
63	Revamp community impact statements so that they can be used by PCCs and the National Crime Agency to make the courts aware of crimes that pose a particular problem in their areas and their impact on local communities.
64	Improve joint working across the CJS by putting together a package of workforce options for criminal justice agencies, which set out a more common approach to staff training, objectives and talent management.

This section focuses on the relationship and collaboration between national and local level. Local priorities are identified in local police and crime plans. Many PCC plans reference road safety. And success is to be judged nationally as well as locally.

RoadPeace comment

Action 62 refers to developing a CJS response to theft from the person in London. So too could the response to bad driving which injures and intimidates vulnerable road users be developed in London. Transport for London has recently established an Enforcement working group, under its Safe Streets for London Steering Group, to help ensure the police contribute to achieving the key target of reducing the number of people killed and seriously injured by 40%.

8 Conclusion

Whilst this strategy is intended to ensure a common set of outcomes within the CJS, it does not represent joined up thinking with transport or public health policy. At a time when the government is promoting walking and cycling, this strategy and action plan includes no actions to support this policy. Instead it only fuels fears that road danger and law breaking on the road is treated with complacency by the CJS.

It is only recently that the interdependency of transport and public health has been realised. And whilst there is more appreciation by transport authorities of the key role that the CJS has in reducing road danger, this has not meant it is a priority for the CJS. Instead traffic remains viewed as a high volume low value problem with victims not even mentioned in criminal charges.