

The potential of a better post crash response for greater vulnerable road user safety

Brigitte Chaudhry, President, European Federation of Road Traffic Victims (FEVR)
FEVR, PO Box 53318, London NW10 3WT, UK; president@fevr.org

The European Federation of Road Traffic Victims - FEVR – was launched in 1991 and is a federation of over 20 European road victim associations, which for many years have been supporting and assisting road crash victims, as well as campaigning on their behalf. They are therefore uniquely informed about what happens after a road crash in which someone has been killed or injured.

The overall experience, Europe-wide, is that road deaths and injuries are not treated with the appropriate seriousness, that the post crash response in the majority of cases is unsatisfactory to an unacceptable level.

It has also been found that when vulnerable road users are the victims, this response can even be more unsatisfactory, as some examples show.

FEVR and the organisations under its umbrella contend that the way a country responds to road death and injury is indicative of the seriousness it attaches to road safety, and they are therefore campaigning for governments to include the post crash response into their prevention work and road safety strategies.

What constitutes this post crash response that victim organisations want to see improved and treated as part of prevention?

- investigation of crashes - these should be to minimum national standards
- criminal justice – with fitting laws, charges and sentences
- civil justice – fair compensation/damages payments (liability issues, length of proceedings, etc.)
- medical care – physical and psychological, to national standards

A handout of a campaign manifesto in respect of the above will be available.

Recent developments in relation to the above areas include:

Investigation – Investigation Manual for police and Coroner Bill reform in the UK

Criminal Justice – new charge from August 2008 – in the UK

Civil Justice – strict liability legislation, which benefits vulnerable road users and is already operating in several countries

Medical care – road injury is at present not a priority for the health sector and consistent trauma care is not available (Royal College of Surgeons, UK, and EU Report 'Injuries in the EU', launched April 2008)

The EU Report 'Injuries in the EU' gives a summary of road fatalities and injured road users, EU27, from 2003-2005: There are almost 50,000 road fatalities in the EU per year, 17% of whom are pedestrians and 7% cyclists.

The Apollo EC supported Project by EuroSafe, of which FEVR is a collaborating NGO, addresses vulnerable road user injuries as part of a joint project on Strategies and best practices for the reduction of injuries, it ends in 2008.

A book – Murder most foul; a study of the road death problem - written 60 years ago by JS Dean, Chair of the Pedestrian Association in the UK, deplored the fact that vulnerable road users had to carry a disproportionate responsibility for their safety compared with those who posed the danger – this book is still highly relevant and copies will be available.

The potential of a better post crash response for greater vulnerable road user safety

Brigitte Chaudhry, President, European Federation of Road Traffic Victims (FEVR)

The European Federation of Road Traffic Victims - FEVR, launched in 1991, is a federation of over 20 European road victim associations and has links with similar organisations beyond Europe. FEVR has UN consultative status and represents road crash victims and their interests at UN working parties, in particular WP1 in Geneva, and at the WHO/UN Road Safety Collaboration Forum set up in 2004 after WHO was elected by the UN General Assembly as the Coordinator for tackling the 'global road safety crisis'. FEVR also lobbies the European Parliament and collaborates with other European NGOs.

The reason road victim organisations were being set up throughout Europe, especially in the early nineties, was the steep rise in road deaths and injuries and the neglect of road crash victims, who were left without assistance as well as justice. Very few countries had responded to the UN resolution of 1985, which asked governments to protect victims' rights, improve their position in the criminal justice system, guarantee fair compensation, and provide medical, social, psychological and juridical assistance to them, therefore victim organisations felt compelled to fill the void left by government failures.

If governments accepted their responsibilities, there would be no need for victim associations, but with the continuing high casualty toll in Europe and the global road casualty situation worsening, it appears that victim organisations will continue to fulfil an important and much needed role for a long time to come.

Most road victim advocacy NGOs offer ongoing assistance to victims - often through a helpline, through information written from the perspective of victims, and through person to person support, including, when possible, escorts to court hearings or meetings. They are therefore uniquely informed about what happens after a road crash in which someone has been killed or injured.

The overall experience, Europe-wide, is that road deaths and injuries are not treated with the appropriate seriousness and that the post crash response in the majority of cases is unsatisfactory to an unacceptable level. It has also been found that when vulnerable road users are the victims, even when they are children, this response can be even more unsatisfactory.

Some cases from the UK and Switzerland illustrate this:

Jack Baxter, aged 14, was crossing the road one early July evening in 2002 when he was hit by a motorcyclist. Jack was thrown some 18 or 19 metres. The motorcyclist remained on his machine for 34 metres before hitting a parked car.

Jack received life threatening injuries - he spent 5 days on life support. He is left with a brain injury which will affect him every day for the rest of his life.

The police constable who attended the scene requested supervision but none was available. He interviewed one witness at the scene, but then waited two months before interviewing the driver. He told the driver that he would not be prosecuted. Two days later he interviewed a second witness whose statement contradicted the first. Neither witness had been close enough to identify the cause of the crash, but the officer closed the case as 'no further action'.

A collision investigation officer after a brief examination concluded that Jack had shot off the pavement directly into the path of the motorcycle. The distance Jack was thrown gave a motorcycle speed of 28 - 33 mph.

It might have ended there, as so many investigations do, with the pedestrian or victim held responsible, but the motorcyclist launched a damages claim against the household insurers of Jack's parents. Through this, Jack's parents learned of a new witness statement. This witness was a professional driver and an experienced motorcyclist and he was very firm in his opinion of the cause of the crash: ***'The boy appeared to be doing everything correctly and the bike could not have been within his view when he started to cross. ... It is an excellent double bend to 'flick' a bike through and that is what the rider was doing. I would estimate that his speed was at least 40 mph and possibly more. ... I would place all the blame for this accident with the rider of the motorcycle. He was travelling far too fast.'***

The civil case against Jack's parents was heard in October 2004. The third witness told the court how he arrived at his estimate of ***'at least 40 mph and possibly more'***. He described the engine note, the road position and the angle of the motorcycle. The court had to choose: Were three police officers wrong, or was the witness mistaken? The court awarded 100% damages to the motorcyclist.

Somehow Jack's parents pressed on. Early April 2005 found Jack's father photocopying obscure research papers in Lancaster University library. A 1988 paper by Denis Wood of Dublin University contained 16 formulae for different aspects of pedestrian throw. Formula 13 included the weights of the vehicle and pedestrian. Substituting some approximate values and working through the formula gave a motorcycle speed of 40 mph.

It was so simple - the distance a pedestrian is thrown depends on the weight of the vehicle as well as its speed. A motorcycle must be travelling faster than a car to throw a pedestrian the same distance. But the investigating officer had used a formula more suited to a pedestrian hit by a builders van. The witness was not mistaken: Jack had been the innocent victim of a speeding biker. The Police had got it wrong.

Jack's parents were also aware of the wider issue and tried to alert the authorities. It was confirmed that police officers receive no training in motorcycle-pedestrian collisions and that forces were using the wrong methods to analyze motorcycle-pedestrian collisions.

But over six years since the crash, Jack has received no compensation, while the motorcyclist retains his. The reward for Jack's parents? They received a letter from a police commander informing them that future training will include motorcycle-pedestrian collisions and that the first ever research into motorcycle pedestrian collisions has been commissioned by him.

Scott Cook was 11 years old when he was killed in April 2005, while crossing a busy road to school. There was no prosecution as the child was considered to be at fault. Scott's parents had expressed their concerns about this road to the authorities 2 years earlier; nevertheless they also hold the driver responsible. They wrote to RoadPeace only on 15th June 2008: *...We can't accept that the driver who hit Scott - an 11 year old walking along a pavement in a bright red top clearly visible to every other driver (some witnesses said he was preparing to cross) ploughed into him at 40mph without reacting at all. The police were sympathetic towards the driver and just seemed to blame Scott. We have decided to proceed with a civil action against the driver. It's not about money; it's about getting some justice for Scott. We do feel the law needs to be changed to make drivers more accountable when they hit a vulnerable road user.*

Susanne Koch, 7, was crossing the road on a pedestrian crossing with cars stopping on her left, but when she was half way through, a car coming from the right hit her, injuring her. The driver escapes a prosecution, but Susanne is being prosecuted for being careless. Through publicity by RoadCross, the Swiss road victim organization – *'It is unbelievable that a 7-year old victim is treated as an offender'*, there is a public outcry and the prosecuting authorities withdraw the case.

Noemi Minder, 10, was seriously injured while crossing the road on a pedestrian crossing. Initially the driver was found not guilty on the grounds that the marking were not highly visible. Following an appeal by the mother with the help of RoadCross, the driver was found guilty of causing serious bodily injury. An appeal by the driver was unsuccessful – on 11 April 2008, the judgment of the previous court was upheld. This judgment is very important for the family of the victim, including for financial reasons, but it is also very important for others.

Besides supporting victims, road victim NGOs also campaign on their behalf - they feel they are forced to campaign - on issues of road victim treatment, lack of justice, and on road danger issues.

The following are examples of advocacy activities by some of FEVR member organisations, which show the wide range of activities and importance of their work:

ACA-M in Portugal conducted a study on pedestrian movements and facilities for them in Lisbon, created zebra crossings made up of rows upon rows of names of those killed on the road, organised a protest against the high speed of official cars, launched a campaign of Fifteen commandments of courtesy at the wheel.

Associazione Familiari e Vittime della Strada in Italy have been calling for ethics in all professions – in the justice sector for judges, magistrates and lawyers, in the road building sector – for companies; have established collaboration with universities for analysing the effect of traffic, especially on pedestrians.

The Ligue in France has been working on the classification of cars in relation to safety, and is working towards a citizen car.

AVR in Luxemburg has campaigned on the reduction of the alcohol limit (successful), held an exhibition on driving while tired and a round table for disabled victims.

RoadCross in Switzerland, as we have learnt, provided assistance in court cases and launched a campaign aimed at young women asking them to leave the cars of risk-taking boyfriend drivers.

Pat-Apat in Spain took part in a Pilot programme where bereaved family members gave testimony of their experiences to learner drivers.

RoadPeace in the UK launched a Justice Campaign, called for black boxes, 20mph default speeds in cities and strict liability laws in respect of vulnerable road users.

FEVR and the organisations under its umbrella contend that the way a country responds to road death and injury is indicative of the seriousness it attaches to road safety, and they are therefore campaigning for governments to include the post crash response into their prevention work and road safety strategies.

Many countries have set themselves targets for the reduction of road casualties – up to 50% within 10 years. This means that even if these targets are achieved, there will occur thousands of deaths and millions of injuries each year. In the UK alone, these envisaged deaths and injuries from 2000 – 2010 will amount to 25,000 and 300,000 -750,000 respectively. But casualties are only a partial measure of road safety!

Virtually no provisions are made in government road safety strategies – for care, for services or other responses for these planned for and expected victims.

In the UK, we have used the Haddon Matrix to analyse the Government's Road Safety Strategy of March 2000, which showed that out of 150 recommendations for action, only one single one related to the post crash stage. Even then there were no detailed plans, merely the statement: *We must not forget the victims of road accidents and their relatives. While police officers are trained to deal sensitively with tragic events, the effects can be long lasting. The victim support charities do a very good job in producing advice for people – their members often have personal experience.* But there is no government funding for that work mentioned, victims themselves have to fund this support.

The Haddon Matrix analysis ought to be applied in all countries to identify post crash actions within Government road safety strategies.

What constitutes these post crash areas that victim organisations want to see improved and included in crash prevention plans? These are listed, together with some background details, mainly relating to the UK:

Investigation of crashes – conducted to consistent standards - minimum national and eventually international, standards

Criminal justice - with appropriate laws, charges and sentences

Civil justice – length of proceedings to be reasonable and damages payments to be fair, strict liability laws to apply to vulnerable road users, thus removing the burden of proof from them

Medical care – both physical and psychological to satisfactory national standards

A thorough investigation of crashes is crucial to establishing the circumstances that have led to a road death, to providing evidence for a criminal prosecution and for lessons to be learnt, so that future deaths and serious injuries may be prevented. But collision investigation is generally poorly resourced, which has negative consequences for both criminal and civil justice.

In an effort to improve the standard of investigations in the UK, a Road Death Investigation Manual was launched in 2001, updated in December 2007¹. This manual is advisory only - chief officers have discretion to adhere to it or not, but it is recommended 'to be used to assist forces to develop policies and business processes to ensure deaths on the road are investigated professionally'. No separate manual exists for road injury investigation.

Road deaths also undergo an investigation in the Coroners Courts – this applies in the UK and for deaths of UK citizens abroad, it also applies in some other countries. In the UK, because of concerns about the quality of inquests, a programme of reforms was introduced in 2003, resulting in a draft Coroner Bill², which after undergoing numerous revisions will now be introduced 'as soon as parliamentary time allows'. The Bill aims to 'provide a better service for bereaved people and make investigations more effective'. Of particular importance is the strengthened obligation on organisations or authorities to respond to coroners' recommendations to prevent future deaths.

Thorough investigations and appropriate charges are essential for delivering justice. In the UK, RoadPeace has been campaigning since 1992 to end the anomaly, whereby motorists who have caused a death through negligence or law breaking were only charged with a minor offence, which completely ignored the fact of death. Finally, on 18th August 2008, a new charge – Causing death by careless driving – has come into force³; its application will now need to be

monitored. There is still no charge in the UK which addresses injury, despite the fact that for every fatal crash there are over 60 injury crashes, eight of which are serious.

A thorough investigation is also essential for Civil Justice, including through the link to criminal justice. If evidence is found to support a criminal charge, it will at the same time support a civil claim. In the many cases, where no charges are pursued, for a variety of reasons, including inadequate investigation, victims have greater difficulty in bringing civil claims and often have to accept partial liability, together with a reduction in damages. This affects frequently vulnerable road users, who then due to the severity of their injuries are unable to prove liability by the motorist. FEVR member organisations are campaigning for strict liability laws in respect of civil claims, as this reverses the burden of proof from vulnerable road users and has a great potential to protect them by making motorists more vigilant and careful in addition to improving their quality of life through adequate damages payments. This law already operates in several European countries.

Road injuries make up almost 25% of all injuries in the European Union – which are said to represent one of the biggest health threats facing Europe, according to the report 'Injuries in the EU' launched in April 2008⁴. This report includes the toll of road fatalities and injured road users from 2003-2005: there are almost 50,000 road fatalities in the EU 27 per year, 17% of whom are pedestrians and 7% cyclists, and 1.744.386 injured road users.

High standards in medical care after a road crash – hospital, pre-and post-hospital and longer- term care, have a huge impact on survival and amelioration of injury severity and it seems surprising that medical care is not routinely included in road death/injury reduction plans. This may be one of the reasons why road injury is not a priority for the Health sector in the UK and this has a direct effect on the funding of care. A joint report by the Royal College of Surgeons and the British Orthopaedic Association, in 2000, has acknowledged that consistent trauma care for the severely injured is not available⁵. Seven years later, in November 2007, a major study found that nearly half of all severely injured patients do not receive good care. Many of those severely injured are road crash victims. The report 'Trauma: Who cares?' points to no improvements in the care of trauma patients⁶. A Royal College of Surgeons spokesman was quoted as saying: *Our mortality rates are among the worst in the developed world, and yet trauma care remains a low priority for the government.*⁷

FEVR and individual member organisations are supporting steps by the European Parliament aimed at improving the safety of road users, such as those approved in June for the protection of pedestrians⁸ and the proposed directive on cross border enforcement⁹ (of speeding, drink-driving, not wearing a seat belt and failing to stop at a red light), on which we will be lobbying.

As already mentioned, FEVR lobbies the European Parliament and is part of several international networks, at which it presents the road victims' perspective and stresses the importance of including and improving the post crash response: UN WP1, UN/WHO Road Safety Collaboration Forum, ETSC and EuroSafe.

In 2007, for the 1st Global Road Safety Week in April dedicated to young road users, RoadPeace reprinted a book published in 1947 - 60 years earlier - *Murder most foul*, in which the author, JS Dean, then Chair of the Pedestrian Association in the UK, deplored the fact that vulnerable road users had to carry a disproportionate responsibility for their safety compared with those who posed the danger and pointed to many other problems that are still with us today¹⁰.

The Road Safety Collaboration Forum was set up in 2004 and meets twice yearly. One of the outcomes (products) of this network in which FEVR had a key part, was the adoption by the UN of a day of remembrance for road victims which FEVR member organisations had observed since 1994 – as World Day of Remembrance for Road Traffic Victims, held every year on the 3rd Sunday of November, this year 16th of November. The UN has called for the day's recognition by all Member states and the international community¹¹. FEVR and RoadPeace were also involved in drafting a Guide for organizers of World Day events, which has been published by WHO¹². Previous years' materials, including photographs, programmes etc. will be included on a new website: **www.worlddayofremembrance.org**

This Remembrance Day is a very important day for all road victims, since it draws attention to the terrible consequences of crashes, their grief and suffering, and the need for action.

The three year European Commission funded Apollo project 'Strategies and best practices for the reduction of injuries', led by EuroSafe, is resulting in an NGO declaration on Injury Prevention and Safety Promotion¹³, which will be issued at the occasion of the 2nd European Conference on Injury Prevention and Safety Promotion, October 9th and 10th in Paris.

-
- ¹ ACPO (2007) Road Death Investigation Manual
 - ² Ministry of Justice (2006) Draft Coroners Bill
 - ³ Department for Transport (Road Traffic Act 2006) Causing death by careless driving
 - ⁴ Austrian Road Safety Board (2008) Injuries in the European Union 2003-2005
 - ⁵ Royal College of Surgeons of England and the British Orthopaedic Association (2000), Better Care for the Severely Injured, London
 - ⁶ The National Confidential Enquiry into Patient Outcome and Death (NCEPOD) (2007) Trauma: Who Cares?
 - ⁷ BBC News website (21 November 2007) Half of trauma care ‘not good’
 - ⁸ European Parliament (18.6.2008) Better protection for pedestrians and cyclists
 - ⁹ European Commission (19.3.2008) Directive facilitating cross-border enforcement in the field of road safety
 - ¹⁰ JS Dean (1947) Murder most foul; a study of the road death problem
 - ¹¹ UN resolution A/60/5 of 26 October 2005
 - ¹² WHO (2006) World Day of Remembrance for Road Traffic Victims – A Guide for organizers
 - ¹³ EuroSafe Alert (2008) Vol. 3 Issue 2