

SP **KES** **INFORMATION SHEET**

CLAIMING FOR DAMAGES FOLLOWING A TRAMLINE CRASH

Several people have asked Spokes for advice regarding claims for compensation for loss or injury following conflict with tramlines. Our main advice is that professional legal assistance should be sought as soon as possible after the incident, with a view to proving negligence on the part of TIE or the highway authority. The following points may also be useful, particularly in terms of how to obtain legal assistance.

1. WHY MAKE A CLAIM?

Making a claim can be stressful, but if you have grounds for a claim there are several reasons to pursue it, through the courts if need be:-

- a. for your own compensation and satisfaction;
- b. to encourage the Council and tram promoters to do their very best to improve conditions for other cyclists, who may otherwise suffer the same as you - or worse – in Princes Street and in other Edinburgh streets where tramlines are likely to be installed in the coming months and years;
- c. to obtain experience of making such claims which can be shared with other cyclists - particularly bearing in mind that these are Scotland's first tramlines for many years.

2. WHAT ARE YOUR CHANCES?

We emphasise that your prospects of success depend very much on the nature of the case. A claim based simply on the fact that the council has installed tramlines is unlikely to succeed – the council are perfectly entitled to do that. However, if the tramline is badly installed, or poorly maintained, it may be possible to prove negligence. Your claim is more likely to be successful if you can prove, for example, that your crash happened because your wheel got stuck, not in the tramline itself, but in a groove where the tarmac has disintegrated next to the tramline. Claims could also be based on poor highway design such as failure to install adequate warning signs, or failure to provide safe right-angled crossings for cyclists at junctions. Motorists and cyclists have in the past been successful in obtaining compensation where they were able to prove that they suffered loss or injury due to poor highway design. For example, see www.cyclecraft.co.uk/expert_casebook.html. Although these cases were not based on tramline problems, they could provide useful precedents for successful claims even where tramlines are involved.

3. GETTING LEGAL ASSISTANCE

It is important to seek legal assistance, and to engage lawyers who have relevant experience. This should be done as soon as possible after the incident. Claims will have a better chance of success too if the lawyers can be supplied with photographs – for example to illustrate the defective road surface, tram line, or design defect - and with the names and phone numbers of possible witnesses.

Continued overleaf

Free legal advice and assistance can be obtained in various ways:-

- a. If you are a CTC member you should report the incident to CTC who will refer you to Russell, Jones and Walker, their solicitors, to obtain free legal advice and assistance, including court proceedings if required. They are very experienced in handling compensation claims for cyclists, have a high satisfaction rating, and may well have experience of cycle/tramline claims in English cities. However, they will not be able to handle your claim if you have already contacted other solicitors.
- b. You may have legal insurance attached to a home insurance policy or trades union membership.
- c. Those without either of the above should consider using a no win, no fee solicitor, such as Thompsons, who advertise in the Spokes Bulletin. They have three branches in Scotland, including Edinburgh (where one of the partners is an experienced cyclist) and branches in most English towns. They may have experience of tramline claims in England. As always, with no win, no fee services, you should study the contract of engagement very carefully to ensure it meets your needs and expectations.
- d. For those who cannot obtain free legal assistance, the last resort is a Small Claims action conducted in person. The Sheriff Clerk provides a booklet on how to do it, and a list of the fees and limited expenses which may be incurred. No legal knowledge is required. The claimant need only produce a plain language account of the facts showing negligence on the part of the defenders.

4. WHO TO CLAIM AGAINST?

We suggest that most claims should be directed not at TIE but at the highway authority (City of Edinburgh Council) which is responsible for the condition of roads and streets. If the highway authority denies responsibility, ask them to give specific legal reasons why they are not liable, and then if necessary re-direct the claim to TIE. Most claims are likely to be denied, meaning that court proceedings may well be required.

5. OTHER POINTS

- a. We would welcome any feedback on the contents of this note, especially if based on your own experience in making a claim. Please email spokes@spokes.org.uk or leave a message on our website contact form.
- b. Some people have suggested a 'class action.' This is unlikely to be realistic for a range of reasons, including the fact that years would be needed to accumulate the requisite number of claimants with similar cases.

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*This information sheet prepared August 2010
Updated March 2011 to include 'What are your chances?'*