

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

CLAIMING FOR DAMAGES FOLLOWING A TRAMLINE CRASH

A large number of 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 the highway authority. The following points may also be useful, particularly in terms of how to obtain legal assistance.

1. WHY MAKE A CLAIM?

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 for injury or damage to your property;
- b. to apply pressure on the Council to remedy the existing dangers, and to avoid similar in any tramline extensions, for the sake of other cyclists, who may otherwise suffer like you - or worse;
- c. to ensure that if another Council in Scotland considers doing the same they do not put their cyclists health and safety at the bottom of the pecking order as has been done here in Edinburgh.

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. Claims have been based on issues such as: poor highway design, failure to install adequate warning signs, failure to ensure that cyclists can cross the tracks at least 45 degree minimum (it is impossible to achieve anything greater than 40 degrees if you are already between the tracks), failure to provide safe right-angled crossings for cyclists at junctions, and failure sufficiently to warn cyclists of the potential hazards the tracks present.

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. It is helpful, but not necessary, if the lawyers can be supplied with photographs – for example to illustrate the defective road surface, tram line, or design defect - and with details 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 compensation claims for cyclists, have a high satisfaction rating, and may 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. 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. Several local firms now have considerable experience of tramline crash claims, notably...

- [Thompsons](mailto:Stewart.White@thompsons-scotland.co.uk) Email Stewart.White@thompsons-scotland.co.uk
- [CycleLaw](mailto:jodi.gordon@cyclelawscotland.co.uk) Email jodi.gordon@cyclelawscotland.co.uk
- [Allan McDougall](mailto:JulieHarris@allanmcdougall.co.uk) Email JulieHarris@allanmcdougall.co.uk

The firm Thompsons, for example, have raised over 100 court actions, of which the first ever to be resolved, in 2019, Lowdean and Fairley (<https://bit.ly/2yID3cv>), were successful.

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. Stewart White is happy to advise on this for free at the same contact as above

4. WHO TO CLAIM AGAINST?

We suggest that most claims should be directed 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. Most claims are likely to be denied, meaning that court proceedings may well be required.

5. FEEDBACK

We welcome 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.

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