

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE DEPUTY OF ST. MARY**

ANSWER TO BE TABLED ON TUESDAY 3RD NOVEMBER 2009

Question

“What level of exposure, if any, is faced by the States should a crack in the surface of the cycle track along the Promenade cause a bicycle front wheel to be caught and the cyclist to come off and suffer injury; with whom would the remedy lie; what precedents are there, if any, for this type of action and where can the outcomes of such action be found?”

Answer

It is not possible to give a certain or comprehensive answer to this question. Legal advice is not given in the abstract. Legal advice is tailored to a factual matrix which is put to the lawyer for consideration.

The term “exposure” may relate to whether the States could be exposed to any claim at all or the extent in terms of financial consequences to any such claim.

Each case is fact specific and whether or not any claim in personal injury can be made at all will depend upon a number of factors. The extent of any claim, even supposing that one could be made, will depend on the consequences to the injured person both physical and financial. For example, even assuming a liability, the financial consequences of an injury occasioning absence from work to a person who earns £200 per week will be very different from that to a person who earns £10,000 per week. The consequences in terms of financial exposure will also of course depend on the existence and level of any insurance cover in place.

If such a claim could be made it would generally be made by the injured person against the Minister in charge of the department that had allegedly breached any such duty. If insurance applied then the case would normally be dealt with by the relevant insurer. The insurer would consequently have the conduct of the defence to any such claim.

The Law Officers’ Department keeps no record of any such claims and is aware of no Jersey reported judgement for such a claim postulated in the question.

If any personal claim is dealt with by the Court then it may be possible to find a judgment giving details of the claim and the determination by the Court. Most personal injury claims are, however, dealt with by negotiation.