

Photos this page: Paul Darlington



### WHAT TO DO AFTER A CRASH CAUSED BY A ROAD DEFECT

The specific defect responsible for the crash must be documented. Images must be informative and, in the absence of measurements, contain something of known dimension for comparison.

There is a difference between claims brought under the 'failure to maintain' provisions of the Highways Act and those predicated on an engineering shortcoming – for example, a drainage channel laid into the road surface parallel to the direction of travel (see above). The latter case is decided on reasonable foreseeability of dangerousness and the bar is set pretty high!

As soon as practically possible after a crash, visit the scene and photograph the defect from your direction of travel, showing where it's located on the road (see photo, top right). It's a good idea to take your bike, then fit its wheel into the defect and photograph that for context.

Then, keeping safe, do a spot of pothole profiling. Put a straight edge across the length and breadth, and measure down to the base. Photograph the tape/ruler so that the depth may be seen (see the photo below). This must be done promptly, otherwise the highway authority will assert that the defect has worsened in the interim. They might even repair it.

A common response when a defect is reported will be that the authority had inspected the road regularly and, as the defect wasn't there at the time of the last inspection, the authority won't accept liability. That standard tactic presents a conundrum.

Reporting the defect immediately should lead the authority to repair it promptly, which is obviously better for other road users. Sadly, it might not help



## “ AS A RULE OF THUMB, A DANGEROUS POTHOLE IS AT LEAST 40MM DEEP AND 300MM ACROSS ”

your own claim, tempting some claimants to adopt a 'wait and see' approach to check if the council does actually inspect or repair the road as it ought.

A recent case involved a cyclist whose crash, caused by a small crater, was witnessed by a fire crew. After providing assistance, they immediately reported the defect to the council, who repaired it before the victim was out of A&E. The pothole repair crew conveniently did not photograph or measure the defect, and the council's defence was that the defect wasn't dangerous.

Victims shouldn't be in a position where they have to choose between what's best for other road users and what might help their claim. However, if your priority is pursuing a claim rather than getting the pothole fixed, one option is to record all the information above but then not report it immediately. You can then monitor developments over the next three months or so to see if any inspections or repairs actually happen. If they do not, then the authority will struggle to claim its statutory defence.

Don't delay in seeking specialist legal advice, however. Do that as soon as possible after the incident. It is preferable to use a firm of solicitors with a track

record in cycle claims. As a Cycling UK member, you have access to exactly that through the Cycling UK Incident Line. That number again is **0330 107 1789**. It's worth putting in your phone's contact list right now. ●

### Component failure

Sometimes a bike component will suddenly and unexpectedly fail. We're not talking about punctures or the odd broken spoke but things like a fork steerer shearing or a frame breaking, either of which can cause serious injuries. If you want to make a claim, here's what to do:

- Keep the bike in its damaged state, pending advice
- Try to collect any debris, such as sheared bolts
- Photograph the scene (excluding highway defects)
- Write down what you recall happened as soon as possible
- Photograph the complete bike even if, for example, the fork is no longer attached to the steerer
- Photograph damaged or broken parts, focusing on any failure surface
- Do not be persuaded to part with any failed component to the supplier or manufacturer, pending advice
- Visit the Cycling UK Forum to check for any identical failures or recalls
- Contact the Cycling UK Incident line and be prepared to upload images, preferably individually

At some point you may to send off your bike for inspection but wait for advice before you do so. You will need to have a good idea of the bike's worth. Other useful information includes: initial purchase documents; a list of upgrades and maintenance; a mileage log or ride diary; the date(s) of intervening mishaps, if any occurred, and details of what was done about it (or them).