



# Light Rail (UK) Group

Auchenshuggle Junction, 8 Beechmore,  
Moore, Warrington, Cheshire, England, U K.  
Tel (+44) (0)1925 740675 (0) 07721378223



8<sup>th</sup> September 2025

## Air Quality Fact Sheet

*Who can be prosecuted or held to account for poor transport corridor air quality and any subsequent death or illness is a question that we are now being asked by several Local Authorities and operators.*

Below is a breakdown of who can be held to account under UK law when poor air quality on a transport corridor causes death or illness.

1. Local Authorities
  - Duty to monitor, declare Air Quality Management Areas (AQMA) and publish Action Plans under the Environment Act 1995 (as amended) and the Air Quality Standards Regulations 2010.
  - Failure to fulfil these statutory duties is a criminal offence and can be prosecuted in magistrates' courts, with fines of up to £20,000 per offence. Enforcement is typically led by DEFRA via the Secretary of State for Environment and, where breaches persist, judicial review can compel action.
2. Highway Authorities / National Highways
  - Under the Environment Act 1995 and subsequent air-quality directions, the Secretary of State can issue a legal notice to National Highways (formerly Highways England) to tackle NO<sub>2</sub> breaches on the Strategic Road Network.
  - Non-compliance with those notices is prosecutable, leading to civil penalties and enforcement undertakings overseen by DEFRA's Joint Air Quality Unit (JAQU) and, where relevant, the Office of Rail and Road for rail corridors.
3. Private Sector Operators
  - Bus companies, freight operators or any large emitter must comply with environmental permits under the Environmental Permitting (England and Wales) Regulations 2016.
  - Breaches (e.g. excessive emissions, failure to maintain engines) can trigger prosecution by the Environment Agency, with unlimited fines on conviction in the Crown Court.
4. Company Directors and Employers
  - Under the Health and Safety at Work etc. Act 1974, directors or managers who negligently allow workplaces or worksites (including depots and maintenance yards) to emit harmful pollutants can face prosecution for corporate manslaughter or breaches of corporate health-and-safety duties.
5. Civil Liability (Nuisance & Negligence)
  - Individuals or families can bring civil claims against anybody whose unlawful emissions or failure to act amounts to a nuisance or breach of statutory duty (for example, a local authority's failure to declare an AQMA).
  - Courts may award damages for personal injury, bereavement or loss of amenity where causation between exposure and harm can be demonstrated.
6. Coroners and Public Inquiries
  - If a death is linked to air-pollution exposure, a coroner's inquest may examine systemic failures. While coroners cannot assign criminal liability, their reports can prompt ministerial reviews or parliamentary inquiries.

In practice, accountability often starts with local authorities and National Highways, then extends to private operators and corporate directors, with civil courts and coroners filling gaps when statutory prosecutions do not follow.

Under current UK law you cannot be criminally prosecuted simply for breaching the World Health Organization's guideline levels for particulate matter. The only legally binding thresholds are those set out in domestic regulations (the Air Quality Standards Regulations 2010 and the Environment Act 1995) which mirror the EU's limit values for PM<sub>2.5</sub> and PM<sub>10</sub> – not the more stringent WHO targets.



Because non-exhaust emissions (tyre, brake and road-surface wear) are treated as diffuse road-traffic sources rather than point-source “industrial” emitters, there is no individual environmental permit or emissions licence you can breach to trigger a prosecution. Instead:

- Local authorities have a statutory duty to monitor air quality, declare Air Quality Management Areas when legal limit values are exceeded and publish action plans. Failure to discharge any of these duties is a criminal offence, enforceable in magistrates’ courts with fines up to £20,000 per breach.
- National Highways (and highway authorities) can be served Improvement Notices by DEFRA’s Joint Air Quality Unit if limit-value exceedances persist on the Strategic Road Network. Non-compliance with such notices can lead to civil penalties.<sup>1</sup>
- Industrial sites (for example, a maintenance depot generating dust) are regulated under the Environmental Permitting Regulations 2016. If such a site’s permit limits for particulate emissions are breached, the Environment Agency can prosecute with unlimited fines on conviction.

In practice that means:

- If PM<sub>2.5</sub> or PM<sub>10</sub> concentrations on your corridor exceed the legally binding limit values (not just WHO guidelines), DEFRA or the Local Authority can seek prosecution for failure to declare an AQMA or to take required action under the Environment Act 1995 or Air Quality Standards Regulations 2010.
- You cannot prosecute drivers, tyre manufacturers or brake suppliers for the non-exhaust particles they shed, because there is no discrete legal limit on tyre/brake wear emissions and no environmental permit covering them. Those sources simply feed into the overall ambient PM measurements.

So, while non-exhaust sources can account for over half of urban PM<sub>10</sub> and more than 60% of PM<sub>2.5</sub> emissions, prosecutions hinge on exceedances of the statutory limit values and on the duty-holders (local authorities or permitted sites) failing to act — not on the WHO’s advisory guidelines or on individual road-traffic sources per se.

1  [uk-air.defra.gov.uk](http://uk-air.defra.gov.uk) 2  [www.gov.uk](http://www.gov.uk)

## *Can a Private Individual or Group Sue Over Excessive Particulate Matter?*

Yes. Although you cannot directly sue tyre or brake manufacturers for the particles they shed, private individuals or groups can challenge public authorities and seek remedies in UK courts when legally binding limits for PM<sub>2.5</sub>/PM<sub>10</sub> are breached and no adequate action is taken to control them.

## **1. Judicial Review of Public Authorities**

- Under the Air Quality Standards Regulations 2010 (which transpose the Ambient Air Quality Directive), central and local government bodies must comply with EU-derived limit values for PM<sub>2.5</sub> and PM<sub>10</sub>.
- Environmental NGOs (e.g., ClientEarth) and private claimants have successfully brought judicial review proceedings when Defra or local authorities failed to prepare or implement sufficient air-quality plans and action measures.
- Post-Brexit, these duties remain “retained EU law,” so JR remains a viable route to force compliance.

## **2. Statutory Nuisance Claims**

- Part III of the Environmental Protection Act 1990 treats “air pollution” as a statutory nuisance.
- An individual can serve an abatement notice on the authority responsible (often the local council) if distinct PM concentrations at their property exceed acceptable levels.
- If the authority fails to enforce or appeal, the claimant may bring the case to a magistrates’ court seeking an order to abate the nuisance and recover costs.

## **3. Rights to Compensation Under EU Law**

- The revised Ambient Air Quality Directive (effective December 2024) explicitly grants individuals the right to compensation for health or property damage caused by breaches of limit values.
- While the UK must implement these changes by 2026, the principle of a private right to claim damages is already enshrined in EU case law and will be carried over into domestic law.

## **4. Human Rights Arguments**

- Article 2 (right to life) and Article 8 (right to private and family life) of the European Convention on Human Rights can underpin claims against public bodies that neglect to safeguard citizens from hazardous PM levels.
- Courts have begun to recognise that chronic air-quality failures engage these fundamental rights, giving additional legal leverage.

## **5. Practical Steps for a Claim**

1. **Gather Evidence**
  - Monitor local PM<sub>2.5</sub>/PM<sub>10</sub> data from official Air Quality Management Areas.
  - Document health impacts or property effects.
2. **Pre-Action Protocols**
  - Write to the relevant authority (council or DEFRA) demanding action or abatement.
  - If you’re an NGO, consider formal requests under the Aarhus Convention for public participation and access to justice.
3. **Issue Proceedings**



- For JR: file a claim in the Administrative Court within three months of the authority's decision or failure to act.
- For nuisance or damages: issue in the county court or magistrates' court, specifying the statutory or common-law grounds.

#### 4. **Leverage Strategic Litigation**

- Partner with environmental charities (e.g., ClientEarth, Friends of the Earth) for expertise and funding.
- Consider a Group Litigation Order if multiple claimants are affected on the same corridor or area.

## **Further Avenues**

- Explore community engagement to build public pressure alongside legal action.
- Lobby for the forthcoming Environment Bill's strengthened Office for Environmental Protection to enforce air-quality duties on your behalf.
- Commission local health impact assessments to bolster both public awareness and legal standing.

Each of these routes makes clear that while you can't single out tyre or brake manufacturers for the particles they emit, you can—and in many cases have—the ability to hold government bodies accountable for failing to keep urban air within legal limits.

# Redress When a Planning Authority Authorises High Non-Exhaust Emissions

*Even if non-exhaust road-traffic emissions (NEE) aren't directly regulated by environmental permits, individuals and community groups have several legal routes to challenge a planning permission granted in full knowledge of excessive particulate levels.*

## 1. Judicial Review of the Planning Decision

- Under section 288 of the Town and Country Planning Act 1990 and the EIA Regulations 2017, any planning permission that fails to assess “direct and indirect significant effects” on air quality—including PM<sub>2.5</sub>/PM<sub>10</sub> from non-exhaust sources—can be quashed.
- A judicial review challenge must be lodged within six weeks of the decision. Grounds include failure to carry out a lawful Environmental Impact Assessment or to take air-quality policy (e.g. PPG para 006) into account<sup>2</sup>.

## 2. Statutory Nuisance Claim

- Part III of the Environmental Protection Act 1990 treats persistent, prejudicial air pollution as a nuisance.
- Affected residents can serve an abatement notice on the local authority demanding remediation of the nuisance.
- If the authority fails to act or appeal, claimants can go to a magistrates' court for an order to abate the pollution and recover costs.

## 3. Human Rights Challenge

- Article 2 (right to life) and Article 8 (private and family life) of the ECHR require public bodies to protect residents from hazardous air pollution.
- In a planning JR, claimants can argue that knowingly permitting high NEEs breaches these Convention rights.

## 4. Private Right to Compensation

- The Ambient Air Quality Directive (as retained EU law) and its transposition grant individuals the right to claim damages for health or property harm caused by breach of limit values.
- Once domestic regulations fully reflect the Directive's private-compensation provisions, claimants can seek damages in civil courts for illness linked to excessive particulate exposure.

## 5. Complaint to the Office for Environmental Protection (OEP)

- If a local authority neglects its duty to monitor, declare AQMAs, or implement action plans under the Environment Act 1995, residents can complain to the OEP.
- The OEP can investigate and, if it finds maladministration, require the authority to remedy its failures.

## 6. Negotiating Planning Conditions or Obligations

- Even post-permission, affected groups can lobby for the imposition of remedial planning conditions or Section 106 obligations (e.g. requiring [ultra-low-emission buses](#)? or infrastructure to mitigate NEEs).

- Authorities can agree to retrofit stops with air-purifying planting, enforce speed reductions, or require operator emission-control measures.

By combining these routes—strategic judicial review, nuisance proceedings, human-rights claims, emerging compensation rights, and OEP complaints—residents and campaign groups can hold planning authorities and operators to account for the health impacts of high non-exhaust emissions

## 7 Why Battery-Electric Buses Fall Short on Non-Exhaust Emissions

Switching to battery-electric buses does eliminate tailpipe pollutants, but their extra battery weight drives tyre and brake wear up by around a third. That surge in particulate emissions makes them a poor fit where air quality is critical.

### Key Drawbacks of Heavier Electric Buses

- Increased tyre abrasion: each bus may generate thousands of extra grams of PM<sub>2.5</sub> and PM<sub>10</sub> annually.
- More brake-pad wear: regenerative braking helps, but mechanical pads still account for a significant share of stopping.
- Higher road stress: heavier axles damage surfaces faster, releasing road dust into the air.

### Alternative Zero-Exhaust Options

1. Hydrogen Fuel-Cell Buses
  - Smaller battery packs reduce kerb weight.
  - On-board fuel cells deliver electric drive without heavy storage.
  - Emerging trials show up to 20% lower NEE vs full-battery models.
2. Trolley-Assist or Full Trolleybuses
  - Continuous overhead power means minimal batteries.
  - Decades of operation in cities like Zurich demonstrate very low NEE.
3. Ultra-Lightweight Chassis and Materials
  - Advanced composites and aluminium alloys can slash bus weight by 10–15%.
  - Retrofit programmes exist to replace steel panels with lighter alternatives.
4. Very Light Rail (VLR) or Tram-Trains
  - Steel-on-steel wheels generate far less particulate per passenger-kilometre.
  - Hydrogen-powered VLR prototypes combine low weight with zero tailpipe output.

### Next Steps for Campaigning and Redress

- In planning objections or a judicial review, emphasise that NEE assessments must compare all zero-emission modes, not just battery-electric.
- Push for conditions requiring operators to trial hydrogen or trolley-assist models in any new or expanded bus network.
- Commission independent brake-tyre emission modelling to quantify local health impacts and bolster legal arguments.
- Seek Section 106 funding for road-surface treatments (e.g., high-adhesion surfacing) and roadside vegetation that traps particulates.

Beyond the bus debate, you might explore:

- Real-time roadside PM sensors to galvanise community pressure.
- Low-friction tyre trials (e.g., silica-enriched compounds) that cut wear by up to 30%.
- Emerging battery chemistries (solid-state, lithium-sulphur) promise lighter packs.
- Pilot schemes with micro-sized electric shuttles on dedicated lanes—further reducing weight per seat.

*Can a bus operator be prosecuted for misleading advertising "Zero Emissions" type displays on their vehicles?*

## **Prosecution for Misleading “Zero Emissions” Claims on Buses**

Yes. Advertising “Zero Emissions” on a bus when non-exhaust particulates (tyre, brake, road wear) continue to be released can trigger both self-regulatory sanctions and criminal prosecution under UK consumer-protection law.

### **ASA and CAP Code Enforcement**

- The Advertising Standards Authority (ASA) enforces the Committee of Advertising Practice (CAP) Code, Clause 11 on environmental claims.
- Claims like “Zero Emissions” are only acceptable if qualified (e.g. “at the tailpipe”) and not implying zero particulate output at all stages.
- The ASA has already banned “zero emissions” ads from BMW, MG and TfL for misleading consumers and forced their removal.

### **Consumer Protection from Unfair Trading Regulations 2008**

- Under these Regulations it is a criminal offence to make misleading commercial practices, including false or unsubstantiated environmental claims.
- Local Trading Standards officers can investigate and prosecute operators who advertise “zero emissions” when particulate emissions persist.
- Conviction can lead to unlimited fines and, in serious cases, imprisonment.

### **Trading Standards and Criminal Sanctions**

- ASA rulings can be referred to Trading Standards for formal enforcement.
- Trading Standards can serve a warning or bring a prosecution in the magistrates’ court.
- Successful prosecutions provide deterrence and set legal precedent for other operators.

### **Competition and Markets Authority (CMA) Oversight**

- The CMA’s Green Claims Code guides businesses on substantiating environmental ads.
- Persistent or widespread “zero emissions” claims lacking clarity could trigger CMA investigations, enforcement notices or fines.



Can groups who are advocating buses and other rubber-wheeled systems, Campaigners for better buses or bus group promoters, in view of the above, be challenged legally for misleading information

## **Legal Routes to Challenge Misleading Bus Advocacy Claims**

Groups campaigning for “better buses” can be held to account if their public statements or paid-for communications are objectively false or misleading. Even without selling tickets, they may fall within the remit of advertising, consumer protection, competition, and charity regulations—and potentially defamation law if they wrongly impugn a specific operator.

### **1. Advertising Standards Authority (ASA) and the CAP Code**

- Any paid or sponsored media message aimed at the public is classified as “advertising” and must comply with the CAP Code.
- Environmental claims (e.g., “zero-emission buses”) must be clear, accurate, and substantiated by evidence.
- An ASA ruling against unsubstantiated or deceptive claims forces withdrawal or amendment of the advert and can trigger referrals to Trading Standards for enforcement.

### **2. Consumer Protection from Unfair Trading Regulations 2008**

- Regulation 5 outlaws “misleading actions” by any organisation deemed to influence consumer behaviour, which can include NGOs if they directly affect choices.
- If a campaign’s messaging causes a reasonable person to make transport decisions they wouldn’t otherwise, local Trading Standards can investigate and prosecute.
- Penalties on conviction include unlimited fines and injunctions against further misleading communications.

### **3. Competition and Markets Authority (Green Claims Code)**

- The CMA’s Green Claims Code expects organisations to base environmental statements on robust evidence and fair comparison.
- Persistent or widespread unsubstantiated “green” claims can lead to enforcement notices, fines, and public censure by the CMA.



## 4. Defamation and False Statements

- If a lobby group publicly labels a specific bus operator as non-compliant with emission limits or a “polluter” without proof, the operator may sue for libel.
- Defendants can avoid liability only by proving the truth of their allegations or that they had a reasonable basis to believe them.

## 5. Charity Commission Oversight (for Registered Charities)

- Registered charities must use their resources exclusively to further their charitable objectives and act with integrity.
- Systematic dissemination of misleading information could trigger a Charity Commission inquiry, governance sanctions, or even removal of charitable status.

## 6. Indirect Challenge via Judicial Review of Planning

- While you cannot directly JR a campaign group, you can challenge a planning consent if a local authority relied on flawed air-quality or emissions data supplied by that group.
- Grounds include failure to take relevant considerations into account or acting on materially misleading evidence.

## Conclusion and Next Steps

In practice, the fastest route is often a combination of:

1. Filing an ASA complaint to remove or correct paid adverts.
2. Referring the matter to local Trading Standards under the Unfair Trading Regulations.
3. Alerting the CMA if claims are systemic or sector wide.

You may also prepare a pre-action letter threatening defamation proceedings if specific operators are falsely maligned. Gathering independent technical reports on bus emissions—and flagging any misuse of that data in planning applications—will strengthen both regulatory complaints and any judicial review challenge.

Beyond legal action, consider convening an expert review panel or commissioning a transparent third-party audit of environmental claims. This dual approach of reputational pressure and formal regulation often prompts the most rapid corrections—and establishes a clear evidential benchmark for all future transport debates.

## Practical Steps for Enforcement

1. Gather evidence
  - Photographs of livery/bus wraps showing “Zero Emissions” claims.
  - Details of routes, dates and operator marketing materials.
2. File an ASA complaint
  - Use the ASA’s online portal to request an investigation.
3. Report to Trading Standards
  - Provide ASA rulings and consumer evidence to your local authority’s Trading Standards team.
4. Alert the CMA
  - If the issue spans multiple regions or operators, contact the CMA’s Green Markets Team.
5. Leverage media and political pressure
  - Publicise ASA breaches in local press and raise questions with transport committees.

Even after a bus hits the road, its marketing remains accountable. By combining ASA complaints, Trading Standards referrals, and CMA alerts, you can hold operators criminally and reputationally to account for any misleading “Zero Emissions” claims.

The key sources and legal frameworks referenced:

- Advertising Standards Authority (ASA), “CAP Code: Environmental Claims,” <https://www.asa.org.uk/resource/environmental-claims.html>
- Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277, <https://www.legislation.gov.uk/uksi/2008/1277/contents>
- Competition and Markets Authority, “Green Claims Code: Guidance for Businesses,” July 2021, <https://www.gov.uk/government/publications/cma-green-claims-code>
- Defamation Act 2013, c. 26, <https://www.legislation.gov.uk/ukpga/2013/26/contents>
- Charities Act 2011, c. 25, <https://www.legislation.gov.uk/ukpga/2011/25/contents>
- Town and Country Planning Act 1990, c. 8, § 288 (judicial review of planning decisions), <https://www.legislation.gov.uk/ukpga/1990/8/section/288>
- Environmental Protection Act 1990, c. 43, Part III (statutory nuisance), <https://www.legislation.gov.uk/ukpga/1990/43/part/III>
- Environment Act 1995, c. 25 (AQMA duties), <https://www.legislation.gov.uk/ukpga/1995/25/contents>
- Air Quality Standards Regulations 2010, SI 2010/1001, <https://www.legislation.gov.uk/uksi/2010/1001/contents>
- EU Ambient Air Quality Directive (2008/50/EC) as retained EU law
- Office for Environmental Protection (OEP), <https://oepr.gov.uk>
- Joint Air Quality Unit (JAQU), <https://www.gov.uk/government/organisations/joint-air-quality-unit>
- Health and Safety at Work etc. Act 1974, c. 37, <https://www.legislation.gov.uk/ukpga/1974/37/contents>