

# TURN BACK

# TIME



The immediate aftermath of a serious road accident is never pretty. Andrew Woolfall reviews the processes and tells us what to expect

Any serious road traffic incident, fatal or non, is life changing – not only for the victims but also the drivers of vehicles involved. The moment an incident occurs, a process is unleashed that will see the drivers' actions and their vehicles subject to forensic examination. This may lead to an inquest and a prosecution. Even where there is no blame, you can expect months, possibly years, of sleepless nights.

The process begins with the Road Death Investigation Manual, the police template for conducting enquiries. Importantly, the manual – published in 2001 by ACPO (Association of Chief Police Officers) and since updated several times – specifies that the police must treat any incident as an actual or potential unlawful killing until the contrary is substantially proven.

As a result, where commercial vehicles are involved, drivers, operators and their staff are generally kept in the dark in the hours following a collision. The police may also recruit other agencies, such as DVSA (Driver and Vehicle Standards Agency), HSE (Health and Safety Executive) – even the Environment Agency or Trading

Standards. Only when it becomes clear that no blame can be attached to drivers or bystanders will the approach relax.

## INITIAL RESPONSE

First on the scene are usually the ambulance service and police. Thus begins the initial response phase. Officers conduct an assessment and send a situation report to their control room. This leads to the deployment of supervisors and additional resources, as required. Thereafter, the police are concerned with making the scene safe and preserving life. While those are priorities, removing victims and providing first aid may disturb the scene and destroy evidence.

Hence the police may photograph and video the location. They will also secure key evidence and identify witnesses – also isolating suspects and/or vehicles. Drivers thought to be responsible will often be removed from their vehicles and placed in a police unit. Drivers may receive very little information about what is going on and may indeed be prevented from talking to others, whether witnesses or employers. Every driver involved will also be breathalysed.

Next begins the investigation stage.

The police team will include a collision investigator, vehicle examiner and investigating officers. The vehicle examiner will want to perform an initial review of vehicles before they are moved. This will often be supplemented by a more detailed examination following recovery.

Meanwhile, investigating officers will conduct a 'first account interview' with any driver considered in some way responsible. This is often done in a police car. The objective is to get any suspects' accounts while fresh in their minds. However, this interview can cause problems, in the event of a prosecution. Remember, drivers are often in shock and afraid, so they may go for denial or be overly co-operative, potentially to their own detriment.

At the very least, wherever possible they need access to legal advice ahead of this first interview. While that might appear impractical, the police normally allow drivers to speak to a solicitor. If your driver has contacted you as the employing operator, you should organise the solicitor. Telephone advice may be all that is possible, but at least your driver then knows what is expected and can be warned against making the position worse.



It is rare for a driver to be arrested at the scene. This only happens if there are real concerns that they may never be traced, or the police are worried for their or someone else's safety, or they are wanted in connection with other enquiries.

### INVESTIGATION

After everyone has been sent home or to hospital and the incident scene re-opened, the investigation continues in earnest. There will invariably be follow-up interviews. Even where the police accept that a driver is not responsible, if there has been a fatality, they will want a more detailed statement.

The police may not be looking to prosecute the driver but simply to use his or her evidence for the coroner to determine cause of death. However, while the driver may not be a suspect, many operators rightly take the view that he or she should be represented, given the serious consequences.

If the police believe a driver is to blame – due to his or her actions, or the vehicle and its load – they will be subject to further interviews under caution. This is part of the process of obtaining evidence for prosecution. Clearly, the driver should obtain legal advice.

If the police conclude that factors, such as mechanical shortcomings or a driver being tired, are to blame, the operator should now expect a visit. This may result in a full fleet inspection by the DVSA and/or police, as well as tachographs and driver's hours' records seized for forensic analysis.

Prosecutions may well then be brought against operators, following detailed investigations. I have dealt with many such situations, including: accidents caused by defective brakes leading to prosecutions against operators and their engineers; incidents caused by driver fatigue resulting in prosecutions against directors due, for example, to falsification of tachograph records; and actions against transport managers who sanctioned the use of vehicles they knew were unsafe.

That's why proper record keeping is vital. Defect reports and PMI sheets properly completed may make the difference between an operator and its staff being exonerated or facing jail. Accurate tachograph charts and work registers may avoid serious criminal sanctions. Be advised: operators who bend the rules are invariably caught.

Once an investigation is concluded a decision will be made about further

action. For the driver, this could mean prosecution for careless or dangerous driving (or causing death by such driving), leading to a custodial sentence and disqualification. If convicted, the driver is also likely to be called before the traffic commissioner.

If an operator is at fault, there may be a prosecution along with a public inquiry. The latter could lead to the revocation of the O licence. Where fatal incidents lead to a conviction, fines run in the tens and hundreds of thousands of pounds. Even if a company survives the public inquiry, it may collapse under the financial penalty. Furthermore, there will be civil claims for compensation and insurance companies will look closely into the incident. If the operator was at fault, many insurers will void relevant policies and reclaim compensation payments.

### TIMESCALES

Given the consequences, all this takes a long time. Nine to 12 months is common for the police to decide whether or not to prosecute a driver. If the driver pleads 'not guilty' to the charges, it might be another year before criminal proceedings conclude. Civil claims can last years.

Further, the police may not release seized vehicles until investigations are completed – which can take weeks. If there is a prosecution, they may be retained as evidence, meaning months or even years without the vehicles.

It is a truism that the difference between a near miss and a fatal accident might be a fraction of a second or a millimetre. However, if it's fatal, drivers and operators forfeit control of their futures. The consequences can be expensive, even disastrous and certainly long term: survivors have to live with the outcome for the rest of their lives. **TE**

*Andrew Woolfall is with Backhouse Jones Solicitors*