

Right side of the law

Delegates at the IRTE Conference 2015 were treated to a comprehensive update on legal requirements and responsibilities for operators. John Challen presents the evidence

An entire afternoon dedicated to legislation and compliance indicates the scale and seriousness of the subject to transport operators – but also to the pace of change. Specialist transport solicitor Backhouse Jones chaired the event, with director James Backhouse kicking off proceedings with a presentation entitled ‘How to avoid appearing in front of the traffic commissioners’.

Backhouse’s focus was initially on OCSR (Operator Compliance Risk Score) and how the system is still being tweaked to improve its sensitivity in identifying operators’ likely risk of non-compliance. Operators in the room were only too familiar with the ‘traffic light’ system, but Backhouse emphasised how easy it is to go from green to red – and stay there.

“When you are in ‘red’, you are identified as an operator to stop more frequently,” he warned. “The inspector will then have a preconceived idea that, because you are in the red zone, you will have more defects – and often, you will. So, more inspections probably lead to more prohibitions and, before you know it, you are stuck in a vicious circle.”

Maintaining compliance is key to getting out of the red, but also amber zones, Backhouse advised. “A much more sophisticated approach to examining your internal processes, but also driver and technician behaviour, and vehicle age and profile, is critical,” he told delegates.

But the key people to help improve compliance, suggested Backhouse, are your

drivers. Make them feel important, he advised.

“A lot of drivers feel unloved by the maintenance regime. They know they have to carry out inspections and report defects, such as steering sensitivity or a brake imbalance. But then the technician will write ‘no apparent defect’. Sometimes there might not be a defect, but drivers are behind the wheel every day, and they know what it is actually like – compared with the technician who drives it every six weeks.”

ENFORCEMENT STRATEGY

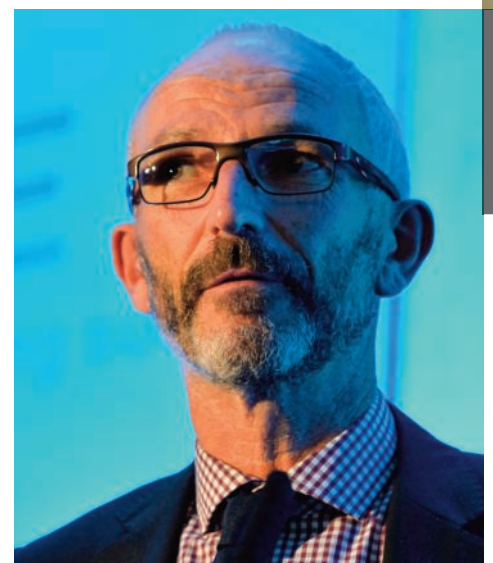
Next up was Peter Hearn, head of policy development and product at DVSA (Driver and Vehicle Standards Agency). This former vehicle examiner was keen to stress the agency’s current enforcement strategy and, in particular, its Earned Recognition programme. “Enforcement hasn’t really changed since I started but, in engineering terms, things have moved on, with components now lasting a lifetime,” he explained. “So we want to review how we [manage enforcement] in tomorrow’s world and how we might harness technology and intervene in different ways.”

Hearn explained that DVSA sees three key areas for improvement that can also help operators. “Working remotely, Earned Recognition and a strategic traffic management office will all point us in the right direction, and make a big difference,” he insisted.

“We started a trial of remote enforcement in the South, with the cooperation of the traffic commissioner, to look at the impact of conducting

our assessments remotely,” he said. “We’d carry out a desk-based assessment, and look at other interventions and improvements in an operator’s compliance regime. That saves time and allows me to concentrate on other work – so improving efficiency.”

But Hearn suggested this new approach would also make life easier for operators. “The traditional route was to schedule a follow-up meeting after an assessment, but that is time consuming and costly. We want to speed up and simplify the process. So, having been successful in the trial, we are now rolling it out in the South East by Christmas, with a separate entity in London.”



FACT

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Peter Hearn

Making it work, however, means never ignoring DVSA correspondence, he advised. "Always contact us if there is a delay. Don't just leave correspondence in the in-tray. We will probably be asking you to corroborate something we've found at the roadside, so make the process as smooth as possible. Find it, send it, but don't delay," he warned.

Moving on to Earned Recognition, though, Hearn told delegates this is a far larger aspect of

DVSA's thinking for the future. "There is a lot of technology in the industry so what the Earned Recognition concept is designed to do is tap into that technology. We want to look at compliance records and systems remotely and use that information to stop us having to intervene at all," he explained.

"This is a big cultural change, including for our vehicle examiners. But, while we want to use technology, we don't want everything to be technology-led. So we have started a trial looking at all kinds of operators, whether they have two or 200 vehicles, to ensure that we will be able to manage compliance remotely around the clock."

What about the traffic commissioners? Kevin Rooney, traffic commissioner for the North East, was next up to the podium – and, instead of

striking fear into delegates' hearts, he was keen to show a caring and helpful side. So he started by explaining the traffic commissioners' four strategic priorities for the future – concerning modernisation, systems, processes and drivers.

From a systems perspective, most encouraging was news of a new IT system currently being introduced to replace the existing set-up that dates back to 1998. This brings benefits, he explained, such as acceptance of online applications for O licences, scanned driver CPC qualifications and bank statements. Rooney revealed, for example, that 87% of applications arriving in Leeds are currently incomplete.

"We go back to people on average five times, normally by sending a letter, so it often takes weeks to get licences. The aim of our new system

is to get that 87% down to something more sensible," he said.

Rooney next reminded delegates about the traffic commissioners' statutory guidance documents, which have been updated and will see further updates in coming months. "We've looked at transport managers' responsibilities, for example, and introduced new starting points that nearly halve the [time required]. So for two vehicles or fewer, we now expect transport managers to dedicate four hours a week. We also set out what we think transport managers should do – and that is to manage, audit, review and be proactive."

Other documentation has similarly changed, while a new addition – what senior traffic commissioner Beverley Bell calls 'Statutory Document Zero' – sets out how traffic commissioners deal with statutory documents. "We have to abide by the rules and, if we don't, we have to explain why," stated Rooney. "So this document is designed to drive up consistency around the country, and call us to account."

Rooney also said that he and his colleagues are currently visiting operators and asking them to send drivers on a one-day course on walk-around checks. This, he said, would reduce the time needed with operators, also leaving the commissioners free to focus on public inquiries. Similarly, they are working to re-allocate resources.

"Currently in the North East, from the vehicle examiner's call and production of their report, it takes around four months to get to public inquiry... In the past it could be a year, so we are improving," he explained. "But we are also trying to increase delegation to our staff, so that not everything goes through the traffic commissioner. There are 10,000 operators in the North East, but only one commissioner."

Finally, Rooney turned his attention back to drivers, and revealed the consultation on Statutory Document 6 'Vocational Driver Conduct' has closed. "We are trying to clamp down on mobile phone offences, so letters have now been sent out warning that the consequences could stretch beyond three points and a £100 fine. Next time they get caught they could end up in front of the traffic commissioner," he warned.

Concluding the afternoon legal session, James

Backhouse returned to talk about what happens to drivers and operators in the immediate aftermath of a serious accident. "Phone calls come to me out of the blue, but I can usually tell within seconds that this is a real problem. You know there has been a serious accident before they even mention it," he said, setting the scene.

"From a lawyer's perspective I'm in contact straight away. If the driver is arrested, I need to know, because they will need representation. The



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important thing, though, from the operator's point of view, is that everybody is affected. For example, someone has to ring the driver's family... So it is profoundly upsetting."

SERIOUS INCIDENTS

Backhouse also warned that if someone has died in the accident, the driver will normally be arrested, regardless of blame. Power of arrest is vested in police officers where it is necessary to conduct an investigation. "They are not obliged to arrest anyone, but where there has been a fatal accident they will – because, if they don't and something goes wrong, they will be criticised," explained Backhouse. "If they do, everything is in their control and the arrest prevents interference with witnesses and communication with operators. There might be a defect on the vehicle and the driver might otherwise tip off the operator."

Moving on to what operators shouldn't do, Backhouse offered words of wisdom. "Never interfere with any document or process that relates to the use of your vehicles or that vehicle. The cardinal sin is tampering with the evidence. At the point where the accident or fatality has occurred,

the police, DVSA and maybe the HSE [Health and Safety Executive] will investigate your systems. Any attempt to correct a cock up in the records is fatal."

He also warned about the emotional impact on the driver and the implications for managers. "Once the driver is released, the following day he or she might turn up to drive. That is a challenging situation. On one hand, it could reduce his trauma, but on the other, operators need to make a call on whether that person is fit to return to work."

A serious incident or fatality might also require operators to take stock of their responsibilities, advised Backhouse. "There could be factors relating to the role of the employer, transport manager or senior manager responsible for the driver. What if the incident happened because the driver was tired or the vehicle had a defect that, not only the driver, but someone else within the operation should have spotted?"

Vehicle condition is the most common problem, but driver condition also matters – if he or she exceeded driver's hours, or they were working with underlying health issues. "There are offences of aiding and abetting, dangerous driving and manslaughter. These are serious. So, if the authorities think there was a defect on the vehicle that was influential in the accident, it will be investigated to the nth degree. Suddenly you, as managers, could be liable and face jail."

In his concluding remarks, Backhouse suggested it is worth remembering that the size of an error doesn't necessarily have any bearing on the scale of the ensuing accident. "Genuinely small mistakes have led to catastrophic accidents with appalling consequences." ■