

The long arm of the LAW

The ever popular legal stream featured a traffic commissioner, the DVSA's head of enforcement policy and a leading transport solicitor, ensuring a large turnout from delegates. Brian Weatherley reports

What do traffic commissioners (TCs) want from operators who appear before them at a public inquiry for maintenance failings? West Midlands TC Nick Denton (main picture) told delegates he normally asked operators to bring a year's worth of maintenance documents for him to look through. Using a suitably-redacted real-life preventative maintenance inspection (PMI) sheet as an example, Denton explained: "The first thing I look for is to see what date the [PMI] edition is from." The pro forma PMI sheet within the 'Guide to Maintaining Roadworthiness' (<https://is.gd/netibo>) is up to date with modern practice. Older PMI sheets don't have all the inspection items that appear on the latest forms, Denton reported. "Only 10% of documents I see are the right era."

An empty box that should have been filled out during an inspection is a sign of problems. Pointing to his PMI example, Denton highlighted blank spaces for tyre tread depths and pressures. "All you've got is 'All tyres good' – which doesn't give the information as an operator or transport manager I'd be seeking." As well as indicating when tyres need replacing, tread depths can indicate under-inflation or axle misalignment problems. Denton insisted: "If there's a blank, I want to know the reason why."

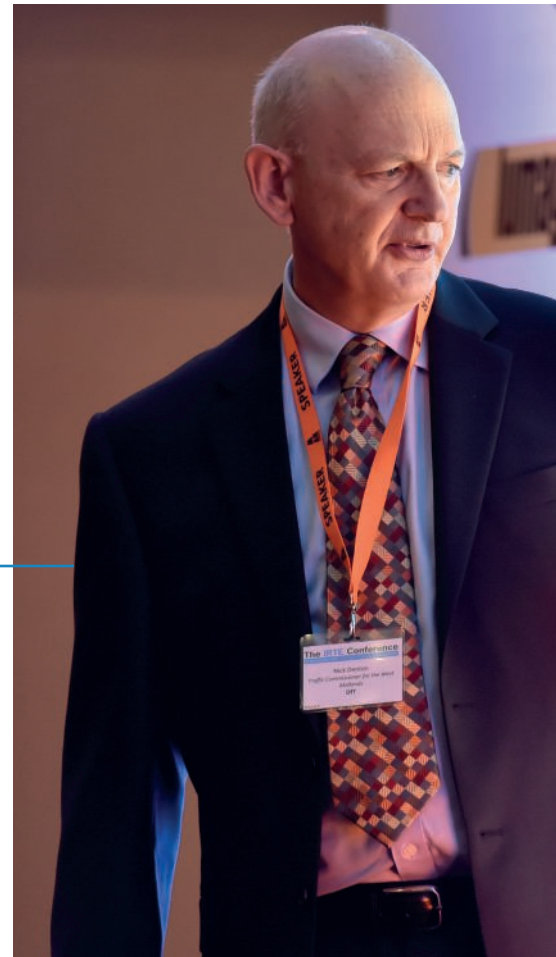
Pointing to the '50%' and '70%' entries in the

roller-brake test box, Denton reckoned this was another warning sign of poor practice. "When you look at the printouts from a roller-break test it's very rare they're on the dot of '10' – so again that suggests to me that might be a 'pro forma' thing. When I look back through the other reports I find the same thing. They all say 50% and 70% – they're just figures the person in the garage puts in, irrespective of the genuine reading."

Considering defects that are recorded on PMI sheets, Denton said it's not uncommon to see action taken on some but not others. Using the 'Oil leak from the front of the engine' as his example, Denton noted: "It doesn't say how serious it is, but it's something you'd want to look at sooner rather than later. Just to have a blank under 'action taken' is a bit concerning."

Equally worrying is where action has been taken on a defect, but there's no sign-off. "Who's done it? That's something I prefer to see," said the TC.

Of greater concern was the lack of any signature on the PMI sheet confirming the vehicle was actually roadworthy. Denton asked: "Why does the operator continue to operate it? Either there has to be someone's signature there – someone has got to be taking responsibility for the fact that when it left the workshop it was considered to be in a roadworthy condition – or if nobody is signing it, that's an alarm bell for me. I'd want to bring the



maintainer in at once to say: 'Was it an oversight or is it genuinely not roadworthy?'"

All too often operators appearing before Denton claim that PMI sheets for inspections completed four or five weeks ago haven't been returned. They should come back with the vehicle or be emailed back at the same time, insisted the TC. "It's no use knowing three weeks later that your vehicle wasn't roadworthy three weeks ago. You need to know the state of your vehicle immediately, as it comes out of the safety inspection."

Denton also warned of the mismatch between driver defect reports and PMI sheets, with drivers submitting a 'nil defect' report when a following safety inspection identifies faults they should have spotted during a walk-around. PMIs are a valuable tool for tracking both drivers and maintenance

FACT**DVSA is looking to use dynamic brake and tyre test equipment in enforcement**

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providers, insisted Denton. "If I was a transport manager on the front line I'd be poring over these to glean what information I could from them." Concluding, Denton reminded delegates of the need for ongoing regular checks on both licence entitlement and renewal dates for Driver CPC.

Neil Walton, transport branch legal compliance project manager for Wolseley UK, raised the importance of checking the back of a licence, not just for entitlement, but for details such as whether a driver needs to wear glasses, and if the licence is for three rather than five years – which can signify a medical condition. Denton agreed, also stressing the importance of regular checks of licences with DVLA. "You can't rely on the plastic card alone," he said.

DVSA'S VIEW

The compliance theme carried on into the next session, when Gordon Macdonald, the DVSA's head of enforcement policy (pictured, left) delivered an unequivocal message. Reaffirming the agency's longstanding policy of seeking out serially non-compliant operators, he declared: "That's where our target sits." The DVSA is also working closely with Highways England to gather more enforcement intelligence. "There are lots of traffic officers out there that see things all the time, vehicles that are sitting on the hard shoulder or on the slip-roads, [they're] looking at what's going on, picking up information on those operators' vehicles that are breaking down, so getting that sort of information that we've never had before."

As well as ensuring its existing enforcement sites are fully equipped, the agency is looking to expand its range of 'dynamic' enforcement tools beyond its existing, and highly effective, Weigh-in-Motion Sites (WIMS) to include dynamic brake test equipment (using infrared technology) and tyre pressure and tyre tread depth dynamic monitors. Why the focus on dynamic detection? "So again, trying to pinpoint those vehicles that we know are not compliant before they even reach us at a road-check site," said Macdonald.

Automatic number plate recognition (ANPR) is also helping DVSA to spot rogue operators' vehicles on the road, as well as the arrival of new tacho testing equipment to detect tampering and the future prospect of tachographs capable of 'broadcasting' driver offences to enforcement authorities. Macdonald reckoned: "All these things are making [it] easier to find offences."

The DVSA has run highly successful 'disruptive targeting' against the most non-compliant operators, and he described how it pursued one particular company that was falsifying records. After a series of DVSA checks, that firm finally waved the white flag. "Frankly, they needed our attention, so we bombarded them with enforcement attention to the extent that the chief executive of that company came to us, with his hands held high and said: 'Look guys, I just cannot take any more. My

business is going to go down if you don't stop this!"

Macdonald continued: "Our response was 'OK, let's have a conversation'." Ultimately the operator conceded that the only way to survive was by being compliant – and put the necessary measures in place to be so. As 'jaw-jaw' is infinitely better than 'war-war', Macdonald reminded delegates that helping and advising operators on how to stay on the straight and narrow remains a core DVSA function.

Pointing to the London Task Force team, created jointly with the Metropolitan Police and TfL, in particular to reduce the number of accidents between cyclists and waste and construction vehicles, Macdonald claimed it was "arguably the most effective enforcement team we have in the country. We've looked upon that as a good model and how we might work in the future with other major urban areas." The agency's recently-established Remote Enforcement Office scheme has also allowed it to review operator compliance systems online, either prompting a visit for further compliance checks, or to simply give an operator "a bit of a nudge" towards improvement, rather than coming down hard on them.

On Earned Recognition, Macdonald acknowledged: "We've had some reticence within the industry about joining the pilot and we really need it to succeed before Earned Recognition could go live." He then busted a common myth surrounding it. "The DVSA under normal conditions will not have access to unlimited data or any [operator] information. This is about monitoring KPIs, and the only information that people in DVSA will receive under the scheme is in relation to those KPIs. We will not see data and I think there's a bit of fear [about that] in the industry."

Summing up, Macdonald encouraged participation in the pilot project. "We want to make sure we put an excellent scheme in place that best recognises your investment and high standards of compliance. This is why the testing of the concept is really so important. Being part of a pilot, you'll be helping to develop the Earned Recognition scheme which is absolutely essential for us."

When asked by Kevin Taylor of Gray & Adams whether there are any restrictions on the size of fleet or the type of operator licence for the trial, Macdonald replied: "We want a full range. We need a full range."

BRIEF ENCOUNTER

In the final session, Andrew Woolfall, director at solicitors Backhouse Jones (pictured), delivered a comprehensive heads-up on approaching legal changes.

That started with the senior traffic commissioner's Guidance and Direction documents, which were updated in September. The documents (<https://is.gd/uvokun>) contain the major transport manager 'must-knows' and Woolfall advised: "Be aware that there have been some changes."

Operators should also expect an end to paper-based correspondence from TCs or DVSA. Following the roll-out of the Vehicle Operator Licensing System (VOLS), communication with operators is increasingly digital. Woolfall said: "If you're not signed up for online access to your records, do it now and check the information that's on there is correct." That means ensuring email addresses are current (as licence renewals will soon be handled by email) and that maintenance provider and especially directors' details are correct. VOLS can now 'talk' to Companies House and compare data, so if directors' names don't tally, a TC will want to know why. "This is a breach of the terms of your O licence," said Woolfall. "Any material change has to be notified within 28 days."

TCs' written decisions could soon be published online – and operators may not want that information to be seen by customers or competitors. There are plans, too, for transferring responsibility for considering environmental issues from the TCs to the planning department of local authorities, though this will need a change in legislation. And PIs look set to become more formal, with tougher rules on evidence and timetables for delivering it. If the TCs have their way, operators could also end up footing the bill for a PI: another incentive to stay compliant.

Following the DVSA's creation of Remote Enforcement Offices, operators are already receiving emails asking for compliance information online. Woolfall reckoned: "It's going to be the new normal." DVSA examiners will also soon be able to check vehicle and O licence data at the roadside in real time – previously it could be anything up to 48 hours or more out of date. Is this finally the end for the blue disc in the windscreen?

**FACT****Operators should expect an end to paper correspondence with TCs**

After a decade of issuing Fixed Penalty Notices to control driver offences, DVSA wants to revert back to concurrently prosecuting operators as well. "As engineers and transport managers, if you want the stick to prod those above you, it's another reason to drive compliance," said Woolfall. Moreover, operators prosecuted in magistrates' courts will face the prospect of unlimited fines, as the old £5,000 ceiling for road traffic offences has been dropped. To add insult to (financial) injury, if you're prosecuted and win your case, don't expect to get your costs back either, as they've taken away the right to reclaim costs.

Operators using self-employed drivers will increasingly be quizzed on their status, especially when they can only work for that company. Woolfall revealed: "We've been shown a copy of a letter that HMRC has sent to the TCs basically saying, 'We want to really get to grips with this in the transport industry'. When we're doing PIs, it's increasingly common for the TC to want to know exactly on what basis you employ a driver."

On annual testing, some three-quarters of all current vehicle exemptions are expected to be scrapped by next May. So those companies running mobile plant, mobile cranes, volumetric mixers and so on will find them drawn into the testing regime.

With driver management high on the TCs' agenda, Woolfall stressed the importance of proper recruitment and induction practices, along

with checks for HGV licence entitlement (as it could have disastrous implications for insurance in the event of a collision) and clear policies for handling of health issues. Finally, he advised delegates to pay attention to disgruntled drivers or mechanics who could be potential whistle-blowers if their concerns aren't addressed. "Treat them seriously, because if you don't listen to them they could go direct to the enforcement authorities."

In the Q&A session, which saw Woolfall joined by fellow director James Backhouse, Ken Hargrave, fleet manager of AbAgri, raised the scenario of a driver with a medical condition who tells an employer that they've received a letter from their doctor saying they are fit to drive – but the DVSA has actually asked for further tests to be carried out that the driver didn't declare.

Backhouse responded: "It all depends on the letter – but basically if they meet the terms of the letter then they're OK to drive. If they don't then they're not. Your job is to become aware of the letter, so they should tell you about it immediately and then you need to monitor it and make sure they don't fall foul of it. And if they do, they're not insured." Woolfall further advised companies not to just rely on drivers to go to their own doctors, especially as DVLA letters can have caveats that the driver may not mention. It would be better to get the company's own doctor to also assess a driver's fitness, he added. ■