



Do the right thing

Gaining and retaining a commercial vehicle operating licence revolves around reputation, fitness and whether you have the traffic commissioners' trust. By Peter Shakespeare

Earlier this year, the Office for the Traffic Commissioners (TCs) re-published Statutory Document No 1 - 'Good Repute and Fitness' (www.is.gd/libog). The document was amended to clarify the TCs' expectations for transport managers to keep their knowledge up to date. This applies to standard licence holders, who must have a qualified transport manager, but also to restricted licence holders, where the organisation (beholden on the directors) is expected to take steps to ensure the knowledge required to comply is kept up to date. Specifically, the TCs are looking for evidence that something has been done - attending conferences, training workshops, e-learning programmes, ideas sharing - to keep up to date with changes in rules and regulations. There is no laid down requirement, such as exists for the Driver CPC, unless no evidence can be provided. In this case, the transport manager or company directors must complete two days' formal refresher training every five years.

The Freight Transport Association (FTA) was pleased that the TCs recognised there was more than one way of keeping knowledge up to date, as they were at risk of creating a mandatory training programme,

according to head of transport regulatory policy, James Firth.

Operators are being advised to re-familiarise themselves with Statutory Document No 1, as compliance with it is fundamental to gaining or retaining the O licence. Harry Bowyer, partner in road transport law firm Smith Bowyer Clarke, clarifies that good repute relates to holders of a standard national licence, and fitness refers to holders of a restricted licence. Although different technically, they are used almost interchangeably, he points out.

Good repute is formally defined in the Goods Vehicles (Licensing of Operators) Act 1995, Schedule 3. The term can apply to both companies or specific individuals in it, whether operators, directors or employees, and can cover any time from when they apply for a standard licence until the licence ends, according to Bowyer.

REPUTATION MANAGEMENT

Much of good repute relates to convictions and offences. He continues: "Schedule 3 of the act requires a TC to conclude that an individual is not of good repute if they have more than one conviction for a serious offence or have been convicted of more than one road transport offence. A serious offence is one that has been punished by more

than three months' imprisonment; a fine exceeding level 4 on the standard scale (currently £2,500); a community service order (or equivalent) requiring more than 60 hours' unpaid work; or a foreign conviction corresponding to these."

Bowyer adds that if good repute is lost or the company is found unfit to hold an O licence, all is not necessarily lost. "It depends on the type of offences and when they were acquired. Offences which are spent in relation to the Rehabilitation of Offenders Act 1974 should be disregarded by the TCs." They can also discount offences if they think sufficient time has elapsed. He points out: "We have acted at public enquiry for individuals who have served substantial prison terms and have been accepted as being of good repute. But if the offence has been committed more than once, the TC is obliged to consider [that] the individual is not of good repute."

The FTA's James Firth maintains that the TCs must feel that the statutory directors of a company are of fit and proper standing to hold the office, and can be entrusted to run an operation that involves the use of heavy commercial vehicles. He states: "Company directors cannot delegate their responsibilities, so it is a misconception to think the person named on the O licence, or a transport

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manager, is ultimately responsible. An operator facing the TC at public enquiry should never say, 'I don't know, my transport manager deals with that'. Directors must demonstrate an active role in managing and ensuring compliance with the terms of the licence."

DEALING WITH ISSUES

If something goes wrong, the directors or director could lose their reputation, Firth says. In order to reapply for a licence, new directors must be found who are of good reputation, and those involved previously cannot have any role in running the operation until they have been rehabilitated. The overarching requirement for operators is to notify the TC if someone in their operation is convicted under a road traffic law of an offence relating to a commercial vehicle, or other serious offence.

He says that knowing what is notifiable is one of the most difficult aspects for operators. "Some years ago the TCs took the line of 'tell us everything'. But they stopped that

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because it was unsustainable. Operators contact us and ask whether they need to notify. This comes mainly from transport managers, who understand the O licence requirements, but are under pressure from their board or company secretary, who ask, 'Do we really need to tell them about this?'"

Firth says that the TCs expect to see the O licence as a standing item on every board meeting agenda. This shows the board is scrutinising all the key performance indicators, is diligent and, through notification, has an open and honest relationship with the TC. "This is the process of notifying the TC. If the TC finds out about offences or any irregularities that you haven't volunteered, then it becomes problematic. If that does happen, what operators must do is write to them and explain: 'This has happened, this is why it's happened, this is what we have done

about it, and this is why it's not going to happen again'."

PAYE CRACKDOWN

On 11 July, the government confirmed that, following a consultation, it will introduce legislation on 6 April 2020 to stamp out off-payroll working (covered under IR35 tax legislation) in the private sector. This will affect medium to large commercial transport undertakings. Many of them rely on agency drivers, and many of them provide their services, via driving agencies, through limited personal service companies and other intermediaries that currently enable them to avoid PAYE. HMRC has said that some companies will be exempt: those with an annual turnover of not more than £10.2 million; a balance sheet total of not more than £5.1 million and a number of employees not more than 50.

However, the new rules mean that the hirer will be responsible for assessing the individual's employment (tax) status and whether he or she should be engaged on the basis that they are employed – under the IR35 definitions – and therefore should be paying standard income tax and Class 1 NICs on their income. If there are irregularities, the employer will be held liable.

If any prosecutions are brought, could this affect an operator's good reputation? James Firth responds: "If a driver is under your direction, there are O licence obligations. The TCs have already expressed a view on driver employment status, and this will push them to take a position." Firth agrees that if HMRC found a transport operator was complicit in employment tax avoidance and took action, it would be notifiable to the TC, and any prosecution could have an impact on the operator's reputation. [TE](#)

