

Good **repute?**

The role of transport manager is pivotal and statutory for all operators in the UK, and must on no account be underestimated, warns Andrew Woolfall

Transport managers' roles have come under increased scrutiny in recent years. Whenever a public inquiry is convened, in relation to an operators' licence, it is inevitably transport managers who are called before the traffic commissioner. Some then lose their 'good repute' and, until it is re-established, are prevented from performing the function.

However, the Road Transport Operator Regulations 2011 (which came into effect in December 2011) took matters further. They introduced more powers for the traffic commissioners, including being able to: disqualify transport managers; remove their CPC qualifications; and, importantly, call a transport manager to account, without a public inquiry.

This latter power has recently seen transport managers brought to book over personal convictions, such as 'drink driving' or tachograph infringements, and subject to regulatory action. In one case, a transport manager was disqualified, while in another he nearly lost his 'good repute'.

Worryingly, many transport managers are unaware that their roles are clearly defined in law. To recap, the legislation covering operators' licences makes it a mandatory requirement for a standard national or international operator to have a transport manager. He or she has to be in the employment of the licence holder and – either alone or jointly with others – have 'continuous and effective responsibility' for the management of all transport operations for the business.

Those words are important. There are many ways in which 'continuous and effective responsibility' is measured. Traffic commissioners expect a transport manager to be regularly involved in the running of all operations. What does that mean? While there are no legal requirements as to the minimum time, the senior traffic commissioner's Statutory Guidance and Directions do suggest a starting point that links the number of vehicles to the number of hours spent.

Simply working within the business is not enough. If the individual has other responsibilities – for example, they are the business owner or a finance director or sales director, so not performing the transport manager's tasks. Then they will probably

face criticism. In such circumstances, traffic commissioners regularly request that new people are appointed to the position of transport manager.

Be advised that this is a growing trend. One recent public inquiry saw a company director and owner, who spent most of his time managing the business, requested to resign as transport manager. He was required to appoint a replacement, because he could not demonstrate an ability to devote enough time.

In another inquiry, a finance director, who also acted as transport manager, but never saw maintenance document or tachograph records, came close to losing his good repute. Transport was, the inquiry heard, actually being run by local depot managers. He was 'encouraged' to resign.

Your responsibilities

So how does a traffic commissioner determine whether an individual is 'continuously and effectively responsible'? Well, they'll look at several factors, such as the hours the individual puts into the transport manager's role. They will also examine the person's authority in the business. If the transport manager is unable to make decisions – such as removing vehicles from service, authorising expenditure or recommending disciplinary action – then the commissioner may well take the view that he or she does not have responsibility.

Some traffic commissioners will go so far as to enquire about the rates of pay the individual receives. Why? Because it's not uncommon for public inquiries to find transport managers being paid less than drivers or office staff. In such circumstances, the commissioner properly takes the view that the individual has neither the seniority nor the authority the transport manager role requires.

All that said, the overriding evidence for or against the transport manager comes from whether or not the operator is meeting the terms, conditions and undertakings on the operator's licence. Whenever an 'O' licence is applied for, the applicant agrees to fulfil a series of obligations. These include ensuring that: laws relating to driving and operation of vehicles are





observed; rules on drivers' hours and tachographs are observed and records kept; vehicles operate within speed limits; vehicles are kept in a serviceable condition; there is a proper system of driver defect reporting; and convictions and changes are notified to the commissioner's office.

Additional undertakings also apply, depending on whether the vehicles fall within the goods or public service sector. If an operator is found to be falling short, the commissioner will often take the view that the transport manager is not performing his or her function correctly.

Clearly then, the transport manager must establish proper systems and procedures, and ensure that they are followed correctly. For example, on drivers' hours and tachographs, they must ensure drivers and staff know the rules, that correct equipment is used and that work is issued in compliance with the legislation. Charts or data must be collected and analysed, and the quality of the

analysis must be monitored and audited. Any infringements must be brought to the attention of the drivers and, where appropriate, drivers must be retrained, disciplined or even dismissed.

It's a similar situation with vehicle maintenance: the transport manager must oversee staff training. There must be proper forward planning for inspection intervals and the transport manager should be satisfied that inspections are being carried out correctly. This might include organising audits.

MOT pass rates should also be monitored carefully and the transport manager must have the power to remove vehicles from service when they consider that they are not roadworthy. A proper 'nil daily defect' reporting system should also be established, and drivers should be trained and monitored. Transport managers should ensure that vehicle inspection sheets and daily defect reports are regularly compared to detect driver failings.

It's your fault

If prohibition notices are issued that could easily have been prevented or, for example, VOSA (the Vehicle and Operator Services Agency) finds shortcomings on a maintenance investigation, the traffic commissioner will expect the transport manager to give a full explanation. It is a common sight at public inquiry to find a transport manager criticised for such failures, particularly if the individual has not either actively managed systems and procedures or known what is required.

Such inquiries see transport managers risking either the loss of their 'good reputé' or even disqualification. Transport managers are therefore best advised to keep up to date. This includes undertaking regular refresher training. All too often, traffic commissioners see transport managers who may have passed the CPC examination 10 or even 20 years earlier, but then done nothing since. Legislation and best practice will have developed significantly in that time, so the individuals will be rooted in what is often seen as outdated ways.

The role of the transport manager requires a proper understanding of how vehicles are being operated. The nominated person must develop and oversee systems and procedures to ensure compliance. Undertakings given to the traffic commissioner by the operator, under the 'O' licence, must be met. Any failure will raise questions about the transport manager's ability to fulfil his or her statutory role.

Above all, never be like one of our clients who, when called to public inquiry, had to disclose that the transport manager had actually been dead for four years. No one had bothered to inform the traffic commissioner. That is a sure-fire way to risk losing your 'O' licence – on a whole bunch of grounds. **TE**

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