

# Procedural propriety

Good drivers may be hard to find, but the law is clear: if they don't come up to the mark in any way, action has to be taken.

Andrew Woolfall explains

Relationships between operators and drivers can be both complicated and variable. Good operators see their drivers as invaluable assets to the business, while others see them as a necessary evil. However, the traffic commissioners and enforcement authorities increasingly see drivers as the front line indicator of operators' compliance. Unlike any others, it is drivers that can either promote a compliant image or damage a brand by the way they interact with customers, other road users and their vehicles.

Over the last 20 years, we have seen a significant turnaround in the dynamics between operators and drivers. Prior to the recession, drivers were in short supply and operators mostly went to considerable lengths to recruit and retain the good guys. This would often involve overlooking failings, with explanations along the lines of, 'He's a good lad, he gets the job done and, while he might occasionally break the law, good drivers are hard to find'.

## Balance of power

Post 2008, the balance has shifted somewhat as transport companies have gone to the wall, drivers have been made redundant and jobs have become scarce. Now operators hold the balance of power and may demand better compliance. Post 2014 and the legal requirement for driver CPC, this may change again. Many drivers have yet to complete training and some talk of leaving, rather than attaining the driver CPC qualifications. Whether this will see a new shortage of professional drivers and another shift in the relationship remains to be seen.

What is clear, from an enforcement perspective, is that operators can no longer afford to adopt the 'he's a good lad but...' attitude. There is now an expectation that drivers will be properly managed. The fact that an individual holds a driving licence



does not mean that he or she is competent to drive a commercial vehicle. Both the traffic commissioners and the courts expect employers to be proactive in training and monitoring drivers, so they are fully aware of their responsibilities. They also expect them to be disciplined when found non-compliant.

This is not just about driving. Drivers are the front line of any operator's maintenance system. While a vehicle may receive preventive maintenance inspections every four or six weeks, the driver sees it every day. The daily first use inspection is an operator's primary tool for ensuring that a vehicle is

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in a roadworthy condition. If the driver fails to complete a proper inspection, then prohibitions, prosecutions and ultimately public inquiries can follow. Anecdotal evidence suggests that about one half of all prohibition notices are for items that a driver should have spotted on a first use inspection.

### Zero tolerance

This matters. Although, following the introduction of roadside fixed penalties, the driver might be hit with a fine or licence points for failure to spot a problem, the impact on the business can also be severe. And the same principles apply to issues such as load security, overloading and driving at excessive speed or failing to comply with drivers' hours. The message is clear – drivers have to be managed.

So the often heard excuse for failure to train ('He's been doing this job for 30 years') is not acceptable. Regardless of how long an individual has been driving or whom they have worked for, operators cannot assume that a driver knows his or her obligations. And this applies equally to daily vehicle inspections, vehicle loading and the use of tachographs and compliance with drivers' hours regulations. Best practice suggests that training is provided and evidenced in writing, with reference materials, such as guides and company handbooks, also provided.

After training, drivers should also be monitored. It cannot be assumed that they will simply do as they have been told. With regards to daily vehicle inspections, for example, it is now common practice for operators to carry out random vehicle audits. This involves stopping a vehicle before it leaves the depot, but after the driver has supposedly conducted his checks. The transport manager or fleet engineer then conducts his or her own walk-around inspection. If defects are found, questions must be asked as to whether re-training and/or disciplinary action is required.

Some operators have adopted novel approaches. I know of one fleet engineer who leaves notes attached to key components requesting the driver calls him. If he fails to do so, the engineer knows he has not properly checked the vehicle. He then investigates further. Other businesses take a higher-risk approach, deliberately placing defects on vehicles. Be warned: this requires good procedures, so that sub-standard vehicles do not go on the road. However, the fleet engineer can be sure that, if the

driver fails to report a problem, he has not done a thorough check.

So far, so good. Where a driver fails to carry out his or her responsibilities, a proper investigation must follow. It may be that the driver has misunderstood the training or it could be a wilful breach. If disciplinary action is required, then proper procedures should be followed. The investigation must be followed by a disciplinary interview and a proportionate decision taken. Depending on the employee and the failing, this could range from a verbal warning to dismissal.

### Finance versus compliance

Many operators are reluctant to dismiss failing drivers. But, whether that is due to fear of employment legislation and claims of unfair dismissal or misplaced loyalty, if dismissal is warranted, then this is what the traffic commissioner will expect. Any argument that the driver might be hard to replace will fall on deaf ears. Such excuses imply that an operator is happy to run vehicles knowing that there is a good chance its drivers will not be fulfilling their obligations and may be breaking the law. Traffic commissioners understandably see this as putting financial motives ahead of compliance.

Many operators fall foul of a failure to discipline drivers. I recall one incident where a company's driver handbook described specific actions as amounting to gross misconduct leading to summary dismissal. When it was found that several drivers were committing such actions, but had not been dismissed, the traffic commissioner demanded a full explanation. The failure to dismiss in line with the handbook was, in the commissioner's view, evidence that the operator condoned the misconduct.

At another public inquiry, where the business had issued final warnings and dismissed some drivers for failing to carry out proper daily inspections, yet was still encountering problems, the commissioner ordered all of the company's drivers to attend. He made it very clear that any further failings would result in action against their vocational driving licences, directing that the next individual to receive a prohibition notice when he or she could have detected the defect would lose their driving licence.

Make no mistake: failure to manage drivers can also lead to prosecutions before magistrates and crown courts. If drivers are not fulfilling their obligations, with the knowledge of senior managers, then they, too, may find themselves in the dock alongside their drivers. And this does not only apply to proceedings following accidents due to defects that should have been spotted by the driver. The same applies to falsification of records, whether it be the driver defect report or driver's hours documents. It is also worth noting that the scale of the error does not bear any relation to the scale of an accident – or the ensuing criminal consequences. **TE**

