

Proper systems and processes are key to preventing an appearance before the traffic commissioners over alleged digital tachograph offences. Andrew Woolfall explains

# DIGITAL

**T**he digital tachograph has now been with us for eight years and most operators have at least one vehicle equipped with this technology. However, many businesses and drivers still struggle with proper systems and procedures. So why?

The reality is that digital systems need not be any more complicated or onerous than their analogue counterparts. Some changes must be made to office and driver procedures but, by and large, the legislation, the responsibilities of drivers and operators and the basic systems are similar. Unfortunately, in common with analogue systems, there is no clear, definitive management guidance. While vehicle fitness is exhaustively covered by VOSA's (the Vehicle and Operator Services Agency) 'Guide to Maintaining Roadworthiness', there is no equivalent publication for drivers' hours and tachograph systems.

That said, the law places several requirements on drivers and operators. First, anybody driving a vehicle equipped with digital recording equipment must have, and use, a digital tachograph card. Secondly, any driver with such a card must carry it when driving commercial vehicles, whether or not they are equipped with a digital unit. And thirdly, data from the driver card and the vehicle unit must be recorded, downloaded and analysed.

In the early days, many operators were unaware of the requirement to download vehicle data. However, the new problem is failing to analyse it. This is vitally important for all operators, as it is the only way they can discover whether a vehicle is being driven without the driver using a digital card.

## Detecting cheats

One operator I represented recently was running a large fleet of vehicles used to collect commercial refuse. Drivers were given a list of collections and finished work once their tasks were done. Unknown to the operator, some drivers were removing the digital driver card at certain times during the day to give a false impression that they had taken a proper break after four and half hours' driving. In reality, they continued working in order to finish early.

Analysis of the driver cards showed no infringements. The operator was unaware of the importance of analysing vehicle data so the issue was not discovered until VOSA investigated. The

matter eventually resulted in a public inquiry, and the operator's licence was curtailed for several weeks.

Legislation places a clear burden on operators to ensure that drivers properly use the recording equipment. They must ensure drivers record all their duty. Any failure can lead to prosecutions. Furthermore, the Transport Act 1968 states that, if such offences are committed by the neglect, connivance or consent of directors or senior managers (including transport managers), they, too, can be prosecuted. Over the past 12 months, a clear trend has emerged with VOSA bringing such personal prosecutions. If VOSA feels that a director or transport manager has not done their job properly, with robust systems and procedures, it will look to bring charges.

Where analysis of the tachograph data shows that drivers have committed breaches of the driving hours or rest regulations then, again, operators or individuals can be prosecuted. Here, there is a defence of 'reasonable excuse', but such an argument is only successful if it can be shown that the operator has good systems and procedures in place. While this might sound onerous, it boils down to five simple steps.

First, an operator or transport manager must ensure that drivers have proper equipment for compliance. This means having a working driver's digital card. The business also needs to have the equipment to download and capture data.

Secondly, drivers and staff must be trained in how to use the equipment. An operator cannot assume that, just because a driver has been doing the job for years, they know how digital tachographs work. Similarly, it cannot be assumed that planners or fitters know how to download data. An operator should ensure that all relevant staff have proper training and that a log is kept. Time and again, I see drivers appearing before the courts or the traffic commissioner, claiming not to have had any instruction. A simple training log defeats such argument – as long as training is appropriate.

Thirdly, managers must ensure that equipment is used correctly. Having invested in technology and trained staff, many operators fail here, and it's a matter of auditing – having the digital tachograph data properly analysed. Many operators routinely send data away for analysis or have their own internal programme. But this just looks at the basic

**BACKHOUSE**  
SOLICITORS **JONES**

**Andrew Woolfall**  
is with **Backhouse**  
**Jones Solicitors**

# DOWNLOAD

information on either the card or vehicle unit. Rarely is any cross reference made. However, many investigations centre around conflicting evidence between driver data and other materials, such as driver worksheets, clocking-on details or GPS tracking information.

Again, I recently represented one company where the tachograph data indicated little problem with drivers hours infringements. However, contrasting this information with the drivers' time sheets suggested that they were falling to record substantial amounts of working time. Often, they would get to work early and carry out yard duties or remove the card at the end of driving but perform more work at the end of the day. VOSA frequently considers such infringements as false records. Any transport manager or operator should have a system for contrasting all information.

## Action, not words

Fourthly, once the data has been analysed, any infringements should be acted upon. Frequently, I come across operators who spend significant sums on equipment, training and analysis but then leave infringement sheets on a desk for a driver to sign, without any follow-up. The transport manager or operator tells you that all drivers are made aware of shortcomings, but the reality is nobody discusses infringements with them. No ongoing record is kept and no action taken. When VOSA visits, the agency is presented with months' of infringement sheets that show regular offences, all acknowledged by a driver.

Whenever an infringement occurs, the transport manager should obtain a full explanation from the driver. This should be detailed on the infringement sheet. A decision should then be taken as to whether the driver needs retraining or disciplinary action. If there are regular repeat infringements then disciplinary action must be taken and this must escalate in its seriousness. It is not enough to issue a verbal warning. Those should lead to written warnings, which then progress to final written warnings and dismissal. In the eyes of the traffic commissioner, regular repeat infringements show an operator is not concerned that one of its drivers is

likely to get into a vehicle and commit an offence. This is putting profit before compliance.

And finally, data needs to be managed. This means making sure that all senior persons are aware of developing trends, and ensuring that digital tachograph compliance is an agenda item at all transport management and board meetings. By doing so, all key personnel can be appraised of any issues that arise and early corrective action can be taken.

Digital tachograph compliance is not something that drivers, transport managers or operators need to be afraid of. It is a development of what has been done for almost 40 years with analogue systems. It does, though, require training and thought. Once procedures have been devised, compliance can be achieved. **TE**

