

Meeting the obligations: Ensuring compliance

It's down to you

Transport managers are very much in the limelight now, as the traffic commissioners focus on where the buck stops with compliance. Brian Weatherly reports

Andrew Woolfall, director at transport law firm Backhouse Jones, left IRTE Conference delegates in no doubt that spending management time and money on achieving 'O'-licence compliance isn't a short-term cost. It's an obligation and a long-term benefit. Not least if you want to avoid appearing in front of your local traffic commissioner, or the courts.

He reminded the audience at Gaydon that, when it comes to meeting 'O' licence undertakings, it's absolutely the transport manager's job. "And make sure those promises are kept," he warned.

Easier said than done, given that the list of compliance 'must-dos' is growing? "15 years ago there were about five or six; now we're up to 13," agreed Woolfall. But he added: "The key ones are drivers' hours, daily defect reporting, safe operation of vehicles, maintenance, speed limits and speed limiters." And he continued: "Get it right at the beginning. Make sure you've got full compliance and save yourselves costs down the line. Because when things go wrong, that's when the bills become huge."

That word isn't inappropriate. Insurance companies, for example, are only too quick to use non-compliance as a reason to avoid paying out on claims, especially if they arise out of an accident involving a company's vehicles and drivers. "If you're not meeting basic levels of compliance, we're seeing insurers using those failures to void insurance policies, and that's another cost to the business."

Woolfall cited one operator making an insurance claim involving a fatal collision on a vehicle with faulty ABS. The haulier was aware of the fault, but had taken no corrective action. "There the insurer can say, 'You don't have very good maintenance procedures so we're going to void your policy'."

Then you're into costs likely to total several hundred thousand pounds. "And when an insurance company comes after you, a claim of that nature comes close to wiping out a lot of companies."

However, insurers are just one of a long line likely to want money from an operator that lets its compliance slide, said Woolfall. "You've also got VOSA [the Vehicle and Operator Services Agency] costs, and they're going up and up. I've just dealt with one big drivers' hours prosecution where VOSA's costs were £150,000. That's what the operator had to pay – and that's before the fine. That ran to a couple of hundred thousand pounds, too. So we're talking big, big sums of money."

Even if you're acquitted, you might still end up seriously out of pocket, advised Woolfall. "The government's changed the rules on defence costs. It used to be that, if you were acquitted, the court would pay something towards your legal expenses. That doesn't happen any more. The age of austerity means you pay whether you're guilty or innocent."

Throw in the cost of unwelcome negative publicity, too, with its knock-on effect on customer relations, and suddenly those huge costs look alarmingly real. "So the thing is to avoid the prosecution in the first place – by being compliant."

Compliance for profit

That said, it's important not to view money spent on compliance simply as a costly way of avoiding an expensive visit to the traffic commissioner or court. "Don't just look at compliance for the sake of being compliant. Look at how it affects your business," urged Woolfall, adding: "Some of the most compliant and safe businesses are often the most profitable."

In the end, no one denies there are costs associated with having the right systems to ensure compliance – whether for training, monitoring or auditing. However, his message is unequivocal: "The cost of non-compliance is often much greater than the costs of developing systems."

But there's no point investing time and money in good systems, if they're only accessible to senior managers, continued Woolfall. "One of the biggest failings I see is businesses claiming, 'We've got a system for this and a policy for that'. But when you ask the people at the coal face, they haven't got a clue. That's because no one's ever told them." His truism – that office manuals tend to live in the office – doesn't work for anyone who works elsewhere.

"And it's no good saying staff can come and look at it whenever they want," he warns. "How many technicians or drivers are going to do that?" The message is simple: don't keep compliance information hidden away. "You've got to be proactive in your training. That's part of the transport manager's responsibilities, too," advised Woolfall.

With the arrival of tough-talking, and tough-acting traffic commissioners, Woolfall explained that there's

been a sea-change in how they view the role of the transport manager. In particular, he drew delegates' attention to their strict interpretation of the individual having 'continuous and effective responsibility for the transport operations of the business'.

As a result, it's the transport managers who are catching the flak when things go wrong. "They're the ones nowadays who the traffic commissioner wants to hear from – not just the operator," reported Woolfall. "You're the person who has continuous and effective responsibilities. If these promises have been broken; if there are PG9s [prohibition notice]; if there's been a prosecution: it's at your door."

Moreover, sanctions against transport managers have moved on. Following changes to legislation in 2011, and the creation of registers of transport managers, Woolfall told the IRTE Conference: "Whereas, once the traffic commissioner could take away a transport manager's good repute, but couldn't touch competence – the CPC qualification – now they can disqualify a transport manager."

It's a similar story with criminal legislation. Where once more serious offences committed by drivers or the

operator saw them appearing in court, Woolfall explained: "Now, we're seeing transport managers being prosecuted for aiding and abetting such offences. Or permitting or causing them. Or, at worst, conspiring with the driver or the operator. We've seen a real move towards this by VOSA."

Finally, given that transport managers also have fleet roadworthiness responsibilities, Woolfall's message was to look hard at inspection reports, etc, both from within the organisation but also especially from suppliers. "You've got to audit them to ensure that what they're doing is correct. Check the quality of those reports. Look at PMI sheets, for example. You can tell whether drivers are reporting defects. If you're seeing blown bulbs, worn tyres, spray-suppression equipment missing, but it's not recorded on the driver defect report, that's a red light to say drivers aren't doing them."

And when you do find things amiss, Woolfall insists: "Take action. Have the sanctions in place. Maybe it's retraining; maybe it's disciplinary action."

At the end of the day, if you're not compliant, and you haven't acted on the information available to you, it will be held against you. Stating that disciplining staff risks recruitment costs will be seen as putting financial gain ahead of compliance. **TE**



Good news and bad news

With the arrival of graduated fixed penalty notices, there's been a reduction in prosecutions brought against operators, according to Woolfall. "What has changed, however, is the nature of prosecutions being brought against operators." VOSA officers are focusing on operators showing what Woolfall describes as "wholesale non-compliance".

Such targeted VOSA investigations can lead to large numbers of summonses – and massive costs. Likewise, there's a growing trend for traffic commissioners to call a public inquiry on single issues – for example, an 'S' mark prohibition. And they're also increasingly questioning the day-to-day control of transport managers, especially if they're also directors of the company, and involved in other duties.