



Two enforcers, one defender, with news on O licence reforms, DVSA's future goals and what Brexit means to operators. Brian Weatherley reports on the IRTE Conference legal stream seminar

#### BEVERLEY BELL, SENIOR TRAFFIC COMMISSIONER

Senior traffic commissioner Beverley Bell's presentation on next year's priorities and O licence modernisation reminded conference delegates how to stay off the commissioners' radar. While the current O licence regime operates on an annual budget of £12 million – described by Bell as "...fantastic value for money" – she nevertheless called for fee reforms. "The price of an O licence fee is a joke, when you compare it to other regulators."

O licence transaction times must reduce, too, she said. The current service level agreement is nine weeks: "That's no good if you've just got a contract that starts in two." While seven weeks is

possible, her target is three to four, although that will require legislative changes.

Using the latest operator compliance licensing system, more operators can make online applications with reduced processing times. However, Bell warned: "There'll be a verification process... We'll be linking into Companies House to check you are the directors, as well as the people with significant control."

When was the last time you looked at the traffic commissioner's Statutory Guidance (available online)? The latest versions give "better guidance" on repute and fitness, and "what happens if you don't keep your promises", Bell explained. Updates have been made to the SGD 2 'finance', and SGD 3 – which includes a section on what traffic commissioners expect in terms of numbers of hours transport managers dedicate to their fleets.

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Beverley Bell

If you're a transport manager, does your job description tie in with SGD 3, as well as what your boss thinks you do? Bell told transport managers to look at the job description in the guidance document. "See if it mirrors yours. If it doesn't, write down the bits not in it and go to your boss and say: 'That's my new job description, because that's the responsibility I have.'"

Managers responsible for maintenance regimes should also be asking themselves who

**FACT**

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they report to, she insisted. "It should be the directors."

Touching on public inquiries (SGD 10), Bell described two new alternatives to a PI. The first involves an erring operator being interviewed by a senior team leader from the local traffic area office, who then assesses the case and refers the matter to the commissioner with recommendations. For example, the operator should make specific undertakings on improving maintenance standards that can be verified by DVSA audit. "These are proving very effective," reported Bell.

The second is via what Bell called a 'preliminary hearing' before the traffic commissioner. "It's the same principle: bring your records, your finances, and tell me what's gone wrong... Can I put it right without a PI? It's quick, cost-effective and these hearings enable the operator to get before the commissioner PDQ."

Rules governing driver behaviour have also been updated. "If you're responsible for drivers, look at SGD 6 to see if it reflects your staff handbook," suggested Bell, stressing the importance of continuous professional development, especially for those responsible for vehicle maintenance. Likewise, regular checks of drivers' licences are essential to get a full picture of penalty points, convictions and disqualifications. Driving without the proper entitlement negates insurance cover.

Referring to maintenance contractors who want to indemnify themselves against operators who insist on taking a vehicle back even though it's been inspected but not repaired, Bell declared such indemnities wouldn't necessarily protect the contractor. Any maintenance provider issuing an indemnity notice should keep a full record of the circumstances, including recording vehicle mileages, she advised.

When should a transport manager inform the commissioner of extended absence, asked Victoria Linnitt, compliance manager at CS Ellis. "For annual leave or sick leave, you don't have to tell us," answered Bell. "But if you take a year out, for say maternity leave, or six months for a world trip, you must notify the traffic commissioner. You'll have to apply for a period of grace or put alternative arrangements in place."

**GARETH LLEWELLYN, DVSA**

Having been in the chief executive's chair since March, Gareth Llewellyn showed an impressive understanding of the challenges facing DVSA (Driver and Vehicle Standards Agency). Llewellyn reported that by the end of next March – post merger – the agency should be sufficiently "settled" to focus on "safer drivers, safer vehicles and safer journeys for everybody". And he added that DVSA sees its primary role as delivering support to the front line.

The good news on LGV driving tests is that waiting times have dropped from six weeks to the current 10 days. "There's more work to be done... but we are seeing unprecedented demand," reported Llewellyn. Meanwhile, on annual testing Llewellyn confirmed that progress has been made in the transfer of testing from government-owned sites to ATFs (authorised test facilities), with 97% of CV tests now conducted by 530 ATFs. However, a 100% migration is unlikely given the difficulties in establishing ATFs in remote locations.

While DVSA is currently investigating the feasibility of what Llewellyn describes as the "delegation of testing to third parties", that would require a change in legislation. Due to Brexit, he warned: "Getting any parliamentary time is very difficult... So making progress here is going to be

tricky." Moreover, when it comes to any delegated HGV testing scheme, Llewellyn told delegates he wanted to avoid replicating some "negative behaviours" seen in the MOT system.

On the much trumpeted earned recognition scheme, Llewellyn said: "There's a much better story here. If people perform well they deserve financial benefits [of being allowed to proceed] – while the benefits for DVSA are a greater focus on people who are persistently non-compliant." So where are we with earned recognition? Llewellyn reported that the Code of Practice for auditors is complete, as is guidance for HGVs. Guidance for PSVs is currently out for review. "We will take a view as to whether we're ready to go in our November board. So we're not too far away."

However, operators looking to gain earned recognition must satisfy two key requirements. First, they must have a digital traffic management system encompassing maintenance and drivers' hours' records that can be viewed remotely by DVSA. Secondly, companies must have held an O licence for at least two years, and be good performers. "We've established KPIs," noted Llewellyn.

If earned recognition can be gained, can it also be lost? Llewellyn was unequivocal: "It's important we get rules sorted out before we

## FACTS

- 97% of commercial vehicle tests are now conducted by 530 ATFs
- After Brexit, nothing much will change in terms of transport law

launch... It's important that everybody's clear what happens in those circumstances and that's what we're working on at the moment." But he promised: "We will make earned recognition work for us and for you."

On delivering roadside enforcement, Llewellyn promised, "we're upping our game". DVSA is to create a new enforcement national service to operate across the whole of GB, targeting non-compliant operators who "treat fines as a cost of doing business," said Llewellyn. "We're talking to government about increased penalties. We need to send a clear message that everybody has a responsibility and we will hold them to account. If you're performing well, you don't deserve to have the industry dragged down by cowboys."

Is there an opportunity for a whistleblower system? "We're planning to have a single telephone or contact point you can call [as part of the new national enforcement service]," said Llewellyn. "We need to set the rules, but the more information we have, the better use we can make of our resources and so target the persistent under-performers."

### JAMES BACKHOUSE, DIRECTOR BACKHOUSE JONES

Thanks to the prime minister, we now know that Article 50 of the Lisbon Treaty will be triggered by the end of next March. And that means what, exactly? For James Backhouse, director of transport solicitor Backhouse Jones, Brexit is "probably the single biggest change to our economic framework since World War II".

What started as a trading bloc between several European countries (which the UK joined in 1973) has, through subsequent treaties, become a very different entity, he reminded delegates. The EU is now a "Common Market on steroids", he said. And he added: "Those treaties are no different from contracts... We're bound by them."

Thus, Article 50 amounts to the UK serving notice on the EU Council of Ministers of its intention to no longer be bound by the treaties. Once invoked, it should take no longer than two years before the UK exits the EU – although it will be complex. "But once the UK serves notice, we're under the cosh. Two years and we're out. We'll be in a mess if we haven't got our ducks in a

row." Additionally, the UK can't ratify other trade agreements with the rest of the world until it officially leaves the EU. That is prohibited.

However, until that negotiating period comes to an end, Backhouse told delegates, nothing much will change in terms of transport law. It also seems highly unlikely there will be major changes when we do leave Europe. Why? Because much of transport law – such as HGV and PSV operator licensing regulations – started as UK statutes.

"The old framework was built in the UK ... So that's not going." It's a similar story for driver licensing and Driver CPC. While the latter was borne in Brussels, it was implemented into UK law. Likewise, operators looking to say goodbye to the Working Time Directive are likely to be disappointed, not least because it includes worker benefits. "Very few people are employers. The vast majority are employees. Unless we're in dire economic straits, I don't think [government] will touch it."

Thus, predicted Backhouse, "the regulatory regime under which we work will not be fundamentally changing." However, his bottom-line message: "Every business is responsible for

making [Brexit] succeed," he urged. "It's not the government who can deliver this for us."

He urged operators to examine the risks of Brexit to their companies, and start working to mitigate them. "Look at each aspect; explore your contracts. Look particularly at fuel escalation clauses. The price of fuel is linked to the value of the pound because it is priced in dollars. When the pound sinks, the price goes up."

Such fluctuations in fuel prices could be dramatic during Brexit negotiations, warned Backhouse. "Think about it. Do I have a fuel management clause built-in? Is it reasonable to enter into this contract without one?"

Finally, operators need to work with trade associations to articulate the risks to industry of a bad Brexit. "Don't assume the very clever people in Whitehall, whose responsibility it is to negotiate on your behalf, know anything about your job," warned Backhouse. "You can't do it as an individual but you could do it collectively... It's very important you gather clear evidence of the impact on the UK economy. That will focus the mind of negotiators on your slice of the pie." ■

