

# A WORD to the WISE

Over the past three years, Traffic Commissioners have started using more preliminary hearings and senior team leader interviews to deal with cases involving passenger and freight operators, as an alternative to a public inquiry. Kevin Swallow investigates what they are and how they work

Anyone who has just acquired an operator's licence is invited to attend a New Operator Seminar led by the Driver and Vehicle Standards Agency (DVSA). Designed to educate operators about standards required when running coaches and trucks, it contains detailed information about DVSA's enforcement processes, and the powers and processes of the Office of Traffic Commissioners (TC). Around 5,000 people attend the seminar every year.

Failure to attend without a good reason is frowned upon and might lead to a visit by DVSA officers. Infractions such as this one are reported to the Office of the Traffic Commissioners (OTC), who may decide to take matters further. In recent times, that could mean a summons to a preliminary hearing, designed to assess to what level the operator of passenger and freight vehicles has flouted the laws they are governed by. There is also the public inquiry (PI), reserved for more serious offences.

"There is usually only a preliminary hearing, if the TC's opinion is that any failing/infringement/discrepancy by



an operator can be resolved easily. The preliminary hearing is just really to determine if the operator's failings are serious enough to call for a full PI," states Barry Hood, compliance and membership services manager at transport compliance consultancy Pro Tect Solutions in Frome, Somerset.

A preliminary hearing is informal and no action can be taken, unless both parties agree to act. Adds Hood: "In my personal experience, a preliminary hearing has rarely become a public inquiry, but obviously that might not be the case all the time."

That anecdotal evidence is backed up by Richard Turfitt, senior traffic commissioner and TC for the east of England. He says that around 95% of preliminary hearings have found a suitable response from the operator, and were acted upon. They also often end up with improved compliance. In addition, the reduced set-up costs less to organise and so represents better

value for money. That is important, he says, since operators fund the activities of the OTC.

Partly for that reason, James Firth, the Freight Transport Association's head of licensing policy and compliance information, welcomed greater use of preliminary hearings to help resolve issues. "A PI is an expensive exercise that requires preparation, staff, time and a venue. Using an alternative method is a more efficient way for TCs to execute their role with greater flexibility," he says.

## HOW TO PREPARE

Even a preliminary hearing, however, should not be taken lightly, argues Chris Powell, a solicitor at road transport lawyers Smith Bowyer Clarke in Derbyshire. He states: "As the name suggests, it is a 'hearing' before a TC or deputy TC. It will be recorded, and is not unlike a court hearing." He says that it is more serious than another

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recent type of engagement with TCs, an interview between the operator and a senior team leader. Powell explains: “A senior team leader meeting will usually take place with a caseworker in the more informal surroundings of an interview room. In many cases, it is a fact-finding exercise in which operators will be asked for further information about an area of their operation that concerns the OTC.”

A senior team leader interview is recommended for many reasons: if the operators’ failings are specific to one area – like brake failures; if an investigation needs updating; to see how an operator has responded to a prohibition and/or responded to a DVSA investigation; to set out future compliance with audits at regular intervals; to establish training and refreshers for transport managers’ training; and establish driver training procedures.

Whichever type of meeting they are attending, operators need to bring any evidence that supports their case and be prepared to answer questions. “When the issues involved are simple and limited in number, senior team leader interviews can be an effective

way for an operator to account for and allay any concerns the OTC may have concerning the management of their licence,” adds the solicitor.

Even when a PI is likely, a preliminary hearing or a senior team leader interview may still be called by the TC to act as guidance for how a PI might proceed, as well as a chance to resolve any issues.

**HISTORY**

It was the desire for a better-targeted process that led to TCs, in 2014, to consider ways to divert more cases away from PIs. Doing so allows better use of tribunal time, as operators are only called up when there is a real prospect that regulatory action might be taken. The following year, trial interviews with operators by senior OTC team leaders began under the watchful eye of former senior TC Beverly Bell. Thirty-one were conducted in the first year in the North West of England before she stepped down in April 2017.


According to data published for the first time in the traffic commissioners’ 2015-16 annual reports, there were 491 preliminary hearings and 76 senior

team leader interviews in total. In the following year’s report, those numbers rose to 495 preliminary hearings and 106 senior team leader interviews.

As author of both reports, Bell watched the growth in popularity of these alternative methods with interest. In the 2016-17 report, she wrote: “I am also pleased to see that there has been an increase of just over 25% in the number of senior team leader interviews, as these can be a very effective way of ensuring low-risk non-compliance is dealt with quickly and effectively by senior staff.

“Consequently, a total of 601 goods and PSV operators were diverted away from the formal PI route.” It seems to be working; the number of PIs declined from 929 in 2015-16 to 867 in 2016-7, according to TE counts.

Powell at Smith Bowyer Clarke does issue a word of warning to operators. “In my experience, problems can arise when operators fail to appreciate that either a preliminary hearing or senior team leader interview is still part of the investigation and enforcement process, and not just a cosy chat.

“Operators would do well to remember that anything said will be considered by the TC before deciding on whether or not to escalate the case to a full PI. It is not uncommon for an operator called to PI to be confronted with what they said in a preliminary hearing or senior team leader interview. For this reason, I would always advise operators to seek legal advice at an early stage.” 

**FURTHER INFORMATION**

- An OTC guide to public inquiries – <https://is.gd/agiroq>
- Public inquiry advice from Smith Bowyer Clarke – <https://is.gd/yevuso>
- TC advice for operators facing a maintenance-based PI – <https://is.gd/raveyi>
- Mock PI at 2017 IRTE conference – <https://is.gd/ejowal>

