

LEGAL  
UPDATE

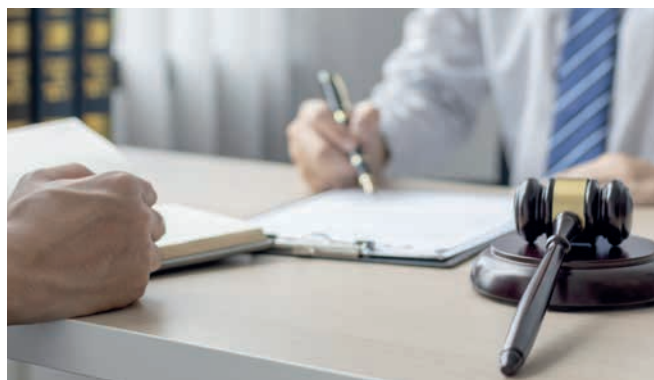
This page is brought to you by Backhouse Jones Solicitors, which runs a frequent series of webinars – see [www.is.gd/opehej](http://www.is.gd/opehej)

## Truck cartel prosecution update

## REGULATORY

On 27 October 2022 the Competition Appeal Tribunal handed down a ruling following the three 'permission to appeal' applications submitted after it granted the RHA the first ever 'opt-in' collective proceeding order (CPO).

While it dismissed the majority of points raised by UKTC and DAF, it has granted permission to appeal on the question of whether there is a conflict of interest between purchasers of new and used trucks such that they cannot both be included in the same collective proceedings. Briefly, the truck manufacturers say that an operator that buys new trucks will want to argue it could not pass on the overcharge when it sold the vehicle on or part-exchanged the vehicle. Conversely, purchasers of used trucks will want to argue that the entire



© Puwasit / iStockphoto.com

overcharge was passed on to them. The truck manufacturers say this represents a conflict within the group.

The RHA's position is that the extent of overcharge that is apportioned to each operator is a matter for determination by an expert who will have access to data to provide the most accurate estimation of what actually happened and what the overcharge looks like for each truck type/each operator. This is the position the tribunal

accepted at the CPO hearing, and it has confirmed that this remains the case.

Steven Meyerhoff, a director of Backhouse Jones, said he remains confident the judgment is correct but understands the tribunal's approach, given this is a new regime and a novel issue not yet tested by the appeal courts under the regime.

Given the potential impact on the claimants, the tribunal elected to halt proceedings pending the appeal.

## REGULATORY

### DVSA issues revised guidance on categorisation of defects

In September, DVSA published revised guidance on how it categorises vehicle defects in roadside checks. The revised rules have been being enforced since 1 September 2022.

The guide can be found via [www.is.gd/esawos](http://www.is.gd/esawos). The changes include updates to suitable securing mechanisms for containers, skips and

paper reels. There are also new load security defects for light vehicles for items being carried directly on the roof panel and insecure loads on a roof rack. Other changes include an updated defect for an inoperative PSV accessibility ramp or lift safety device.

## ATF OPERATIONS

### DVSA floats ATF slot booking changes

In a November blog post, DVSA has suggested plans

to change the way it allocates inspections at authorised test facilities (ATFs). Neil Barlow, head of MOT testing, wrote that market research suggests that DVSA should move away from the current quarterly scheduling process.

He wrote: "Our current thinking is to move to a model where we agree normal levels of testing hours/days with an ATF – and then they stay that way until changed, rather than 'bidding' every quarter. An ATF would be able to request

changes to that profile – for example, if they are growing their business – and we could agree to a permanent change to that level. Or an ATF could request temporary changes – for example, if there is a peak in local demand. ATFs would still be able to cancel days if they are not required, with charges applying if this is done at short notice."

Further information, and the ability to comment, are available via [www.is.gd/sepuxe](http://www.is.gd/sepuxe).

## Fact File

## STRIKES MAY DISRUPT INSPECTIONS

The Public and Commercial Services (PCS) union has announced that its members will take part in discontinuous strike action in January.

PCS has told DVSA the strike action will affect driving examiners and some vehicle and traffic examiners.

DVSA said that it does not expect this action to affect vehicle approval examinations, but it will not know for certain until strike action takes place.

Not all DVSA staff are PCS members and, even if they are, they might choose not to go on strike.

It recommends that operators with a vehicle approval appointment booked during the strike period should continue to attend your booking as planned. If the approval examination does not go ahead as a result of strike action, DVSA will automatically rebook the appointment. You do not need to contact DVSA.

Updates are available via [www.is.gd/jeHugc](http://www.is.gd/jeHugc).