



The true cost of non-compliance

Nobody wants an 'S' marked prohibition. Brian Tinham talks to Andrew Woolfall about the real cost of non compliance - and what operators should be doing to protect themselves

Operators rightly fear 'S' marked prohibitions above all others. Being issued with one indicates VOSA's view that there has been a significant failure involving your maintenance systems - and that, in turn, can lead to an expensive minefield. Given that VOSA sees maintenance as starting with the driver's daily vehicle inspection, causes could be anything from a driver failing to spot what should be obvious defects, to problems with defect reporting or a workshop technician missing safety-critical items. Most worryingly, they may stem from systemic failures - in which case, technician competence and your maintenance provider's systems and procedures may all be called into question. Either way, you're potentially in for a rough ride.

"Whatever the reason for it, an 'S' marked prohibition has serious consequences, both in terms of regulatory compliance but also cost," observes Andrew Woolfall, a transport law expert with Backhouse Jones Solicitors, who deals with such cases more frequently than many would like. "First, there is always an immediate cost, in terms of the vehicle stopped at the roadside and delayed on its journey. Then there is the cost of having the prohibition cleared. If you're lucky, that might take place at the roadside. However, 'S' marked prohibitions often require the vehicle

concerned to undergo a full inspection."

That means more downtime as your vehicle is taken out of service for preparation, plus the time for technicians doing the work and taking it for testing. And there's the price of the procedure. However, all that pales into insignificance, if the prohibition leads to a prosecution - which is likely to be the case, if the prohibition is deemed to have been caused by failings with the operator's workshop staff or maintenance contractor.

"In such circumstances, the operator risks legal costs [their own and VOSA's] and fines," states Woolfall. "These can quickly run into several thousands of pounds. Also, convictions have to be reported, so the operator then faces the very real possibility of a public inquiry. And as well as the time and expense of clearing the prohibition, and dealing with a prosecution, an 'S' marked prohibition virtually always leads to an in-depth maintenance investigation."

Deep water

Now you're in deep water, with an unannounced visit by VOSA vehicle examiners being the likely next step. Several vehicles will be inspected and maintenance records checked. Clearly, there are costs associated with vehicles unavailable for work, but also there is the fact that technicians, administrators and management will have to work

with VOSA, providing paperwork and explaining issues and shortcomings arising.

"In Scotland, regardless of the outcome of a maintenance investigation, it appears there is a policy that certain 'S' marked prohibitions always result in a public inquiry," comments Woolfall. "This particularly applies to wheel loss incidents and prohibitions imposed on PSVs [public service vehicles]. However, in England and Wales an inquiry usually depends on whether shortcomings are found during VOSA's visit. Where the failure which led to the prohibition is deemed to be a one-off, then, if they're lucky, the operator may simply receive a formal warning. But, if the maintenance inspection reveals endemic problems, a public inquiry hearing is highly likely."

You don't want to get to this point, because now things really start getting costly. "If the operator is to be legally represented, there are professional fees, but, either way, management and workshop time are bound to be lost," says Woolfall. Also, new systems and procedures frequently have to be implemented and associated retraining provided – which will be more expensive than it might be, given that time is not on your side and you won't have much bargaining power with suppliers.

Lawyers and advocates

"Further, many lawyers and advocates will suggest that an independent audit be commissioned, first to double check VOSA's initial findings, but secondly to comment on improvements since implemented and their effectiveness." Rest assured, none of that is provided free. And there is the stress on the operator's staff. Woolfall makes the point that people understandably worry about VOSA investigations and inquiry hearings, so operators should expect staff at the very least to be distracted.

But there's still more. Plainly, any decision of the traffic commissioner can also have a serious impact. As Woolfall explains: "Following an 'S' marked prohibition, the very least an operator can reasonably expect is a formal warning. While this might not mean direct action against the company's 'O' licence, it may well involve agreeing to certain undertakings. These might include changing systems and procedures and/or accepting regular independent audits."

Again, all of this will incur direct costs, as well as management time. "If the operator's licence authority is reduced or, worse, suspended, then the business won't be able to run vehicles and revenue will be lost. And the ultimate sanction of

Transport industry verdict

"If you think it's expensive to train your technicians to irtec standards and get your facility through a Workshop Accreditation assessment, you need to understand the true costs of non-compliance... While good quality maintenance and workshop standards may not win you business, not having them will certainly lose you business.

"If you look at vehicle emissions and where we are, in terms of Driver CPC, the one aspect that's fallen through the cracks in legislation is maintenance standards. People are amazed when they hear that guys who maintain and repair trucks don't need qualifications. IRTE Workshop Accreditation and the irtec technician licensing scheme provide opportunities to put that right."

John Parry, former engineering director with Exel Logistics, now consultant for major companies

"An 'S' marked prohibition may not mean a significant breakdown in vehicle maintenance systems and procedures. A lot depends on the view of the VOSA inspector at the roadside. But, either way, it costs money.

"Workshop Accreditation and irtec certification are bound to have some impact, because both demonstrate that you are diligent and professional. Specifically, they are effectively shorthand for competence. irtec guarantees that technicians are up to speed with the latest technical

developments, while Workshop Accreditation provides independent verification that the organisation's procedures and statistics reach the standards we would expect.

"From an operator's perspective, both give you confidence that maintenance work, repairs and inspections will be handled properly."

Dave Rowlands, technical services director, Wincanton

"Operators recognise that, while they can subcontract their maintenance, they cannot subcontract their responsibilities for vehicle condition under the terms of their 'O' licence... So, with around 80% of operators now subcontracting their vehicle maintenance to third parties, there is a real appetite for a 'buy your maintenance with confidence' scheme."

Ian Chisholm, head of operations and communications, SOE

"As 'O' licence holders, operators have a responsibility to ensure their vehicles are in a fit and serviceable condition at all times. What this means is that VOSA expects operators to strive for maintenance standards in excess of minimum MOT standards, bearing in mind that components deteriorate between routine service intervals. "This kind of focus, rather than what might be sufficient to avoid prohibitions, will ensure full compliance. Obviously, anything that falls short of MOT standards is at risk of

attracting a prohibition. It's important, therefore, that operators' maintenance regimes take account of these standards, and that suitably qualified personnel and, if necessary, accredited workshops play an integral role in fulfilling maintenance obligations."

Gordon MacDonald, VOSA head of enforcement scheme





revocation will, in most circumstances, see the end of the business,” warns Woolfall.

Why are ‘S’ marked prohibitions potentially so punitive? “The point is that, while some prohibitions may be unavoidable, by definition ‘S’ marked prohibitions can be prevented,” answers Woolfall. “Whether the fault lies with drivers or maintenance providers, the same rules apply. Individuals must be properly trained and audited on a regular basis to ensure that their training is constantly implemented. If shortcomings are found, then retraining and/or disciplinary action must follow.”

Maintenance is key

His contention is simple: where failings lie with the maintenance provider, it may well be that either its technicians have not properly conducted preventive maintenance inspections – so missed items that were bound to fail – or that repairs were botched. Plainly, the likelihood of either is significantly reduced simply by ensuring that technicians have proper qualifications and experience, and that these are underpinned by robust workshop systems and procedures.

“Whether technicians are employed by an operator or work for independent maintenance

contractors, the operator should always be satisfied that maintenance staff are up to the job,” says Woolfall. “It is no longer good enough simply to have served an apprenticeship 20 or 30 years ago, but have undergone no further training. The result can be technicians fundamentally misunderstanding newer vehicle technologies and/or processes currently required for repairs.”

They may, for example, apply tolerances that were acceptable 15 years ago, but which VOSA no longer allows. “Many prohibitions arise when a fitter deems a part serviceable, but fails to understand the stance now taken by VOSA,” he warns.

“Clearly, contracting third party maintenance providers that are certified under IRTE Workshop Accreditation and who employ irtec qualified technicians substantially reduces the risk of attracting ‘S’ marked prohibition notices,” continues Woolfall. “If such accreditation is not offered, operators should fully audit maintenance providers themselves. Again, IRTE guides explain how such audits should be conducted.”

Similarly, he says, where maintenance is provided by operators’ own workshops, transport managers would be wise to ensure that their own staff are irtec qualified. Equally, facilities should be Workshop Accredited, and both their competence and process compliance should undergo regular reappraisal.

And if, despite acting on all of the above, a maintenance failing is still detected by VOSA at the roadside, the operator then stands a very good chance of convincing VOSA and the traffic commissioners that the problem is not systemic.

“Independent proof of competence and compliance may well avoid a potentially costly prosecution or public inquiry, and the associated loss of management and vehicle time,” confirms Woolfall. “Even if an inquiry is called, operators should avoid punitive action. One operator I recently represented at public inquiry had incurred three ‘S’ marked prohibitions in a short space of time. However, the fact that proper training and systems were in place played a substantial part in persuading the commissioner to take no formal action.” **TE**

Problems found with commercial vehicles at the roadside: photos courtesy VOSA photographic library

