

# Enforcement

**Although already tightly regulated, drivers and operators are finding themselves subject to new enforcement regimes and tougher penalties. Andrew Woolfall explains**

**C**ommercial vehicle operations are among the most regulated of all industries. Businesses face scrutiny not only from DVSA (the Driver and Vehicle Standards Agency) and the local traffic commissioner, but also other organisations, including the police, HSE (Health and Safety Executive), the Environment Agency, HM Revenue and Customs (HMRC), Border Force, etc. This can lead to a myriad of prosecutions and licensing issues.

In the main, though, it falls to the DVSA (formerly VOSA), the police and the traffic commissioner to take the lead. To date, prosecutions have been brought in magistrates and crown courts, while traffic commissioners' public inquiries have considered regulatory action, such as revoking, suspending or curtailing operators' licences. However, this enforcement landscape is now changing and, in some ways, significantly.

In the past, if VOSA or the police detected an offence at the roadside, both the driver and operator would be prosecuted. Several years ago, when fixed penalty notices were introduced, this began to change and only drivers faced fines. The traffic commissioner would then deal with the operator – although very few public inquiries are called solely on the grounds of drivers receiving penalty tickets.

## **Operator prosecutions**

More often than not, public inquiries deal with other matters, such as prohibition notices or adverse maintenance reports. Many operators felt this was the right way to do things, given that the infringement was the driver's fault – whether by failing to conduct a proper daily defect check and report items for repair, or managing their hours of work and rest periods.

However, this enforcement area is changing again. DVSA and the police are starting to bring more prosecutions against operators, with DVSA in particular favouring large-scale investigations and

proceedings, often bringing many hundreds of offences before the court at a time.

Given the ease with which tachograph offences can now be detected, through digital data, this is likely to increase. In recent months, I have dealt with several operators facing more than 100 offences in one set of proceedings. One received more than 500 summonses. Clearly, fines can then be significant and, in the latter case, were in excess of £250,000 plus VOSA's own costs of well over £100,000.

Gone are the days of relatively modest financial penalties for operators. Sentencing guidelines now given to magistrates encourage the imposition of high fines on businesses. Where once, a few



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hundred pounds might have been the norm for offences such as overloading, penalties of £2,000–£4,000 are now commonplace.

Prosecuting authorities such as DVSA are also seeking to recover as much of their own costs as possible. So whereas a relatively straightforward guilty plea might have previously seen a claim for a contribution of £85 towards prosecution costs, now several hundred pounds is not unusual.

This has to be contrasted with the removal of the court's power to award costs to an operator that has successfully defended proceedings. Previously, if an operator was found not guilty, or proceedings were withdrawn, the court would make an award for a contribution towards the defendant's legal costs. This would cover most, if not all, charges. Nowadays, operators are entitled to nothing, while individuals can only recover at very modest rates – typically only a quarter of their legal costs.

This often sees drivers and operators pleading guilty, even when defences are available, simply because they make commercial sense. But many forget to look at the consequences of a conviction when the operator or driver then goes before the traffic commissioner. He or she will take the view that the individual or company pleaded guilty so the offence must have been committed. Bad news.

## Historic offences

Another change relates to roadside encounters. At the present time, DVSA is restricted to issuing fixed penalty notices for offences ongoing at the time of a roadside check. This summer has, though, seen a government consultation proposing to extend this power to cover historic offences. The enforcement authority would have the power to issue a fixed penalty for an offence that might have occurred up to 28 days prior to the vehicle being stopped. Inevitably, non-compliant operators can expect their drivers to get more roadside fixed penalties if infringements persist.

Clearly, ongoing changes in the prosecution landscape mean operators must redouble their focus on compliance to avoid such issues. Never has it been truer that investing in systems and procedures to prevent offences is far more cost effective than being prosecuted and paying substantial fines and legal costs.

The other side of the regulatory coin for operators is the traffic commissioner and the public inquiry hearing. In 2014, the traffic commissioners have reviewed their strategic objectives and they have openly stated their intention to target “serially and seriously non-compliant” companies. So operators that continually attract prohibition notices, adverse maintenance investigations, MOT failures or drivers' hours offences, etc, will face even closer scrutiny. Those who deliberately flout the law and others unable to comply, through competence and system issues, will find themselves increasingly under the traffic commissioner's gaze.

And there's more. The commissioners also stated that they are now seeking to work more closely with government bodies such as HMRC and the Border Force. They are entering into formal agreements to share information and will be looking into issues such as the unlawful use of rebated fuel, money laundering or tax evasion – and the transportation of illegal immigrants and other forms of smuggling.

Traditionally, such matters haven't been brought to the commissioner's attention, or have only come into public inquiries where there have been prosecutions and convictions. The new agreements will see the commissioners having far more intelligence and may well lead to inquiries being called despite no prosecution having taken place.

## Stiffer penalties

In publishing strategic goals, the senior traffic commissioner Beverly Bell has also made it plain that she and her colleagues will review how they deal with enforcement action – reducing the burden on those who are compliant, while targeting those who consistently fail to meet best practice. Those who only just fall short may now avoid public inquiries and be dealt with through less formal routes – being given warnings as to future conduct, with an expectation that they implement change and submit regular audit reports to the commissioner.

New procedures and guidance documents will be introduced for other, less common matters, such as driver conduct hearings or issues of bus service reliability. However, those who choose not to comply or appear unable to do so, due to repeated infringements, will face stiffer penalties.

Many operators have been forced to reassess their businesses and, in some cases, change their focus following the economic slump. They should not lose sight of the fact that the enforcement agencies are also changing how they conduct their activities. Compliance with best practice has to be a priority, otherwise prosecutions will get very expensive, while public inquiries will see draconian action taken against the operators' licences. **TE**

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