

Manager means manager

Traffic commissioners and the courts are increasingly putting transport managers' activities under the microscope when infringements bring them to their attention. Andrew Woolfall explains that it's no longer only company directors who have to account for themselves

Following European legislation in 2011, the traffic commissioners have been placing increased emphasis on the role of transport manager. While the new regulations were not the catalyst for a different thinking, it did build upon a trend that has seen transport managers increasingly called to public inquiries to personally account for operators' failings. And it gave the traffic commissioners the power to disqualify transport managers and have their names placed on Europe-wide registers to prevent them from obtaining work.

COMPETENT PERSON

Why? Because the transport manager role is pivotal to the holding of a standard national or international operator's licence. He or she meets 'professional competence' requirement under the terms of the O licence, and is the person responsible for one leg of what the commissioners call the 'three-legged stool'. The other components are financial standing and the operator's own good repute. If an operator loses any one of these legs, the stool falls over and the licence is lost.

Whether the transport manager is an internal or external appointment, that person is critical to delivering on the undertakings of the O licence. These are the promises made to the commissioner in return for which the licence is granted. They include, ensuring that proper

systems and procedures are in place so:

- vehicles and drivers comply with the law
- vehicles are maintained in a roadworthy condition
- drivers conduct daily first use inspections
- vehicles are not overloaded
- vehicles comply with speed limits
- records are kept, and
- the laws and rules on drivers' hours and tachographs are observed.

Whenever an operator is called before the traffic commissioner for a breach, there is now a presumption that the failing has occurred because the transport manager was not doing his or her job properly. The statutory job description is to have continuous and effective management of the transport operations of the licence holder. So the transport manager will be asked to explain why the failings have occurred, what steps were initially taken to prevent them and what actions have been taken since to prevent a recurrence. Transport managers who are seen as ineffective risk losing their positions.

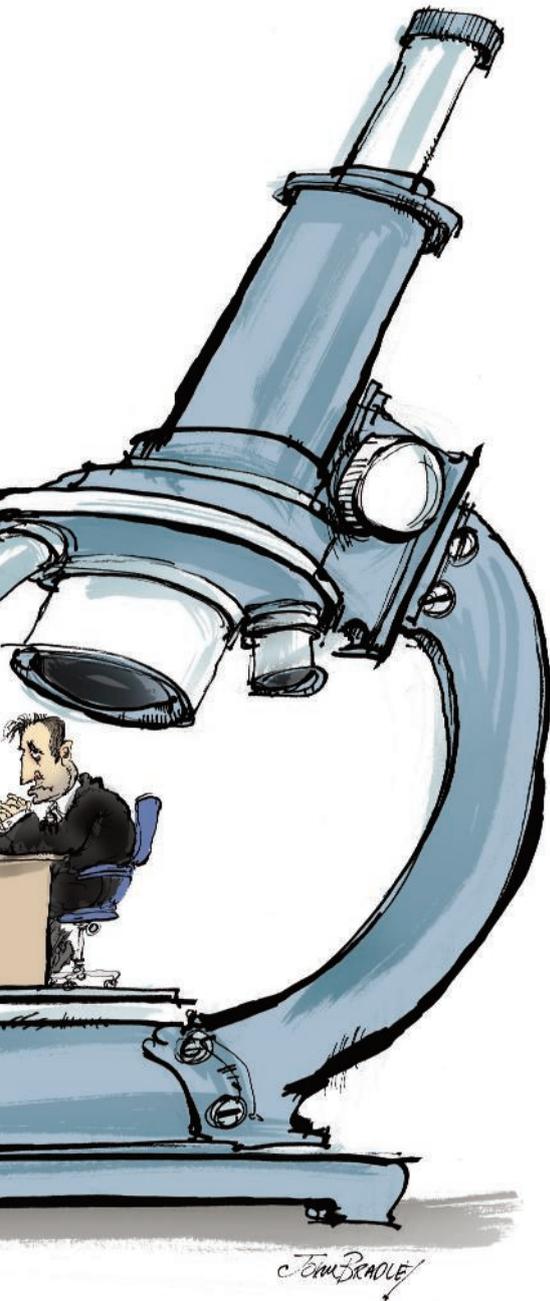
Gone are the days when the operator alone was the sole focus of a public inquiry. Whereas transport managers used rarely to be called to hearings, they are now considered equally culpable. And by placing blame on named individuals, not just faceless companies, the traffic commissioner makes the issue of compliance personal. So the transport manager simply has to deliver

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or face a rebuke. It is not uncommon for transport managers to lose their good repute or professional competence, especially at second or subsequent public inquiries - and there comes a point when the commissioner decides the individual is not up to the job and has to go.

This is not to say that operators escape any blame or sanction. They will often have regulatory action taken against their licences. Commissioners will also want to know why the operator has not properly managed and monitored the transport manager.

Even where transport managers have been allowed to stay in position, it is



now common for the commissioners to demand that, as a bare minimum, refresher training be carried out. While drivers have undergone the DCPC programme, many transport managers have not experienced training since taking their original exams. Indeed many still have no relevant qualifications, having benefited from grandfather rights exemption.

The traffic commissioners now expect transport managers to keep up to date with developments. And while there might not be any legal requirement (though commissioners often suggest there should be), transport managers are now expected to keep themselves

abreast under continuing professional development.

Note that the traffic commissioner will always appreciate a transport manager who goes on regular refresher courses or plays an active part in a trade body or professional institute.

Even restricted licence holders' transport operations are coming under scrutiny. Large restricted licence holders, who operate many vehicles, are expected to have transport departments. Their transport managers will be assessed just as critically as others on standard licences. And while the commissioner cannot take action against a transport manager on a restricted licence, he or she can certainly expect a grilling if a case goes to a public inquiry.

MANAGER IN NAME?

Many operators will have experienced this closer scrutiny. Any application to appoint a new transport manager today comes under detailed examination. The commissioners are now looking with interest at the hours the individual works, time he or she spends commuting and the level of authority. The commissioners want to know exactly what the transport manager can and cannot do. Do they have authority to spend money? Can they take or recommend disciplinary action? If they have another job within the business - for example, finance or sales director - how might this distract them? The commissioner will also want to know what support is available. In short, they want to be satisfied that the manager has continuous and effective management control.

Additionally, where transport managers have faced criticism with previous operators, public inquiries may be called if new operators seek to nominate them on their O licences. The commissioner will want to know what

the individual has learned from past experiences and whether he or she is up to the job, especially where larger fleets are concerned. Hence the importance of properly researching candidates' backgrounds and references before offering jobs. Finding out about past misdemeanours through a public inquiry calling-in letter reflects badly.

GUIDANCE

If you're still in any doubt, the senior traffic commissioner has produced a guidance document on what is expected of transport managers: all transport managers, and operators, are encouraged to read it (www.gov.uk/government/uploads/system/uploads/attachment_data/file/245251/3-transport-managers.pdf).

As for the future, it is conceivable that the transport manager's role will come under even greater scrutiny - by both the criminal courts and the traffic commissioners. Recent changes to the rules in magistrates' courts mean the vast majority of offences committed by operators or transport managers can now attract unlimited fines. This, in addition to rules introducing higher court costs for those convicted, may well see the DVSA bringing more prosecutions against individuals.

Either way, operators need to remain vigilant and make sure they comply with the terms of the O licence. Likewise, transport managers need to know what's expected in terms of best practice. Independent audits can help operators to gauge whether their transport managers are performing properly. Shortcomings can then be tackled by training or disciplinary action. One thing is certain: the enforcement process will continue and will get more expensive. If possible, that should be avoided. **TE**

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