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Backhouse Jones

ISSUE **22**

Things we do and don't mind paying for*

A challenge for you. Can you think of any single scene from any movie or television programme set in a concrete underground car park in which something unpleasant did not occur?*

Nope neither can I. Now you might liken your experience of the legal process to the darkest, dingiest car park and I might not disagree. The law, after all, exists for the mad, the bad, the rich and the destitute. Everybody else should park at home.

But allow me to tell you about my favourite car park. It has to be the Mayfair car park at the bottom of Park Lane. A mere £3900 for a season ticket albeit I recently paid £22 for just three hours.

I didn't mind. I can't say it was fragrant but there was no overpowering smell of urine and it's a cheap alternative to the Motor Show as I get to look at spectacularly expensive cars.

The other reason I don't mind paying £22 for just three hours is this is something I do just once a year. If I did it twice a week it would drive me insane. Asking 100 people to pay £10 once a year is not the same as asking one person to pay £10 one hundred times a year.

This is the thinking behind our monthly BACKUP service. It works in two ways. Firstly, operators pay just £10 per vehicle per month to ensure the nimble daily management of employees and compliance and secondly to ensure they don't have to find thousands of pounds if the wheel falls off. Let's be frank if a crisis happens the time for preparation has already passed.

The service provides 24/7 telephone access to our expert transport lawyers regarding regulatory and HR matters and representation (at no additional charge) at Public Inquiry or employment tribunal if our practical guidance can't actually keep you away from them - which is what we will be working to achieve. We have skin in your game as we want you to get it absolutely right. Having skin in any game can make boring things less boring and as we are sharing the risk with you so working on dull things like driver daily walk round checks cease to be boring. We want your systems to be efficient, so we are not butting heads with The Traffic Commissioners on your behalf at our expense.

This brings a resourcefulness and intensity to our guidance enabling you to improve your compliance.

It's all about how much neck is on the line and unlike lawyers charging you an hourly rate we are sharing the risk with you and so we want to train your team to be the best.

Building a transport company is almost like building a ship. Do not begin by gathering wood, cutting boards and distributing work, but rather awaken within men the desire for vast and endless sea. Our BACKUP training will assist you in achieving this goal.

Anyway, BACK to concrete. Not much is concrete in the legal process but our £10 per vehicle, per month is set in stone for a yearly contract and talking of concrete did you know that between 2011 and 2013 China used more concrete in three years (6.6 gigatons) than the USA did in the entire 20th century (4.5 gigatons). Not a lot of people know that.

For concrete advice join BACKUP

*Hat tip The Wikiman @rorysutherland.

Ian Jones
T: 01254 828 300
E: ian.jones@backhousejones.co.uk

BACK on your bike

James Backhouse looks at the increasing emergence of cyclists on UK roads and the impact of this for a PCV or HGV business.

Every cyclist is in a vulnerable position on Britain's road network. They are not easily compatible with large vehicles on the narrow, crowded and winding streets so typical of our towns and cities.

In fact, the same can be said of our more rural roads too. Only recently, a lorry driver was jailed for 36 weeks after failing to stop after killing a 72-year-old man by knocking him off his bike on a B road in Suffolk because he didn't see him. However, like it or not, for the foreseeable future we are all going to have to share this ever more congested space.

Then comes the word "blame". As a solicitor who has represented operators and drivers for 20 years in all manner of cases, blame is always a key factor.

For serious road traffic incidents, as they are now called, the driver does not necessarily have to be wholly to blame to be guilty of offences such as dangerous or careless driving. When there is a death involved, causing that death becomes part of the offence and the sentencing almost inevitable imprisonment. As long as the inappropriate driving was a contributory cause of the death then these offences can be made out.

Having dealt with a large number of cyclist related accidents over the years, it is fair to say that in the vast majority of instances the cyclist was in fact at fault. Usually by failing to follow the Highway Code and, on the face of it, not obeying the laws of common sense. In other words they put themselves in harms way. ▶

Cycle safety is a critical issue, particularly in London where - with over 600,000 journeys a day - cyclists are at an all time high.

From a criminal perspective that may allow a good argument to be made in favour of the driver's acquittal. However, even when the cyclist has done something stupid, it does not automatically provide a defence if the manner of driving fell below expected standards.

In any event whilst these points matter to the driver in an investigation, no one wants to be in that driver's position if they can possibly avoid it! Prevention is certainly better than a cure. Drivers involved in a fatal road traffic incident may find themselves arrested, their fingerprints, photograph and DNA taken, and they may even be held in a police cell (not a pleasant experience for the uninitiated). This will often be shortly after the incident itself and the driver may be understandably upset and shocked by what is an extremely stressful process. Such investigation can take months, with a number of police PACE interviews where the driver is repeatedly reminded of the event whilst it is scrutinised for any element of driving failure. It is obvious how much stress this puts on not only the driver, but his family and friends also.

All this can, and often does, happen - even if the driver is ultimately shown to have no criminal responsibility.

Moreover, the driver is the tip of the iceberg: his employer may be visited and asked to assist in the investigation. Sometimes this includes the seizure of documents, including maintenance records, training records and drivers' hours records. The police will be looking to see if the employer "aided and abetted" the incident by failing in their management obligations, which could result in the arrest and detention of the directors and / or transport manager.

In essence, one significant incident has the potential to create significant business and personal upset for both the driver and other business employees. From my experience, more often than not there is ultimately nothing wrong with the driving or operation in question.

So for all concerned prevention is better than cure.

In this case, therefore, what is the vaccine?

The primary vaccine is constant vigilance. Through documented training employers can remind drivers to be constantly alert of the unseen: of who and what may lurk in their vehicle's blind spots. There are schemes out there which now put drivers on bikes to demonstrate what cycling on Britain's roads is actually like, i.e. seeing it from the other perspective.

The second vaccine is technological: fitting vehicles with equipment designed to assist drivers in identifying those hidden at first glance.

The third, and my final recommendation here, is helping to make the cycling community aware of the issues inherent in manoeuvring large vehicles on busy streets. This can be done by contacting cycling clubs and inviting them to visit the yard and see for themselves what the blind spots are actually like, encouraging them through experience to keep clear.

Remember, many cyclists may neither drive nor have a licence: they do not necessarily know the Highway Code, and they don't have to pass a test to be on the road. What may seem obvious to you and the driver may in fact be completely alien to the cyclist who has no real knowledge of the issues at hand.

In essence no right thinking person wants to seriously injure or kill another, so the main objective is to develop systems and training to prevent, as far as possible, this from ever effecting your lives and businesses.

TfL's Safer Lorry Scheme in London is now dictating the equipment you will be expected to have on your vehicles, which is over and above that required by European legislation. Whilst no one likes to have more costs and regulatory burdens put on their business, you may well find that you cannot obtain work in London without meeting these requirements. Non-compliance ranking could work against you in tendering rounds, if not ruling you out altogether as with the FORS accreditation.

Remember the objective is to save lives which is in the interests of us all.

James Backhouse
T: 01254 828 300
E: james.backhouse@backhouses.co.uk

NEWS BRIEFS

Don't be fooled by digital applications - Operator's licence applications have moved online since 1 April 2018

Previously, we have written about how more and more things are moving online for operators. Since 1 April 2018, this applies to paper application forms relating to your operator's licence. Operators now won't be able to download on GOV.UK and the Office of the Traffic Commissioner have released some information on why this is.

When the new Vehicle Operator Licensing (VOL) Service launched in 2016, it gave operators the chance to do more online. GOV.UK Verify which allowed operators to sign an application digitally for the first time for example. However, operators are being positively encouraged to do more and more online and by 2019, the whole system will be paperless. If you are trying to get some extra vehicles on your licence or pay your continuation fees, not only is it easier, but it can be more advantageous to do this online.

For compliant operators, doing things online means their matters will be dealt with quicker. The average processing time for online goods and PSV major applications is currently 6 weeks. Paper applications take nearly 9 weeks.

The Office of the Traffic Commissioner have carried out research on why operators are still using paper applications when most other areas of their business are in fact run digitally. Broadly, they have concluded most people do this simply because they always have. However, it is felt it is more advantageous for operators to do this online and that this is how the best service will be provided.

That's why operators now won't be able to download the paper forms from GOV.UK and will need to register for VOL. However, they will still be available through the Contact Centre for operators who don't have access to the digital services though.

The important role of the Traffic Commissioners acting as gatekeeper to those who run vehicles will not change, however, how operators do some things must.

Backhouse Jones has a team dedicated to managing clients' Operator's Licences and most of this is done digitally. This team provides a specialist service whereby they take the stress out of dealing with the administration of Operator's Licences by doing this for operators. Services provided include making new applications and variations, managing the application process and liaising with the Central Licensing Unit in relation to any queries and additional information.

If you would like to chat through how these changes will affect you or need help registering for VOL, please contact a member of the regulatory team on 01254 828300.

Who's in the driving seat?

If you were asked to picture a typical UK lorry driver, images of a white, middle-aged man chomping on a Yorkie bar, guzzling a can of Tizer and reading the red top tabloids would no doubt spring to mind.

It is unlikely that any of you would picture that driver being young and even less likely that any of you would imagine them to be a woman.

Sadly, these stereotypes reflect the current reality. Around 60 per cent of HGV drivers in the UK are aged over 45 yet, astoundingly, only 2 per cent are aged between 16 and 24 and less than 1 per cent are female. It is perhaps therefore unsurprising that, in an industry dominated by older male drivers, the UK is facing an unprecedented shortage of qualified and experienced professional drivers.

Solving this problem in the long term means attracting more young people and more people from the under-represented sectors of society (such as women) to the industry. But how bad is the shortage and why are young people and women, in particular, currently choosing not to enter the sector?

The statistics

It is estimated that the UK is currently 60,000 HGV drivers short and that, by 2020, the industry will need an extra 150,000 HGV drivers to keep the wheels, literally, turning. However, the number of individuals taking and passing their HGV test has steadily fallen since 2008 and it is estimated that only 17,000 drivers are currently entering the industry annually (25 per cent lower than in 2008).

The industry also loses around 35,000 drivers every year due to retirement or failure to pass periodic medical tests (and this does not include those that have their entitlements revoked or those that leave the sector for other job opportunities and to pursue different careers).

The combined impact of an ageing driver population and the lack of new entrants to replace those who leave means the sector now faces a chronic skills shortage, which creates a very real and fundamental problem for operators and the economy.

Concerns were exacerbated in September 2014 with the introduction of the Driver CPC. This acted as a trigger for many drivers to retire early or quit and saw experienced drivers leave the industry en masse rather than complete the 35 hours of periodic training required to obtain the qualification. Statistics reveal that a shocking 20,000 drivers have left the industry since September 2014.

The shortage is also driving down quality. One client recently confirmed that due to the driver shortage, the quality of drivers has definitely decreased. Experienced drivers are commanding higher wages that smaller and medium sized operators simply cannot afford.

Barriers to entry

One of the most fundamental problems that the industry has to overcome if it is to attract more people to the sector is its image. There is a lack of visibility and appeal to wider society. People, particularly younger people and women, simply do not know that commercial road transport exists as a viable career option and, sadly, too few younger people and women are therefore choosing professional driving as a career.

Furthermore the recruitment practices favoured by many small operators, such as word-of-mouth, means recruitment of non-typical drivers (such as younger people and women) is further limited.

Historically, becoming a professional driver was often viewed as a job of last resort for those without specialist skills and public perception still seems ▶

"If you look around, almost everything you can see from the clothes you wear to the food you eat will have been delivered by a lorry for at least part of its distribution journey."

▶ to be that there are far more attractive industries for younger people and women to enter. Despite almost one million young people not being in employment, education or training, those aged between 16 and 24 are simply not attracted to the sector and shun it as a potential career option.

Women, in particular, seem to be deterred by the standard and security of facilities available to drivers, the non-standard working patterns and unsociable hours associated with the role, which are not perceived to be conducive to family life and the job itself is, admittedly, not a glamorous one!

Then there is the cost of acquiring a vocational licence (somewhere between £3,000 and £5,000 – even if they pass first time). This acts as a barrier to many potential new entrants to the sector.

It is a lot of money to lay your hands on and there are currently no student loans or public funding available for licence acquisition. Even where potential new entrants are able to find the money to fund their training, they face delays in medical assessments from the DVLA and delays in test bookings from DVSA.

Also,they then need to find an operator willing to take them on as a driver with no experience!

Insurance presents a further hurdle, as many companies insist that drivers are at least 25 years old and have at least two years' driving experience.

Breaking down the barriers

It is clear there is an urgent need for the sector to engage with the currently under-represented areas of society to improve public perception of the industry and quash preconceived notions to broaden the appeal of driving and convince prospective employees that commercial road transport can provide a viable and rewarding career.

If you look around, almost everything you can see from the clothes you wear to the food you eat will have been delivered by a lorry for at least part of its distribution journey. Commercial road transport is the life blood of the UK economy with 80 per cent of goods being moved by road, yet there is a general lack of awareness of the road transport sector and a lack of recognition of the vital role that it plays in supporting the UK economy. This needs to change.

Despite it being an industry dominated by older male drivers, those younger people and women who do work in the sector report only positive experiences. Younger people and women therefore currently provide a largely untapped resource. The road transport sector is a dynamic sector but some of the negative preconceptions need to be challenged.

Laura Hadzik
T: 01254 828 300
E: laura.hadzik@backhouses.co.uk

NEWS BRIEFS

Accurately complete your records and keep them up to date!

At a recent public inquiry, Deputy Traffic Commissioner, Hugh Olson, highlighted just how necessary it is to keep up to date and accurate records. Legally, an operator is required to keep records that relate to all of their drivers and all of their vehicles. All operators, upon signing the application of their operator's licence, were made aware of and committed to this condition.

To ensure road safety for both the commercial world and the public, it is important that this condition is satisfied.

The Deputy Traffic Commissioner suggested three practical benefits of effective record keeping:

1. Effective maintenance systems – by keeping accurate records, automatically maintenance systems are up to date and will work effectively. Current failures that vehicles have will flag up on the online system and therefore, can be fixed accordingly.
2. Prevention of further issues – if a vehicle fault has been flagged up, then not only can the necessary work be carried out to fix it, but, also operators can review their other vehicles to see how the problem may be avoided.
3. Trust – Accurate records will demonstrate to the Traffic Commissioner that the operator is doing their job. These records would normally need to be produced to both the Traffic Commissioner and the enforcement agency.

More details about record keeping can be found in the DVSA Guide to Maintaining Roadworthiness.

Disqualified, and he never knew...

Recent cases have demonstrated the importance of keeping the address on a driving licence and the registered keeper address on the V5 (vehicle registration document of the DVLA) up to date.

Where the Police send out a Section 172 Road Traffic Act Notice/Notice of Intended Prosecution ("S172 Notice") to a registered keeper of a vehicle in circumstances where the driver of that vehicle is believed to have been speeding, the service of the Notice will be valid if the details of the keeper and the registered address is what is currently on the V5 at the DVLA.

In a case where the keeper moves his address but does not amend the address at which the vehicle is kept, the keeper may not be aware of a Section 172 Notice. Failure to respond to the Notice by giving the driver identification information the Notice requires within 28 days is an offence under Section 172 Road Traffic Act which carries a fine and where the registered keeper is the holder of a driving licence, 6 penalty points on the driving licence.

One unlucky driver was unaware of two such Notices served within a few days for separate speeding allegations. He was later unaware of the prosecutions which followed which led (months after the events) to a six month totting up disqualification because he received two lots of six penalty points which took him to 12 points and a mandatory totting up ban. This driver had notified the DVLA of the change of address on his driving licence. The first he knew of the disqualification was when the DVLA wrote to him to confirm that he was disqualified. ▶

▶ The rules about good service of Court proceedings are more lenient than those for service of the Section 172 Notice so it may be possible to apply to the Court to have the case re-opened. The driver can only ask the Court to re-open the case for the purpose of re-sentencing him because the driver will still not have a defence to the Section 172 offence.

It is not possible for the driver who is unaware of the Section 172 Notice to argue that he has the defence that it was not "reasonably practicable" for him to comply with the notice, where the problem with the address is of his own making.

At the sentencing stage the driver would still have to suffer six penalty points multiplied by two and face a totting up disqualification unless he was able to persuade the Court that the consequence of the disqualification would mean exceptional hardship. In considering the question of disqualification, the Court can consider circumstances of the defendant driver or of others who it is persuaded might suffer "exceptional hardship" if the driver was banned e.g. loss of employment. But the Court cannot consider "any circumstances that are alleged to make the offence or any of the offences not a serious one".

In Regina (on the application of Purnell) v Snaresbrook Crown Court [2011] EWHC 934(A) Admin, the High Court said that while there was no legal duty on the keeper of a vehicle to keep the registered address up to date, if the factual basis for the lack of knowledge of the service of a Section 172 Notice was the failure by the registered keeper to give the DVLA an address at which Notices in relation to the driving of the vehicle would be received and acted on, the Court would be unlikely to find that this meant the defendant could successfully say that this meant that it was not "reasonably practicable" to provide the information.

A further troubling aspect of this case is that the driver had been driving around while disqualified (and so uninsured) for a fortnight by the time he got the letter from DVLA telling him he was disqualified.

The driver had given his up to date residential address to the DVLA even before the speeding matters for driving licence purposes but when it came to the proceedings the Police did not check at the DVLA for the address on his licence so the proceedings went to the registered keeper address. That address is of course associated with the vehicle, not necessarily the driver, but they will often be the same.

Further, when the cases had been proved against the driver in his absence and the Court could see that a totting up prosecution would follow, the Court very properly adjourned sentence to give the driver a final opportunity to attend and be heard.

The Sentencing Council Guidance relating to "Disqualification in the offender's absence" says this:

"When considering disqualification in absence, the starting point should be that disqualification in absence should be imposed if there is no reason to believe the defendant is not aware of the proceedings, and after the statutory notice has been served, pursuant to Section 11(4) of the Magistrates Court Act 1980 where appropriate.

Disqualification should not be imposed in absence where there is evidence that the defendant has an acceptable reason for not attending, or where there are reasons to believe that it would be contrary to the interests of justice to do so".

Pausing there for a moment, the Court should in a case where the drastic sanction of disqualification is under consideration, reflect on the procedural history of the matter and consider possible explanations for a driver not responding to not only the original Section 172 Notice but also the proceedings.

An intelligent approach to the case at that stage might have led to the Prosecution and the Court recognising that it was likely to be case where the defendant, for whatever reason, was unaware of at least six official notifications concerning him.

These would be the two Section 172 Notices, two reminders of those notices, the original Court proceedings and the notification of the sentence and the proposal by the Court to disqualify him unless he attended.

A further interesting conundrum has arisen. The Court proceedings against the former registered keeper defendant contain the registered keeper address but also the date of birth of this defendant. The date of birth is not a piece of information which the defendant is required to supply to the DVLA when they become the registered keeper of the vehicle.

Further as we have seen although the defendant had a driving licence, the address he gave on the driving licence is his correct residential address and was not the registered keeper address. That was the position even before the speeding offences. We believe that what this must mean is that at some stage the Police had checked with the DVLA and established that the defendant whose full details including date of birth would be registered with the DVLA under the driving licence record was indeed the same person who was the registered keeper of the speeding vehicle albeit the registered keeper address was different.

"Disqualification should not be imposed in absence where there is evidence that the defendant has an acceptable reason for not attending, or where there are reasons to believe that it would be contrary to the interests of justice to do so"

If the Police had carried out the exercise of establishing that the registered keeper and the person with the driving licence are one and the same, then they should have been able to see that there was another residential address associated with the registered keeper. Further by the time the matter went to Court the DVLA would have been able to tell them that the defendant had by this time acquired another vehicle and had in fact registered that vehicle to the same address as the one on his driving licence. In other words, the most likely relevant address was the address on his driving licence, not the registered keeper address.

Against that background it is clear that the Police should have been telling the Court that there were two reasons as to why there was every reason to believe the defendant was not aware of the proceedings. Firstly, as we have seen the defendant's failure to deal with the whole series of official documents. Secondly, the fact that to the knowledge of the Police and the DVLA, there was another address (and very likely a more current and correct address) associated with this defendant and his driving, namely the address that was on his driving licence and that was available to them as the registered keeper address for the vehicle he was now registered to as the registered keeper.

It is a moot point as to whether a driver in this position has any legal remedy against the Police or the Court for any negligence in utilising a doubtful or obsolete address as a good address for service of Court proceedings.

What it undoubtedly does is give the defendant good grounds for re-opening the proceedings and making representations to the Police that on reflection, they perhaps deserve prosecution only for the underlying speeding offences and not for the Section 172 offences on the moral basis that the administrative approach by the Police to the proceedings is at least open to the criticism as the drivers original failure to keep the registered keeper address at the DVLA up to date.

The moral of the story of course is whatever address somebody is going to register a vehicle to as the registered keeper address, it needs to be a good address at which official notices will come to their attention.

Sensibly the registered keeper address for a vehicle they drive will almost always be the address on their driving licence although there may be reasons when these can be different in certain circumstances. ▶

Who would have thought that two "simple" and unremarkable speeding offences could lead to these legal and practical consequences?

▶ It has to be said that a reasonable conclusion at that stage to anybody looking at the history of the case would be that the address at which all the mail was obsolete and was not coming to the driver's attention.

A check on the address of the driver licence at the DVLA would have revealed a different up to date address for the defendant to which, in our view, the Section 11(4) Magistrates Court Act Notice should have been sent. That Notice in effect warns the driver that he is liable to be disqualified in absence unless he attends Court.

As it is the Police and the Court combined to produce a disastrous situation where the driver was committing the (potentially imprisonable) offence of driving while disqualified and further was uninsured. It is interesting to consider the attitude of the Police in relation to the offences of driving whilst disqualified as set out in the Code for Crown Prosecutors. This provides: -

"There is a duty on a person who chooses to drive to ensure that he/she is entitled to do so. It is no defence for that person to say that he/she thought the disqualification had expired. It is no defence for a person disqualified in their absence to claim that they did not know that they had been disqualified. However the Court should be reluctant to disqualify offenders in their absence because of this problem".

This last comment seems to reflect a reluctance from the Police to see a driver disqualified in circumstances where they are unaware they had been disqualified at least until notification reaches them, if indeed it ever does. The Sentencing Council Guidance provides that the starting point is that disqualification in absence should be imposed, but it then goes on to acknowledge but it must be in circumstances where "there is no reason to believe the defendant is not aware of the proceedings".

In our submission, if many official Notices have been sent to a defendant at a particular address to which he has not responsed threatening dire consequences if he doesn't respond, then the number of Notices over time which have been sent should be alerting the Court/Police to the fact that the reason for the lack of response is that the address is no longer a valid address for that defendant, not that the defendant is burying his head in the sand and not reacting to official documentation.

In these days when the Courts are online to the DVLA, at the very least an up to date driver licence check should be done. It may be thought that it is more likely that a driver would keep their current driving licence address up to date than the registered keeper address for a car, which after all they may have sold.

At the very least we would submit that a Court should be checking what the current address on the driver licence is and if it is different from the registered keeper address which has resulted in no response to the defendant, official Notices should be sent to the driving licence address. Indeed when the Police are considering prosecuting, arguably the best address for any defendant will be the driving licence address, not the registered keeper address for the vehicle.

This is particularly the case if on a consideration of when the DVLA were given the address, the driving licence address is of more recent date than the registered keeper address.

It would be reasonable for a defendant to take the view that there is negligence on the part of the Police in not checking the driving licence address before launching potentially prejudicial proceedings against him and a good address for service on him will not necessarily be the registered keeper address for the vehicle. ■

John Heaton
T: 01254 828 300
E: john.heaton@backhouses.co.uk

Brake testing is like ice-cream to the DVSA

The DVSA have recently issued a warning to operators of the need to improve their approach to brake performance testing.

Brake performance testing is a key part of an operator's maintenance regime and should happen at every safety inspection; however, inadequate brake testing, or the complete absence of it, is still frequently being identified during DVSA investigations and remains a common feature in most maintenance-related Public Inquiries.

The latest edition of the DVSA's Guide to Maintaining Roadworthiness ("the Guide") (which was published in 2014) makes it clear that vehicle and trailer brake performance must be assessed at every safety inspection.

The Guide strongly advises that a calibrated roller brake tester is used at every inspection to measure individual brake performance and overall braking efficiencies for the vehicle or trailer; however, it is also acceptable to use an approved and calibrated decelerometer to test vehicles without trailers to measure overall brake efficiencies. It is also recommended best practice to test vehicles and trailers in a laden condition to get meaningful results.

The Guide adds that, to help operators arrange brake tests with safety inspections, it is acceptable for a satisfactory brake test to be carried out within the same week of the planned safety inspection and, where it is impracticable to obtain a brake efficiency result on a safety inspection, brake performance must be assessed by means of a road test. ▶

▶ This should be carried out under controlled and safe conditions and the safety inspection record should clearly state that the brake performance was assessed by a road test. The Guide does, however, state that a road test method to assess brake performance for all planned safety inspections will usually be inadequate and it is expected that the vehicle or trailer should complete at least three successful brake efficiency tests spread throughout the year (in addition to the MOT).

The results of all brake performance tests must be recorded. You should always try and obtain a printout of the brake efficiency test from either the roller brake tester or decelerometer and attach this to the corresponding safety inspection record. If you are unable to obtain a printout, the results should be recorded on the safety inspection record instead. This documentation should be retained on the relevant vehicle or trailer maintenance file for the minimum required 15-month period.

We are, however, frequently dealing with cases where both in-house fitters and external maintenance providers are failing to properly document brake performance tests; there is either too little information recorded on safety inspection records in relation to brake performance testing to offer any meaningful assessment or no information in relation to brake performance testing has been recorded at all.

Recent examples include:

- missing brake figures on safety inspection records;
- 'not applicable' written in the brake test section of the safety inspection record;
- the brake testing section of safety inspection records being left blank (in the absence of a separate printout, it is not possible for a DVSA Examiner to establish whether any assessment of brake performance has in fact been undertaken at the safety inspection).

When analysing and auditing completed safety inspection records, operators and transport managers must therefore ensure that the 'brake performance' section is completed correctly and, where appropriate, a separate printout is attached to the safety inspection record.

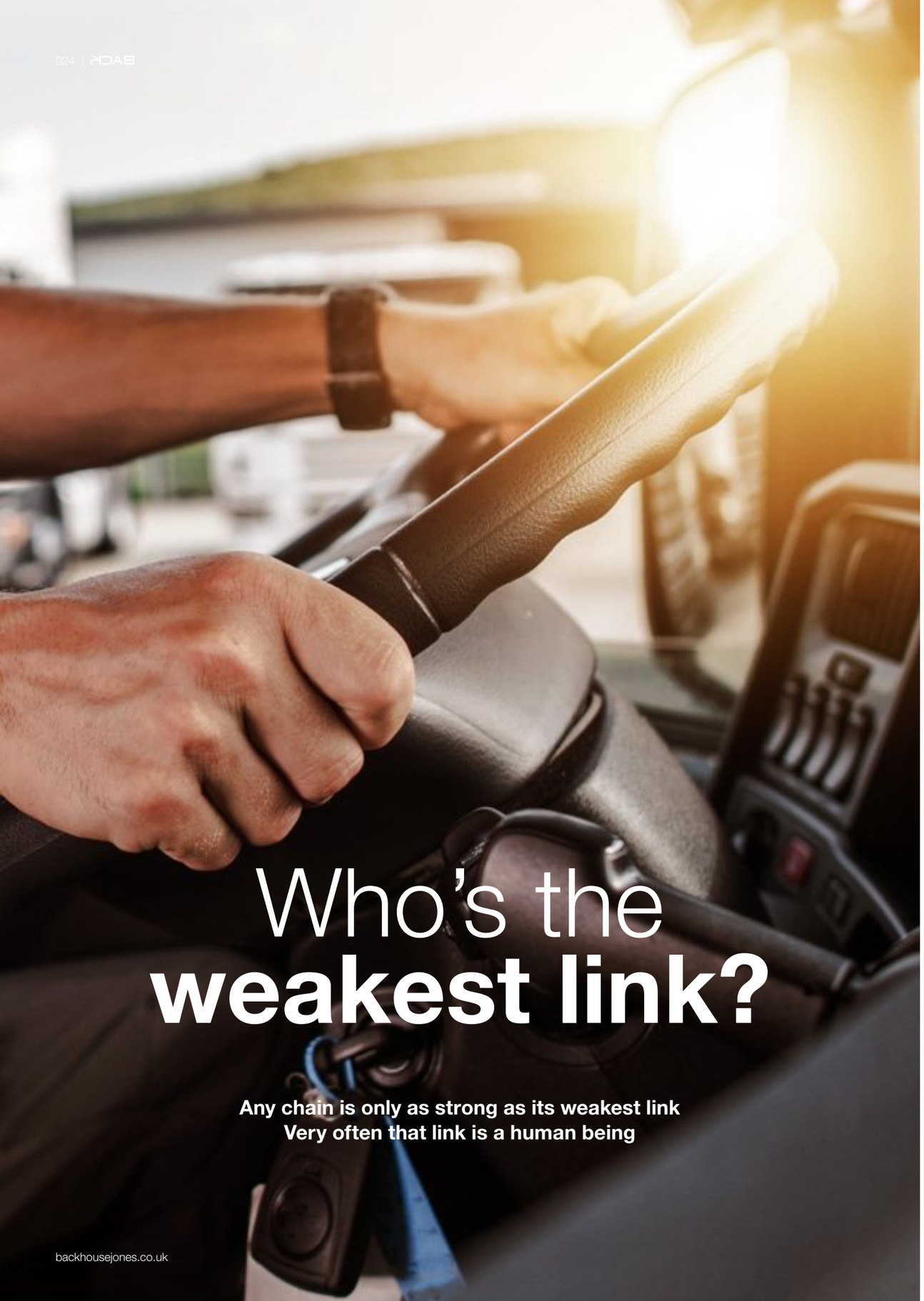
Failure to carry out and/or document brake performance testing correctly, or at all, will normally result in an unsatisfactory DVSA maintenance investigation, which is likely to lead to a Public Inquiry at which the Traffic Commissioner will consider taking regulatory action against the Operator's Licence. The operator and driver could also face criminal prosecution if a vehicle is driven with brakes that are not in good and efficient working order.

The consequences of not meeting the minimum standards for brake performance can be even more devastating if this results in a collision, a tragic example of which occurred in 2015 when a 32-tonne tipper vehicle killed four people when its brakes failed on a steep hill. The DVSA's investigation found that on five out of thirteen safety inspection records, the brake test section had been left blank and, on the other records, the comments were too limited for anyone to understand what they meant.

The company director and mechanic both received prison sentences of over seven years and five years respectively and the Traffic Commissioner revoked the Operator's Licence and disqualified the company's directors for two years.

Operators and transport managers are therefore urged to carry out an urgent review of their brake testing regime. This should include an analysis of safety inspection records over the last 15 months to ensure that the type of brake test being carried out and the information being recorded in relation to brake performance testing is sufficient. Do not simply assume that your maintenance provider is conducting and/or properly documenting brake performance testing!

Jonathon Backhouse
T: 01254 828 300
E: jonathon.backhouse@backhouses.co.uk



"In the wake of a fatal/serious accident caused by a medical issue of your driver, the failure to require a medical on commencement of employment and regularly thereafter starts looking less than reasonable."

In a commercial vehicle operation, the weak link is likely to be sat behind the wheel, driving the most valuable asset the business possesses.

To fail to invest in the driver leaves you and the vehicle exposed to all kinds of risk. With autonomous vehicles not yet a reality, it is the way the driver goes about their business that determines the longevity of the vehicle and general wear and tear.

The life of the vehicle and its running costs can be improved through some fairly basic training and monitoring telematics. But it's not just a case of how hard a driver is accelerating, going through the gears and braking; what about the driver's health? This isn't where we get into suggesting bohemian wellness techniques but the very serious issue of drivers who are medically unfit to drive, i.e. unfit to be driving that very valuable billboard on wheels.

The reality is that drivers who are perfectly fit can become unfit - and not by means of lack of exercise but medically unfit to drive. In many instances the driver will be aware of the deterioration in their health or the social issues causing distraction/ lack of sleep. But can you expect that individual to approach you and have a frank conversation? I would suggest not; that puts their only means of earning a living in jeopardy. Furthermore, the vast majority of us, particularly men, tend to play down matters of a medical nature and think we will pull through or bury our heads to the reality; the "it'll be reyt attitude" or if you prefer, call it the British stiff upper lip. Great attitude but one which can have catastrophic outcomes when mixed with commercial vehicles.

Probably the most infamous example of a driver hiding his medical issues from his employers is Harry Clarke. Who? The Glasgow bin lorry driver. In 2014 he killed six pedestrians and left a further 15 injured. Clarke became unconscious at the wheel. But he'd previously experienced unconsciousness at the wheel in 2010 when he was a bus driver. He neither told the bus company he worked for at the time nor did he disclose this to Glasgow City Council when he applied for a job. It also seems he mislead doctors about the previous blackout otherwise the doctors would have been under a duty to notify the DVLA.

So, we know that drivers can't be relied on to be honest about their medical issues. The spectre of committing criminal offences isn't a sufficient deterrent - failing to notify of a medical issue is an offence under the Road Traffic Act 1988, as is driving after making a false declaration of physical fitness.

The Fatal Accident Inquiry into the Glasgow bin lorry accident made 19 recommendations which centred around the sharing of medical information between an employer and proposed employee from the very start of employment.

Recommendations include:

- employment to begin only when references have been obtained;
- references to include focused health questions;
- occupational health doctors to perform examinations where there are any driving related medical concerns;
- subject to the employee's consent, provision of the full facts and medical records if a doctor is used to advise on a driver's condition.

Some of these are fairly obvious such as obtaining a reference before putting the driver behind the wheel. Why wouldn't you do this when you're entrusting your valuable asset with this individual? But with ex-employers references being what they are should you not be going a step further? Medical assessments before starting. What? How much is that going to cost? It also delays the process of getting the driver on the road that you're in the process of recruiting because you need someone now, not in a few weeks.

True, but once something has gone wrong you're in the realms of hindsight which we know is a wonderful thing, but not so wonderful when one of your vehicles has been involved in a serious accident which could have been avoided had the driver been medically assessed. Now the decision to get the driver on the road without a medical isn't looking great. ▶

▶ Also, the problem with hindsight is that steps that could have been taken but weren't start looking crass or, ammunition for cross examination by a prosecutor or the basis of difficult questions from a Traffic Commissioner. Courts and Traffic Commissioners concern themselves with whether reasonable steps were taken. In the wake of a fatal/serious accident caused by a medical issue of your driver, the failure to require a medical on commencement of employment and regularly thereafter starts looking less than reasonable.

Whilst a very good case can be made for medicals there are a number of open goals often missed. Don't let someone drive your vehicles without first, checking their driving licence, their driver CPC and downloading their digital tachograph card (even if they're going to be driving a non-digital vehicle or on journeys exempt from the tachograph rules).

You're probably thinking of course I would do this. But, there are a good number of Public Inquiries caused by operators failing to take these basic steps and why, because the job was urgent, the driver promised he would get the documents to the operator and the driver has been seen driving other vehicles.

Putting your trust in someone you may have just met has now put your operator's licence in jeopardy and everyone who relies on your business for a living. Oh, and that highly valuable asset they are driving isn't insured!

Finally, the consequences of a serious accident whether through an unfit driver or not attach themselves to your brand for years. No one outside of those immediately involved in a trial remember the names of the prosecuted HGV drivers. Think of the recent trial of two HGV drivers involved in the M1 crash where eight people travelling in a minibus were killed.

Everyone will remember that tragic accident by reference to the FedEx and AIM Logistics vehicles involved. In time it will be forgotten whether it was the FedEx or Aim Logistics driver that parked their vehicle in first lane having fallen asleep and was found to be over twice the drink-drive limit and whose HGV entitlement had been revoked.

Mark Davies
T: 01254 828 300
E: mark.davies@backhouses.co.uk

Directors: the buck stops with you

A recent statement from Richard Turfitt, the Senior Traffic Commissioner recently reminded all directors that responsibilities regarding compliance rest with them.

Compliance is important for all transport businesses. Therefore, a director's approach to compliance may affect how well the business operates. By this, what is meant is that if a director manages compliance well, then the rest of the company will work well; benefitting all.

For directors to be satisfied that specific criteria are being met within their company, they should remember the "Plan, Do, Check, Act" steps.

Plan - be aware of operator duties and risks; Do - don't leave transport to run itself, have management systems in place from the start; Check - get routine and incident-led reports on performance and compliance; and Act - undertake regular reviews through auditing and take forward recommendations.

Directors can face consequences for the neglect of these duties and responsibilities in relation to the Operator's Licence. At a public inquiry last year, a director was held accountable for not ensuring that compliance standards were met. He was not able to check the technological systems or the paperwork and could not provide the support that his transport manager required. As such, the repute of the director was damaged and the company's licence was curtailed.

12 month driving ban resulting from driver's aggressive behaviour towards the DVSA

A bus driver demonstrated aggressive behaviour towards both the Traffic Commissioner and the DVSA representative it was reported at a recent driver conduct hearing before the West Midlands Traffic Commissioner.

The Traffic Commissioner advised that drivers should never opt for a 'path of confrontation', but, on this occasion the driver did. In choosing to drive away from the vehicle encounter with the DVSA and from causing another examiner to have to step away to avoid being hurt (in a separate incident), the driver quite clearly decided to opt for aggression.

Despite the driver's expired PCV test at the time of the incident, which was shown via DVLA records, it has since been confirmed that the driver was entitled to drive the bus and carry passengers following medical approval.

The West Midlands Traffic Commissioner, Nick Denton, has since provided that the driver's behaviour was in fact 'bullying, threatening and wholly intemperate' and that drivers should be mindful and co-operate with the DVSA.

The driver received a 12 month driving ban.

I don’t even know my own name!

What many Operators consider to be subtle or minor changes within their business often have unintended consequences as far as the Operator’s Licence is concerned. Regularly operators find themselves at Public Inquiry due to changes made in the business structure which has resulted in the licence being held by one entity but the vehicles are being operated by another.

The basic position is that the Operator’s Licence must be held by the entity that is operating the vehicles, this can be a sole trader, a partnership, a limited liability partnership or a limited company. However, changes made to the structure of the business can mean that the entity which holds the licence no longer exists or is no longer the operator of the vehicles.

One of the most common examples of this is when a sole trader or a partnership incorporates their business i.e. becomes a limited company. The person (in the case of a sole trader) or people (in the case of a partnership) in charge of running the limited company are probably the same individuals(s) that were running the previous business but the establishment of the limited company has created a completely new entity that must have its own Operator’s Licence.

Another very common scenario is where a limited company holds the Operator’s Licence but because of restructuring, administration/ liquidation that company is no longer trading or the operation of the vehicles has been moved to another company with close links.

A change in partners within a partnership often creates a new partnership and therefore a new entity which requires a new licence or alternatively where a sole trader goes into business with another person or a number of other individuals a new licence is required as that business is no longer a sole trader, it has become a partnership.

The regularity that these issues arise at Public Inquiry means that it would be prudent for all operators to review their Operator’s Licence and ask themselves whether the name on the licence is the entity that is operating the vehicles. If there has been a change in the name of the business or the persons listed as the licence holders then advice should be sought.

If you are unclear which entity is the operator of the vehicles you need to ask yourself which entity is it that employs the drivers or gives the drivers their day to day instructions? If the licence is held by a different entity the chances are that the Operator’s Licence is held by the wrong entity.

What are the implications of the wrong entity holding the licence and does it matter seeing as there is a licence in place?

Operator’s Licences are not transferrable from one business to another. This means that the name on the licence disc must be the entity operating the vehicle, another entity cannot use that disc. The most common way this issue comes to light is during a DVSA stop when the officer asks the driver who he is working for.

If the name given by the driver doesn’t match the name on the licence disc it will alert the DVSA officer to the prospect of there being an issue with the licence.

Depending upon the officer’s findings this can result in a Public Inquiry, a prosecution for using a vehicle without a licence, using an Operator’s Licence disc with intent to deceive and even impounding of the vehicle. Furthermore, the insurance policy may be invalid. It is therefore critical that the licence is held by the correct entity.

If the “entity issue” is identified by a DVSA officer or the Traffic Commissioner the operator then finds themselves in the position of having to apply for a licence in the correct entities name and having to wait until that licence is granted until they can legally operate again. A new licence application can take weeks or months and may only be determined at a Public Inquiry if the matter has been brought to the attention of the Traffic Commissioner. The inability to operate for these periods would have a devastating effect on most businesses which can be avoided by simply checking the name on the licence documents.

Scott Bell
T: 01254 828 300
E: scott.bell@backhouses.co.uk

GDPR - you can't just take a pass

Is GDPR up there with changing the bleach blocks in the gents urinals? ▶

This new general data protection regulation is in force from 25 May 2018. It is compulsory and if you are found not to be compliant, your company could be fined up to €20 million or 4% of annual global turnover.

▶ This is obviously not a piece of legislation to flout and being landed with a fine of such hefty nature is enough to rain on anyone's parade.

The general idea of the GDPR is to provide a single legal framework, which will apply to all members of the EU, to streamline and simplify the jumbled legislation that currently covers data protection. Furthermore, our ever-evolving assortment of digital and online services leaves old legislation seeming prehistoric, so the GDPR will modernise the rules to reflect our digital age.

Previously, it was only 'data controllers' to whom compliance obligations fell. However, the GDPR shall apply also to data processors. The controller says how and why data is processed and the processor acts upon the controller's behalf, and the definitions shall be broadly the same as that set out in the Data Protection Act. So, what does all this mean for you and your business?

In basic terms, you are required to keep a clear paper trail which clearly demonstrates where the data was sourced, what consents you have for its use, confirmation permission has been given and accounts of any third parties it has been shared with.

The first data protection duck we suggest you align is in relation to any data already held. You must ask yourself whether you know where the data has come from and that you have a record of the obtained requisite permissions to use the data.

Another good practice is to consider whether you have made contact with the data subject within the last 12 months, and abide by the motto 'if you don't use it, lose it'. If the data held does not comply with the GDPR, then it is best to remove it so you are not at risk of being fined.

Another consideration to be borne in mind is that any privacy statements will need to be revised, so that you can ensure it is transparent and there is no doubt in the data subject's mind what their information is being used for.

Key principles that you and your business should take out of the GDPR include being accountable and transparent, which we briefly touched upon as you need a paper trail confirming the source of your consents and a transparent privacy statement.

Secondly, but equally as important, the consent obtained must be freely given, unambiguous and given by means of a statement or clear affirmative action.

Under the new legislation, the frequently used methods of silence or pre-ticked boxes are unlikely to be classed as a clear affirmative action.

If there are no legitimate grounds for you keeping the data, the subject has the right to request that their data be deleted, which also involves the obligation to take reasonable steps to inform third parties to whom the data has been shared.

Similarly, to requesting removal of data, the subject has the right to request access to their data free of charge within 1 month. Subjects can request their data to be provided in a useable format to be transferred to another data controller.

You must report any breaches to the supervisory authority within 72 hours as a general rule and any of which are high risk must also be communicated to the data subject. If your core activities include processing operations that require regular monitoring of individuals on a large scale and those dealing with sensitive data, you will be required to appoint a data protection officer.

You might be wondering why we must be compliant with this regulation in light of Brexit. Firstly, the new rules will come into effect whilst we are still members of the EU and therefore we will have to comply.

Secondly, the laws are likely to be transposed into domestic legislation once we do leave as a result of the 'great repeal bill'.

Finally, the GDPR will apply to all UK entities that do business in the EU. As this will be applicable to many UK businesses and will affect those trading within the EU member states, it seems plausible that the UK government will come to the sensible conclusion to reform UK legislation and harmonise with the EU. This will help to drive UK businesses into possessing the requisite standard required to trade in the EU.

In summary, businesses should start looking now at their data protection obligations and their levels of compliance. Just like construction and use rules, driver's hours and other road transport legislation, this must be complied with. Fines for non-compliance can come from both the courts and the Information Commissioner's Office.

If you require any further advice on data protection or the GDPR, contact us now for a chat, an audit or help!

Andrew Woolfall
T: 01254 828 300
E: andrew.woolfall@backhouses.co.uk

"The general idea of the GDPR is to provide a single legal framework, which will apply to all members of the EU, to streamline and simplify the jumbled legislation that currently covers data protection."

Are you **GDPR ready?**

The EU General Data Protection Regulation ("GDPR") is in force from 25 May 2018 – the biggest and most radical shake-up of data protection law in several years. Are you ready for the changes?

The article below sets out headline changes and obligations employers must comply with. For further specific details; of which there are many, reviews of your employment documents and tailored training to get you GDPR ready, please contact us on 01254 828 300.

Background

There has been some confusion concerning the status of the GDPR in light of Brexit where questions hovered over whether or not the new regulations would apply in the event the UK left Europe. However, the ICO ("Information Commissioner's Office") has indicated that the regulations apply as of 25 May 2018, replacing the current Data Protection Act 1998 ("DPA").

Whilst the regulations are much longer in content than the DPA and more prescriptive, the aim is to streamline current data protection laws.

Why does it affect my organisation?

The new regulations will have an impact on employee and recruitment data. If your organisation processes any form of personal data then the GDPR will apply.

What are the headline significant changes?

Accountability – there will be more obligations on data controllers to demonstrate compliance. This includes amending existing data protection policies or introducing a new data privacy notice setting out information letting the employee/candidate know that they can withdraw consent to their data being processed; that they can lodge complaints with the ICO; have access to and the erasure of data; and automated decision making (i.e. profiling as part of a recruitment process).

Consent – most organisations rely on consent from their staff to justify data processing. However, the advice from the ICO is that this should be avoided and instead organisations should rely on the other processing conditions set out in the GDPR such as 'performance of the contract' or 'compliance with a legal obligation' as a legal basis for data processing. If an organisation does rely on consent, it must be freely given, specific, informed and unambiguous. Consent cannot be construed from silence, a pre-ticked box or inactivity.

Subject Access Requests – the 40 day response period for employers is reduced to 1 month. This can be extended based on the complexity of the case. There is no more "fee payable" unless the request is manifestly unfounded or is a repeated request in which case a charge can be levied but also the request can actually be refused.

Reporting breaches - Employers will need to put in place mechanisms which allow for breaches to be reported to the ICO no later than 72 hours after it becomes aware of the breach, unless the employer can demonstrate the breach will pose no risk to the data subject.

Data Protection Officers – if your organisation does not have one already, you will need to appoint one or bring in an external consultant.

Failure to comply

Currently, the maximum fine for breaches of the DPA is £500,000. The new regime will mean that you could be fined up to 20 million euros or 4% of your group worldwide turnover – whichever is higher. Some action points:

- get your organisation on board with the changes – they are happening and any breaches will result in serious fines;
- appoint a Data Protection Officer if you do not have one. If you do, make sure they are aware of the changes and their responsibilities;
- review your contracts and policies, including websites, so that they are GDPR compliant;
- start documenting what personal data you hold, where it came from, why you hold it and who you share it with;
- get mechanisms in place so that you can detect and report a personal data breach within the mandatory 72 hour deadline;
- review your subject access request policy and implement changes.

Rafia Ahmad
T: 01254 828 300
E: rafia.ahmad@backhouses.co.uk

Have I created an accidental tenant?

If your answer to any of those questions is yes, then read on as there is a good chance you will be liable to pay your tenant compensation if for any reason you want to bring the current arrangement to an end.

Where a landowner and occupier intend their relationship to be one of landlord and tenant, and substantial rental payments are made, the law is clear; Something called a periodic tenancy will be found to arise by implication. Equally, where a formal lease has expired and no new document is entered into and rent continues to be paid, it is likely a periodic tenancy will arise.

To provide operators with some protection as regards their commercial tenancies, we recommend that such tenancies are “contracted out” of the Landlord and Tenant Act 1954 (LTA 1954). This means the tenant will not have the benefit of the statutory right of renewal of the lease at the end of the lease term. The tenant does not have what we call “security of tenure”. A periodic tenancy cannot be contracted out of the LTA 1954.

Therefore, if a tenant occupies commercial premises under a periodic tenancy, the tenancy will be a business tenancy and the tenant will have a right of renewal under the LTA 1954.

What does this mean for you as an operator?

Under the LTA 1954, the tenant is entitled to a lease renewal of the tenancy and the landlord can only oppose the lease renewal on certain grounds:

Fault Grounds (where the tenant is at fault):

- Ground (a) - Premises are in disrepair.
- Ground (b) - Arrears of rent.
- Ground (c) - Other breaches of covenant (however this ground would be difficult to establish if you do not have a written agreement in place).
- Ground (d) - Suitable alternative accommodation to be provided by the Landlord.

Non-fault grounds:

- Ground (e) - Tenancy was created by a sub-letting.
- Ground (f) - Landlord’s intention to redevelop.
- Ground (g) - Landlord’s intention to occupy.

A tenant with security of tenure under the LTA 1954 is entitled to compensation if it does not obtain a new lease solely because the landlord establishes one of the “no fault” grounds of opposition. The level of compensation is set by statute, and is currently equal to the rateable value of the property.

The compensation will be doubled if the tenant and any predecessor have been in occupation of the property for the purpose of the same business for 14 years or more.

If the landlord successfully opposes the lease renewal on any of the “fault grounds”, the tenant will not be entitled to statutory compensation.

This means that if you cannot rely on any of the Fault Grounds (a – d) outlined above to bring the tenancy to an end, you will most likely have to pay the tenant an amount equal to the rateable value of the property in order to bring the tenancy to an end and regain control of your operating centre.

If you are concerned your arrangement with a tenant may fall under the above scenario, then please don’t hesitate to contact us to discuss your situation.

Brett Cooper
T: 01254 828 300
E: brett.cooper@backhouses.co.uk

Backhouse Jones acts on landmark case: Attempted insurance fraud

In a landmark case - the first of its kind in the bus industry - the High Court has given jail sentences to a couple for contempt of court after an attempted insurance fraud.

In September 2014 an Abellio London bus collided with Amrik and Jakmit Ahuja's car while making a slow turn at a junction.

The Ahujas alleged that the bus was going at 10-15 mph and jolted them both sideways causing serious injuries.

Bus CCTV confirmed Abellio London's assertion that the bus was travelling at no more than 5mph. A medical expert who examined the Ahujas argued that such a collision could not have caused the injuries described.

Despite this, the Ahujas maintained their position and at a personal injury trial in 2016, the judge agreed with Abellio London. The judge highlighted CCTV showing Mr Ahuja after the accident, where he did not show any signs of injury.

The Ahujas were given the opportunity to clarify that there had been a misunderstanding but declined. Their claim was dismissed due to "fundamental dishonesty" and they were ordered to pay Abellio London's legal costs of £5,000.

Abellio London took the Ahujas to the High Court, arguing that their behaviour at trial meant they were in contempt of court for attempting to defraud the business.

In a ruling, the judge found the Ahujas guilty. Mr Ahuja was sentenced to 60 days in prison and Mrs Ahuja was sentenced to 28 days suspended for six months.

They were also ordered to pay Abellio's £6,000 legal costs, on top of the original £5,000.

Frances Whitehead (pictured), Backhouse Jones Solicitor who acted for Abellio, says: "Defending claims involving large vehicles on behalf of operators is a specialist area of legal practice. This is just one example and demonstrates our robust approach in dealing with such matters."

If you think this may of relevance to your business, please get in touch with our Insurance Litigation department.

Frances Whitehead
T: 01254 828 300
E: frances.whitehead@backhouses.co.uk

The basics of a management buy-out.

Part of a management team who is thinking of taking a stake in the business by doing a management buy-out? Take a look at this quick guide to the potential perils and plunders that could be in store for you as management doing a management buy-out (MBO).

An MBO involves the management personnel of the target company setting up a new company (commonly referred to as Newco), which subsequently acquires the shares in the target company, of which the management personnel have been directors or employees. An MBO is usually at least partially funded by investors, who will also normally take shares in the Newco. This effectively creates a triangular scenario where management owes duties to the target company as current employees and directors of the target, and management needing to keep the investor happy to fund Newco's acquisition of the target.

From the perspective of the management team, they are already on the inside, so an MBO can present less of a risky acquisition due to the fact that management has in depth knowledge and understanding of the target company.

However, an MBO can also put the management in a complicated position where they are wearing several hats. They will be expected to make promises (known as warranties) about the business, think about their director's duties and agree on their own new employment arrangements going forward. It's these areas we are looking at in this article.

The warranty balancing act

The level of warranty cover that the seller offers Newco (as the buyer of the target company) will typically be significantly lower than any usual acquisition due to the management's knowledge of the target company. However, this is where things can become awkward for management, as an investor may be reluctant to accept this, as it is their funds in jeopardy if the warranties are inadequate.

"If an MBO is done correctly, the potential of benefits of dividends and capital growth can be financially attractive for management, as well as essentially working for themselves"

Newco will want warranties from the sellers regarding the state of the target company it is acquiring to be set out in the share purchase agreement, and investors are going to want warranties under a separate investment agreement. Typical warranties in an investment agreement will seek to cover the reasonableness of any projections made in the business plan and furthermore will seek to assure the investor that management do not have knowledge of undisclosed information that may impact these projections. In other words, the investor wants to protect itself from any unwelcome bombshells concealed by management.

Management are often also required by the investor to carry out and warrant the answers to a standard form questionnaire about themselves. Such questionnaires will cover topics such as the individual's personal wealth, net assets and employment history. In the event that there is a breach of the agreement, the investor has the information it needs to try and recover any losses and target assets.

Where the warranties end up on an MBO really depends on the parties and their individual bargaining power, their trust of one another and their attitude to risk. Management will normally ask for limits on their liability, such as financial caps and time limits. Such limits need to be agreed for management as a whole, as well as individual managers, particularly if the warranties are given on a joint and several basis. The implication of management accepting joint and several liability is that all or any one of them may be sued for the full amount if a warranty claim arises. If the other party is insistent on joint and several liability, management can regulate liability amongst themselves with a separate deed of contribution.

Typical investment terms

Some of the terms of the investment will be between the management and the investor in a MBO. The Investor is likely to want to incorporate terms to keep a certain degree of control over management, without being too obstructive so as to hinder their running of the target and Newco. A typical term is that management will usually not be able to transfer their shares at all, so that the investor can ensure the shares are firmly held during the life of the investment.

The management will also often be required to make a financial investment themselves, thereby evidencing their commitment to the project. Many private equity houses will be looking for a return on their investment in the medium term and a clear exit strategy. An investor may also add in certain leaver provisions, so that if a manager is also a shareholder and chooses to leave the company, they will be required to offer up their shares for sale.

The circumstances on which that shareholder leaves will determine the price at which the shares may be obtained from the manager. For example, a 'good leaver' is typically someone who has been wrongfully dismissed, deceased or suffers from permanent ill health. A 'bad leaver' is typically all other methods of exit. Ultimately, it just means that the good leavers are likely to receive a greater amount for the sale of their shares than a bad leaver.

Another term to be aware of is the potential 'step in rights' that may be inserted into the investment agreement. This will permit the investor to assume control of Newco to either sell or otherwise act to safeguard their investment. ▶

Management should be cautious that they do not breach their existing obligations and seek formal consent from their employer to proceed with the MBO.

▶ Avoiding conflicting director duties

Throughout the MBO process, management continuously have to think about both what is best for them as the management purchasing the business, without compromising their duties as directors for that target company.

Any failure to do so could see that director liable to recompense the company for any losses triggered from that director's acts, or acts sanctioned by them. For example, if the business seriously under-achieves whilst negotiations concerning the MBO are taking place, this would be a conflict.

In order to avoid or at least alleviate the risk of encountering conflicts, management should deal with the parties to the transaction transparently, particularly throughout the disclosure process and also keep clear records of any dealings. For example, if the director mainly corresponds via email, it would be best practice to keep all such emails in a designated folder.

Service contract/employee clashes

Most management members will have some form of director's service contract or employment contract. Management should be cautious that they do not breach their existing obligations and seek formal consent from their employer to proceed with the MBO. Such consent will need to cover all and any actions management may need to take in the preparation and completion of the transaction. Without this, management run the risk of breaching a number of existing contract terms which could affect their participation in the MBO process.

In terms of the new service contracts to be entered into with Newco, the investor will want to strike a balance when negotiating the length of notice periods. The investor will want to avoid any expensive severance payments if it wishes to terminate management without notice, however, the length of notice needs to be sufficient to ensure that the team can deal with the departure of management adequately.

The investor will undoubtedly want management to demonstrate their commitment to the MBO by agreeing to certain restrictive covenants. Common covenants sought by investors include the requirement to devote all their time to the target and Newco, not to compete with the target for a prescribed period and not to solicit staff, customers and clients of the target company/Newco for a prescribed period following termination of employment.

These covenants will typically be drafted into both the new director's service contracts, as well as in the investment agreement. This is often done tactfully, so if there is a breach of the director's service contract by the employer, these restrictive covenants would fall away.

By including these covenants in the investor's agreement, these restrictive covenants will still stand. Management therefore need to properly and fairly negotiate these covenants.

If an MBO is done correctly, the potential of benefits of dividends and capital growth can be financially attractive for management, as well as essentially working for themselves. Furthermore, an MBO takes the majority of the risk out of the due diligence part of a the transaction, as management will undoubtedly know the ins and outs of that business, warts and all, thereby making it potentially a less risky investment for them.

Brett Cooper
T: 01254 828 300
E: brett.cooper@backhouses.co.uk

Fitness to drive

An ongoing hot topic in the industry is the continued requirement for operators to ensure their drivers' fitness to undertake their role as a professional driver.

As a starting point, all drivers are required to hold the appropriate licence.

Section 87 of the Road Traffic Act 1988 ('RTA') provides that:

1. *It is an offence for a person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class.*
2. *It is an offence for a person to cause or permit another person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising that other person to drive a motor vehicle of that class.*

Essentially, section 87 requires an individual to drive with a licence, and any operator for whom an individual drives must ensure that the individual drives with the relevant licence.

Who is responsible for ensuring a driver is fit to drive and who must be notified?

Whilst an operator has to ensure the driver holds the relevant licence to drive, the primary duty for notification of any medical conditions lies with the driver. All drivers (and applicants) have a legal duty to tell DVLA about any injury or illness that would affect their ability to safely drive. They should be advised by their GP if they have a medical condition which may impair their fitness to drive and if they are required to notify DVLA.

Failure to do so by the driver is an offence. A driver must surrender their licence to DVLA if their GP tells them that they need to stop driving for 3 months or more because of the medical condition.

If a driver cannot, or will not, exercise their own legal duty to notify the DVLA, then the GP (or other healthcare provider with care of the driver) does have the ability to notify DVLA themselves. This is in circumstances where there is concern for road safety for both the individual and the general public and is in accordance with the guidance given by the General Medical Council.

An operator is not strictly required to notify the Traffic Commissioner of any driver medical conditions under its Operator's Licence, and it does not have a duty to notify the DVLA of any such condition – this duty lies with the driver. It is important to remember, though, that an operator must not allow a driver to drive unless his licence permits him to do so, taking into account any medical issues (pursuant to section 87(2) above). Similarly, an operator cannot simply 'turn a blind eye' to the problem.

What is the effect of section 88 of the RTA?

Section 88 can, in some circumstances, allow drivers to continue to drive without holding a current licence. This is usually in circumstances when a driver has applied to the DVLA to renew their licence but the licence expires whilst the application is being processed, or where an application is being considered following notification of a new, or changes to an existing, medical condition.

When DVLA has been notified of a medical condition which may affect a driver's ability to hold the required licence and investigations are taking place, it is usually a lengthy process, with DVLA making enquiries with the drivers GP and other healthcare professionals involved. The individual may retain their legal entitlement to drive under section 88 provided they meet the following conditions:

- their Doctor has confirmed they are fit to drive and supports them;
- they have held a valid licence and only drive vehicles subject to their current application; ▶

- their licence has not been suspended, revoked or refused by the Traffic Commissioner;
- they meet any conditions that were specified on the existing licence;
- DVLA has received the correct and complete application with the last 12 months;
- their previous licence was not revoked or refused for medical reasons;
- they are not currently disqualified from driving by a court;
- they were not disqualified as a high-risk offender on or after 1 June 2013.

Usually in cases where the DVLA is assessing a driver's medical fitness, the relevant condition will be the first in the list and an operator would be advised to obtain a letter from the driver's GP which confirms that the driver meets the section 88 conditions before they are permitted to drive.

If they meet the criteria, they will retain the right to drive under section 88 until the following happens:

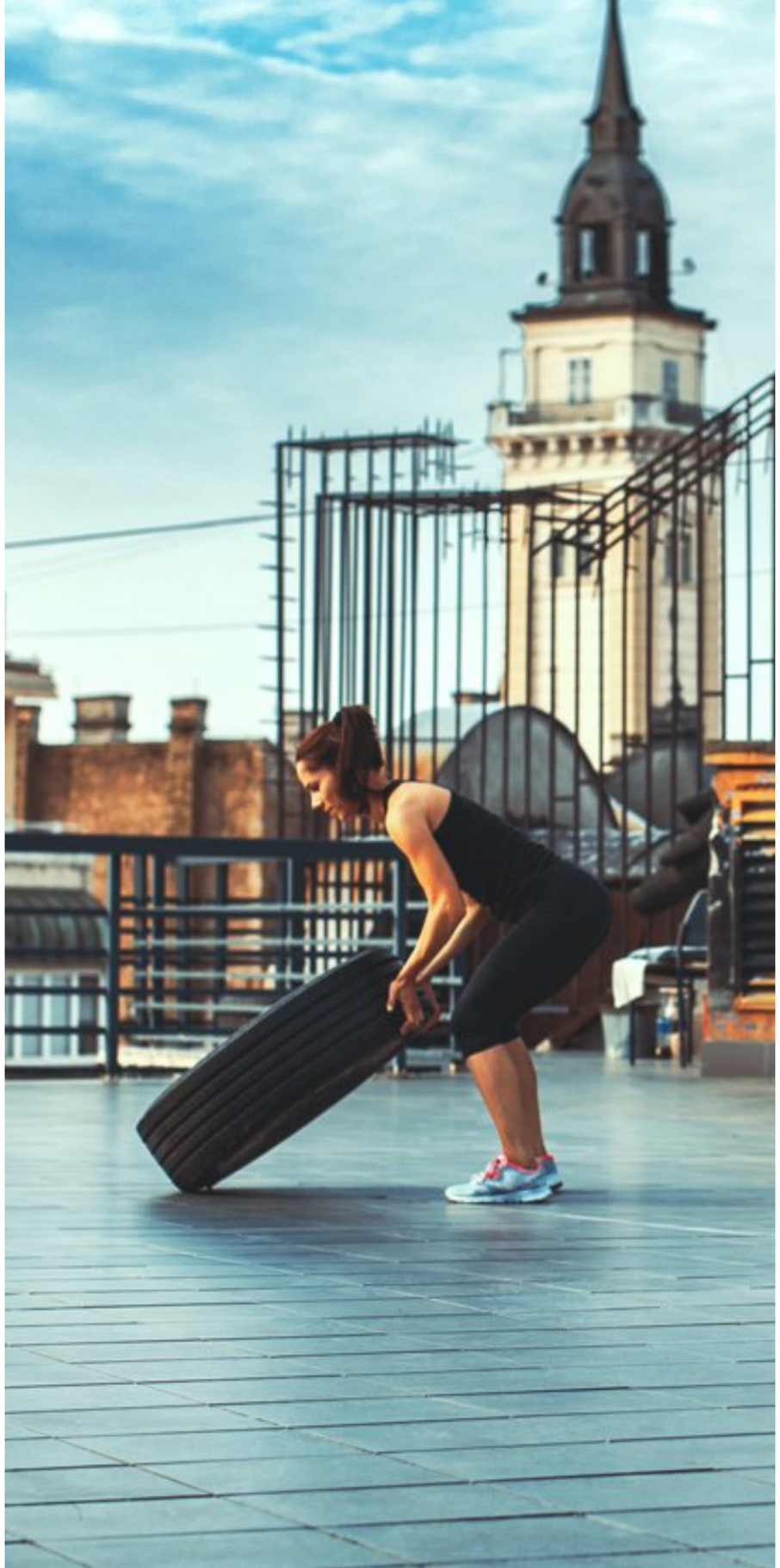
- they receive their new licence;
- the application is refused, or licence revoked;
- the application is more than a year old;
- they have been disqualified since the application was sent.

What steps can an operator take to monitor a driver's fitness to drive?

Under the Equality Act 2010, it is no longer lawful to ask questions about an applicant's health before an offer of employment has been made. There are certain exceptions to this, the relevant one being if it is necessary to establish if an applicant will be able to carry out a function that is intrinsic to the work concerned.

However, to avoid potentially falling foul of the Equality Act 2010, it is commonplace and sensible for operators to make an offer of employment subject to a satisfactory medical assessment being carried out.

"It is also advisable that operators require drivers to complete an annual medical questionnaire to declare that there have been no changes to their health or any issues which may affect their fitness to drive."



If a driver notifies an operator of a condition either on the questionnaire, or at any point during their employment, it is essential that this is investigated by the operator.

This can be by way of a medical questionnaire, and medical assessment if necessary, depending on the information provided. Some operators go a step further and require all new recruits to undergo a medical assessment with their Company Doctor/Occupational Health Provider.

Once they have commenced employment, they should be contractually required to notify the operator of any medical conditions which arise which may affect their ability to safely drive.

It is also advisable that operators require drivers to complete an annual medical questionnaire to declare that there have been no changes to their health or any issues which may affect their fitness to drive.

The questionnaire can provide crucial information which would allow an operator to evaluate whether it is safe for the individual to drive. If a driver notifies an operator of a condition either on the questionnaire, or at any point during their employment, it is essential that this is investigated by the operator. In most cases, a driver will have already seen their GP and may have been signed off as unfit for work.

What can an operator do if they have concerns about a driver's fitness to drive but the driver has not made them aware of any issue?

Now, imagine this scenario: a driver declares no medical issues on his medical questionnaire nor brings any concerns to your attention. However, you walk into the drivers' break room and see the driver asleep at the table. You see this five days in a row.

This should ring alarm bells that something isn't perhaps right – it is not normal for an individual to fall asleep during the day.

Is the operator able to request the driver undergoes a medical fitness test to determine whether there might be an underlying medical issue?

The simple answer is yes. If an operator reasonably believes one of his drivers may not be fit to drive or has any concerns about sending them out in a vehicle, they should stand them down from duty and request that they undergo a relevant medical assessment. This can be by way of a report from the driver's GP or a referral to Occupational Health. In the meantime, the operator might also suggest that they visit their GP to speak to them about the concerns. ▶

FACTS, FIGURES & CASE STUDIES

According to research in 2016, more than

3,000,000

drivers have failed to reveal potentially dangerous medical conditions to the DVLA.

In 2015

64

motorists were found guilty and sentenced in court for offences relating to failing to disclose medical issues.

Over

8.8m

amounting to 1 in 4 drivers – have a health issue in England and Wales.

In 2009

2,605

people died in road traffic accidents in the UK.

Common medical conditions suffered by drivers include:

- **9%** Heart conditions
- **8%** Stroke or mini stroke
- **7%** Diabetes
- **7%** Physical disability
- **5%** Brain condition or head injury
- **3%** Visual impairment
- **1%** Epilepsy

If a driver loses their driving entitlement on medical grounds, the operator can consider termination on grounds of capability

▶ If the GP signs them off as unfit to work they would be entitled to SSP, or contractual sick pay. If however the driver insists they are ok to drive, but the operator is not satisfied pending investigation, then it is advisable to place the driver on suspension. Any suspension would have to be on full pay. An alternative to suspension may be offering the driver other work, for example, yard duties. It would be important to remember, though, that any alternative work should also be suitable in light of the potential medical condition.

What are the options if a driver is deemed unfit to drive and/or has his licence revoked?

If a driver loses their driving entitlement on medical grounds, the operator can consider termination on grounds of capability. They would have to ensure that they follow a fair process, part of which would be to investigate whether the driver is capable of doing any alternative work which does not require a licence and whether this is something the operator could accommodate.

The operator would need to ensure that medical opinion was obtained to confirm the driver's fitness for any alternative duties. If, after investigation, there was no alternatives to dismissal, they would confirm the driver as dismissed. They would be entitled to their notice period (paid at normal pay) and in the circumstance it would be usual for this to be paid in lieu, rather than the driver remaining on the books for the duration of the notice period.

The infamous Glasgow bin lorry crash in 2014, which killed 6 pedestrians and injured a further 15 members of the public, involved a driver who had knowledge of previous health problems but failed to disclose the information to his employers, amongst other third parties. It was said that the driver, Mr Clarke, fell unconscious whilst at the wheel of the vehicle.

It was found that Mr Clarke had already experienced unconsciousness at the wheel of a bus in 2010 but did not alert his employers, FirstBus, nor Glasgow City Council and the DVLA. He lied to doctors about the blackout and was therefore not advised to notify those parties of the problem.

On Boxing Day 2015, Robert Wright, an Edinburgh County Council bin lorry driver, suffered a heart attack at the wheel of his vehicle. Despite the physical and mental distress that he must have endured during those moments, Mr Wright managed to safely drive into a barrier on the central reservation, protecting both his colleagues and pedestrians. Tragically, he died a week later.

Mr Wright had no knowledge of any heart problems and, therefore, the operator was also unaware of any medical conditions that could potentially affect his driving. Heart attacks, amongst other physical health issues, can occur with no prior warning.

These statistics serve as a reminder of the importance for operators to continue managing the medical fitness of their drivers. It is highly recommended that operators and drivers work together in ensuring that drivers undertake all possible assessments in an attempt to uncover health troubles which may, otherwise, be disguised until something more sinister occurs.

Heather Lunny
T: 01254 828 300
E: john.heaton@backhouses.co.uk

Bring BACK summer

“Self-employed” worker wins landmark case for backdated holiday pay

In a landmark ruling, the European Court of Justice in the case of The Sash Window Workshop v King held that anyone deemed to be a “worker” is entitled to claim holiday pay for the whole of their employment, if they had not been allowed to exercise their right to take it.

Mr King worked as a “self-employed” sales person for over 12 years on a commission only basis. He did not receive any pay when he was on holiday or sick leave. When he left in 2012 he brought claims in the ET (Employment Tribunal) for unlawful deduction of wages relating to holiday pay.

The ET deemed that he was a full time “worker” and found that he was entitled to be paid annual leave under the Working Time Regulations.

However, under the UK regulations, a worker has to give notice to take holiday and if they don’t exercise their right to take it in the current holiday year, they lose it, except in cases where they have been unable to do so due to long term sickness, for example.

The Employment Appeal Tribunal found that there was no evidence that Mr King had actually requested, and been refused paid holiday and therefore lost the entitlement.
Mr King appealed the decision to the Court of Appeal, who referred it to the European Court of Justice (ECJ).

The ECJ said: “A worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave.

They went on to say that “the employer was able to benefit, until Mr King retired, from the fact that he did not interrupt his professional activity in its service in order to take paid annual leave” and that “an employer that does not allow a worker to exercise his right to paid annual leave, must bear the consequences”.

It made no difference that Sash Windows had not considered the status of Mr King, as a worker and therefore entitled to paid holiday, they determined “The fact that Sash Window Workshop considered wrongly that Mr King was not entitled to paid annual leave is irrelevant. Indeed, it is for the employer to seek all information regarding his obligations in that regard”.

Currently, there is a two-year back stop on claims for holiday pay. However, the ECJ had to decide whether European Law allowed him to claim payment for the entire length of his employment. It was determined that the two-year backstop in this case had no relevance. The ECJ therefore determined that under the Working Time Regulations, a worker does not have to take a period of unpaid leave to bring legal action for pay for that leave.

The ECJ confirmed that leave may be carried over and a claim brought on termination. As a result, Mr King is entitled to claim backpay for the whole of his employment from 1999 to 2012, a potential liability for Sash Windows of £27,000.

Now that the ECJ has given its opinion, the case will now be referred back to the UK Court of Appeal, where it is thought highly likely that the COA will agree with the ECJ’s verdict.

This is a significant ruling, which could open the floodgates to huge claims for untaken holidays dating back many years, for those employers who have engaged self-employed contractors who are actually deemed to be workers.

It is all the more important that employers now seek advice on the real status of their workforce, for those continuing to use “self-employed” contractors.

Laura Smith
T: 01254 828 300
E: laura.smith@backhouses.co.uk

Covert CCTV to catch suspected thief violates their privacy rights

Care should be taken if CCTV monitoring is being considered in any capacity within a business and we recommend taking advice beforehand as even the most simplest of cases prove to give varying decisions. ▶

“Shortly after the video cameras were installed, Ms López Ribalda and four colleagues were caught on video stealing items. The five employees admitted involvement in the thefts and were dismissed.”

Facts

Ms López Ribalda worked as a cashier at MSA, a supermarket chain. The manager of the supermarket identified significant discrepancies between the stock levels and what was supposedly being sold. In some months, the discrepancy was as much as €20,000.

As part of an investigation, MSA installed surveillance cameras in the supermarket. The cameras aimed at possible customer thefts were visible. However, other cameras, aimed at recording possible employee thefts, were hidden. The concealed cameras filmed the area behind the cash desks. MSA did not inform its employees that the hidden cameras were in place.

Shortly after the video cameras were installed, Ms López Ribalda and four colleagues were caught on video stealing items. The five employees admitted involvement in the thefts and were dismissed.

Claim

All five employees brought unfair dismissal claims and the dismissals were upheld by the Spanish employment tribunals. The court accepted that in the circumstances, the covert video surveillance had been lawfully obtained even though prior notice had not been given to the employees which would ordinarily be expected.

This decision was appealed, however, the High Court found that the surveillance had been justified, since there had been reasonable suspicion of theft, appropriate to the legitimate aim pursued, necessary and proportionate. It is these four factors which must be carefully considered when determining whether it is lawful to install or use material such as CCTV with has data protection implications.

European Court of Human Rights (ECtHR)

The employees appealed further to the ECtHR, complaining that the use of footage taken from the covert video surveillance in the unfair dismissal proceedings had breached their right to privacy under Article 8 of the ECHR.

Decision

By a majority, the ECtHR upheld the employees’ Article 8 claim, finding that the Spanish courts had failed to strike a fair balance between the rights involved for both the employee and employer. It was considered whether the employees’ privacy rights had been infringed.

The court observed that covert video surveillance of an employee in their workplace must be considered a considerable intrusion into their private life, since an employee is contractually obliged to report for work at their workplace and cannot avoid being filmed. Article 8 was therefore triggered.

Weighing up the balance for the employer too, the court noted that the covert surveillance was carried out in the context of an arguable suspicion of theft, which did warrant an investigation. On the other hand, the use of covert surveillance contravened data protection law and guidance issued by the Spanish data protection agency, similar to the Information Commissioner’s Office in the UK. Namely, MSA did not inform the employees that surveillance cameras had been installed focusing on the cash desks, or of their rights under the data protection legislation in advance of doing so.

Comment

This case surrounds a very real issue across all industries internationally. It provides further guidance on a subject that is becoming more prevalent in the workplace today, namely the use of CCTV and to what extent its use is permitted.

While this decision may appear harsh in the employees favour and unfair towards the employer who was victim to theft, the case gives direction alongside previous cases with similar circumstances. There are other cases that found the use of CCTV to detect theft in the workplace was justified.

The distinction there was that only a particular employee under suspicion was targeted by the surveillance and the surveillance had been carried out over a limited period (two weeks) which only covered the area surrounding the cash desk. Both cases involved dishonest employees who were dismissed on the basis of covert video surveillance which showed them stealing from their employer, yet the decision differed.

Theft or any other dishonest conduct capable of being proven on CCTV could be relevant to your business and the subtle differences between the employer’s actions in the two cases give a good indication of where the line is to be drawn between protecting an employer’s interests and respecting employee’s private life under Article 8. A more time-limited approach means a court is likely to find that any intrusion into an employees’ privacy is necessary.

It is important to be wary of the level and extent of using CCTV in the workplace. In cab cameras are more commonly utilised for employee driver protection during duty as well as for proving any misconduct alleged against a driver. Ordinarily, drivers would be aware of the CCTV in operation and consent to the same.

Does your in-cab CCTV have audio recording too? Do you know whether this is enabled in the cab? This should be investigated as use of audio recording is unlikely to be justified, running continuously to monitor staff without a specific purpose, having regard for the UK guidance published by the Information Commissioner’s Office.

Similarly, the ICO states that it will be rare for covert monitoring of employees to be justified and that it should only be done in exceptional circumstances. It is therefore essential that employers make a realistic assessment of whether such action is required and necessary.

If CCTV monitoring is being considered in any capacity within business, advice is recommended to be sought beforehand as even the most simplest of cases prove to give varying decisions. Employers should have a strict policy that covert video surveillance will only be carried out in highly exceptional circumstances where the employer reasonably believes that there is no less intrusive way of dealing with a specific issue and this should be carried out for the shortest possible period and affect as few individuals as possible.

Paul Mills
T: 01254 828 300
E: paul.mills@backhouses.co.uk

"Mineral oil tax can be refunded if the fuel was paid by fuel card, credit card or bank card. It cannot be refunded in cases of cash payment."

GUEST FEATURE

High potential savings for international journeys

www.dkv-euroservice.com/gb/services/refund/vat-refund/

DKV Euroservice offers a combined fuel and VAT/Fuel Excise Duty refund service

Transport and coach companies making journeys throughout Europe face a complex purchasing situation: diesel net prices, VAT and fuel excise duty rates as well as the level of refundable international tax payments all vary widely. However, if you make sure your purchasing concept takes these issues into consideration, you can definitely save money. For companies who wish to increase their potential savings, DKV Euroservice offers the possibility of combining refuelling abroad with VAT and fuel excise duty refunds.

VAT refund

DKV has two variants for obtaining VAT refunds: the first involves the standard refund for 28 European countries. With this variant, the waiting time for refunds depends on the authorities. To reduce the time for the refund to take place, DKV also offers an immediate refund procedure (Net Invoicing Program) for most European countries. Here the customer receives the international VAT with the same DKV invoice as the provided VAT service.

DKV Euro Service takes the full handling of your VAT refund applications out of your hands, even including VAT on invoices not originating from DKV, by way of:

- automated processes and complete handling of the bureaucratic effort by experts versed in the language concerned;
- instant acceptance of DKV invoices by all European tax authorities (exception: specific new EU member nations);
- permanent access to all records, including automatic data filing and extraction via DKV eREPORTING;
- intelligent full-service, full costs transparency and no hidden cost factors, including a unique cost airbag.

Excise duty refund

All road transport firms (including coach companies) with a registered office in the EU can now apply for refunding of mineral oil tax paid in countries like Belgium, France, Hungary, Italy, Slovenia and Spain. Vehicles qualifying for refunding must have a maximum allowed weight of at least 7.5 tonnes.

Mineral oil tax can be refunded if the fuel was paid by fuel card, credit card or bank card. It cannot be refunded in cases of cash payment.

Fuel fills that cannot be assigned to a specific vehicle on the invoice (information lacking, or different from the official vehicle licence plate, e.g. truck cards), are excluded from refunding of mineral oil tax.

Who are DKV euroservice?

DKV Card : Your fuel card to the largest supply network in the industry.

For the tenth time, the DKV CARD has been selected as the Fuel Card of the Year for the commercial carriage of goods and passengers. For over 80 years, DKV has been providing a powerful fuel card for all of Europe. You too can benefit from our experience!

Your Contact at DKV:

Neil White
UK Sales Team Manager
T: 07920257460
E: neil.white@dkv-euroservice.com

GUEST FEATURE

Hauling the cost of waste crime

"Environmental Convictions not only damage a company's reputation, they can also affect your ability to hold an Operator's Licence."

Serious organised waste crime is big business. Last year Sir James Bevan, Environment Agency Chief Executive, made headlines likening it to "the new narcotics".

Illegal waste activity cost England £1bn per year and in the financial year 2016 to 2017 we found 850 new illegal waste sites, while in the same period we stopped illegal waste activity at 824 sites. Most, if not all illegal sites receive waste transported on our road networks. Hauliers involved in illegal waste deposits may not realise they could be committing an offence, but the Waste Duty of Care Regulations also apply to persons and companies who are involved in the transport and transfer of waste.

What is an illegal waste site and why are they a problem?

An illegal waste site is a waste facility operating without an environmental permit or a registered exemption, or a site that operates in breach of either of these authorisations.

Some waste operations are considered low risk and sites register waste exemptions which allow smaller quantities and restricted waste types on site. Waste criminals may register exemptions to provide a legitimate cover for activities when they have deliberate intentions to breach the conditions of an exemption and operate illegally.

Illegal waste sites undermine legitimate business and can have a serious impact on the local environment and communities. They are frequently the source of amenity issues including odour, dust, litter, flies and vermin.

Poor storage and handling of materials increases the pollution risk of water and land and the stockpiling of unsuitable waste presents a fire risk. Sites are often filled up and abandoned leaving landowners to face disposal costs that can run into hundreds of thousands of pounds to clear.

The Consequences

Being found guilty of an environmental offence can be costly through fines imposed alongside investigation and prosecution costs. In January 2018 a Devon haulage company faced a bill of £100,000 for dumping thousands of tonnes of soil and stone on farmland.

In another case, one trucker left court with fines totalling £30,000 and costs of £20,000. This was in addition to the order to pay £100,000 under the Proceeds of Crime Act.

Environmental Convictions not only damage a company's reputation, they can also affect your ability to hold an Operator's Licence.

We work closely with partners such as Driver and Vehicle Standards Agency (DVSA) and the Police to target waste criminals and the Environment Agency has the power to seize and impound vehicles used in waste crime.

The Duty of Care Legislation.

Section 34 of the Environmental Protection Act 1990 covers Duty of Care. The duty of care applies from the moment that waste is created until it is disposed of and applies to you whenever the waste is in your possession. Failure to comply with duty of care is an offence subject to an unlimited fine on conviction.

How can haulage companies help?

We want to be able to remove the ability to transport waste to illegal waste sites. The best way of stopping waste crime is to make sure that waste doesn't fall into the hands of an illegal operator in the first place.

The Environment Agency advises hauliers to:

- Use reputable agents and brokers who are registered as a dealer or broker, even if they do not take physical possession of the waste.
- Carry out proactive checks in accordance with the Waste Duty of Care Code of Practice and keep a record of your check; this can be used as evidence that you have met your duty of care.

You should check whether a person or business is authorised before you transfer waste to them and that a waste management operator has an environmental permit or registered exemption to accept such waste.

Ask the person or business who arranges the transfer for evidence of their authorisation, a copy of their permit or proof of their exemption registration.

Ensure all waste transfers have a Waste Transfer Note or a Hazardous Waste Consignment Note – including a unique classification code and an accurate description. There is a simple way of keeping records online using EDOC: www.edoconline.co.uk

- Criminals can be very persuasive, sometimes offering thousands of pounds in cash up front. Don't be tempted by quick money.
- Suspicious behaviour such as being asked to divert waste loads whilst on route or depositing waste at a remote or large capacity site with no obvious sign that it is authorised (e.g. no signage, workforce, office, plant or machinery to treat the waste) should always be questioned.
- If something doesn't feel right, don't carry out the job, contact the Environment Agency incident hotline on 0800 80 70 60.

The Environment Agency provides impartial advice to customers, individuals and businesses to help them grow. Our local officers will be happy to talk to you, can make public register checks whilst you are on the phone (03708 506 506) or you can make checks on our website for free.

The Right Waste Right Place website offers practical guidance on duty of care for those who produce, transport, treat or dispose of waste www.rightwasterightplace.com/#intro

If you see or suspect illegal waste activities, you can also report it anonymously to Crimestoppers or call 0800 555 111 (24hr service), or call the Environment Agency Incident Hotline 0800 80 70 60 (24hr service).

Emma Ayers
Environmental Crime Officer
T: 0203 0251979

BACKHOUSE JONES

chloe.west@backhouses.co.uk
backhousejones.co.uk

The North
Backhouse Jones

The Printworks
Hey Road
Clitheroe, Lancashire
BB7 9WD

The South
Backhouse Jones

22 Greencoat Place
London
SW1P 1PR