



Compliance in the spotlight

OTC obligations for road transport operators

Sarah Valentine, a Senior Associate at Eversheds Sutherland, reviews the obligation on road transport operators to notify the Office of the Traffic Commissioner (OTC) of any changes or events which may affect repute. She also considers the measures businesses should take to ensure compliance with their licence undertakings.

In the last 12 months we have seen an increase in the number of public inquiries (810) and driver conduct hearings (3,290) held by the OTC. In 2017 the OTC revoked 261 operator licences, curtailed or imposed conditions on 203 licences and issued 211 formal warnings. With only 93 cases of no further action recorded it is important operators fulfil their undertakings to avoid the risk of an OTC "root to branch" investigation of the company's approach to risk-management and accountability.

The OTC's regulatory regime enables inquiries and driver-conduct hearings to take place many months before commencement of any criminal proceedings. In the case of the Bath tipper crash in February 2015, the OTC revoked the operator's licence within eight months preventing the business from operating. This highlights that OTC's inquiries in the midst of an incident should not be treated as a peripheral issue, as any adverse decision could cease the operation of a business.

When should you notify the OTC of any changes?

There are various reasons and changes that all businesses holding an operator's licence must report to the OTC, some may surprise you whilst others are common knowledge. The legislation for goods and passenger operators does not set out a definitive or exhaustive list of each and every item or event that must be reported to the OTC. However, one of the many undertakings an operator must adhere to is to inform the OTC of all notifiable offences and convictions of the company, directors, employees and agents. The VOSA "**Goods Vehicle Operator Licencing Guide – for Operators**" explains what relevant convictions and penalties must be declared. This assists operators to know what offences and penalties need to be reported.

However, the OTC's directive on "**Good Repute and Fitness**" refers to other events that the OTC expect to be informed of as matters which may have a serious impact on repute. These include recurring civil penalties and breaches of other enforcement regimes where strict liability offences and other enforcement action may result. The additional offences are listed at paragraph 60 of the statutory guidance and include any transport related convictions, workplace health and safety incidents, convictions for environmental offences and serious driving offences committed by employees who hold vocational licences.



The OTC expects to be notified of matters beyond more obvious things such as criminal court convictions and criminal fixed penalties. The guidance also includes any formal enforcement notices issued by the Health and Safety Executive (either improvement notices or prohibition notices). It does not extend to notification of contraventions or fees for intervention matters. For this reason operators should be alert to the fact that the ambit of the reporting requirement is much wider. If there are encounters with other government agencies then it needs to be borne in mind that they also may need to be notified to the OTC.

Road transport operators must ensure that a notification of any of the offences listed above is submitted to the OTC within 28 days. There is no prescribed form to complete. Care should be taken when submitting this information to the OTC to ensure documentation to support any learning outcomes or remedial measures is also provided. A copy of this documentation should also be sent to the DVSA Area Manager. It is important for businesses in this situation to demonstrate that a full investigation has been completed and where appropriate policies revised and refresher training or disciplinarys undertaken.

Following review of this information the OTC may record the enforcement action against the licence or schedule an inquiry to review the circumstances of the offence. In order to avoid the latter it is advisable for businesses to demonstrate to the OTC that they have reacted appropriately within the timescales required, and that as an operator the business is fulfilling their due diligence in regards to their undertaking.

This due diligence exercise extends to monitoring all individuals with a vocational licence. The importance of these reviews was highlighted by the Court following the multiple incident which occurred on the M1 in August 2017. In this case a professional driver had failed to notify his employer that his licence had been revoked 37 days before the incident. The OTC did not take any action against the operator as it was able to demonstrate that regular licence reviews were being undertaken.

Finally, in the last 12 months we have also seen an increase in the number of OTC inquiries and revocations in cases where there has been a historic failure to notify the OTC of any changes to the role of transport manager. Operators are reminded that the OTC must be notified of any changes in the removal, replacement or addition of a transport manager within a business. The same notification period of 28 days applies.

How we can help?

We can assist your business in completing a [compliance review](#) of its operator licence procedures to ensure they fulfil the requirements of your undertaking to the OTC. In the event an offence is committed we can assist in notifying the OTC and provide representation if your business finds itself subject to an inquiry.

For more detailed information on when changes must be reported to the OTC please [click here](#) or contact our Sarah Valentine.



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