



## When should a business report a change to the Office of the Traffic Commissioner (“OTC”)?

### OTC obligations for road transport

Traffic Commissioners are responsible for the licensing and regulation of those who operate heavy goods vehicles, buses and coaches, and the registration of local bus services. They are assisted in this work by deputy Traffic Commissioners, who preside over a number of public inquiries.

Changes should be reported to the OTC in the following situations:



#### Do you need to notify the OTC when changing the structure of the business?

Operator licences are only valid to the operator they have been granted to and cannot be transferred to another entity without the express permission of the OTC. If there are any changes to a business through the sale or transfer of shares an application for a new licence will need to be submitted. This includes any changes to the directors of a company or changes to a partnership.

In the event a business enters administration notice should also be sent to the OTC who may agree to continue the licence for an agreed period of time whilst the business is under the operation of an administrator.

Notice must be sent to the OTC within 28 days setting out any changes to the licence.



## Do you need to notify the OTC when adding or changing operator's centres?

Any changes to a correspondence address can be made on the OTC self-service system within 28 days.

If the business is changing location an application to vary the licence will need to be made. The OTC must be advised 9 weeks in advance and there are mandatory advertising requirements to satisfy in order to change the operating centre.



## Do you need to notify the OTC of a change of Transport Manager?

Many businesses fall foul of this licence condition. In the last 12 months we have seen an increase in the number of OTC Inquiries and revocations in cases where there has been an historic failure to comply with this requirement. The OTC must be notified of any changes in the removal, replacement or addition of a transport manager within a business.

A certificate of competence must accompany any application to modify the licence. The OTC will review this certificate to ensure the manager meets the good repute and fitness directive (and completed the CPC training) and that the individual has not been named on an operator's licence which has been subject to enforcement action.

It is advisable to undertake a competency assessment and reference check as part of any Transport Manager recruitment process.



## Do you need to notify the OTC when changes or upgrades are made to the licence?

You must notify the OTC if any changes or upgrades are made to your licence. The OTC will publish the details of the application to enable any objections to be filed. A change in operating practices cannot be made until the upgraded licence has been received.



## Do you need to report convictions, fines, enforcement notices and prohibitions to the OTC?

This is another area where businesses often fail to report. If the business, director, transport manager or driver is convicted of any transport related offence or any offence arising from a work placed incident in breach of the Health and Safety at Work etc. Act 1974 or Environmental Permitting Regulations 2016 the OTC must be notified.

The standard period of 28 days applies. The same is applicable to any employees who hold a vocational licence (HGV or PSV) who have been convicted of death by dangerous driving, drink driving, dangerous driving or mobile phone use. Additional offences are notifiable for employees who hold a PCV licence.

Following the revised “**Good repute and fitness**” directive companies must now notify the OTC “**where there is an intervention by the Health and Safety Executive ... of formal enforcement.**” This includes the service of a prohibition or an improvement notice.

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, refresher training completed 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. We have seen in the recent M1 tragedy that the driver of one of the vehicles had failed to report the revocation of his licence. As a responsible employer and operator it is important a system of monitoring licences is also in place.



## What is a Traffic Commissioner Inquiry?

Traffic commissioners are responsible for licensing and regulating operators of heavy goods vehicles (HGVs) and public service vehicles (PSVs). They can also take action against their drivers. They can call a formal public inquiry in a court to get more evidence to help them decide if they should:

1. grant or refuse licenses for HGV or PSV operators; or
2. take action against a vehicle operator, bus service operator or driver of a bus, minibus or lorry

Typical cases which can trigger a Traffic Commissioner Inquiry can include a failure to comply with driver hours and tachograph regulations and inadequate vehicle maintenance regimes.



## How do I deal with an Office for the Traffic Commissioner Inquiry?

1. **Be prepared** - the Inquiry is usually listed within 28 days following receipt of the notice. It is difficult to reschedule the hearing without good reason (supported by documentation) so it is important action is taken immediately to ensure the relevant information is before the OTC in advance of the hearing.

It is important to check if the OTC has directed for an employee to be called to a conjoined public inquiry/ driver conduct hearing. The company will need to consider in the circumstances whether to arrange separate representation and assistance for the employee.

- 2. Check your finances** - the OTC will need to be satisfied that there are sufficient financial resources to maintain vehicles in a fit and serviceable condition. Often the OTC will in advance of the hearing review the company's filing history at Companies House. Any outstanding accounts are likely to raise further questions by the OTC. Therefore, it is important to ensure the necessary financial information is made available to the OTC to demonstrate the company's ability to maintain its vehicles and manage a compliant business.
- 3. Lead from the top** - the OTC will request that a board-level director of the company attend the public inquiry. This demonstrates to the OTC that the senior management team accept their duty to fulfil the undertakings that were given at the time the licence application was submitted.

In exceptional circumstances and with the OTC's prior written approval an individual below director level may attend on behalf of the company with written authority from a director. The form of authority must be on company headed paper and state that he/she has the right to speak and make binding decisions on behalf of the company.

- 4. Collect your evidence** - the OTC will usually request the following documents:- 3 months driver daily defect reports, 6 months maintenance inspections for all vehicles, forward planner, evidence of systems for ensuring compliance with the drivers' hours and tachograph legislation, evidence of training or disciplinary action received by drivers and managers and maintenance contract.

In addition, the company may also wish to provide copies of any new policies, procedures or training which has been introduced and demonstrate how this has been reviewed with the workforce. Any written submissions to support your position should be submitted along with the above documents 7 days before the hearing.

- 5. Make contingency arrangements** - for any outcome from the inquiry. In some scenarios the OTC can order the revocation of a licence. It is important to consider this outcome and have arrangements in place to ensure business continuity.

For more information please speak with our Sarah Valentine or visit our [website](#).



**Sarah Valentine**

*Senior Associate*

Eversheds Sutherland (International) LLP

**T:** +44 20 7919 0833

**M:** +44 79 0086 3947

[sarahvalentine@eversheds-sutherland.com](mailto:sarahvalentine@eversheds-sutherland.com)

[www.eversheds-sutherland.com/EHS-UK](http://www.eversheds-sutherland.com/EHS-UK)

**eversheds-sutherland.com**

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