

Wheels

Woodfines Solicitors' newsletter for Road Transport

Autumn/Winter Newsletter 2019



The Importance of Understanding Brake Efficiency Tests

When working with Operators, a common issue we identify is that insufficient brake tests are being carried out by their maintenance provider. It seems that there are inconsistencies between what maintenance providers, Operators and the Office of Traffic Commissioner (OTC) expect, in relation to brake testing. Operators also regularly feedback that they find a brake efficiency test print-out following a roller-road brake test difficult to understand.

As an Operator, you will no doubt be paying good money to your maintenance provider to carry out the maintenance of your vehicles, in good faith that this is being carried out in accordance with legal requirements. It is, however, you as an Operator who is ultimately responsible for ensuring that the brake tests of your vehicles are carried out adequately and you who is at risk of being called to a Public Inquiry if you fail to adhere. The OTC does not have the ability to call a maintenance provider to a Public Inquiry, but they can call you and it is important that you understand your brake testing obligations not merely because of the obvious safety dangers.

The OTC expects that laden roller brake tests be undertaken and recorded. Dependent on the age and use of the vehicle, these should be undertaken four times a year, with one of these taken during the annual MOT test.

When checking a brake efficiency test it is important to scrutinise the print-out and not simply rely on the end result stating whether the vehicle has 'passed' or 'failed'. The overall result



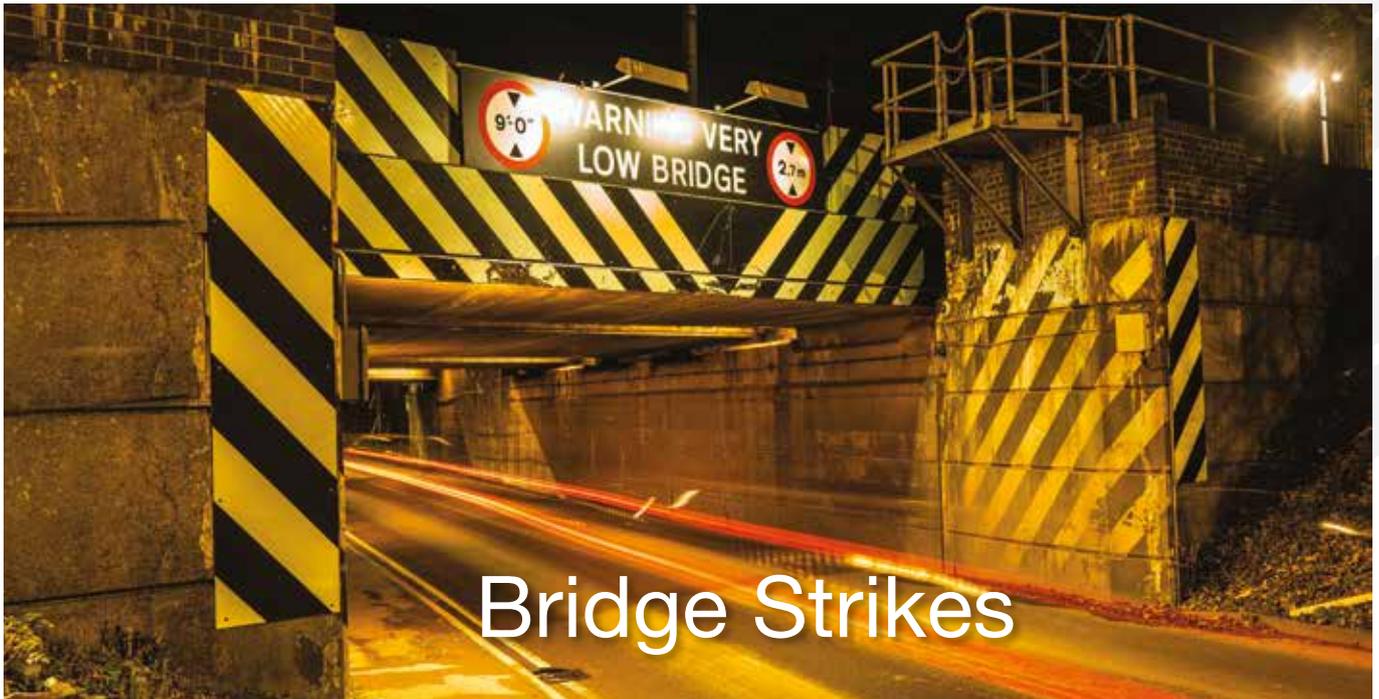
Charlotte Hunt
Solicitor

can be misleading and show as 'passed' where the conditions of the test may not have been correct. Items on the print-out should be checked to ensure that the brake testing is being carried out adequately and so that you can be satisfied that your vehicles are on the road safely. It is only when you check the detail of the print-out that you can identify if there are any red flags. To help you do this, you can check the following:

- Check the vehicle/trailer details are correct and note the GVW and GTW
- Check the imbalance percentage for each axle
- Check the axle weights, including any load or simulated load, to ensure that the vehicle was sufficiently laden to allow for a meaningful brake test. If it is not sufficiently laden this can record the result showing an insufficient load
- Check the pass value percentage for each brake system, service, secondary and parking against the test value.

Common red flags to look for on the brake efficiency print-outs include: 'Insufficient Load on Axle ABC' and 'Unladen'. If you have any concerns about the brake test report, you should discuss this with your maintenance provider and document the action taken.

For further advice or assistance, please contact Charlotte Hunt in our Road Transport team on transport@woodfines.co.uk



Bridge Strikes

Woodfines' Transport team presented on the ever-present issue of bridge strikes at our Transport Conference at Cranfield in 2018, and highlighted Network Rail's national campaign which ran from June to December 2018 where the haulage industry and professional drivers were challenged to 'wise up, size up'. Since then, the topic has been a key focus of the DVSA and Office of the Traffic Commissioner (OTC), including stern guidance being given by the Senior Traffic Commissioner, Richard Turfitt, at our Transport Conference at Duxford in May 2019.

Research undertaken by Network Rail identified various areas where the numbers of bridge strikes could be significantly reduced. Their research showed that 43% of lorry drivers admit to not measuring their vehicle before heading out on the road, and 52% admit to not taking low bridges into account. Furthermore, most of the vehicles that hit railway bridges are Heavy Goods Vehicles (HGVs) and buses at a cost of around £13,000 per strike, costing the UK taxpayer around £23m in a year.

Common excuses used include drivers not knowing their vehicle's height; poor route planning; drivers not understanding road signs; inadequate road signage; and blind obedience to 'car' satellite navigation system directions which do not include details of low bridges.

The consequences of bridge strikes for professional drivers and operators can be significant and can not only lead to potential criminal investigations and convictions but also to regulatory action being taken by the Traffic Commissioner. At Woodfines' recent Transport Conference, Richard Turfitt said:



Nathan Taylor-Allkins
Solicitor

*"We can joke about the stupidity of drivers but this is becoming a very serious problem for the industry. It's attracting political attention. It's creating a huge amount of problems for the public, with passengers sitting on trains for hours... you need to make sure route planning is done properly. Control the route, your operation and instruct your drivers properly. **Otherwise, I will take action.**"*

The Senior Traffic Commissioner has also notified the industry that information on incidents is shared between Network Rail and the OTC, and that "Network Rail has advanced systems that quickly identify the vehicle involved. These incidents cost millions of pounds annually and they are easily avoided". Mr Turfitt further stated; "... if I receive reports of a bridge strike, **I will follow it up.**"

So, what can your transport business do to try to prevent this issue?

- 1 Review your internal policies and systems to ensure they are up to date (Network Rail has provided some useful guidance documents for transport managers and professional drivers, which are available in a number of languages);
- 2 Ensure drivers use LGV-specific satellite navigation systems and avoid

using their own-sat navs that are not updated regularly. Drivers should also avoid placing reliance solely on satellite navigation systems and should ensure that the route is properly planned in advance. If a route is diverted, the driver should, if necessary, stop and seek advice.

- 3 Ensure, where possible, routes are planned in advance and routes selected to eliminate the risk of bridge strikes. Routes for vehicles under maintenance, on test or diversion should be planned to avoid low bridges. Delivery schedules should not cause the driver pressure, stress or fatigue as this may increase the risk of bridge strikes.
- 4 Ensure the vehicle's height is checked effectively on the driver's daily walk-around and that appropriate disciplinary action is taken where necessary.
- 5 Finally, ensure any necessary training is provided to the drivers, including regular tool box talks, and that policies and system changes are duly notified to drivers in a clear and precise manner.

For further information, or for advice regarding any criminal investigation and/or Public Inquiry, please contact Nathan Taylor-Allkins in our Road Transport team at transport@woodfines.co.uk

Clandestine Entrants and the Issues Faced by Vehicle Operators



Mike Hayward,
Partner

International haulage drivers, those working at ports, and any operator or driver working with shipped containers have plenty of responsibilities to undertake. As well as dealing with all of the usual necessary driver and operator regulations, they often find themselves faced with unexpected delays at ports, and security checks that are common place.

A significant problem faced by both commercial and passenger vehicle operators concerns the continuing and systematic attempts by persons intent on travelling into the UK using illicit methods,

known as 'clandestine entrants'.

HM Border Force has the power to issue fines for clandestine entrants at a level of £2,000 per entrant against the vehicle operator. With some lorries caught with multiple clandestine entrants on board, the civil penalties can be significant.

However, recent events in the news have shown the tragic and fatal consequences that can arise when illicit methods to gain entrance to the UK take place.

Criminal activity can lead to loss of life and consequential convictions (for those found responsible), but it also creates a negative image of the haulage industry which is a far cry from the reality. Criminal behaviour should not be mistaken for the genuine efforts of drivers engaging in cross border work on a daily basis, who fall foul of the activities of clandestine entrants without their knowledge.

If your driver receives a Civil Penalty for having clandestine entrants on board their

vehicle, these penalties can be appealed and you should seek legal advice at the earliest opportunity.

HM Border Force have issued guidance on the steps that can and should be taken by both driver and operator, and you should have systems in place to demonstrate to the authorities that you have done all you can to prevent clandestine entrants using your vehicle in this way.

To read this guidance, please visit the UK Government's website at <https://www.gov.uk/government/publications/civil-penalty-code-of-practice-prevention-of-clandestine-entrants>

If you need help or advice regarding clandestine entrants, please get in touch with our Transport team on transport@woodfines.co.uk



The first thing to do if you receive a summons for careless driving? Obtain legal advice.

Woodfines' Transport team has recently reported seeing an increased number of individuals receiving summons for cases of careless driving. Many people feel that pleading guilty to the offence will make things easier for them and reduce any costs, but can this be avoided?

Careless driving, also known as driving without due care and attention, is an offence under the Road Traffic Act 1988. It is committed when the defendant's driving falls below the standard expected of a competent and careful driver. The Prosecution must consider both whether the manner of driving is deliberate, and occurs because of incompetence, inadvertence or inexperience. Having an accident will not necessarily constitute a prosecution for careless driving if these elements are not present.

Case law has provided a non-exhaustive list of driving behaviours that the Courts deem typical of careless driving, which includes:

- overtaking on the inside
- driving inappropriately close to another vehicle
- driving through a red light
- emerging from a side road into the path of another vehicle
- distraction due to tuning a car radio or setting a sat nav

- distraction due to use of a hand-held mobile phone or other hand-held electronic equipment (this could also be charged separately under a specific offence)
- distraction due to selecting and lighting a cigarette or similar.

An individual could face a penalty for careless driving of up to a Level 5 fine, and the Court can either endorse the driver's licence with three to nine penalty points (unless there are 'special reasons' not to do so), or impose a period of disqualification for a fixed period and/or until a driving test has been passed. It is often overlooked that if you plead guilty to an offence of careless driving, you would then have a criminal conviction that may need to be disclosed.

Often, if an accident occurs, you may be required to attend the police station to speak with police officers. The severity of the situation may be downplayed with the voluntary interview referred to as an 'informal chat'. Therefore, you may not instruct a solicitor to assist you throughout the interview process, but the fact is that legal assistance should always be sought when attending an interview under caution, be that voluntary or otherwise, so that a solicitor can advise you through the process.



Michelle O'Garro
Senior Associate
Solicitor

Woodfines' Transport team advises that if you are ever in a position where you are to be questioned regarding an offence of careless driving, you should seek legal advice at the earliest opportunity.

In such situations, early intervention is key and our team will assess the circumstances of the offence, and determine whether you have a defence, or whether the elements of the offence are present in the circumstances. Investing in obtaining legal advice at an early stage could avoid any additional time or cost if the case does end up in Court.



Keep your transport business up to date on Brexit

The guidance on Brexit is changing all the time.

Keep up to date with advice for the Road Transport and Logistics industry on our website, visit:

www.woodfines.co.uk/services-for-business/road-transport-logistics/brexit



Contact Us For further information regarding any of the topics covered in this issue of Wheels, or any other issue regarding your transport business, please get in touch:

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