

Woodfines' 16th Transport Conference 2021

Keeping the Show on the Road!

Welcome

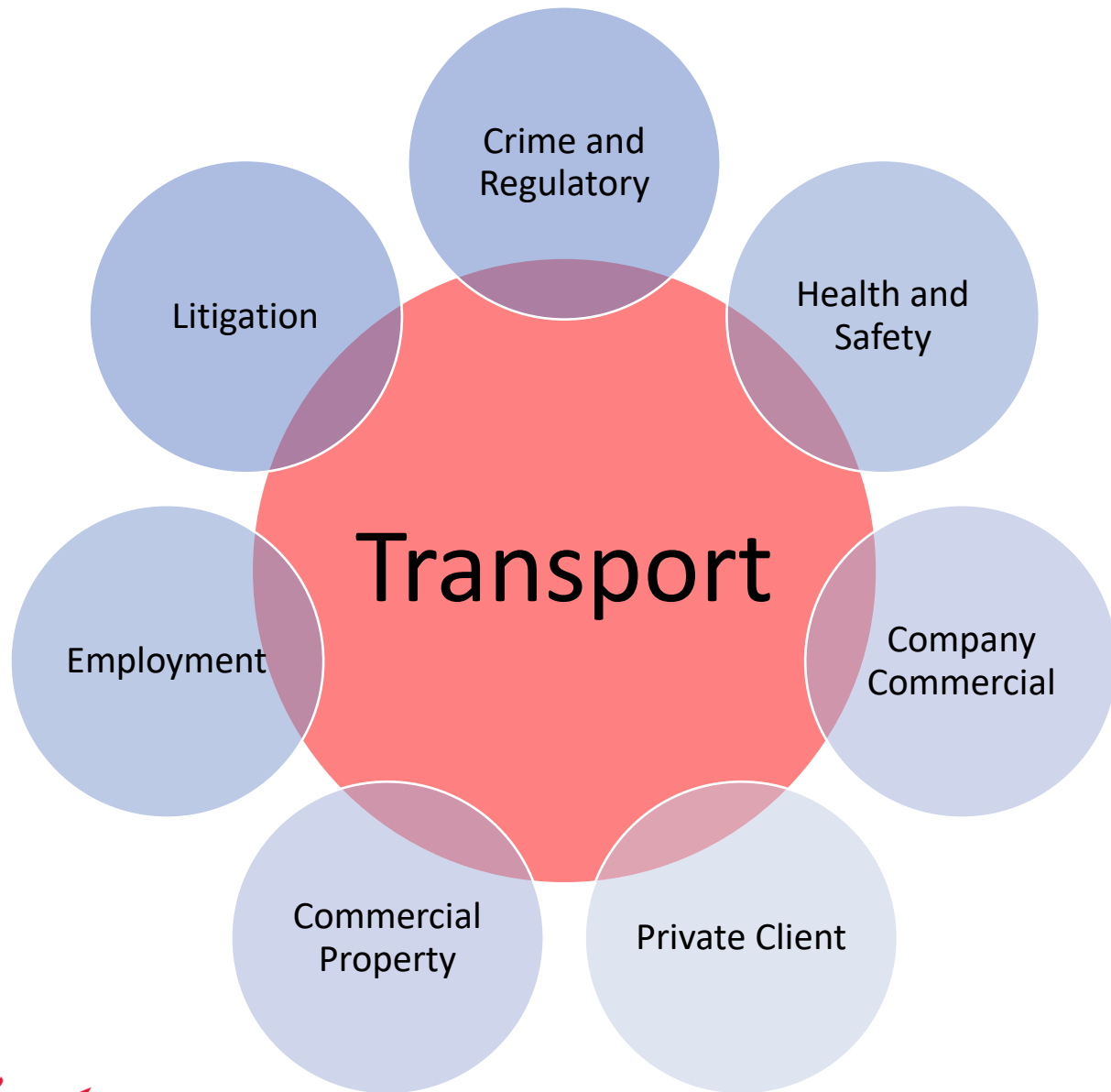
25 November 2021



#CARS team!! Crime and Regulatory Solicitors

- Dedicated team of regulatory and transport lawyers in all legal disciplines
- Experience in advocacy in prosecuting and defending in the Magistrates & Crown Courts, Court of Appeal, Upper Tribunals and Public Inquiries
- Specialists in Health and Safety, Waste Management and Trading Standards matters and a wide variety of transport cases





Our aim

To Protect , Preserve and Promote

through

Collaboration and knowledge sharing

=

Strength



Since we last met...

- A JOURNEY LIKE NO OTHER
- It's been a busy time
- Some updates



Logistics Professionals

Employment • 1.46 million people employed in Transport and Storage



Keep on trucking

- Domestic freight (UK registered vehicles)
- 79% of domestic freight moved by road
- 153 billion tonnes kilometres moved international freight (UK registered vehicles)
- 4.9 billion tonnes kilometres moved



What a journey...

Patience !



What a journey....

Good humour "I went full McEnroe"



What a journey....You cannot be serious!



<https://www.bbc.co.uk/news/uk-england-northamptonshire-58767230>



Since we met - Maintenance

- They now include assessments of managing exhaust emissions, wheels and tyres, safety recalls and vehicle security.
- https://www.check-vehicle-recalls.service.gov.uk/recall-type/vehicle/make?_ga=2.69697235.231429080.1637451615-1755247810.1625154493



DVSA investigations AND Guide to Roadworthiness

<https://www.gov.uk/government/publications/maintenance-investigation-visit-report-mivr-guidance/maintenance-inspections-guide-hgv>

Ask yourself?

- Satisfactory
- Mostly Satisfactory
- Unsatisfactory
- Report to OTC



It's the pits!



Maintenance – Guide To Roadworthiness

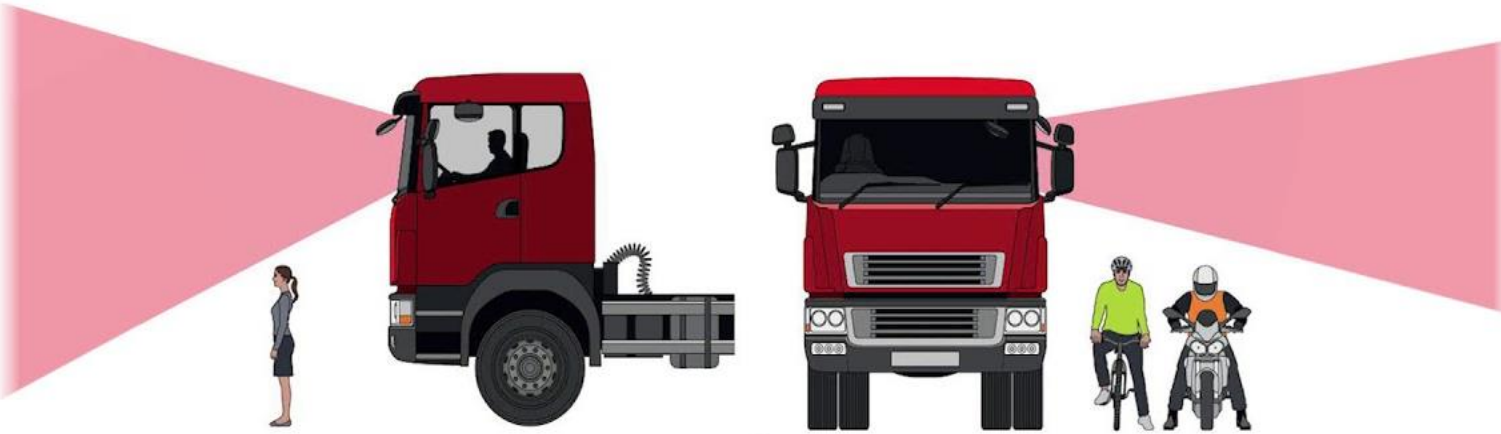
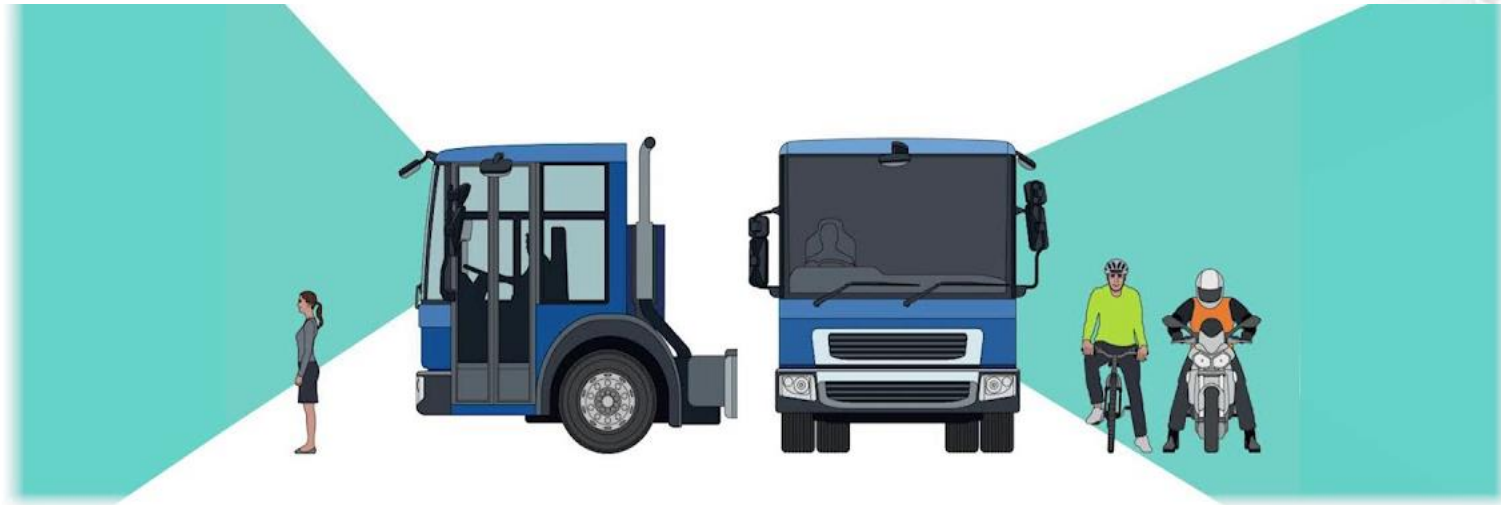
- December 2020
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033118/guide-to-maintaining-roadworthiness-commercial-goods-and-public-service-vehicles.pdf
- Run that check:
- <https://www.gov.uk/check-mot-history>



Love that lorry....

Well not too much!





Since we met -Direct Vision Standard and HGV Safety Permit

- The Direct Vision Standard (DVS) and safety permit for heavy goods vehicles (HGVs) requires operators of lorries over 12 tonnes gross vehicle weight to apply and obtain a permit to enter or operate in Greater London, or you may receive a Penalty Charge Notice. £500.
- 150,000 Lorries in and 90,000 permits issued



Clandestines



The Procedure

- Clandestine entrant discovered
- Border Force conducts their initial investigation
- A Notice of Liability to pay a penalty is submitted to the owner and/or Operator and/or driver
- Where penalties imposed against commercial vehicles these Notices are often served on the Operator and driver and contains the details of what penalty per entrant has been fixed.



What can be done?

- Submissions can be made to the Border Force setting out:
 - The system that was in place to prevent clandestine entry
 - The condition of the vehicle including security features
 - Any other relevant factors such as whether this is a first or repeat event and the business's financial circumstances
- The penalty fixed by Border Force is **multiplied by the number of persons concealed** within the vehicle.



What can be done?

- Written objection is lodged within 28 days seeking a review of the penalties imposed. The amount is then considered by Border Force and adjusted downwards or cancelled out completely if justified.
- If still not satisfied the owner/operator or driver can still lodge an appeal to a County Court but all routes via the Border Force must have been exhausted first.
- If unsuccessful in the County Court on appeal the costs of the Border Force have to be met.



Tyred out

<https://movingon.blog.gov.uk/2020/12/09/ban-on-tyres-over-10-years-old-for-heavy-vehicles-and-some-minibuses/>



COP 26 ----- 2040

- Diesel being phased out:
- From 2035 - Government's approach for zero-emission HGVs but is concerned about the timing of phasing out some sizes of new trucks from 2035
- Decarbonising freight moving to zero emissions:
- Start planning your vehicle replacement programmes.



Driver shortage

- The [Driver and Vehicle Standards Agency \(DVSA\)](#) [has launched a consultation](#) on proposals to help ease the chronic shortage of heavy goods vehicle (HGV) drivers.
- Last month, the [Government unveiled a package of measures to tackle the HGV driver shortage](#), including proposals to allow drivers to take one test to drive both an articulated and rigid lorry.



In the Dock !



November 15th 2021 Changes to the Tests

<https://www.gov.uk/guidance/changes-to-hgv-and-bus-driving-tests-from-autumn-2021#upgrade-provisional-licence>



Woodfines
SOLICITORS

- learn to drive in an articulated lorry (category CE) if your provisional lorry licence was issued from 15 November 2021 (if you had a provisional licence before this date, you need to take extra steps to [upgrade your provisional licence](#))
- take your test in a large articulated lorry without having to pass one in a large rigid lorry (category C) first
- You can still learn to drive and take a driving test in a large rigid lorry (category C) if you do not want to drive anything larger.



- If you got your provisional lorry or bus entitlement before 15 November 2021, you may be entitled to additional provisional entitlements. You need to [apply to get the additional provisional entitlements added to your licence.](#)
- If your provisional lorry or bus entitlement was issued from 15 November 2021, you'll have the extra provisional entitlements added to your licence automatically.



Changes to the Driver CPC part 3 (driving ability) test - from 29 November

Note – this is proposed but start date being deferred?

The Driver Certificate of Professional Competence (CPC) part 3 (driving ability) test is 1 of the 4 tests you have to pass to drive a lorry or bus for a living.

The test will be split into 2 parts

- Driver CPC part 3a test: off-road exercises
- Driver CPC part 3b test: on-road driving



If you take a test up to and including 28 November 2021

- You will still take a single [Driver CPC part 3 test \(driving ability\) test](#) if you have an appointment booked up to and including 28 November 2021.
- However, you can choose to take a [Driver CPC part 3a \(off-road exercises\) test](#) with an approved training organisation before your main test. They can charge you up to £40 for the test itself, but this does not include the cost of training and vehicle hire.
- When you come for your full Driver CPC part 3 test appointment, the examiner will check if you have a part 3a pass certificate.
- DVSA will then only carry out the on-road part of the test, including the 'show me, tell me' safety questions.



Driving tests are usually provided by the Driver and Vehicle Standards Agency (DVSA). The law is changing from 15 November 2021

- To allow some organisations to provide Driver CPC part 3a (off-road exercises) tests for heavy goods vehicle (HGV) and bus drivers.
- This test includes:
 - an ‘S’ shaped reverse into a bay
 - showing the uncoupling and recoupling procedure if you’re taking a test with a trailer



Driving tests are usually provided by the Driver and Vehicle Standards Agency (DVSA). The law is changing from 15 November 2021

If you get your organisation approved:

- you can provide Driver CPC part 3a tests for any eligible drivers whenever you want to (the tests must be done in adequate light - this could be from floodlights)
- you can be advertised as a test provider on the GOV.UK website if you want to
- You'll be approved for 4 years. You'll need to get reapproved before your authorisation runs out.



Thunderbirds are go????



The Traffic Commissioner's Annual Report



TC's strategic objectives

- <https://www.gov.uk/government/publications/traffic-commissioners-strategic-objectives-for-2021-to-2023>
- **Top tip** – in your packs , read and apply



STC Mr Richard Turfitt

*“This report identifies some of the key achievements during a very difficult year for the transport industry. Traffic commissioners take responsibility for effective licensing and regulation of the commercial vehicle industries, but the success of any public service relies on the energy and willingness of those at the frontline. **People are at the heart of the Office of the Traffic Commissioner (OTC) and the delivery of quality services to our stakeholders; it remains the mission of everyone in OTC to promote safe, fair, efficient, and reliable passenger and goods transport.**”*



Mr Turfitt

“It is right to record the exceptional efforts made during the last year.”



The stats

- The Annual Report also contains statistics:
- 14,080 operator licence applications and variations processed
- 21,717 local bus registrations processed
- 1054 public inquiries determined
- 178 preliminary hearings held
- 46 Senior Team Leader (STL) interviews held
- 10,442 vocational driver cases closed



2 way relationship

Traffic commissioners seek to reduce regulatory burdens and support compliant businesses.

However, statistics are unable to record the instances where the advice or assistance provided by individual traffic commissioners has resulted in improved compliance and road safety.



Processing times

- The impact of the continuing pandemic has seen the average processing times increase and the performance currently sits at 47.4 days for HGVs and 54 days for PSVs.
- 12 week target for Public Inquiries



Driver shortage

- The shortage of HGV drivers continues to be a challenge for operators.
- The obvious risk is that operators may be tempted to retain drivers even after retraining and disciplinary processes have failed to import the standards expected of a professional driver.
- The introduction of IR35 is unfortunately, still continuing to be a problem for many operators.
- We would encourage all operators to make themselves aware of the tax status of all the drivers undertaking work for them. The differences between self-employed drivers, what constitutes a self-employed driver, drivers engaged as a personal service company and drivers provided by agencies need to be fully understood, especially where they relate to HMRC and financial standing.



Risk management

Operators who find deficiencies in their operations need to draw on good practice and change their control procedures, before they attract regulatory action. One example is viewing **driver defect reporting** as a daily exercise, with a simple walk around at the beginning of the day. A competent driver will ensure that defects are detected before the vehicle and trailer go into service, but driver defect reporting is more than just a tick box in the morning. Extra walk around checks might be necessary if a vehicle has been driven over difficult terrain or it is an older vehicle.



The future – currently for international operations

- LGV vans We cannot avoid mentioning the need for operators with Light Goods and other vehicles between 2.5 and 3.5 tonnes to prepare for changes in the law.
- If operating internationally they will be required to apply for an operator's licence and have transport managers for vehicles that have previously been outside the traffic commissioners' remit.



TC's comments

The operator licensing jurisdiction is not well-known amongst the general population, but the efforts of the operators, directors, partners, sole traders, transport managers and drivers impact on almost every element of national life. When they do things right no-one comments, but when things go wrong, they are the subject of considerable criticism



Brake time

The Importance of Understanding
Brake Efficiency Tests





Common issues

Vehicles and trailers brake tested unladen with wheels locking at very low brake efforts

- Printouts noting “pass” but where it is clear that one or more brakes are not working as they should
- Operators/Transport Managers who do not understand the information on the printouts
- Technicians conducting brake tests who fail to identify potentially serious road safety issues
- Lack of understanding that the standard to be applied at PMI inspection must be above the minimum MOT requirement (if the vehicle or trailer is to remain safe and compliant until it is next inspected).



Tips

- It is strongly advised that a calibrated roller brake test is used at each safety inspection to measure individual brake performance and overall brake efficiencies for the vehicle or trailer to the annual tests standards
- Brake testing should be undertaken in a laden condition in order to achieve the most meaningful results
- Top Tip – ask your maintenance provider.



Brake regulations and Law

- Road Vehicles (Construction and Use) Regulations 1986, Part II
- HGV Annual test; and
- “Maintenance and efficiency of brakes”
- “18.—(1) Every part of every braking system and of the means of operation thereof fitted to a vehicle shall be maintained in good and efficient working order and be properly adjusted.”
- Guide to Maintaining Roadworthiness
- PMI’s are required to include all items in the Annual test which therefore must include roller brake test and be at least 4 times a year.



TAKE A BRAKE WITH THESE TIPS.....

- How can you manage the brake performance of your vehicles?
- Make sure your maintenance provider(s) is specified on your licence
- Make sure your Transport Manager can understand the brake efficiency print out.
- Don't rely on the test summary. Know what the numbers mean.
- The Guide to Maintaining Roadworthiness is key.



TAKE A BRAKE WITH THESE TIPS.....

- Don't place all your trust in your maintenance provider. Reassure yourself that a satisfactory brake test is being carried out.
- A printout of the brake efficiency test should be attached to the PMI record.
- Part 3 of the PMI sheet **MUST** be completed.
- It is acceptable for the brake performance assessment to be carried out the same week as the PMI.
- Raise any concerns you have with your maintenance provider and document any meetings.



Early warning system!

- Encourage communication



- Early intervention

