

Woodfines Road Transport Conference

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Welcome and Update

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Who are we?

- National road transport solicitors
- Offices in Milton Keynes, Cambridge, Bedford
- Motor and truck enthusiasts!
- Regular speakers on automotive and logistics issues



The parachute team



Updates

- Health and Safety
- DVSA Search App
- Roadside Penalties
- Prosecution statistics
- OCRS
- MOT testing results
- Brexit

Health and Safety – fatal and non-fatal offences

- Section 2 HSWA 1974 – duty to protect **own employees** plus Section 3 HSWA 1974 – **duty to protect others**
(NB extends to wrongs by sub-contractors if work is considered to be part of your undertaking)
- Section 7 HSWA 1974 – duty of employees to others
- Other H&S offences
- **Corporate manslaughter** (still relatively rare)
- Also: gross negligence manslaughter (peanuts???)

Sentencing Council says fines should.....

*‘meet.....the aims of **punishment and deterrence** and **removal of gain**; and **be sufficiently substantial** to have a **real economic impact** which will **bring home to both management and shareholders the need to comply with legislation** and **achieve a safe environment for workers and members of the public.**’*



Culpability

- **Very high:** deliberate breach of or flagrant disregard for the law
- **High:** falling far short of appropriate standard;
- **Medium:** falling short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low'
- **Low:** not falling far short of appropriate standard e.g. minor breaches



How penalties are now calculated.....

CULPABILITY (very high, high, medium, low)

+

HARM (seriousness of harm risked / harm likelihood)

= **CASE CATEGORY**

TURNOVER (large, medium, small, micro)
gives starting point fine and max / min range
of fine

LOOK AT AGG / MITIGATING FACTORS
THEN COURT FIXES FINAL PENALTY



Case examples

- Associated British Ports, DFDS Seaways PLC and ICTS (UK) Ltd – fatal accident of security guard at Immingham Docks – fines for each company of £750,750, £166,670 and £500,000 plus costs respectively
- Mick George Skips Ltd – Fined £566,670 after a tipper vehicle driven by one of its employees came into contact with overhead power lines during the construction of a waste transfer station. (Recent Judgment of Court of Appeal reduced fine to £334,000)

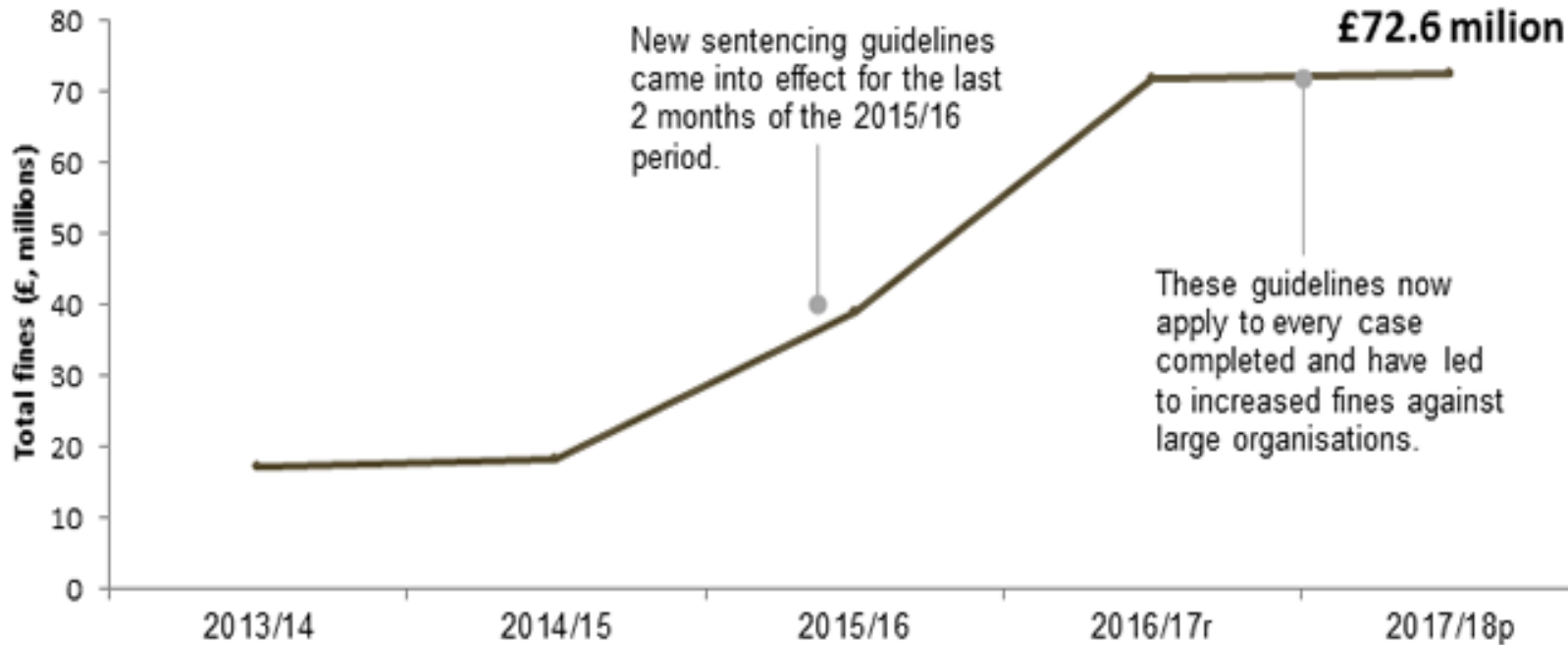


Latest figures

- 510 cases in 2017/18
- Conviction rate of **91%**
- Total fines = £72.6 million
- Average fine per conviction = £99,746



Total fines for health and safety offences prosecuted by HSE and in Scotland COPFS



DVSA Search App

So what can they see?

- access useful intelligence (including Operator Compliance Risk Score (OCRS), test data, operator details, outstanding prohibition notices)
- access to ANPR recognitions to validate drivers hours records
- make an informed decision whether to examine the vehicle
- target both domestic and foreign vehicles – access to road levy payment details
- VOL information



DVSA Search App



Reminder to staff: Bodycam on DVSA and EA officers



Historic Driver Offences and Roadside FPNs

- Since 5 March 2018 - fines for drivers' hours offences committed within the previous 28 days – £300 each, up to 5 = £1,500
- 2017 – 80,418 roadside enforcement encounters involving a drivers' hours check – issued 4,236 fixed penalties for drivers' hours offences totalling £478,400
- Since March 2018 – 73,147 roadside enforcement encounters – 19,723 fixed penalties for drivers' hours offences totalling £3,653,450
- Increase of 465% for FPNs issued

Increase of 763% for fine amount



Roadside Fixed Penalties

Action

Have they occurred? If yes:

Why not identified by TM during tacho checks

Take decisive action – training, disciplinary

Have they occurred? If no:

Tell driver to not accept the FPN and to contest it.

Once evidence submitted, can always plead guilty



DVSA top 10 prosecutions

Year	Type	Convictions	Av Fine
2017 to 2018	C & U	72	£399.60
2017 to 2018	Driver licence	77	£167.14
2017 to 2018	Drivers' hours	1,033	£122.43
2017 to 2018	Miscellaneous	15	£435.00
2017 to 2018	No 'O' Licence	58	£606.31
2017 to 2018	Other 'O' licence	1	£263.00
2017 to 2018	Overloading	98	£839.57
2017 to 2018	Plating & Testing	34	£372.71
2017 to 2018	Tacho/records	910	£110.61
2017 to 2018	Vehicle excise duty	1	£100.00

OCRS and Roadside stops

- If a fault has been found with one of your vehicles, you or your driver can expect to receive a PG9 at the roadside. This is a prohibition notice setting out the faults which have been found. Depending on the seriousness of the defects found, a PG9 can either be immediate, or delayed.
- If a DVSA officer believes that the faults on the vehicle are caused by a significant failure of the operator's maintenance systems, he or she will mark the prohibition with an "S".
- This is likely to lead to a follow up visit by the DVSA on the operator's own premises, and could even result in the operator being interviewed under caution.
- How much thought is given to appealing a prohibition notice? Are they just accepted?



OCRS system

- System in place to act quickly
- Tell drivers to inform you
- Keep any item (e.g. tyre) that was subject to the issue
- Consider an appeal to the DVSA enforcement
- Will impact on OCRS – the traffic light system
- Roadworthiness Vehicle tests (first tests, subsequent annual tests); ‘vehicle encounters’ (fleet check inspections at operator premises, roadside inspections)
- Traffic Roadside inspections and prosecutions (for example, for drivers’ hours and tachograph offences, weighing checks)



Post May 2018 testing results

20 May 2018 saw new HGV testing regime. See GtMRW

- Little change save for emissions now in top 10 defects
- Amended elements to this area of testing including:
 - using manufacturers' plate limits for smoke testing
 - using a stricter default limit for Euro 6 vehicles
 - checking for smoke coming from a Diesel Particulate Filter equipped vehicle
 - checking if emissions control equipment is missing, modified or showing signs of tampering
 - checking if the engine Malfunction indicator light is operating correctly



Top defects:

- Headlight Alignment
- Lamps
- Brake Systems Components
- Service Brake Performance
- Steering Mechanisms
- Suspension
- Secondary Brake Performance
- Parking Brake Performance
- Speed/Tacho
- Wiring
- Emissions



October 2019?

