Autumn 2010

Review

Regulatory - Safety, Health and Environment, Transport & Licensing

Welcome to the Autumn edition of the Regulatory Review, our quarterly update on developments in the fast moving areas of health, safety and environmental law, transport and licensing. We hope you find the articles useful and interesting. For further information, please feel free to contact the individuals named after each article.

Wide use of sentencing guidelines for offences causing death

On 9 February 2010, the Sentencing Guidelines Council published a Definitive Guideline (the "Guideline"), which set out principles to guide the courts in sentencing organisations convicted of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007, and also other health and safety offences under the Health and Safety at Work etc Act 1974, where the offence was a "significant cause of death".

The Guideline took effect on 15 February 2010. It recommends that fines for organisations found guilty of corporate manslaughter should seldom be below £500,000 and may be measured in millions of pounds. For health and safety offences, where the offence is shown to have caused death, the Guideline says that the appropriate fine will seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more.

In sentencing hearings since 15 February 2010, the courts have been placing a great deal of weight on the Guideline. Fines above six figures are now commonplace, even when there has been a guilty plea. For example, on 23 June 2010, Hanson Building Products were fined £280,000 (plus almost £30,000 in costs) following a guilty plea and in April 2010, Serco were fined £450,000 (plus almost £50,000 costs) following a trial. Both cases involved a single fatality. Although some trends are emerging, the differences in the facts of each case mean that these can only be used as a loose guide to the sentences likely to be imposed in similar cases.

It is clear when the Guideline will apply in relation to corporate manslaughter cases, but a greater difficulty arises in deciding when the Guideline will apply in relation to other health and safety offences causing death. The Guideline specifically states that it applies in 'cases where it is proved that the offence was a **significant** cause of death, not simply that death occurred'. It is therefore open to defendants to argue that the Guideline should not apply in any given case.

The difficulty here is the interpretation of the word 'significant'. 'Significant' has been held to mean 'more than minimal' (in death by dangerous driving cases) or 'noteworthy or of considerable importance', although this was in relation to the phrase "significant risk" in the Criminal Justice Act 2003. This interpretation has subsequently been held to apply in relation to the Guideline. In a recent case, although it was argued by the defence that an employee was acting on a frolic of his own and his actions were the cause of the death, the judge held that the defendant's employer's lack of policy and supervision were nevertheless a significant cause of the death. It held that the requirement was simply that the cause was of some significance or importance and that a small contributory cause could be sufficient. It has also been held, in a different case, that because the accident could not have happened in a safe place of work, the defendant's failure to make safe the place of work was a more than minimal cause and therefore not insubstantial.

It seems, therefore, that the phrase 'significant cause' is being interpreted consistently by the courts to mean a 'more than minimal' cause. This broad interpretation is likely to result in the Guideline being used in more cases of health and safety offences causing death than was originally envisaged with the potential for substantial fines to be imposed as a result.

"In sentencing hearings since 15 February 2010 the courts have been placing a great deal of weight on the Guideline"

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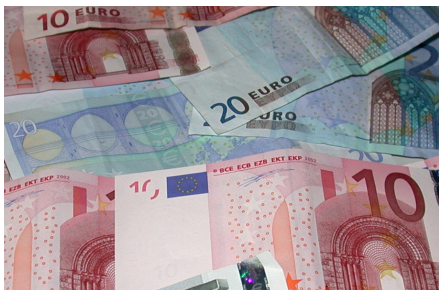

"Company directors can be extradited under an EAW to face prosecution for regulatory offences"

Use of European Arrest Warrants in regulatory cases

European Arrest Warrants (EAW's) are valid throughout all Member States of the EU and, once issued, require the receiving Member State to arrest and transfer a criminal suspect or sentenced person to the issuing state, so that the person can be put on trial or complete a detention period. In 2008, around 13,500 EAW's were issued across Europe (up from 3000 in 2004), and 515 people were extradited from the UK.

If a UK company has committed a regulatory offence and a prosecution is brought against a director in their personal capacity (whether or not the company itself is prosecuted), an EAW could be served on that director if he or she is based outside the UK. The effect would be that they would be forced to return to the UK to face criminal charges.

EAW's were intended for major criminals (for example, drug importers, fleeing bank robbers) and to combat terrorism, but have been criticised for their usage for minor offences, including the theft of 10 chickens (Romania); unintentionally receiving a stolen mobile phone (Poland); and the theft of £20 worth of petrol (Czech Republic). They have also been used in relation to white collar crime, for example in relation to failed businesses and fraud. In April 2010, an EAW was used to extradite back to the UK a member of a fraud gang who dishonestly manipulated the VAT system through the import and export of computer processing units. A recent case in Germany has suggested that EAW's have to be proportional, but this is not a requirement of the legislation itself.

The circumstances in which EAW's can be issued are limited, but they can be used for health and safety and environmental offences that carry a maximum custodial sentence of 12 months or more or, where a sentence has been passed or a detention order has been made, for sentences of at least four months. They must also be for the purposes of a criminal prosecution (not investigation), and so can only be used once the decision to prosecute has been made. Extradition must take place within 90 days of arrest or within 10 days if the arrested person consents to surrender.

Concerns about the widespread use of the EAW stem from the lack of judicial discretion. Before the system was introduced, British courts or the British Government could stop an extradition if it was unjust. Now they have to rubberstamp requests for extradition from other EU countries. Further concerns have been raised as EAW's have, in some instances, been issued many years after the offence has been committed or in relation to convictions following an unfair trial. These raise concerns about human rights and natural justice. There is also no provision for the withdrawal of an EAW and so people could be arrested every time they try to leave or enter a country.

Directors of UK companies who are based outside the UK need to be alert to the fact that they can be prosecuted for regulatory offences and an EAW can be issued to force them to return to the UK. Likewise, directors of European companies who live in the UK need to take responsibility for the health & safety and environmental obligations of their company because, if prosecuted in their individual capacity, they can be extradited under an EAW from the UK to Europe to face prosecution.

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"Greenwashing" - making environmental claims in advertising

Increasing consumer interest in the environmental performance of companies has been reflected by a significant rise in the use of so-called "Green Claims" on products and in advertisements. Demonstrating environmental credentials has also become a key part of the marketing strategy of many companies. There is, however, rising concern that some claims are being used to "greenwash" products rather than to provide accurate information about the environmental credentials of goods. Uncertainty about the use of terms such as "environmentally friendly", "re-usable", sustainable", or "carbon neutral" and when such terms can be used makes it difficult for consumers who wish to purchase genuinely "green" products to distinguish between those which truly are "green" and those which may not be. Also, companies that invest in green products and market them on that basis feel that ambiguous use of 'green claims' undermines the commercial advantage that has cost them money to create.

In the UK, DEFRA advises businesses to make Green Claims in accordance with its guidance document "Green Claims – practical guidance" first published in 2003. These are not, however, legal requirements and criminal sanctions for misleading descriptions on goods currently only have effect under legislation such as the Consumer Protection from Unfair Trading Regulations. A DEFRA consultation is currently underway to look at new sanctions against companies that breach the energy efficiency labelling requirements. It is anticipated that this consultation will lead to the DEFRA Green Claims practical guidance document being updated and further information being published on how advertising and marketing campaigns should present environmental claims.

At present the main criteria companies should ensure they comply with are as follows:

- No green claim should be misleading whether through ambiguity, exaggeration, admission or inaccuracy;
- The basis of any claim should be clearly explained and qualified where necessary;
- Evidence to support green claims must be available;
- Exaggerated or confusing scientific terms must be avoided; and
- Green claims should always be legal and truthful.

"There is rising concern that some claims are being used to "greenwash" products rather than to provide accurate information about environmental credentials"

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"Time and effort spent implementing CLP in the EU should therefore provide benefits to companies in improving their access to non-EU markets"

Classification, Labelling and Packaging Regulation (CLP)

The CLP Regulation came into force on 20 January 2010 and although it has not attracted as much attention as REACH did, in many ways it is just as important for companies.

One key difference from REACH is the very obvious international coverage. CLP implements in the EU the Globally Harmonized System for the classification and labelling of chemicals (GHS). The GHS will continue to be implemented in most countries across the world over the coming months and years. Time and effort spent implementing CLP in the EU should therefore provide benefits to companies in improving their access to non-EU markets. It is therefore important for such companies to plan their implementation activities with a global view rather than focusing just on the EU.

The three most pressing deadlines under CLP are:

- 1 December 2010 - for the (re)classification of substances in accordance with CLP;
- 3 January 2011 - notification to the classification and labelling inventory of substances placed on the market on 1 December 2010 (notifications are due 30 days after placing on the market starting from 1 December 2010); and
- 1 June 2015 - for the (re)classification of mixtures in accordance with CLP.

There are transitional arrangements for the (re)classification of substances and mixtures already placed on the market.

CLP also requires the development of a classification and labelling inventory by requiring those placing substances on the market (on their own and in mixtures) to notify specific information to the European Chemicals Agency. It should be noted that there is no tonnage threshold for these notification requirements, in contrast to the registrations under REACH.

The notification requirement applies 30 days after a substance is placed on the market starting from 1 December 2010. The deadline for many will therefore be 3 January 2011.

We can provide step-by-step advice on the key elements of CLP, its legal implications for companies and how the duties under CLP can be cost effectively met.

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The Del Basso case and the application of POCA

The recent Court of Appeal decision in Del Basso illustrates that the courts consider that Confiscation Orders under the Proceeds of Crime Act 2002 can be used in cases of regulatory offences.

In June 1997 a planning application was made requesting that 201 parking spaces be allowed on land at Dunmow Road, Bishops Stortford. This land was owned by Mr Del Basso, and was rented to Bishop's Stortford Football Club (the 'Club'). The original planning application intended to provide parking for the football supporters who visited the Club. Conditional planning permission was granted but restricted to those days when football matches were taking place.

Four weeks later a further planning application was made for a park and ride facility at the site, but this application was rejected by the Local Authority in July 2000. At about the same time, the Local Authority became aware that the site was already being used as a park and ride facility. All warnings from the Local Authority to end the business were ignored and the park and ride facility continued to operate.

On 28 January 2003, enforcement proceedings to end the park and ride facility began. An Enforcement Notice was obtained and all appeals against it were unsuccessful. Throughout these procedures, the park and ride business continued to operate.

On the 9 March 2004, the Local Authority warned Mr Del Basso and Mr Goodwin (who were now trading as Bishop's Stortford Football Club Members' Parking Association a non-incorporated partnership of which they were the only partners) that if the business continued beyond 11 August 2004 a prosecution would commence without further notice.

Despite this warning, the business continued beyond 11 August 2004. The Local Authority began a prosecution on 17 September 2004. In the run-up to the trial, the Bishop's Stortford Football Club Members' Parking Association Limited was formed with Mr Del Basso and Mr Goodwin each holding 50% of the shares in the company. At the trial, both were convicted and sentenced to a fine of £20,000 each. Shortly after the trial, the Local Authority again visited the site and found that the park and ride business was continuing as before. On 17 January 2006, a second prosecution began. Mr Del Basso and Mr Goodwin pleaded guilty to all charges.

Confiscation proceedings then began under section 6(3) of the Proceeds of Crime Act 2002 ('POCA'). The judge held that the park and ride business became criminally unlawful from when the Enforcement Notice became effective and that Mr Del Basso and Mr Goodwin were to be treated as having a criminal lifestyle from then onwards within the meaning of POCA. The deemed turnover of the company was in excess of £1.8m and this sum could be subject to a Confiscation Order. Taking into account personal circumstances, a Confiscation Order for £760,000 was made against Mr Del Basso and a nominal order made in respect of Mr Goodwin, as he was now bankrupt.

Both Mr Del Basso and Mr Goodwin appealed against the Confiscation Orders. The basis of the appeal was that the business had only realised £180,000 in profits and that this should be the sum that any Confiscation Order should be based on. It was argued that neither of them had personally profited from the business and they obtained no real benefit from the breach of the Enforcement Notice.

"The basis of the appeal was that the business had only realised £180,000 in profits and that this should be the sum that any Confiscation Order should be based on"

> "It held that a POCA procedure was based on all the income received by the offender and no account should be taken of what happened to it"

Del Basso and Goodwin's case was that the purpose of the business was to provide income for the Club and no element was for personal profit. They argued that the court should recognise that all the income gained was used on the costs of operating the scheme including VAT, National Insurance contributions, business rates and rent that went to support the Club. They argued that the judge should have deducted these monies when calculating the benefit they had received and the benefit was to be equated with net profit, not turnover. They argued that, in these circumstances, the original Confiscation Orders were an abuse of process.

The Court of Appeal dismissed Del Basso and Goodwin's appeals stating that what was relevant was the property obtained from the breach. It held that a POCA procedure was based on the income received by the offender and no account should be taken of what happened to it. All monies derived from criminal activity were subject to POCA and liability extended to the aggregate total.

The court also held that there was no abuse of process. Del Basso and Goodwin had been given several warnings by the Local Authority of what would occur if they did not cease their park and ride business. It was their duty to obey the law and they had chosen not to do so. It was held that confiscation proceedings were appropriately brought after the second prosecution.

It is obvious from this case that a very stern view was taken by the court in relation to the application of POCA. In relation to regulatory offences which are prosecuted in the criminal courts, although the defendants may not consider the breach to be a criminal one, it is now clear that authorities are taking steps to ensure that the full criminal sanctions are applied, including confiscation of the proceeds of the crime under POCA.

As such, where there is a breach of specific regulations, and that breach continues, there could be an application under POCA to recover assets which have been obtained by the company as a result of the breach. This would be in addition to any fines and costs that are paid by the company at the original criminal prosecution. POCA is very strict and it would be difficult for any company that has been found guilty of a breach to escape POCA and the potential financial liabilities that would result.

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PPL, PRS and playing music in public

It became apparent last year that PRS for Music was increasing its monitoring of music played in the workplace and in other premises, to check whether such businesses hold the appropriate licences. This trend is continuing.

In recent months it has also become apparent that PPL is also conducting an aggressive enforcement campaign. It seems that PRS for Music and PPL share information. If your business needs licences from both of these organisations but only has a licence from one of them, then your business may well be a target for investigation by one of these organisations.

However, there is some good news. A recent ruling of the Copyright Tribunal, vigorously but unsuccessfully contested by PPL, confirmed that some of the tariffs charged by PPL from 2005 to 2009 were too high and unreasonable. Therefore, your business may be entitled to a refund if you paid PPL licence fees, under the affected tariffs, during that period.

> "PRS for Music and PPL are conducting aggressive enforcement campaigns and your business may be a target for investigation"

Why you may need a licence to play music in public

Copyright is a long-established legal right which protects certain types of works from unauthorised commercial exploitation. For example, copyright protects the lyrics of songs, music, the recordings of songs or music and radio or TV broadcasts. The owner of the copyright in any of these works can control their commercial exploitation by either (i) stopping or (ii) charging third parties for the privilege of playing or performing them in public.

In public

The lyrics of a song, the notes of music, a recording of a song or a piece of music, or a radio or TV broadcast, will be played 'in public' where they are played other than for private and domestic purposes and can be heard by at least one person, in addition to the person who caused them to be played. Examples of what would amount to playing or performing such works in public include playing a radio, TV or CD player in a restaurant, shop or office (or having the radio on in a private room forming part of the premises which can nonetheless be heard by the public coming into them), putting on live music in a hotel or restaurant and playing music or songs to telephone callers whilst they are kept on hold. Examples of what would not amount to playing or performing such works in public include an office worker listening to an IPod via headphones at work or watching TV or listening to the radio or a CD at home with family or friends.

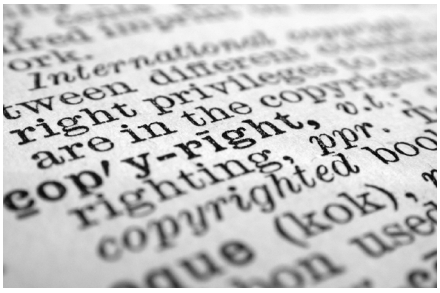
It is not a defence that you have bought and paid for the CDs that you play. When you buy a CD you are, in effect, buying a licence to play that music for your private and domestic purposes. Playing music in public will be outside that licence.

PPL and PRS for music – who they are and what they do

PPL and PRS are collecting societies that collect and distribute licence fees to their members. This centralised function means that businesses which play or perform music in public only have to deal with these two organisations instead of having to deal with hundreds of recording companies, individual musicians and song writers.

PPL collects and distributes licence fees in relation to sound recordings on behalf of record companies and performers. PRS for Music, by contrast, collects and distributes licence fees relating to the performance in public of the underlying song lyrics and music.

For many businesses if you have a PPL Licence you will need a PRS for Music Licence and vice versa. For example, if your business plays recorded music via the radio, TV, CDs, DVDs or via computers then you will need both a licence from PRS for Music (for the underlying music and/or lyrics) and from PPL for the underlying sound recording.



"It is always sensible to acquire the necessary licences from PRS for Music and PPL before you start playing music in your business. To play then pay can have serious consequences."

How PPL and PRS for Music calculate their licence fees

Both PPL and PRS for Music fees are payable annually in advance (and attract VAT). You can apply for your licence either online or by telephone. PPL and PRS calculate the licence fees payable to them in different ways.

PPL has a number of different tariffs depending on where sound recordings are played. For example, Tariff 210 relates to background music in pubs, bars, restaurants and cafes. Some of the PPL tariffs were set in 2009 by the Copyright Tribunal (a public body which oversees the charges set by PPL) and are calculated by reference to the size of the area in which the music can be heard. The bigger the audible area the more you pay. PPL also has a range of other tariffs where the fees are calculated on a different basis. For example PPL tariff 001 covers music played in nightclubs, discos and dances and the fees are based on the number of events per year, their duration and the average number of people who attend them. PPL charges a 50% uplift on its standard licence fee rates for those who have played music without having a licence in place and are paying retrospectively.

PRS for Music also has a number of different tariffs, for example Tariff HR relates to hotels, restaurants and cafes. Some tariffs are calculated by reference to the number of people who can hear the music and the number of days/occasions on which it is played. Other tariffs are calculated in different ways. For example, where live music is performed, the PRS for Music licence fees are calculated by reference to how much it costs the venue to put on such music on an annual basis. PRS for Music also charges a 50% surcharge in relation to licence fees that are paid retrospectively, only after the public performances of works has already taken place.

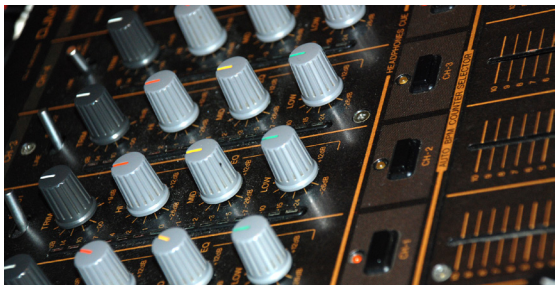
Play Then Pay?

It is always sensible to acquire the necessary licences from PRS for Music and PPL before you start playing music in your business. To play then pay can have a number of serious consequences, for example you will be required to pay the retrospective licence fees plus a 50% uplift and your business could be sued for copyright infringement. It is also worth noting that it is a criminal offence to play music in public without a licence if you knew or had reason to know that doing so amounted to copyright infringement. This could lead to directors of companies who play music in such circumstances being sentenced to up to six months in prison or paying a fine of up to £5000.

Dealing with approaches from PRS or PPL

Both PPL and PRS for Music maintain enforcement teams that seek to identify unlicensed businesses, which play music in public. Neither are government bodies. They are private sector organisations. Like any other private claimant the burden is on them to prove that a third party owes them licence fees. There is no presumption of guilt on the part of any third party. That said, there is an obligation on businesses to ensure that they have the necessary PPL and PRS licences in place and they should comply with that obligation. When dealing with PPL and PRS for Music businesses should at all times conduct themselves in a reasonable fashion, that will stand up to scrutiny in Court.

It is our experience that PPL/PRS can often be quite aggressive in their pursuit of licence fees. For businesses and those that work in them who are not used to dealing with these issues, this can often be intimidating.



Some important points to bear in mind when dealing with either PPL or PRS are:-

- Control the flow of information – you should have one (and only one) senior person nominated to deal with PPL/PRS for Music or their lawyers, to whom other employees should be told to refer communications from PPL/PRS for Music.
- Don't be panicked into giving incomplete or inaccurate information – for a multi-site organisation it can be time-consuming to work out what music has been played where, when, in front of whom and by whom. Providing inaccurate information under pressure, which you subsequently have to correct, will often be characterised by PPL/PRS for Music as proof of dishonesty and may generally undermine credibility in any subsequent legal proceedings. Make it clear to PPL/PRS that you will answer relevant questions, properly raised, only once you have had an opportunity to collate and review all relevant information.
- Make it clear that you will pay what is properly due (for past and future) and that you won't infringe – PPL/PRS for Music will frequently threaten legal proceedings and injunctions.
- Engage experienced lawyers early on – often it will save money in the long run if specialist lawyers are engaged early on. You should not agree to disclose any of your documents nor agree to the terms of any court order without having first taken proper legal advice.
- Agree a deal where possible – if your business has played music in public, without having the necessary licences in place, then you will need to settle with PPL/PRS to avoid court proceedings, which will inevitably be expensive. This does not mean that you need to write a blank cheque to PPL/PRS but it does mean that realism is required. Face to face meetings with PPL/PRS representatives and mediation can both help to resolve disputes. Use of without prejudice save as to costs offers and special offers made under Court Rules (known as Part 36 offers) can give a measure of costs protection for your business. Your lawyers will be able to advise on this.
- Have a written policy on playing music in your business and enforce it – it may well help your case, when dealing with PPL or PRS, if you can evidence that your business has a written policy on playing music in the workplace, which is enforced. This policy should be referred to in employment contracts and handbooks and be on your firm's intranet site and notice boards. Breaches by employees should be dealt with formally and the process documented.

Claiming rebates from PPL

As stated above, the Copyright Tribunal imposed new tariffs on PPL in 2009 lowering the tariffs that PPL had been charging between 2005 and 2009. This means that many businesses which paid PPL's licence fees between 2005 – 2009 are entitled to a refund. These refunds can be very substantial indeed for a multi-sited business.

Going forward

We have significant experience in acting for clients who are being pursued by PPL or PRS for Music for licence fees or who are in dispute with PPL or PRS for Music about the amount of licence fees payable. We have developed a market-leading PPL/PRS compliance product, which will enable your business to meet its PPL/PRS obligations with the minimum of fuss. We can also assist your business with drafting your firm's music at work policy documents and with claiming rebates from PPL.

"The Copyright Tribunal recently lowered PPL's 2005 - 2009 tariffs meaning that many businesses could be entitled to a substantial refund"

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> “ 25% of all road accidents and 26% of all road fatalities are work-related”

Driving at work and managing the risk

The significance of the risks involved in driving at work is frequently not prioritised as highly as it should be by many organisations.

According to figures produced by the Royal Society for the Prevention of Accidents (RoSPA) and the Department for Transport, 25% of all road accidents are work-related. Further, 26% of all road fatalities are also work related. During the period 1992-2001, overall road fatalities fell whilst during the same period work-related road fatalities increased.

One in three company car drivers will be involved in a collision during the course of a year with the same drivers being 30-50% more likely to have a road traffic collision (these figures are provided by the Transport Research Laboratory). The issues in relation to driving at work are therefore significant and require thought by those organisations whose employees drive as part of their working day.

A number of areas have been identified as having a particular impact in relation to work-related driving incidents. These include;

- driving whilst fatigued
- using mobile telephones
- eating or drinking whilst at the wheel, and;
- driving whilst under time pressure to attend meetings.

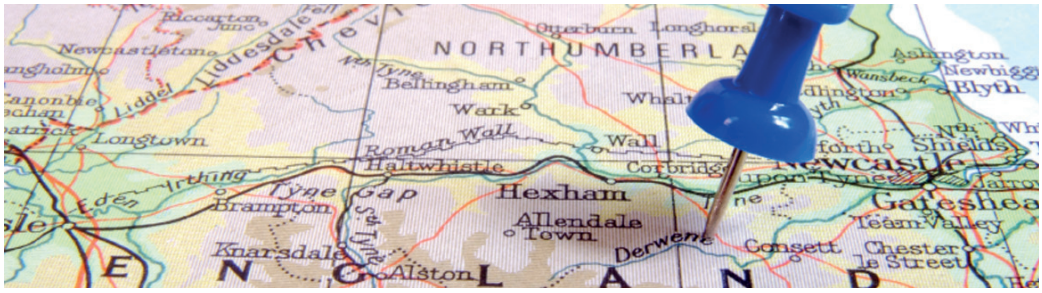
There are a number of factors that need to be considered by any organisation to minimise the risks in relation to work-related driving. These include training, fatigue, pressure and incident management.

Where an employee is involved in a work-related driving incident there are significant costs that will be incurred by the organisation. These costs will include vehicle loss, staff loss and third party claims. However, if there is a fatality there is also the possibility of an investigation by the Health and Safety Executive under the Health and Safety at Work etc. Act 1974 or, alternatively, a prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007, both possibilities greatly increasing the level of exposure and cost to the organisation involved.

The duties owed by an employer to an employee are the same in relation to driving activities as if that employee were based on a building site or in an office. This is a point that is often forgotten; ‘out of sight out of mind’.

There are five main areas that need to be considered in relation to work-related road safety;

- having a suitable and effective driving policy;
- responsibility;
- organisation and structure;
- systems, and;
- monitoring and review.



It is essential that driving is covered by the organisation's health and safety policy or, alternatively, that there is a stand-alone driving policy covering both commercial and non-commercial vehicles.

Directors and senior managers need to set an example to employees throughout the organisation and demonstrate a top level commitment to work-related driving. Any policy needs to be integrated with tailored guidance and training provided to ensure that compliance can be achieved. A monitoring function should be put in place to ensure that employees report and document work-related road incidents.

Risk assessments in relation to driving at work activities should examine potential hazards as well as determine who may be harmed – the driver, employee, passenger and other road users. In terms of evaluating driver risk, these will cover three main areas:-

(a) The driver (competency, training, fitness and health);

(b) The vehicle (suitability, condition, safety equipment, safety critical information, economic considerations); and

(c) The journey (routes, scheduling, time, distance and weather conditions).

An effective transport policy could have benefits for the organisation as well as the employees including reduced costs through reduction of incidents, better decision making in terms of risk reduction, reduced stress on employees, reduction in loss of work time and less risk of scrutiny and enforcement.

Although work-related driving has been, in some instances, considered separate to the daily work function of employees, it is important that organisations adopt a policy of inclusiveness and ensure that their employees are adequately covered and trained whilst engaged in work-related activities.

> " It is essential that driving is covered by the organisation's health and safety policy or that there is a stand-alone driving policy in place."

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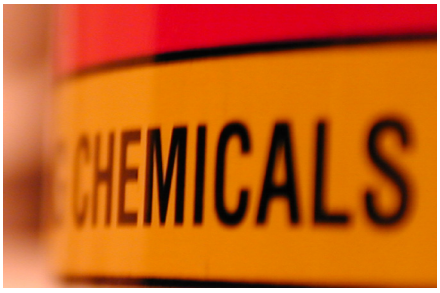


"Over the last five years there have been significant changes in road and transport law affecting the chemical sector."

The rules of the road - transport law for the chemical sector

Over the last five years there have been significant changes in road transport law affecting the chemical sector. New offences, such as causing death by careless driving, have been introduced.

This new legislation now forms part of an already comprehensive legislative framework which also includes The Goods Vehicles (Licensing of Operators) Act 1995 (and attendant Regulations), The Corporate Manslaughter and Corporate Homicide Act 2007 and the Health & Safety at Work etc. Act 1974. This legislative framework creates specific road transport offences many of which impact on an Operators' Licence in the event of a breach.

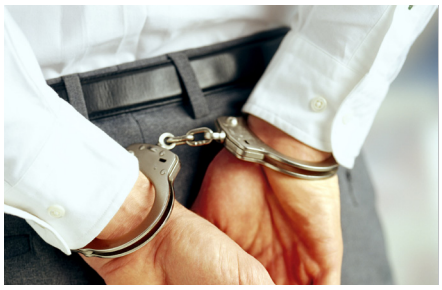
In 2008 causing death by careless driving became an offence. It was considered necessary to plug the gap between the charge of causing death by dangerous driving, with a maximum penalty of 14 years imprisonment, and the relatively minor offence of driving without due care and attention which was usually dealt with by way of a fine and penalty points. The offence of causing death by careless driving attracts a prison sentence of up to five years.

Authorities believed that drivers involved in fatal collisions were being charged with driving without due care and attention because it would have been difficult to secure a successful prosecution under the more serious offence of causing death by dangerous driving. The new offence reduced the burden on the prosecution in situations where a fatality was caused by the actions of the driver.

For transport operators in the chemical sector, The Goods Vehicles (Licensing of Operators) Act 1995 (the '1995 Act') and The Goods Vehicles (Licensing of Operators) Regulations 1995 (the '1995 Regulations') are possibly the two most important pieces of legislation.

Both the 1995 Act and the 1995 Regulations effectively provide a framework within which transport operators are required to conduct their business. Operators must ensure that they have the appropriate maintenance agreements in place, conduct regular servicing of vehicles and have sufficient financial resources in place to ensure the maintenance of vehicles. The Regulations need to be adhered to by operators to ensure compliance.

Failure to comply with the 1995 Act or the 1995 Regulations will result in an investigation by VOSA and possible Public Inquiry before the Traffic Commissioners with the very real possibility of revocation or suspension of the Operators' Licence.



During the course of 2007, The Corporate Manslaughter and Corporate Homicide Act 2007 was introduced. It was designed to make organisations accountable for their actions where a fatality had resulted. There have been a number of high profile, but unsuccessful, prosecutions for corporate manslaughter in the past including, for example, the Herald of Free Enterprise disaster.

The new corporate manslaughter legislation is designed to make it easier for the authorities to bring a prosecution. The first prosecution under the Act has come in the transport sector. It is important that operators in all transport sectors, but specifically in the chemical sector, are aware of their responsibilities under the Corporate Manslaughter Act to ensure that they are following their obligations to reduce risk to their employees and members of the public. Conviction under the Act can lead to unlimited fines and publicity orders which would have a severe impact on operations.

It is worth noting that the Health & Safety at Work etc. Act 1974 has been in place for a considerable period of time and provides a framework under which an organisation can be prosecuted for a breach of its health and safety duties either to one of its employees or a member of the public. Again, as is the case with the Corporate Manslaughter Act, a conviction in the Crown Court allows an unlimited fine to be imposed.

Should a transport operator be prosecuted for one or more of the offences discussed above this would have a significant impact on their Operators' Licence.

It is essential for the company to inform the Traffic Commissioners of any such conviction and it would then be for the Commissioners to decide what action to take. Should there be a serious breach, an investigation and subsequent Public Inquiry could be called with the possibility of curtailment or indeed suspension/revocation of the Operators' Licence. Any impact on the Operators' Licence would have a detrimental effect on any operation.

"Should a transport operator be prosecuted for one or more of these offences this would have a significant impact on their Operators' Licence."

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"The seminars will be run in each of our UK offices. Breakfast is provided and there is no charge for attendance."

Regulatory News

We have launched the latest in our series of client breakfast seminars. The seminars will be run in each of our UK offices on various dates between September and November and run from 8.30am for approximately two hours. Breakfast is provided. There is no charge for attendance.

Our Autumn seminar programme will cover the following topics:

Corporate Responsibility, Sustainability and the creation of enduring value?

As customers, employees, and suppliers place increasing importance on Corporate Social Responsibility, many organisations have started to regard it as a creative opportunity to fundamentally strengthen their businesses, their brands and their market proposition.

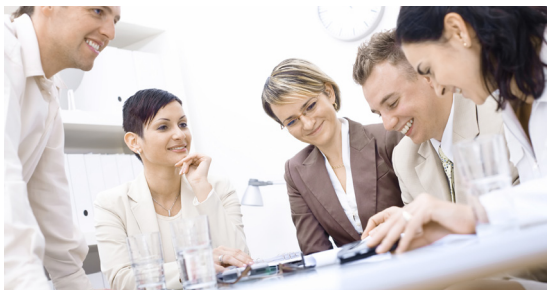
We will consider how to ensure effective CSR delivery in line with your main business agenda and look at how CSR connects to changing legislative drivers, impacts upon the market and links to building a sustainable business that delivers enduring value.

14 September - Manchester
16 September - Birmingham
21 September - London
23 September - Leeds

Environmental Reporting

Many companies are legally obliged to report on environmental issues affecting their business. Our specialist environmental team will take you through the complex regulatory requirements relating to environmental reporting and provide tips on how to meet and exceed your legal requirements.

5 October - Manchester
7 October - Birmingham
19 October - London
14 October - Leeds



Transport Risk Management

In conjunction with Matrix Global Solutions, we will consider the legal responsibilities of organisations, directors, transport managers etc. relating to the transport aspect of their operation. We will look at how applying Matrix's Internet based solution 'Driving Risk Manager' can help businesses to obtain the detailed information on their at-work drivers needed to help them to manage occupational road risk and put in place the robust policies needed to ensure compliance.

10 November - Manchester
17 November - Leeds
25 November - London
30 November - Birmingham

For more information or to reserve a place, please email Helen Lambert on cdr.events@hammonds.com

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And finally

Our Safety, Health and Environment team has been chosen as the winner of Corporate INTL magazine's award: "Health & Safety Large Law Firm of the Year 2010". The award recognises the team's market-leading position in the energy generation and distribution sectors and the significant new instructions it received last year in the field of nuclear and renewables work.

Rob Elvin said: "We differentiate ourselves from other firms because we work pro-actively. We offer, and receive a lot of instructions, to train our clients to avoid serious incidents and help them stay clear of regulatory intervention. That contrasts to the traditional approach of helping a client reactively after an incident."

Our team is one of the largest of its kind in the UK, with specialist lawyers located throughout the firm's UK and international offices.

Corporate INTL Global Awards 2010 Winner

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