

Rothera Dowson Solicitors

Transport Law Newsletter

January 2012



It's an Offal Case

Are you in the animal waste industry? Rothera Dowson are currently acting for a couple of large businesses both charged with offences because it is alleged that drivers should have been using a tachograph. In both cases, drivers were using their vehicles to transport Category 3 animal waste from retail outlets for safe and lawful disposal. In neither case were the drivers exceeding their permitted hours.

We contend that the decision to prosecute in these cases was taken without regard to any VOSA policy and that the drivers were entitled to rely on a derogation from the relevant EU Regulation.

Partner and Transport Head, Anton Balkitis, says:

"It seems that the words "animal waste" must include such things as meat products discarded by supermarkets. It is also arguable that it includes all other material which has been contaminated by meat, but to establish that such an interpretation is correct, will involve an argument that the derogation should be construed in a purposive way, so allowing the disposal of animal waste together with items from which it is impracticable to separate it".

These matters are fixed for trial and we are also arguing that the decision to prosecute is an abuse of process. This is because it is only in Lincolnshire that VOSA has seen fit to prosecute, despite both clients operating throughout various VOSA areas without any previous legal challenge, and even though there have been many stops and checks.

If this is a matter that may affect you or your business or for more information contact Anton Balkitis or Lucy Wood at Rothera Dowson Solicitors.



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DSA to improve drink-driving rehabilitation scheme

A consultation into the drink-drive rehabilitation scheme (DDRS) has now closed following the Driving Standards Agency's announcement that it wants to overhaul the current system.

Its aim is to improve the standard of courses offered to offenders and the way trainers are approved.

The DSA also wants more training providers to deliver the DDRS courses. It is hoped that if the quality of courses is improved, as well as the ability of offenders to access them, then fatalities and serious injuries will be reduced.



The DSA also intends on making drink-drivers pick up the bill for joining the scheme. Driving or being in charge of a vehicle when drunk can result in up to six months in jail and a £5,000 fine.

At the moment around 60,000 drivers who have been disqualified for at least 12 months are referred to the DDRS to educate them of the importance of changing their ways, with only 30,000 completing it.

"Improving the way courses are delivered is a positive step towards achieving this and will help to ensure Britain's roads remain among the safest in the world," says transport minister Mike Penning.



Waste company fined £15,000

A Blackburn-based waste collection company has been fined £15,000 after an employee fell from the top of an HGV, breaking his elbow and injuring his foot.

Neales Waste Management was found to have allowed workers to use metal bars on trucks to climb on to the top of the vehicles, despite them not being designed for this purpose.

Blackburn Magistrates heard how waste often became stuck on the roofs of vehicles when the contents of overfilled skips were being emptied.

But the firm did not have an acceptable health and safety procedure in place for removing this waste.

The 44-year-old employee, who asked not to be named,

had climbed up the bars but fell when the access fixings gave way.

The company was prosecuted by the Health and Safety Executive and admitted breaching the Health and Safety at Work Act by failing to ensure the safety of employees. It was also ordered to pay more than £11,000 in costs.

"The company wrongly assumed the metal bars on the front of the vehicle could be used as a ladder to climb up to the roof," says HSE Inspector Imran Siddiqui. "They were not designed to be used in this way and Neales should not have allowed this practice to continue."

Last year, more than 150 workers suffered major injuries in the recycling industry in Great Britain and one was killed.

False Documents

Three directors of a Scottish haulage business have been disqualified for two years after a public inquiry revealed "one of the worst cases of falsification of documents" the Traffic Commissioner's office has had to deal with.

Donald Richardson, Dawn McClung and Scott McClung cannot apply for or hold an O-licence or have a controlling interest in any company as from 18 December.

SDS Logistics (Bonnybridge) and SDS (Logistics) were both called to a public inquiry after the former business applied for a licence for eight vehicles and eight trailers.

TC Joan Aitken wanted to find out more about the overlap of directors, transport manager,

operating centre and a statement that the licence belonging to SDS (Logistics) would be surrendered if the Bonnybridge licence was granted.

Following an adjournment the directors provided finance documentation to show they had suitable finance, but this was later shown to have been falsified.

The TC stated: "I found that this company has a rotten foundation in that it has had to deceive through use of false documents to have had any chance of fulfilling the financial standing requirement whether for the 8, 4 or 2 vehicles variously sought."

O-Licence Legislation changes

The haulage industry now has a completely new set of rules to abide by after EC Regulation 1071/2009 overhauled existing O-licence legislation in December.

It remains to be seen how smoothly the new requirements run but we will be paying close attention to the way they are introduced and how they are interpreted by the enforcement authorities and the Traffic Commissioners.

The Regulation includes merging the national and international transport manager CPCs and limiting the number of companies a transport manager can be attached to.

In conjunction with the start of 1071/2009 the acting senior Traffic Commissioner also published the final set of statutory guidance and directions.

STC Beverley Bell says these 12 documents offer a comprehensive review of all areas of operator

licence legislation and provide guidance to both operators and TCs alike.

The road to their publication has been rocky, to say the least, with a very short second round of consulting on the documents announced and then closed in less than two weeks.

It could be for this reason that Bell says she will review how the documents are working and whether further revision is needed in six months' time.

We urge you to take a look at the publications and familiarise yourselves with them; they offer an essential view to how the TCs approach their work and also regulate you and your industry.

See: <http://www.dft.gov.uk/publications/senior-traffic-commissioners-revised-guidance-directions/>

Fairer fees for tachographs

The fees paid for having your tachographs calibrated and inspected are de-regulated this month – and VOSA says it will result in fairer prices being negotiated.

It also says the move will help companies needing tacho calibrations during “unsociable hours”, remove the need for government intervention in fee setting and result in geographical variations in cost being ironed out.

VOSA chief executive Alastair Peoples says de-regulation will benefit the industry,

with tacho centres able to recoup their costs as well as providing a flexible service to hauliers. It's far too early to say if this will happen, but the Freight Transport Association says it remains concerned.

The association is not against de-regulating per se, but it says members have expressed worries about areas of the country where calibration centres already enjoy a monopoly, particularly in remote rural locations.

Dangers of texting at the wheel

If anyone still needed an explanation of why texting at the wheel is so dangerous then the tragic case of Jemma O'Sullivan will more than suffice.

The 22-year-old student was killed in a four vehicle collision on the M18 near Doncaster when HGV driver Christopher Kane lost control of his lorry texting at the wheel.

Following Christopher Kane's conviction at Doncaster Crown Court for causing death by dangerous driving Jemma's father Vincent said the trauma and grief he had put the family through could not be put into words.

He added: “This man has caused devastation to our family by texting while driving a heavy goods vehicle at



55 mph on the M18. As we heard in court one text alone had one hundred and seventeen strikes of the keyboard.”

Kane was jailed for five years and disqualified from driving for five years.

Explosive goods lead to £20,000 bill

A haulage company and its driver have been fined thousands of pounds after they failed to declare a cargo of potentially explosive goods which endangered the lives of 500 ferry passengers.

Larne magistrates said it was “only by the grace of God” that hundreds of lives weren’t lost after Tinnelly International Transport and driver James McGivern allowed an unaccompanied freight trailer containing aluminium smeltings to board a ferry without declaring it to the shipping company.

On 19 February 2008 Stranraer police were alerted to the trailer which had been unloaded from the Larne to Stranraer ferry. The trailer was giving off a strange odour and it was not placarded.

Investigations revealed the contents were smeltings, which would have set alight had they become wet.

McGivern pleaded guilty to failing to declare a cargo of dangerous goods and was fined £3,000 and £1,000 costs.

Tinnelly International Transport, which is no longer trading, was found guilty of failing to declare the cargo and failing to placard the vehicle and was fined £10,000 and costs of £6,000.

Captain Bill Bennett, Area Operations Manager (Northern Ireland) for the Marine and Coastguard Agency, says: “This was a serious breach of the International Maritime Dangerous Goods Code with a cargo which is known to give off gases and to explode if it comes in contact with water. P&O Ferries had already banned the product for transportation on their vessels.”



News in Brief

Transport Minister Mike Penning says he will investigate claims that second-hand HGV wheels are not fit for purpose if the industry's trade associations provide him with evidence.

The United Road Transport Union has had its Driver CPC training approval withdrawn by the Driving Standards Agency after complaints were received about one of its courses. URTU says it will not make a full comment until there has been “a completion of the due processes of law.”

The Road Haulage Association says it will be engaging with the DVLA in January to discuss its plans to close 39 offices and centralise services to Swansea.

The Department for Transport says it will consult on adopting European timescales for downloading digital tachograph data, which would mean downloading driver information every 90 days rather than the current 56 day limit.

Rothera Dowson's online blog is updated weekly with news and views from the transport world. Our aim is to help you preserve your O-licence, as well as providing advice about keeping on the right side of the law. Go to: www.keepmeontheroad.co.uk/blog

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