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Not my Responsibility?

The Law makes it clear that work equipment should be maintained in good repair and working order with vehicles being no exception. Employers holding an Operator Licence, will have a preventative maintenance programme in place which should be scheduled at least 6 months in advance with best practice being 12 months. Drivers should have a daily 'first use' checklist to complete whether paper or electronically recorded and should show both nil and identified defects. For commercial vehicles over 3.5T the 'DVSA Guide to Maintaining Roadworthiness' includes a comprehensive checklist and drivers must be allocated sufficient time in their work schedule to complete these. Defect sheets must show a clear line from identification to rectification and records kept for a minimum of 15 months.

Vehicles that fall out of scope of an Operator Licence and those less than 3.5T, cars and vans must still be maintained by the drivers with checks often following a simpler format such as FLOWERED (Fuel, Lights, Oil, Water, Electrics, Rubber, Environment, Damage). Responsibility falls on the driver to complete those checks and in the event the vehicle is stopped the driver can face possible prosecution. For a company owned vehicle it is possible that the law would also look at the part played by supervisors, managers or directors with poor processes, record keeping and culture all be taken into account under Use, Cause, Permit legislative powers.

In December 2020 the importance of vehicle maintenance and responsibility was tested in a new way in Court. A driver, using someone else's car drove dangerously, with no Insurance and over the drink drive limit resulting in a fatal crash of another motorist in 2018. He was sent to prison as a result. Importantly the passenger in the car was also the vehicle owner who had been issued with an advisory MOT notice for poor tyre tread several months earlier. The car was knowingly driven for a further 7,000 miles before being involved in the fatal crash. Using the little known Accessories and Abettors Act 1861, for which there were no sentencing guidelines the passenger was prosecuted for 'aiding and abetting causing death by dangerous driving'. Whilst he was not the driver he was found to be responsible and received a 2 year 6 month prison sentence alongside a driving ban of 4 years 3 months.

Who can stop a vehicle?

For faults the Police will have the powers to stop the vehicle, of any type, and issue a vehicle defect rectification notice for which there are 14 days to evidence that the work has been completed.

Further, the Driver and Vehicle Standards Agency (DVSA) have the powers to stop a commercial vehicle, of any size, which includes vans, lorries, buses and coaches. They are

able to carry out spot checks and issue fixed penalties or prohibitions, such as a PG9 or TE160, if necessary.

Not stopping for either enforcement body is an offence.

Both the Police and DVSA have the power to seize or immobilise the vehicle if deemed unroadworthy.

Company Actions

- 1 Monitor that 'first use' checks are carried out thoroughly through spot-checking and random unannounced gate checks.
- 2 Could new systems be put in place that restrict drivers 'ticking boxes' to say that checks were actually done? This include ensuring drivers scan QR codes around the vehicle or identifying randomly placed tags to find. Telematics and maintenance systems can be linked which can show how long a driver took to complete the checks, any defects noted and photos sent over. This ensures that information is received more quickly improving vehicle efficiency and minimising vehicle down time.
- 3 Do the maintenance records show that there are specific defect trends highlighting poor maintenance or inherent vehicle faults?
- 4 Has there been an increase in roadside prohibitions, issuing of prohibition notices, changes in the OCRS O'Licence score or increased enforcement stops?
- 5 Have maintenance audits been carried out to ensure there is a complete chain, from identification to rectification of the faults, and that no faults are outstanding?

Conclusion

It is important that all those involved in the supply, maintenance, use and driving of vehicles take responsibility for its safety and condition. For those who now fall into the scope of the new van Operator Licence changes introduced in 2022 also need to consider the planned maintenance process is robust enough to meet the requirements of the Traffic Commissioner.

References

- 1** HSE Vehicle Maintenance
<https://www.hse.gov.uk/workplacetransport/checklist/section4.htm>
- 2** DVSA Guide to maintaining roadworthiness
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
- 3** Hatchers.co.uk
<https://hatchers.co.uk/aiding-and-abetting-causing-death-by-dangerous-driving/#:~:text=In%20what%20was%20described%20as%20a%20landmark%20case%2C,72mph%20on%20a%20road%20with%20a%2030mh%20limit>
- 4** Complicating Complicity: Aiding and Abetting Causing Death by Dangerous Driving in R v Martin, Sally Cunningham <https://www.jstor.org/stable/41302778>

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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