

WELCOME TO THE SUMMER 2018 EDITION OF

# Deliver



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# Welcome to the summer edition of *Deliver*, our transport and logistics newsletter.



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Welcome to the latest edition of *Deliver*.

With an unclear Brexit looming and the continued driver shortage these are tricky times for the transport and logistics sector but we hope this edition will assist you with some of the issues that may be concerning your business at present.

[Sonya O'Reilly](#) from our [Employment Team](#) tackles the employment status of drivers; particularly in light of the Pimlico Plumbers case, [Julie Gowland](#) considers the issue of CCTV in the logistics supply chain and passenger transport, Dan Hart then looks at the updated Guide to Maintaining Roadworthiness and finally he highlights the recent consultation on restricted operator licence holders.

I hope you enjoy this edition and, as ever, any feedback or suggestions for our next edition would be gratefully received.

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## Employment status: the ongoing saga



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*Employment Status has been a difficult issue over the past couple of years, with the rise of the 'gig-economy' employers are often finding it tricky to determine who is an employee, worker or self-employed contractor.*

Many big-name companies have been to some of the highest courts in the country debating the status of the individuals who work for them.

Most recently it was the turn of the Supreme Court to determine the employment status of a Pimlico Plumbers' plumber after they appealed every other courts decision that he was a 'worker' and not a self-employed contractor.

It comes as no great surprise that the court rejected Pimlico Plumbers' appeal. The plumber being a 'worker' had been a consistent finding from the outset of the case!

In coming to their decision the court found that a main feature of the plumber's contract was an obligation to provide personal performance.

The court also found that because the plumber was subject to Pimlico Plumbers' tight control; for example in relation to his ID badge, van, uniform and Pimlico Plumbers strict administrative controls and payment terms, Pimlico Plumbers were not his client or customer.

Does this decision take us any further forward? Unfortunately not. The court's decision has not provided us with any greater clarity on the legal tests for 'worker' (or 'employee') status, and reiterates that tribunals will reach a decision based on the facts and circumstances in each particular case. What is clear, once again, is that tribunals will not accept cleverly-worded contractual documentation as determinative of employment status.

In short, our firm advice is to ensure that you are clear of the status of employees throughout the logistics chain and drivers in particular.

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## Restricted licence holders: level of financial resources



**Daniel Hart**  
Associate



*For standard licence applicants and operators, financial standing levels are set at a fixed amount (in Euros)...*

*The Traffic Commissioners for Great Britain have launched a consultation on whether the financial standing levels for restricted operator licence holders need to be increased.*

For standard licence applicants and operators, financial standing levels are set at a fixed amount (in Euros), according to EU regulations. As a result, traffic commissioners do not have any influence on those figures. The amounts change every year for applicants and operators in England, Scotland and Wales, depending on the exchange rate. For restricted licence applicants and operators, traffic commissioners have decided what level the financial requirement should be set at. The levels for restricted licence holders have not changed since 2004.

The Traffic Commissioners for Great Britain are considering the following options for the restricted financial levels:

- to remain the same
- increase the levels in line with the Consumer Price Index since 2004
- increase the levels in line with the Consumer Price Index since 2013
- increase the levels in line with the percentage increases for standard licences since 2014
- increase the levels in line with the percentage increases identified by the Road Haulage Association since 2011
- standardise the levels with those set for standard licence holders, or
- reduce the levels.

Any changes could have a dramatic impact on restricted licence holders. For example, an inflationary increase based on the Consumer Price Index (CPI) since 2004 would see the level required for the first vehicle increase from £3,100 to £4,269.46 and the figure for each additional vehicle from £1,700 to £2,341. A restricted licence holder with authorisation for ten vehicles could see financial standing levels increase from £18,400 to £25,698.46 - an additional £7,298.46. If levels were brought in line with that of standard licence holders, such an operator would be required to demonstrate an additional £29,150 of continuously available funds.

The consultation seeks to hear responses from the industry, including restricted licence holders. The consultation process closes on 31 August 2018 and should you wish to respond you can visit the following link for more information <https://www.gov.uk/government/consultations/restricted-licence-holders-level-of-financial-resources>.

## CCTV in transport



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*Whilst there can be real benefits to using CCTV it can have drawbacks that users should be aware of.*

*Throughout the logistics supply chain and in passenger transport, CCTV is being increasingly used to protect businesses.*

CCTV can most obviously help protect from theft but it can also help create a safer working environment, ensure that health and safety guidelines are adhered to, help identify faults with equipment, and ensure employees and drivers are working as they should be. CCTV on large goods vehicles and passenger service vehicles can also be used to assist with law enforcement and insurance claims in the event of accidents or incidents as well as enhancing record keeping.

Whilst there can be real benefits to using CCTV it can have drawbacks that users should be aware of. New technology has made it easier than ever to set up camera surveillance, but the rules around data protection and human rights are much more complex. All business owners using CCTV should carefully consider the purpose for which they are using it in order to ascertain what rules they must comply with. CCTV engages data protection laws so these need to be considered carefully, particularly in light of GDPR which increases potential penalties for breaches. The Human Rights Act 1998 (HRA) also applies; it gives the right to family and private life. If you are using CCTV, consider other people's rights under the Act as well as your own.

For example, people must be made aware that they are in an area where CCTV is in use and the best way to do this is to use signage but more detailed consideration may be needed such as whether a data protection impact assessment (DPIA) is required or whether the Information Commissioner (ICO) needs to be notified.

Used in the correct manner CCTV undoubtedly can prove invaluable in helping a business to run better and ensure the health and safety of customers, employees and ultimately the business.

## Top tips

- Be transparent about the use of CCTV and for what purpose.
- Display signs –which are clearly visible and readable.
- Only use the data for the purpose it was collected for.
- Be aware of your duties under the GDPR, DPA and HRA.

# Guide to Maintaining Roadworthiness



**Daniel Hart**  
Associate

*The Driver and Vehicle Standards Agency (DVSA) have published a revised 'Guide to Maintaining Roadworthiness', which provides best-practice advice on the responsibilities an operator or driver has to ensure the roadworthiness of their vehicles as well as detailing minimum legal requirements.*

The 2018 guide acknowledges the development of technology such as smartphone apps to assist with driver defect reporting and contains references to new approaches such as electronic brake performance monitoring (EBPM). Other changes include an updated driver defect report (which now include vehicle height and AdBlue system checks), updated safety inspection reports, (including brake temperatures and report sign-off) and advice for using Vehicle Operator Licensing system (VOL) for maintenance updates.

## Some of the key changes

- **Removal of the inspection frequency graph** – The change is designed to promote a proactive, evidence-based approach to setting inspection frequencies. Six-weekly intervals are considered to be a good starting point for many operators, but operators are encouraged to regularly review this period based on the results of inspections and performance of vehicles. The graph is replaced by case study examples of time-based frequency for various operating conditions.
- **Safety inspection and repair facilities** – The guidance has been updated to highlight the importance of ensuring that in-house workshops and/or maintenance contractors have adequate inspection facilities for the job. The new content also

strongly recommends that workshops and technicians should have achieved a recognised quality standard, such as IRTE accreditation scheme.

- **Tyre management** - A section highlighting important aspects of tyre management including monitoring tyre age has been added. Operators are also providing details on where to locate a detailed tyre management guide produced by the road haulage and tyre industries.
- **Brake testing** – The guide strongly advises that a laden roller brake test should be carried out at every safety inspection. The guide now includes details of how to use EBPMS and has more advice on brake testing. If a road test is being used to assess the brakes, the guide recommends that brake temperature readings are measured and recorded on the safety inspection report.
- **Emissions and air quality** – In response to the DVSA focus on emissions fraud and changes to the HGV levy rules from February 2019 to reward cleaner vehicles, a section on exhaust emissions and the importance of correctly maintaining the vehicle's emissions control system, has been added.

## Health, Safety and Environment Conference 2019

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Plans are well underway for our next conference which will be in January 2019. As always, there will be a specific session geared towards transport and logistics. To register your interest now, contact [sandie-simmons@birketts.co.uk](mailto:sandie-simmons@birketts.co.uk).