

It's a fine line

Sometimes you shouldn't just accept the decision and take the path of least resistance with on-the-spot fines

By Richard Wadkin and Clare Benger

As new fixed penalty laws come into force, it may be a case of "act in haste, repent at leisure" for many drivers who are stopped at the roadside.

Since 5 March, the DVSA is now permitted to issue an on-the-spot fine for any drivers' hours offences committed in the 28 days preceding the stop.

The DVSA traffic examiners' powers have been widened. They are able to issue fixed penalty notices for up to five drivers' hours offences in a single roadside check. As each fine is for a fixed sum of between £50 and £300, a single stop that identifies five offences at the highest level will result in a driver being fined £1,500.

Implications for drivers

UK drivers should be aware that they will have 28 days to decide whether to accept the fixed penalty or not. If they do, then that is it – there is no appeal or further action to be taken, but the penalty is recorded against them.

If they do not agree with the assessment that an offence has been committed, or they are unsure and want to consider the issues further, they should decline the offer of a fixed penalty. This may result in a court summons where reasons for the contravention and arguments for a lower penalty can be put forward. If the driver is found guilty, or pleads guilty, the fine and the costs are likely to be greater than the initial fixed penalty.

Fixed penalties count in the same way as convictions before a court. If a driver is convicted of drivers' hours offences, they could be called before the traffic

commissioner (TC) for a hearing to consider whether or not any action should be taken against the driver's vocational driver's licence. This could clearly have significant financial implications on someone prevented from working as a driver during a period of suspension.

The guidance provided by the senior TC indicates that a person convicted of drivers' hours offences might expect to receive a suspension of their licence, ranging from a few days to a few weeks depending on the TC's view of the significance or severity of the offences.



Implications for operators

Both the operator and transport manager are obliged to notify the TC of any offences committed by drivers, including any fixed penalties.

An operator that engages a driver who commits drivers' hours offences needs to recognise that this can lead to being called to a public inquiry (PI) that will consider any action to be taken against the operator's licence. In such circumstances it is likely that the operator will have to explain how its systems failed to prevent the offences. If the fixed penalties have just been accepted, there will be limited opportunity to discuss and consider defences and mitigation in relation to the issues concerned.

TCs are equally keen to ensure that a transport manager demonstrates continuous and effective control over the transport aspects of an operator's activities. Failures by drivers (such as by breaching drivers' hours rules) will reflect on the competence of a transport manager.

Since a transport manager can also be called to a PI to explain apparent failures in the carrying out of their responsibilities, they also need to recognise the implications for them of the actions of drivers in relation to any adverse check that might occur.

What should you do?

Operators, drivers and transport managers need to be aware of these new rules and ensure that if a roadside check involves a driver being offered a fixed penalty then this should not be accepted lightly or as an easy way out.

At the very least operators and transport managers

The new powers

The DVSA officially became able to hand out on-the-spot fines on 1 February this year, but the body didn't hand out fines for the first month.

DVSA chief executive Gareth Llewellyn said that the tougher fines on offenders would help the agency crackdown on rule breakers.

He said: "There is no excuse for driving while tired. The results of falling asleep at the wheel of a 40-tonne lorry can be devastating to families and communities. Any drivers breaking these rules are putting other road users at risk."

The RHA welcomed the new powers but warned that there was still an urgent need for lorry parking in the country.

Chief executive Richard Burnett said: "While we support action against firms who deliberately flout drivers' hours rules, we also call on the government to address the urgent need for more lorry parking areas so that drivers have somewhere secure to rest."

should require their drivers to make them immediately aware if a fixed penalty notice has been issued, and stress that they need to be notified by drivers before it is accepted.

The driver's own licence, the transport manager's reputation and the operator's licence may be affected by any fixed penalty. As a result, there can be serious implications for an operator's business and further cost in dealing with any fall out.

Clearly it is best to avoid such an issue arising in the first place but, if it does, those involved should know how to manage such an eventuality. ■

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