



The importance of repute

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Transport
Compliance
Seminar



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CheckedSafe Transport Compliance Seminar 13th October 2022

- Repute and Fitness - what does it mean
- Presented by Darran Harris
Solicitor & Director of
CheckedSafe





Rules and Legislation

- Road Traffic Act 1988
- Public Passenger Vehicles Act 1981
- Goods Vehicle Legislation: The Goods Vehicles (Licensing of Operators) Act 1995
- Senior Traffic Commissioner's statutory guidance and statutory directions
- DVSA Guide to Maintaining Roadworthiness (December 2020)
- O-Licence undertaking





So what is Repute and who needs it

- Repute – dictionary definition is
- “the opinion generally held of someone or something; the state of being regarded in a particular way”
- Looking at the Statutory Guidance, specifically -Statutory document 1: Good repute and fitness at 2.1 Basis of Directions – it says this
- “The difficulty in providing directions stems from the absence of a definition for ‘good repute’ or ‘fitness’”
- Perhaps the best summary of repute would, in this context, be “fitness to hold the O-Licence or in the case of a TM, the position”



What is fitness

- The concepts of “good repute” and “fitness” form part of what the Traffic Commissioners often describe as the fundamental pillars of the operators’ licensing system.
- Before a licence is even granted, an applicant must persuade the Commissioner that, depending on the type of licence being sought, he or she or the business meets these minimum requirements
- Restricted licence holders must meet the test of “fitness”
- Standard national and international operators have to be of “good repute”





Difference between Repute and Fitness

- Essentially it is the type of licence - Both based on trust and both require honesty.
- Fitness – The TC will monitor whether there has been a material change in the circumstances of the licence holder and if, for instance, convictions have been incurred, conditions breached, prohibition notices issued or undertakings not fulfilled then action can be taken.
- Good repute - The 1995 Act is much more prescriptive when it comes to the concept of good repute. Essentially the applicant must have good repute when a licence is granted but critically if at any time the licence holder loses his or her good repute, then the licence **must** be revoked.





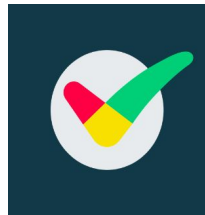
Loss of Fitness or Repute

So what can cause the loss of fitness or repute

- Obviously Traffic Offences
- Cause of the mandatory loss of good repute

The 1995 Act makes it clear that a Traffic Commissioner must decide an individual person is not of good repute if that individual has more than one conviction of a serious offence (not always transport related) or has been convicted of repeated road transport offences.

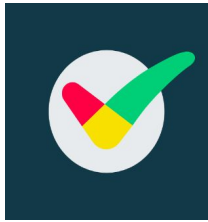
- A serious offence is actually defined by the penalty imposed by the Court. The relevant levels of punishment are a sentence of imprisonment for a term exceeding three months, a fine exceeding £2500 or a community order requiring the individual to perform work for more than 60 hours. The reference to a sentence of imprisonments for a term exceeding three months also includes suspended prison sentences.





Loss of Fitness or Repute (Cont)

- If an individual therefore receives two fines exceeding £2500 then he or she will be liable to lose their good repute regardless of what the offences actually related to.
- Similarly, if they receive a fine over this level and a community order requiring more than 60 hours' work, the starting point is that they will lose their good repute.
- The only way the Commissioner can avoid making such an order is if the convictions are either “spent” under the provisions of the Rehabilitation of Offenders Act 1974 or if the Commissioner can be persuaded to disregard an offence on the basis that he accepts such time as he thinks appropriate has elapsed since the date of the conviction.
- It must be stressed that these provisions relating to the mandatory loss of good repute are not applied to limited companies.
- However, this does not mean that they cannot be affected by these provisions. A director may incur convictions which fall into these categories.
- Similarly, a transport manager incurring two or more of these convictions will lose his or her good repute and therefore will not be able to be nominated on the licence. The company may then fail to meet the requirement of professional competence





Other Issues Impacting Repute

- Non-traffic offences
- Failure to report matters relating to finance
- Tax evasion
- Failing to have proper management and control – shadow TM
- This is logical as the O-Licence is based on trust.



Specific Cases

- Langdon Transport Limited 29 June 2021
- Decided by Kevin Rooney -Case involving the Furlough scheme.
- Called in the PI for using more vehicles than authorised.
- Documents produced which led to another unexpected issue.
- Licence Revoked
- Soundbite is this Absent any further explanation, I find that the furlough claims for drivers 3 and 4 were unlawful. Furlough is a new concept for most and it is incumbent upon employers to make proper enquiries as to eligibility before claiming public funds. I have no evidence that happened here so I find the claims to be fraudulent. That strikes at the heart of the operator's good repute.



Specific Cases

- STAGECOACH DEVON LTD, PH1020951, t/a Stagecoach South West (August 2022)
- Also decided by Kevin Rooney
- Related to a serious incident in which a mini-bus turned over and 37 injuries, 10 serious injuries.
- TM's called as well to the Public Inquiry.
- Lots going on in this case.
- An under age driver
- A route of over 50Km split to get around tacho rules
- TM's appointed with no involvement
- Wrongly relying on a DoT letter when as the TC put it Stagecoach is, however, a significant transport operation and has within its resources the ability to check the law rather than rely on an official's letter relating to a different and very specific potential regulatory burden.

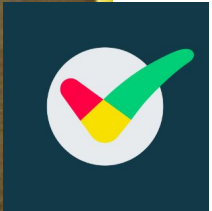


Specific Cases

- STAGECOACH DEVON LTD, PH1020951, t/a Stagecoach South West (Cont)
- It appears to be that there was pressure to deal with a driver shortage so corners were cut. Commercial considerations overtook safety.
- The operator failed to notify the conviction of Kameron Allan within 28 days. I have seen an explanation for that being that the transport manager did not know of the need to notify the conviction. It is not an acceptable explanation. The operation of a service in a dangerous manner, the conviction of a driver for careless driving whilst driving one of the operator's vehicles and the failure to notify a relevant conviction are material changes since the licence was granted. Section 17(3)(e) of the 1981 Act is made out. The nature and background of the conviction in particular are such that I attach significant weight.
- TM's delegated but left hand didn't know what the right hand was doing. Risk is for TM and the O-Licence.
- Risk is people paying lip-service to compliance, and this is a well funded national organisation.



Board Room O-Licence Discussions



Senior TC Turfitt: 'Directors have ultimate O-Licence responsibility'



Tim Deakin
/ Editor

It is imperative that company leaders make sure that transport operation in good health

Senior Traffic Commissioner (STC) Richard Turfitt (pictured) has reminded company Directors that the ultimate responsibility for an O-Licence remains with them, and that they should undertake regular audits of compliance, remain up to date on legislation and action any shortcomings discovered.

Speaking at the Confederation of Passenger Transport's National Coach Conference last week (see Big Story, p6-8), Mr Turfitt adds that it is incumbent on Directors to ensure that Transport Managers (TMs) are exercising continuous and effective control. "I still see examples of TMs who have lost sight of what

they should be delivering," he continues. "But TMs should also expect things from their bosses. They need your feedback and support, they need the right tools for the job, and they need to understand their worth."

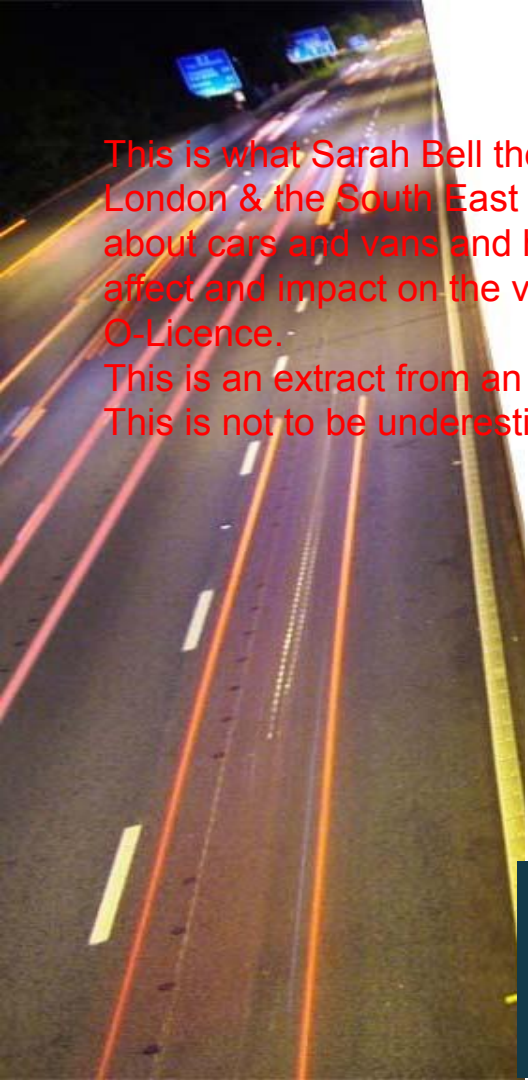
To ensure that TMs remain in control of the transport operation Mr Turfitt says that Directors should be asking questions of them. But company leaders should also discuss the O-Licence and compliance in board meetings, adds the STC.

"Directors have the ultimate responsibility for the O-Licence and for the transport operation. They should have an inquiring mind. An operator's O-Licence is its key asset."

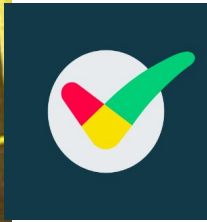


Mr Turfitt stresses that TMs must be able to correctly interpret brake test reports. But it is not always the case that they can, which gives rise to concern among the STC and his colleagues. In test reports, percentages are required, not just pass/fail.

Additionally, it is important that control of drivers is maintained to ensure ongoing compliance. With agency or self-employed drivers, that becomes more difficult than with employed staff, but it remains a responsibility of the Directors to ensure that it happens.



This is what Sarah Bell the TC for London & the South East has to say about cars and vans and how they can affect and impact on the valuable O-Licence.
 This is an extract from an article in This is not to be underestimated.



Driving for Better Business

And the consequences for wrongdoing?

“Depending on what we find we might curtail them, reducing the number of vehicles they can run, to make that side of their business more manageable while they sort themselves out. We might suspend them, and say they need to park their fleet for a couple of weeks while there’s a root and branch review and they get outside help to improve things.”

If Bell considers a ‘short, sharp, shock’ insufficient, she says, “you’re looking at licence revocation and potentially disqualification.”

The key test is
“Can I trust you moving forward?”
Actions speak louder than words.

Bell clearly enjoys her job, explaining that safety and fair competition – ‘a level playing field for all operators’ – are important motivations.

And what about the small stuff, those cars and vans? They can’t affect an O licence, can they? Think again. “Everything an operator does tells me something about their overall approach to road safety. Cars and vans go to their ‘good repute’ too, which is made up of their actions and their judgements.”

“If there’s an Environment Agency prosecution that is relevant too. It’s the same principle for fly-tipping or carriage of non-authorized goods. If they can’t get it right with vans and cars, why would I trust them with lorries? There’s that word again.

One of the most common pitfalls into which many operators fall involves general non-compliance with basic licence undertakings such as un-roadworthy vehicles, ‘making a mess’ of drivers’ hours, along with tachograph and working time directive failings.



“Most operators never see us,” concludes Bell. “That is why we enjoy speaking engagements and events. The vast majority of the commercial vehicle industry, both goods and PCV, are very professional.”

Everything an operator does tells me something about their overall approach to road safety. Cars and vans go to their ‘good repute’ too, which is made up of their actions and their judgements.”

So what does a ‘good’ operator – the ones Bell seldom sees – look like?

“It’s an operator who sees transport as an integral part of all their health and safety systems,” says Bell. “If one part of the system falls down, another part picks it up. If your transport manager is off ill for weeks you don’t just leave everything, someone covers for them.

“What ‘good’ looks like is a finely oiled machine with the systems in place. I know it’s not sexy but you need a board of directors that is engaged and understands commercial transport, you need a transport manager who is up to date and is comfortable with challenge whether upwards to the board or downwards to the drivers.

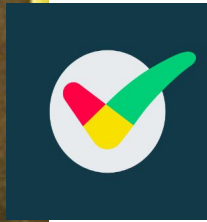
“You need a healthy engagement with the maintenance contractor and you need drivers who are trained and supported but also disciplined. If you’ve got all of those, everything should be fine.”



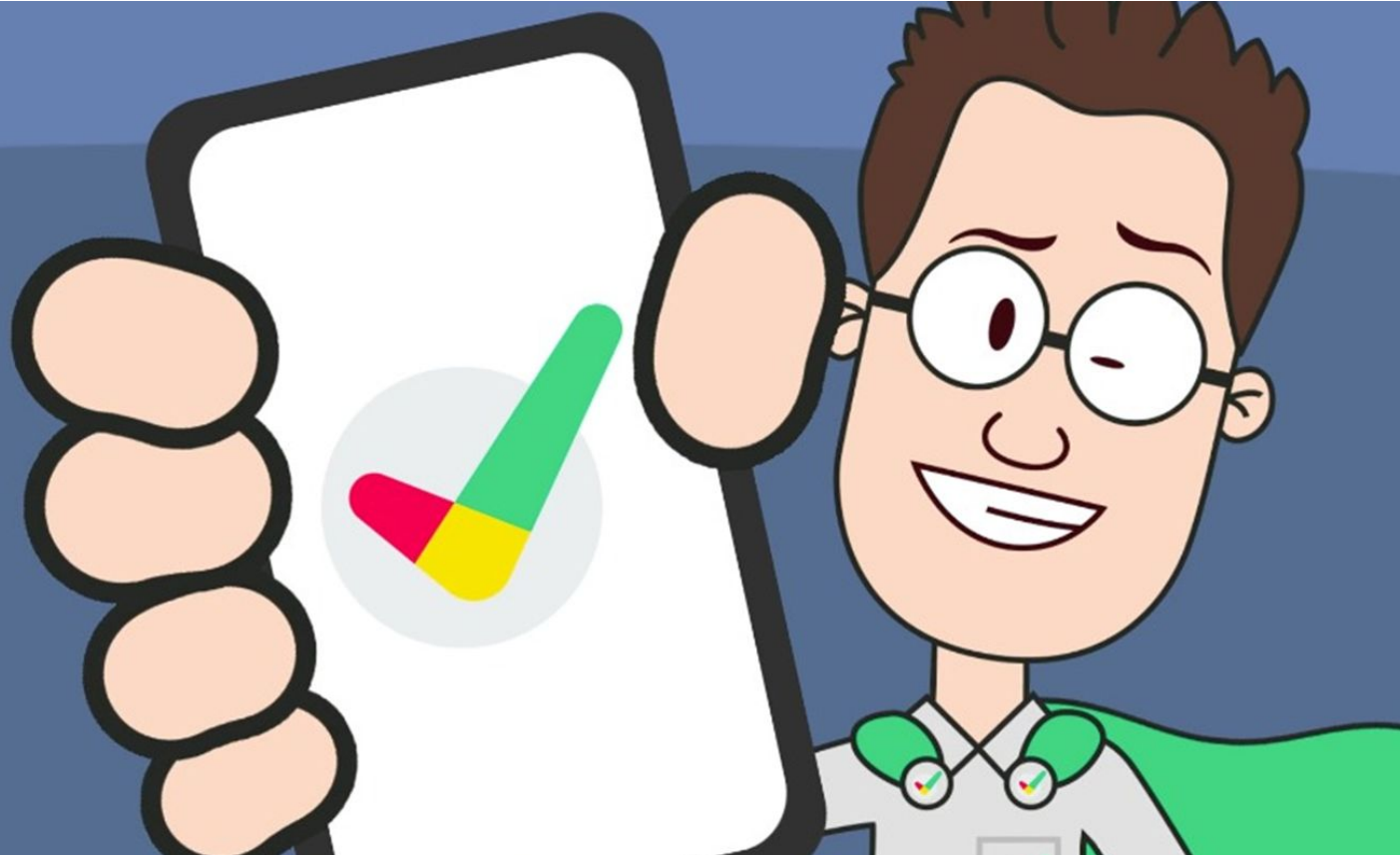
Sarah Bell
 Traffic Commissioner for London and the south east

Suggested Examples

- Business where Transport is secondary
- Example, say a bed manufacturer. Makes Beds. The board is most likely interested in making beds and selling them. How they get to the customer is probably secondary.
- Transport is an overhead they could do without.
- So what if there is an issue? What if say proper walk around checks are not done, to say the smaller vehicles such as vans.
- If there is a Public Inquiry and the licence is lost or curtailed, on a business working on tight margins what happens?
- Probably not viable to use external transport.
- Business cannot trade, lost of jobs? Even those unconnected with transport are then affected.
- It is clear that Transport and specifically compliance is critical to the overall operation of any business that relies on transport.
- Protect your reputation. And here is how to do it



Captain CheckedSafe your Compliance Saviour



Even the Police get it wrong!
Someone didn't check the height indicator

