

Member Briefing Webinar – Managing drivers in logistics

Questions and answers

Q: When discussing DATA PROTECTION you mentioned transparency. So it is completely acceptable to monitor drivers' activity covertly, however we HAVE TO tell them we will be monitoring them first?

A: Covert monitoring is not forbidden, but can only be only justified in very limited circumstances. These circumstances include, for example, preventing or detecting suspected criminal activity or gross misconduct. Certain exemptions in the law do allow for non-provision of transparency information in such contexts, but these exemptions are applied strictly. The position is further complicated if you consider further sharing of information you have collected covertly, for example with external law enforcement or regulatory agencies. Covert monitoring in these instances should generally cease once relevant external agencies are involved.

Q: We've been made aware that some social media bloggers are actually targeting branded vehicles/drivers to provoke a reaction for views!

A: Unfortunately, this is the way social media is going, I hope it is just a trend. Dash cams for your drivers would help so they have a narrative if needed but also training and communications about how to handle and avoid these situations.

Q: At a Transport Manager conference, we were advised to go straight to a legal representative and NOT to an internal investigation so as to ensure legal privilege for the driver?

A: Legal privilege is a complicated area and our experience is that although very often attempts are made to cover an investigation by way of legal privilege it rarely succeeds. Notwithstanding that, there is no harm if you can afford it, to attempt to deploy legal professional privilege to cover an investigation and to employ a legal adviser to undertake it. For litigation privilege to apply the investigation must be undertaken in the contemplation of litigation.

Q: Our maintenance is on-site but the maintenance is conducted by our fleet provider and the staff work for them. Should [we] be able to prove refresher training even for experienced mechanics. Can they be qualified by experience?

A: As part of your procurement process you should conduct due diligence of your maintenance providers. This should be periodically reviewed. This should include satisfying yourself that their staff are adequately trained – including refresher training.

Q: Whose jurisdiction does Direct Vision Standards come under if not complied with in London. Is this regulated by the TC in any way please?

A: DVS is part of the TFL HGV safety permit scheme in London and they have ownership of enforcement. Any failure to adhere to the DVS would lead to a breach of the safety permit and a penalty charge of up to £550 per breach. It may be that breaches would be reportable to the Traffic Commissioner, insofar as that may lead to a finding of a loss of repute in the event of multiple breaches. That would be rare in our opinion.