

Welcome

Dear Member,

I welcome you all to our latest newsletter.

Well, construction looks like it may be waking from the long sleep. I'm sure we all welcome this and can get back to whatever passes for normality.

Membership has remained constant this year. After talking to several members, the feeling is the authorities have backed off the crusade against us. This may be for several reasons: one they have lost a couple of cases but I think they have realised just trying to pick us off one by one is not going to change the facts or the law. They are well aware of the debate going on in the EU regarding all special class vehicles and are hoping this will bring us under their remit.

At the last AGM, it was clear we really didn't know what was happening regarding the consultation on MOT's. Following our meeting in the spring with the DfT we now know the whole picture. The consultation is concerned with all vehicles in Europe that are exempt from annual testing. It was made clear MOT's would be coming in from 2017 for any vehicle that could physically go through an MOT lane would have to have an MOT. As far as we could see, this was the only thing on their agenda.

When we pressed them regarding the other issues we have as an industry i.e. weights etc they were pretty evasive. After a lot of beating about the bush, it was clear they were well aware of our concerns but said that when the EU pass the law requiring all eligible vehicles to have an annual test it was then up to the individual member states to implement this.

Causing Serious Injury by Dangerous Driving

The Offence

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has recently introduced the offence of "Causing serious injury by dangerous driving." The offence is defined as follows:

"A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence."

It is an offence which is triable either way, meaning it can be dealt with by either the Crown Court or the Magistrates' Court. If the Magistrates' Court deems its sentencing powers are insufficient for the alleged seriousness of the offence committed, or if the defendant elects to, then the matter will be heard in the Court.

Sentence

In the Magistrates' Court, the maximum sentence can be up to six months in prison, whilst in the Crown Court, the maximum sentence can be up to five years in prison.

Comments

The offence has been introduced to attempt to plug the gap between dangerous driving, with a maximum sentence of two years and death by dangerous driving, with a maximum sentence of fourteen years.

They were unable, at this stage, to say how this would work in practice. They have put us on their mailing list and promise to keep us informed of any up dates.

We have now been advised by the Department for Transport that a consultation on MOTs should be out early in 2014. Additionally, and potentially of equal importance to members, is that a consultation on the exemptions from the Operator Licensing regime is also due out early in 2014. At the moment, we have no further details as to those proposals but are the authorities considering trying to bring Volumetrics within the remit of the Traffic Commissioners? Watch this space...

We need to ready for this coming change, I'm sure no responsible member could object to annual testing but what about the requirement for an Operator's Licence? The Association's big task in the next couple of years is to monitor the progress of the consultations and make sure we are involved with drafting the changes. If we are not involved, it will be an ideal opportunity for the authorities to steam roller us into plating and testing as well as Operator Licensing. .

It is proposed that the AGM will take place on 18th November 2013 at 2pm in Corby. This is also when the new membership year will start. If you have any issues you would like us to discuss then please drop me a line or email our coordinator, Jared Dunbar, at jjd@dynesolicitors.co.uk

Chris Smith
Chairman

Dates to Remember

BSA ANNUAL GENERAL MEETING

Monday 18th November 2013 at 2pm

Location: Corby Holiday Inn, Geddington Road, Corby,
Northants. NN18 8ET

Judges were finding that in some cases, although they involved seriously dangerous driving and the victim suffered horrific injuries, perhaps even put into a vegetative state, the Court's hand were tied. As there was no fatality, a maximum sentence of only two years could be handed out when arguably longer was warranted. With the same level of driving but when a victim died, the Court was able to hand out longer sentences which arguably merited the crime. It was for this reason that the Government felt a 'middle ground' offence was required.

Implications for Civil Claims

In most cases, a civil claim for damages will follow a criminal prosecution for driving offences which involve death or serious injury. Those trying to defend the civil claim could be severely hampered by the fact that the element of "serious injury" has already been established within the criminal courts.

Insurers may take the view that it is their interests to fund representation in the criminal case, in an attempt to reduce their exposure in the subsequent civil claim. Obviously, if the criminal case is successfully defended then this will reduce, or even avoid, a civil claim.

Mineral Products Association

We have recently learnt that the Mineral Products Association has been lobbying the Government regarding Volumetrics. Their recent update is as follows

1. MPA has continued to press regulators and the Department for Transport about the regulation of volumetrics, notably the principle that volumetrics should be subject to the same level of regulation as LGVs. MPA is not anti – volumetric, but wants to see equivalent regulation.
2. Equality of regulation may ultimately require further legal action to alter the existing case law which is used to defend the current operation of volumetrics as engineering plant, or a change in the regulations to ensure that volumetrics are defined as LGVs rather than engineering plant. If an operator chooses to operate as engineering plant there appears to be an ability to ignore LGV regulations such as weight limits and drivers hours limits.
3. In the meantime there is clearly increasing concern amongst regulators such as VOSA about the operating standards of volumetrics and there is likely to be increasing enforcement action in and around London within the scope of what the current interpretation of the law allows.

A second announcement from their chief executive was as follows:

"Whilst DfT have been less than responsive to our lobbying in the last 2 years, we have now convinced TfL of the legitimacy of our concerns and they are now also lobbying DfT for change. TfL/VOSA and the Metropolitan Police are putting greater efforts into enforcement within the scope of existing law, which is providing more evidence of the scale of the problem. MPA is also taking further legal advice as we remain determined to overcome DfT's current reluctance to act."

We need to consider how we react to this and how we react in the future.

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Careless Driving can now be subject to a Fixed Penalty Notice

Following a consultation last year, the Government has now made careless driving a fixed penalty notice offence. These new powers are effective from the 16th August 2013. However, the option of going to court would still be retained should the driver wish to contest the offence.

The fixed penalty for careless driving is now £100 with 3 points on the driver's licence. The most serious examples will continue to go through court, where offenders may face higher penalties. The police will also be able to offer educational training as an alternative to endorsement. Drivers will still be able to appeal any decision in court.

Careless driving is an offence related to general poor driving and includes a variety of behaviours, such as tailgating, failing to look properly and sudden braking. It is defined, under s.3ZA of the Road Traffic Act 1988, as driving that "falls below what is expected of a competent and careful driver" and "driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving".

The offences for careless driving include driving "without due care and attention" and "without reasonable consideration for other persons" (s.3 of the Road Traffic Act 1988).

Examples of careless driving cases include:

- Injudicious overtaking;
- 'Tailgating';
- Turning into too small a gap in traffic;
- Inappropriate speed;
- Being in the wrong lane on a roundabout;
- Attempting to pass a vehicle on the nearside.



Website

The Association's website is now live and can be found at www.batchedonsite.org – it is intended that this be a simple vehicle for the association to

provide information to members going forward. It is intended that newsletters, updates and meeting minutes will be available on the site.



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