

## Welcome

Dear Member,

I would like to welcome you all to the fourth edition of the Batched on Site Association's Newsletter. We have decided to go for a 'legal special' edition this time to keep members updated on the court case the BSA part funded and the ramifications of it.

Some BSA members have had their Volumetric overload prosecutions dropped as a direct result of the Master Concrete (Northern) case. However, others seem to still be proceeding against members. As a result of this apparent inconsistency, the BSA's Committee has written to VOSA's policy department asking it to set out VOSA's position on Volumetrics.

The Association's principal objective is still to justify why batched on-site machines should continue to be treated as special case. It is in this regard that we must all stick together to provide a united and strong voice to present our arguments to Government.

The membership is steadily growing but the more members we have, the better our position is with VOSA. It is in all members' interests to try and generate membership numbers as together our voice will be louder.

Our AGM recently took place on Tuesday the 12th October 2010 in Corby and the minutes will soon be circulated to members. The main topics discussed were the overload court cases, the Department of Transport's Consultation on MOT's and the forthcoming BSA website. Thank you to all those that attended.

Tom Baker  
Chairman

## VOSA -v- Master Concrete (Northern) Limited - Update

On Friday 5th March 2010, Master Concrete (Northern) Limited successfully appealed against an overloading conviction. The appeal was fully supported by the BSA, which provided financial assistance to the tune of almost £15,000. However, the large majority of the legal fees were covered by Reimer Engineering Ltd who provided the remaining £35,000 to cover both the original Magistrates' Court hearing and the Crown Court appeal legal fees.

Master Concrete (Northern) Limited had been convicted by Liverpool Magistrates for excess third and fourth axle weights. That overloading conviction was quashed by unanimous decision of the Crown Court which accepted the BSA argument batching plant / volumetrics are exempt from plating and testing and so outside the scope of construction and use weight limits.

VOSA then applied appeal the decision Crown Court decision to the High Court. The Crown Court however refused this on the grounds that it felt it was a 'frivolous' appeal.

On the back of the Liverpool case, two further Volumetric Overload prosecutions were dropped, specifically citing the decision in Liverpool in their reasoning for discontinuing. However, the battle has not been won, there are still ongoing prosecutions and appeals. Currently, at least 2 other cases are proceeding against BSA members for Volumetric overloads. We will have to wait to see whether the authorities see the light in these matters.



The BSA is hoping that the Liverpool Crown Court decision will persuade VOSA's policy unit to return to the negotiating table. The BSA wrote to the policy unit for clarification on its position surrounding Volumetrics but it appears VOSA position is unaffected by the Court decision. The BSA would like to think that some amicable way forward can still be reached on the basis that the vehicles are operated within design weights. However, it may appear that VOSA's view is to try and tackle the issue in the Court's again. The Association needs to be ready for this.

### What does the Liverpool case mean for you?

Although the Liverpool Crown Court case is not a binding authority on the other courts in England and Wales, it is a persuasive authority which strengthens the industry's position.

The Court found that Volumetrics are exempt from the Plating and Testing Regulations and therefore outside the Construction and Use Regulations. This means that they are not bound by the weight limit of 32 tonne as imposed upon a standard HGV.



### Tell us About it!!!

It is useful and interesting to hear some of the concerns and problems which operators are experiencing. A lot of people are not sure of the legal status of their operation. It seems sometimes the various departments we all have to deal with make up and change the rules as and when it suits them.

Please get in touch with us to get clarification on any problems you may be having to keep us informed of any precautions you may have coming up. We, as an association, can't fight the case for you but with our wealth of knowledge we can advise and tell you who we think the best people are to fight it for you.

### To test or not to test?

As has been spoken about at length in this newsletter, we had a great result in Liverpool with Master Concrete (Northern) Limited. However, as far as VOSA is concerned, it's not over yet. Although VOSA's attitude at roadside checks seems to have changed: with reports of mobile batching plants being stopped but not weighed, and only having safety checks carried out. This appears to be a positive improvement.

But we still have several cases ongoing in both the Magistrates and Crown Courts, VOSA has adopted the attitude of you win some, you lose some. This is great if you are part of HM Government PLC but not if you are a small operator trying to make your business work in the worst economic conditions for 50 years. We are following several overload cases through the courts and will keep you informed of the outcomes.

One finding from Liverpool Crown Court was that mobile batching plant is exempt from plating and testing. This may become a hollow victory though, as there is a consultation in progress to change the law to remove the 'engineering plant exemption' from the Plating and Testing Regulations.

The knock on effect of removing this exemption would mean that batching plant would be forced to operate at 32 tonnes. The BSA has submitted a reply on behalf of the industry explaining why we are against the proposal and the potentially unforeseen consequence for the industry. Watch this space for updates.

We do however advise our members to submit their batching plant for an annual voluntary roadworthiness test rather than an MOT. Although getting one is never cheap and involves time off the road, it's the one time in the year when operators know an independent body will make a detailed safety check on the plant. If the unthinkable happened and there was a serious accident, you would be able to sleep at night knowing you had done your part in acting responsibly.

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### BSA Batched on Site Association

The White House, High Street, Tattenhall, Chester CH3 9PX  
Tel: 01829 773 105 Fax: 01829 773 109