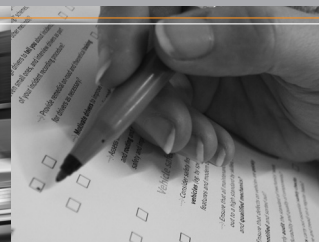


Duty of Care

An information sheet for fleet managers



With almost three in ten fleets failing to fully comply with fleet safety legal requirements, it is clear that a number of companies are neglecting their duty of care responsibilities.¹ Yet ALL companies have a legal and moral duty of care towards their employees, including those who drive for work, and everyone sharing the roads with them. This information sheet outlines the duty of care requirements of employers and explains the importance of meeting – and exceeding – these requirements.

The extent of the problem

In 2006, 858 people were killed and 6,622 seriously injured in crashes involving an at-work driver, meaning 17 people are killed and 127 seriously injured in at-work crashes every week. These figures suggest that a quarter of road deaths in Britain involve an at-work driver.² However, the Health and Safety Executive (HSE) believes that these figures underestimate the problem, due to inaccuracies in police reporting.³ HSE estimates the cost to employers arising from 'at-work' crashes to be in the region of £2.7 billion a year.⁴

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What is a 'duty of care' and who does it apply to?

All companies have a duty of care towards their employees to maintain their health and safety at work. To assess whether you are fulfilling your duty of care responsibility when it comes to the safety of your employees who drive for work, you should ask yourself a few simple questions.

- Does your company have comprehensive road safety policies (in writing for companies with five or more employees), supported by management?
- Are road safety management procedures in place, including risk assessments to eradicate or minimise risk?
- Are employees provided with relevant information, training and supervision to be safe on the road?
- Does your company regularly audit the safety of journeys and amend policies and procedures accordingly when new risks are identified?

If the answer to any of these questions is 'no', the company may not be fulfilling its duty of care. If this is the case you need to take urgent steps to remedy this, as neglecting to fulfil your duty of care could lead to the injury or death of employees or members of the public, and fines or even prison for yourself.

What can happen if duty of care is neglected?

The following case studies highlight the consequences of company failings in their duty of care.

Haulage boss jailed for manslaughter

Martin Graves, 40, company manager of Felixstowe-based MJ Graves International was jailed for four years after a man was killed in a crash caused by one of his drivers, Victor Coates. The conviction, for manslaughter, was due to failing to prevent his drivers from working excessive hours.

A truck driven by Coates hit a broken-down car on the A12 in December 1999, killing 24-year-old Lee Fitt, from Colchester, Essex. Basildon Crown Court heard that at the time of the collision Coates had been working for about 20 hours and had little time for quality sleep. Coates was also jailed for four years for causing death by dangerous driving. ⁵

£150,000 fine for failing to manage workplace transport

Nightfreight (Great Britain) Ltd was fined £150,000 over the death of a driver crushed by a truck at the firm's premises in Willenhall. Neil Prestage, 48, of Southwell, Notts, worked for another company but was visiting Nightfreight when the incident happened in 2002.

The Health & Safety Executive (HSE) brought the case to court, where Nightfreight admitted breaching health and safety legislation. The firm was ordered by Wolverhampton Crown Court to pay the fine, with costs of £91,000.

Speaking after the case, the HSE said the death of Mr Prestage was the "tragic result of a failure to manage workplace transport" at the site. ⁶

Fine for failing to monitor driver hours

The Produce Connection of Chittering, Cambridgeshire, was fined £30,000 after one of its workers crashed and died while driving home after a third consecutive shift of nearly 20 hours.

Mark Fiebig, 21, of Soham, died when his van drifted into the path of a lorry on the A10 in 2002. Cambridge Crown Court heard that Mr Fiebig was thought to be suffering from "chronic fatigue" and had fallen asleep at the wheel.

The company admitted failing to ensure the health of workers and the public. Judge Gareth Hawksworth said it had failed to monitor the hours employees worked. ⁷

What is the law?

Health & Safety at Work Act 1974

Requires employers to:

- provide a duty of care to employees and to the general public
- establish and communicate a health and safety policy
- provide safe handling and maintenance of work articles
- provide necessary information and training on the above

Management of Health & Safety at Work Regulations 1999

Require employers to:

- complete a suitable and sufficient assessment of every risk to employees and members of the public
- establish effective monitoring and reviews of all preventative measures
- provide information to employees about the identified risks
- provide relevant training on recruitment and on any relevant change of responsibility and/ or risk
- repeat training periodically, during work hours

Road Transport Directive

An extension of the Working Time Directive and Working Time Regulations, which limits the hours employees can work. Although the original regulations did not include drivers, the Road Transport Directive does, with no choice to 'opt out' (as in previous regulations).

Restrictions:

- Maximum working week of 48 hours (over a 17-week period, including paid holidays)
- Limits night work to 8 hours per night
- Mandatory daily and weekly rest provisions and rest breaks

As an employer you have a [legal obligation](#) to ensure that your drivers do not exceed the maximum hours and take the required minimum breaks.

The above requirements are in addition to the duties you have as an employer under road traffic law, e.g. the Road Safety Act 2006 and the Road Traffic Acts 1988 and 1991.



New legislation – Corporate Manslaughter Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force across the UK on 6 April 2008.

It sets out a **new offence** of corporate manslaughter, where an organisation as a whole (rather than an individual) can be convicted for management failures that result in a person's death. The Act does not set out any new regulations, but instead requires companies to comply with current legislation. The Act is designed to make companies more likely to face serious criminal charges if they disregard the safety of others at work, with fatal consequences.

Individuals will still be liable for prosecution for manslaughter and for health and safety offences.

The offence

A company will be guilty of corporate manslaughter if the way in which its activities are managed or organised causes a death and amounts to a **gross breach** of a **duty of care** to the person who has died.

In deciding whether or not a company is guilty, judges will consider how the activity that led to the person's death was managed, including any systems and processes for managing safety and how these were operated. A substantial part of the management failure must have been at senior level – i.e. by people who make significant decisions about the organisation.

The penalties

A company guilty of the offence will be liable to **unlimited fines**. Courts may also impose a **publicity order**, requiring the company to publicise details of its conviction and fine (this will be introduced in the months following the introduction of the Act).

How can you put duty of care into practice?

Putting your duty of care into practice simply means taking practical steps to ensure your employees remain safe at work. You need to have policies, procedures and 'safe systems of work' in place to help reduce work-related risks, including the risks to your employees when driving for work.

Reducing risk doesn't have to be difficult. In basic terms, you need to look at what might happen, assess the impact of potentially dangerous situations and take steps to try to reduce the risk.

A guide on 'Managing road risk' is available from the Fleet Safety Forum – see 'Sources of further information'.

There are three key areas that you need to consider when assessing risk for your drivers: **Driver**, **Vehicle** and **Journey**.

Driver

Competency – are you confident that your drivers are capable of doing their work in a safe way?

- Do they have experience?
- Do you carry out pre-appointment checks, including references?
- Do you check their licence on recruitment and periodically afterwards?
- Have you informed your drivers on company policy on work-related road safety and do they understand?
- Have you specified what standards of skill and expertise are required for the job?

Training – are your drivers properly trained?

- Do you provide induction training?
- Do you assess whether your drivers require additional training?
- Do you prioritise training for at-risk drivers, such as those with poor incident records or young drivers?
- Do drivers know how to carry out vehicle safety checks?
- Do drivers know how to use their vehicle correctly (including use of seat belts, head restraints and any additional safety features)?
- Have you provided drivers with a driver handbook that includes road safety advice?

Fitness and health – are your drivers fit and healthy enough to drive safely?

- Do drivers of heavy vehicles have an appropriate medical certificate, where legally required?
- Although there is no legal requirement, would it be beneficial to safety if you required all drivers to undergo regular medical checks?
- Do your drivers meet the eyesight requirements set out in the Highway Code? Is there a way that you can check and monitor this?
- Do your drivers know the dangers of impaired driving and the company policy on impaired driving?

Vehicle

Vehicle suitability – are your company vehicles suitable?

- Do you look into safety ratings and assess which vehicles are most appropriate when purchasing new or replacement vehicles?
- Do you ensure that any private vehicles used for work purposes are insured for business use and have a valid MOT certificate if they are more than three years old?

Vehicle condition – are your vehicles safe and well maintained?

- Do you have adequate maintenance arrangements in place?
- Do you ensure maintenance and repairs are carried out to an adequate standard?
- Are your vehicles fitted with adequate safety features and do features such as seatbelts and head restraints work correctly?



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Journey

Routes – do you plan routes thoroughly?

- Do you ensure your drivers use the safest and most appropriate routes for their vehicle?
- Does your route-planning take into account hazards such as low bridges?

Schedules – are your schedules legal and realistic?

- Do you take account of the times when drivers are most likely to fall asleep when planning schedules (sleep-related crashes are most likely to occur between 2am and 6am and between 2pm and 4pm)?
- Do your employees know they must stop driving if they feel sleepy, even if they have deadlines to meet?
- Do you monitor drivers' hours and regularly check tachographs on vehicles that have them to ensure drivers are not exceeding their hours?

Time – do you allow your drivers sufficient time to complete journeys safely?

- Do your schedules allow plenty of time for journeys to take rest breaks and traffic conditions into account?
- Do your schedules put drivers under any pressure? You must make sure that you don't encourage drivers to take risks e.g. speed to meet deadlines.
- Can drivers stay overnight rather than having to complete long journeys home at the end of a long working day?

Distance – are you sure you are not putting your drivers at risk by expecting them to travel long distances without adequate breaks?

- Can you eliminate long journeys or reduce them by combining driving with other methods of transport?
- Do you plan journeys effectively to try to ensure they are not too long that they can contribute to fatigue?

Weather conditions – do you give enough consideration to weather conditions when planning journeys?

- Do you reschedule journeys if necessary to take account of bad weather?
- Are your vehicles properly equipped to operate in poor weather conditions?
- Do your drivers know the risks associated with driving in bad weather, e.g. the risks to drivers of high-sided vehicles when driving in strong winds?
- Do you advise your drivers not to travel when the weather conditions could make it unsafe to drive?⁸

Detailed information sheets on a variety of safe driving topics for 'at-work drivers' are available from the Fleet Safety Forum. Please see 'Sources of further information' for details.

*Duty of care is something that the **whole company**, including the company board and senior management, must embrace. The Fleet Safety Forum has produced an information sheet on 'Presenting the business case and working with your board', which provides information on how to gain the support of the whole company in relation to fleet safety procedures. For further information please see the 'Sources of further information' section.*

How can you work with your insurance company?

Some fleet insurance companies will not only insure your vehicles but will also assist your company in meeting its duty of care obligations by providing information sheets, advice on duty of care and detailed data about the company's crashes or incidents. You can then use this information yourself to manage your company's risk. The insurance company may also have a relationship with providers, specialising in risk management, who can give specific advice tailored to your needs.

Roger Ball, head of commercial motor and motor trade at Allianz, advises fleet managers to:

1. Work with an insurer (and insurance broker if applicable) with a strong focus on risk management.
2. Never treat insurance as simply a commodity product, but think about how you can best use the services that insurance companies offer.
3. Use any road safety advice that the insurance company provides, such as information sheets for drivers and any frequently updated road safety information that the company may post on their website.
4. Work on a constructive basis with the information that the insurance company provides. This means using the data to pinpoint the cause of incidents and using the results as a way of preventing future incidents and managing risk.
5. Make judgements based on the hard evidence that the data provides. For example, even though you train your drivers, you may find that the data from your insurance company shows that the drivers have frequent reversing crashes. This should tell you that the training you are providing on reversing is not adequate.

Going beyond legal compliance

When considering your duty of care responsibilities, you should not only think about the legal implications, but also your *moral* obligations and social responsibility.

Rather than just taking the minimum steps necessary to meet your duty of care requirements, your company is likely to benefit from exceeding these requirements and embracing safety to a greater extent.

Good PR

Media coverage about your company's drivers being involved in crashes and possibly causing death or serious injury are NOT good PR for your firm. However, media coverage of company programmes or events – such as joining Road Safety Week – or



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your company winning awards for its safety initiatives ARE good publicity. Think about how you can get your company in the news for the right reasons.

A poor reputation for employee and public safety could turn the whole community against your company, possibly resulting in loss of custom and loss of profit.

Ideas for how you can go beyond the legal requirements:

- Promote a 'road safety culture' amongst your employees (an information sheet on 'Developing a road safety culture' can be ordered free from the Fleet Safety Forum – see 'Sources of further information' for how to order);
- Encourage employees to adopt safe driving practices out of work and among friends and family members by including 'Home Road Safety' advice in the driver handbooks;
- Join in with initiatives such as Brake's national Road Safety Week (see www.roadsafetyweek.org for further information);
- Introduce a 'Road Safety Topic of the Month' on specific risks such as mobile phone use or drink driving. You could display posters in staff rooms and send targeted e-bulletins about the topic to reinforce safety messages.

Take steps now to exceed your company's duty of care requirements and you will see the opposite side to this – gain recognition for your achievements, get the community behind you and encourage customers to trust your brand.

CASE STUDY: NKL AUTOMOTIVE

NKL Automotive Ltd is a car transporting company, offering vehicle delivery services and chauffeur drivers for hire.

The company has no vehicles in its fleet, but around 250 drivers who drive clients' vehicles.

All new drivers undergo a full day induction course, immediately followed by a period of training with an appointed mentor. The mentor identifies any areas of concern that may require further training. Any additional training is then provided and the driver will not be 'signed off' until the mentor is satisfied that they are fully trained. This process enables NKL to establish an overall risk profile for each driver. The process is also being developed further by NKL, who are currently integrating 'Task Observer' and 'Low Speed Manoeuvring' courses, provided by RAC, into the programme.

The driver training is then followed by a two day RoSPA approved Fleet Driver Safety Defensive Driving Course, for ALL drivers, which is supplied by XBeam. The course involves both classroom and on the road learning, covering all aspects of safe driving in a range of conditions.

Drivers are only issued with a mobile phone together once they have signed a policy to say they will only use the phone when it is safe to do so. They are also provided with an insurance-approved camera crash pack, to be used in the event of a collision and a driver handbook which, in addition to normal

CASE STUDY: NKL AUTOMOTIVE (CONTINUED)

company procedures, covers the company's overall road safety policy and specifically the policies on the safe use of the mobile telephone and satellite navigation systems.

NKL moved approximately 45,500 vehicles throughout the UK during 2006, driving about 5.5 million miles. During this period the company had a total of nine vehicle incidents requiring insurance involvement, of which six were third party liabilities. The three remaining incidents were all low speed impacts and just one resulted in a minor physical injury.

CASE STUDY: BT

BT has more than 90,000 employees who drive for work. The company works with risk management specialists Interactive Driving Systems (IDS) to train its drivers. All employees who drive on business must complete IDS's Starting Point RoadRISK module and make a Safe Driving Pledge. This requires all drivers to agree to abide by a simple set of road safety rules. Drivers then undergo additional training based on the results of the initial assessment. Drivers who cover more than 20,000 miles per annum have an online OneToOne review with their line manager to agree ways of reducing their mileage.

All managers responsible for five or more drivers complete a half-day fleet safety management workshop called 'Whose Risk is it Anyway?' The workshop promotes a positive attitude towards road safety among managers and teaches them ways of ensuring that the company's road safety policy is implemented effectively among their drivers. This includes advice on issues such as conducting licence checks and developing intervention plans for drivers.

BT regularly carries out internal and external publicity campaigns to promote road safety messages on a range of issues – for example, smoking in vehicles. The messages are sent out using the in-house newspaper, which goes to every employee (whether they drive or not).

BT's fleet insurance company has helped to fund a Driver of the Year competition for the past three years, open to all drivers. Entrants complete three online theory tests and the 30 with the best scores participate in on-road finals.

BT provides its company car drivers with information on the European New Car Assessment Programme (NCAP) when they select their vehicles. The company also operates a system called the Birthday Process, in which each vehicle is reviewed in detail annually, on the anniversary of its purchase (including checking all relevant documents) – in addition to the regular maintenance programme.

Over a four-year period, these measures have helped BT to cut its fleet insurance claims by 40%.



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Sources of further information

Fleet Safety Forum resources and events can help your company meet its duty of care responsibilities.

They include:

- 'Managing road risk: introductory guide for employers' - £9.75 (inc. p&p)
- Free information sheets on a range of topics, including:
 - 'Driver eyesight'
 - 'Young drivers'
 - 'Monitoring and assessing drivers'
 - 'Presenting the business case and working with your board'
- Regular low-cost events such as best practice workshops and its annual Best of the Best conference
- The annual Fleet Safety Forum Awards

If you are already a subscriber, visit www.brake.org.uk, click on 'Fleet Safety Forum' and enter your username and password to access an online resource library and information on events.

If you are not already a Fleet Safety Forum subscriber, join today! Subscription costs depend on the size of your fleet, but start from £105 +VAT. Call the Fleet Safety Forum on 01484 559909 or email admin@brake.org.uk

Fleet safety guidance

Health and Safety Executive produces FREE documents on health and safety legislation and best practice, including:

- 'Leading Health and Safety at Work', aimed at company directors, with guidance on health and safety policies and procedures, a legislation summary and a checklist to assess health and safety leadership within the company.
- 'Health and safety regulation: a short guide', which summarises companies' legal obligations under Health and Safety law.
- 'Driving at work: Managing work-related road safety', a free guide on companies' legal responsibilities towards drivers, benefits of fleet safety policies and developing effective policies

These can be downloaded from the HSE website by clicking on 'Publications' then 'Free leaflets'. Look under both 'Regulations' and 'Road safety'.

T: 0845 345 0055 E: hse.infoline@natbrit.com W: www.hse.gov.uk

Fleet Safety Benchmarking Group, a free project co-ordinated by Brake and Interactive Driving Systems. Sign up to anonymously compare crash data and safety procedures with other companies, to help assess the safety of drivers, vehicles, journeys and management policies and identify potential improvements.
W: www.fleetsafetybenchmarking.net

www.dft.gov.uk/drivingforwork, a Department for Transport website with free guidance on managing work-related road risk.

Fleet Safety Association promotes the benefits of managing work-related road safety, provides an analysis of corporate driver training and offers advice on legal requirements relating to fleet safety management.

T: 020 7344 9236 W: www.fleetsafetyassociation.co.uk

Ministry of Justice produces guides for fleet and health and safety professionals on the Corporate Manslaughter and Corporate Homicide Act 2007. Visit the website and click on 'Guidance'.
T: 020 7210 8500 E: general.queries@justice.gsi.gov.uk
W: www.justice.gov.uk

Fleet service providers

Allianz provides insurance cover and also offers a range of risk management solutions. Through its award-winning online initiative 'Risk Director' (www.riskdirector.co.uk) it can help managers to fulfil their duty of care responsibilities by providing free information sheets, technical guides, online risk improvements and links to preferred suppliers. For further information, please contact your insurance broker.

Interactive Driving Systems provides a range of fleet risk management tools and services to help develop, implement and review fleet safety policies, procedures and processes. Fleet managers wishing to enquire about training modules or procedures to assist with meeting duty of care requirements should contact research director Dr Will Murray.

T: 01484 400399 E: will.murray@virtualriskmanager.net
W: www.virtualriskmanager.net

End Notes

- ¹ Almost three in ten (28%) fleet operators say they do not fully comply with all relevant corporate and regulatory requirements relating to fleet safety (www.fleetsafetybenchmarking.net audit, to April 2008)
- ² 2006 figures obtained from the Department for Transport statistics unit.
- ³ Work-related accidents go unreported' (Fleet News, 14 November 2007)
- ⁴ Reducing at-work road traffic accidents – Final Report (HSE, 2006)
- ⁵ Lorry boss jailed over death crash (BBC News, 4 April 2003)
- ⁶ Fine follows lorry driver's death (BBC News, 20 October 2006)
- ⁷ Company fined after crash death (BBC News, 16 June 2006)
- ⁸ All advice extracted from *Driving at Work: Managing work-related road safety* (HSE)



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