

Talking of Grading...

Duty of Care

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In this issue I want to briefly remind **Members** about the 'Duty of Care' legislation in so far as it relates to **Drivers whether employed or self employed** who are engaged in **driving vehicles being used on company business**.

From the research I have thus far undertaken every company is subject to this legislation as it applies to **drivers engaged in driving on company business activities**. So an **employed or self employed Private Hire or Taxi Driver** undertaking work via agency, sub-contract or other agreement, is in scope of legislation and **Duty of Care**.

It would seem that **any major incident**, which involves any **Private Hire / Taxi Driver**, driving either a **company owned vehicle or his / her own vehicle**; could result in **'Immediate Police Attention'**.



Driving Vehicles on Company business, regardless of ownership, is subject to the above legislation and is regarded as a bona-fide place of work for the duration of any journey undertaken on behalf of the company.

This can or will result in the detailed investigation into the operating company's general organisational policies and procedures. It could also result in huge financial problems for a company and or a custodial sentence for the Director(s) or owners if a non compliance of the 'Duty of Care' legislation is proven.

It is recommended that companies should therefore ask themselves:

- Are their established policies and procedures adequate for company owned vehicles and privately owned vehicles?
- Are these policies and procedures being **fully** and properly managed in line with the 'Duty of Care' requirements?

The updated **2009** version of **The Health & Safety at Work Regulations** requires that **companies must undertake regular assessments** regarding the **health and safety of all employees whilst at work** and for the **safety of others who may be affected by their employees work activities**.

The reversing of larger vehicles without audible warnings or marshalled assistance is an example of failure of 'Duty of Care'.

Something like a bald tyre causing an accident is another, so if a passenger was for example killed or badly injured, responsibility would not solely rest with the driver as the booking and contract is with the company.

Very worryingly one of the most common reasons for **Private Hire Vehicle** failures on street compliance recently in **London** was for bald tyres. The **Public Carriage Office (PCO)** will put a stop notice on such vehicles and remove the licence discs. The **Police** or **VOSA** will also fine and endorse the driver but 'Duty of Care' extends to the **Licensed Operator** and heaven forbid if a bad accident occurs, the **Operator is fully implicated**.

'I didn't know' and 'didn't inspect vehicles' simply won't wash with the courts and Compensation Claims and Corporate Manslaughter charges could come the way of an Operator not meeting their 'Duty of Care' obligations.

Government Ministries and their **Departments** alongside the **Crown Prosecution Service** seemingly believe that there are many companies who are not observing the requirements of the **Duty of Care** legislation and as a consequence are leaving themselves open to prosecution should one or more of their employees become involved in a serious incident whilst they are executing a company journey no matter how small.

The management and responsibilities of this legislation lies squarely with the **Director(s) or Owners** of the company concerned and it is therefore essential that they implement suitable procedures which ensure compliance.

In most instances the matter of the vehicle road worthiness at the time of any incident will be the **Driver's** and or **Owner's** responsibility however in our view it is equally a **Licensed Operators Duty** to ensure **Vehicles** that they send to customers **are serviced and maintained satisfactorily and are subject to regular inspections**.

This means an inspection regime must be in place that would prevent an obvious visually inspectable defect like a bald tyre from going on the road to a customer.

It is estimated that there are currently five million privately owned vehicles being used on company business in one form or another in **England**, whilst there are only three million company owned vehicles. That would suggest that a great many of the difference are being utilised by the **Private Hire / Taxi industry** in one form or another

I have written this brief article to remind **LPHCA Members** of the need for them to ensure that they are fully meeting the requirements of this important piece of legislation.

More information can be obtained from the '**Member's Only**' area of the **Website** WWW.LPHCA.CO.UK and from the **Members Free Business Helpline**, which is run by experts **Croner Consulting**. The low cost telephone number and our scheme number are available from the office, with further information also in the '**Member's Only**' area of the **Website**.

We hope to have representatives from our legal team and 'Croner Consulting' speaking at our AGM at the Heathrow Marriott on 8th October on this topic.