

In this exclusive session, we are joined by Richard Turfitt, Senior Traffic Commissioner, and Laura Hadzik, an expert in transport compliance and road law. This is a unique opportunity to gain invaluable insights from two leading authorities in the field. Richard and Laura provide practical advice and share real-world examples to help operators navigate the complexities of compliance, manage agency relationships, and understand the critical responsibilities tied to an operator's license.

## Part One

### 1. **Why Operator Engagement Matters:**

- Over the last few years, there's been increasing scrutiny on how operators engage drivers. Labelling drivers as "self-employed" often does not align with the realities of their employment, creating legal and compliance issues.
- Traffic commissioners are now focusing on whether driver engagement practices meet the standards required for operator licensing. Failing to meet these obligations can result in license revocation and other consequences.

### 2. **Operator License Requirements and Driver Engagement:**

- Operators and their transport managers commit to meeting several obligations, including ensuring driver compliance with rules on working hours, vehicle maintenance, and safety.
- Effective control over drivers is crucial; operators must have mechanisms for training, monitoring, and, if necessary, disciplinary action to meet these obligations.
- The approach includes not just directly engaged drivers but also agency drivers, requiring systems to ensure all drivers meet the operational and legal standards.

### 3. **Self-Employed and Limited Company Drivers:**

- Generally, it's challenging for HGV drivers to be genuinely self-employed unless they own their vehicle and hold an operator's license. Labelling drivers as self-employed without meeting these conditions often indicates a lack of compliance.
- Misclassifying drivers as self-employed or using 'sham' agencies gives unfair competitive advantages by avoiding costs related to PAYE, NI contributions, and benefits.
- Notably, the **Bridge Step case** highlights how misclassification can lead to license revocation due to the inability to control driver activities effectively.

### 4. **Control as a Central Principle:**

- Operators must demonstrate effective and continuous control over all drivers to comply with licensing obligations.

- This principle is key, especially when engaging agency drivers. The operator must have robust controls in place to ensure drivers operate safely and within the law.

**5. Limited Company (LTD) Drivers and Licensing Risks:**

- Engaging drivers through LTDs, where drivers establish themselves as separate companies, complicates compliance. This practice often shifts the legal and operational control away from the operator, violating operator licensing rules.
- Misuse of LTD drivers can be viewed as “license lending,” which is unlawful and risks penalties, vehicle detention, and legal actions against the operator.
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**6. Traffic Commissioner Actions and Monitoring:**

- Traffic commissioners have multiple ways to identify non-compliance, including audits, competitor complaints, roadside checks, and data from financial or DVSA reports.
- Operators can face public inquiries if non-compliance is detected, and failure to take corrective action may lead to serious consequences, including license revocation.

**7. Importance of Awareness and Proactivity:**

- Operators are encouraged to proactively address any issues in driver engagement practices and to align their operations with licensing obligations.
- Traffic commissioners assess operators' willingness and capability to achieve compliance, and evidence of a corrective plan can favourably impact decisions in public inquiries.