



ROAD TRANSPORT FORUM

Lifting the corporate veil

In the recent appeal case of Vision Travel Ltd the Upper Tribunal have laid down the way in which Traffic Commissioners can “lift the corporate veil” in O-licensing cases.

Before the Tribunal it was argued that the Traffic Commissioner had failed to keep properly in mind the distinct legal personality of the operator as an incorporated company from that of Mr Sharpe, its sole director and shareholder. It was incorrect in law for her to treat them “as one and the same entity”. The entity which should have been considered for the purposes of whether “good repute” continued to exist was that of the operator as an incorporated company. Its repute and conduct went beyond “that of one individual”, however central he or she might be.

Rejecting that submission, the Tribunal said that they agreed that a Traffic Commissioner was required to respect the principle of the separate legal personality of an incorporated company. That principle had the result that there was a corporate veil between such a company and its directors and shareholders. They accepted that it was not enough per se that someone was the sole shareholder and the sole director of a company for a Traffic Commissioner to equate him with the company. However, in this case the Traffic Commissioner had justified and explained her approach involving the lifting or piercing of the corporate veil and treating the operator and Mr Sharpe as being “one and the same”. She had done so by making an explicit finding of fact, that Mr Sharpe was “the controlling mind” of the operator’ saying that on the face of the evidence he alone owned and managed the company, including the transport operations.

The Tribunal held that the Traffic Commissioner’s finding that Mr Sharpe was “the controlling mind” of the operator was an entirely rational conclusion for her to reach on the basis of the evidence before her. They further held that by making that finding she had justified and explained her conclusion that for the purposes of the “good repute” of the operator she could effectively equate Mr Sharpe’s conduct with that of the company. Mr Sharpe was correctly held to be the alter ego of the operator.

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As long ago as 1961 the Court of Appeal held, in the case of *Merchandise Transport Ltd –v- the British Transport Commissioner and others*, that Licensing Authorities, as Traffic Commissioners were then known, were entitled to lift the corporate veil.

In that case Lord Justice Devlin said that: “But the fact that two persons are separate in law does not mean that one may not be under the control of the other to such an extent that together they constitute one commercial unit; or it may be a case in which one man, though nominally independent, is in truth the instrument of another; or it may be a case in which a man has simply put his vehicles in the name of his wife. Whenever a Licensing Authority is satisfied that that sort of relationship exists and that the dominant party is using it to obtain contrary to the intent of the Act an advantage which he would not otherwise get, he is entitled, if not bound, to exercise his discretion so as to ensure that the scheme of the Act is complied with in the spirit as well as the letter.”

Keeping records – a necessity?



Modern technology has created a situation in which it is possible to record almost every activity carried out in the workplace, and, in this context, it is important to remember that, as a matter of law, the cab of a vehicle is a 'workplace'.

In the event of any serious accident the investigating officers will expect to see all the relevant records, on the assumption that a careful employer will have the necessary systems to enable records to be both kept and produced.

In these circumstances an employer is well advised to consider which records are likely to be expected and, in the context of the transport industry, this is particularly true.

There should be a complete personnel file for every driver including a copy of the original of the current driving licence. The employer must be able to show that s/he has seen the original licence produced for inspection. There should also be a medical report confirming that a driver is fit to drive.

Clearly there should be the purchase details of any vehicle with complete, and up-to-date, maintenance records for the vehicle, with confirmation that any required repairs have been carried out. The maintenance records must be in an approved form. Both the FTA and the RHA amongst others provide acceptable forms. There should be similar documentation for any Forklift trucks.

Although tachograph records must be kept to meet the requirements of the operator's licence, it is important to ensure that they are kept in an accessible and orderly manner. Copies of any warnings given to drivers following a failure to record hours and work correctly should be in the driver's personnel file, and should also be with the retained tachograph records.

It is easy to forget the need to keep records for work equipment such as power tools. Unhappily many accidents occur because of the misuse of power tools and so any manufacturer's manual should be retained. There should be maintenance records with inspection records. Employees should be asked to report any fault with a piece of equipment, and there should be a record of those reports with a note confirming the action that was taken.

Records of any training given are essential. They should record the title of the course, the date, and the name of the trainer even if the course was 'in-house'. Obviously the names of those who attended should be recorded with a note as to whether they passed or failed. Note that, if any activity involves a risk of injury, there should be training.

At first sight this may all seem to be an enormous administrative burden but, in reality, once the necessary systems have been established there should be no problem. Additionally, of course, it will focus the attention of the management on issues that will be critically important should there be a serious accident involving either the employer's staff or vehicles.

In the event of a serious accident the first thing that enforcement officers will want to ascertain is the will of an employer to ensure that all his company's activities are safe. The existence of a clear system of relevant records will be persuasive evidence of an employer's real determination to get it right. This is particularly relevant as prosecutions for 'Corporate Manslaughter' are becoming more common.

It has got to be worth taking a moment to look at your company's safety regime.

Jonathan Lawton

Commercial Editor: Mike Jewell, (mikejewell@dynesolicitors.co.uk)

Contributors: Mike Jewell & Jared Dunbar

Dyne Solicitors Limited • The White House • High Street • Tattenhall • Chester • Cheshire CH3 9PX
Tel: 01829 773100 • Fax: 01829 773109 • Email: info@dynesolicitors.co.uk

www.dynesolicitors.co.uk