

Motor Risk

HSC/DETR At-work Road Safety Conference The Barbican, London. 5th April 2001.

In March 2000, the Government launched their road safety strategy; "Tomorrows roads - safer for everyone". In June 2000 they announced their Health and Safety strategy statement "Revitalising Health and Safety". As a result, an independent multi-agency task group (The Work-related Road Safety Task Group) has been assembled to address issues of synergy between the two strategies.

Their remit is to establish accurate statistics, identify the principal causes, promote public debate, propose standards, define mechanisms for linking road traffic law and health and safety at work law and, prepare a regulatory impact assessment if appropriate. As part of this activity, the Health and Safety Commission is currently seeking responses to their discussion document "Preventing at-work road traffic incidents". The scope of the work of the Task Group does not appear to include soft tissue injuries. Closing date for responses, 25th May 2001.

Basic findings

Each year there are 3,500 fatalities and 40,000 serious injuries on the roads.

HSE research suggests that 25-30% of all road traffic incidents involved someone at work. Analysis of fleet motor insurance records suggests that third party personal injury payments could be up to £60 million per year for at-work road traffic incidents.

Statistics also show that of fatal accidents at work, 40% involved HGVs, 13% of victims were not in vehicles, 10% were using cars. On this evidence it is perhaps surprising that the focus of discussion should be on car drivers.

Legal framework

It could be (and is) argued that a general duty to assess and manage the risks associated with occupational road use has existed since the creation of the Health and Safety at Work etc. Act (1974) and associated legislation. However, this duty has not as yet been the subject of any official guidance from the HSE. Instead, occupational road use has been treated in the same manner as non-occupational road use, being subject to the Road Traffic Act (1991) and its enforcing bodies.

Current legislation that would seem to be apposite would include the Management of Health and Safety at Work Regulations (1992/9) and the Provision and Use of Work Equipment Regulations (1992).

Extending the Health and Safety at Work legislation specifically to cover at-work road use incidents would raise a number of questions for insurers.

The definition of an occupational road traffic incident would need to be clarified. Does it depend on who is at fault, or would it be a strict definition, i.e. if any driver involved is 'at-work'? Additionally what is to be defined as at-work road usage? Would this cover company cars, personal cars regularly used for company business, personal cars used for company business as a one-off or employees commuting?

Concern stems from the potential for overlap between EL insurance and Motor insurance (assuming that the driver is covered by a Motor policy in addition to an EL policy). It is likely that Motor policies would be preferentially triggered and bear the costs, as they appear to be the most closely suited policy. However this is not certain to be found in every case.

A key point will be the apportionment of responsibility between driver and employer for the state of the vehicle and the way it is conducted. Under the Health and Safety legislation both employees and employers have responsibilities for Health and Safety. However, historically, driving has been seen as very much an individual and personal deed. Even for occupational use the responsibility for the state of the vehicle and the way it is conducted has generally lain with the driver, unless some material negligence (e.g. un-roadworthiness) by the employer could be proven. The extension of Health and Safety legislation to at-work road usage would require employers to take more responsibility for the management of the vehicle and the driver. However, it could be argued that the driver should retain some responsibility for occupational road risks, as a complete transfer of risk would provide opportunity for moral hazard. How much of the responsibility would be passed onto the employer as a result of such treatment remains to be seen.

The practical complexities of increasing employer responsibility for occupational road use include:

- The competence of investigating police officers to identify occupational causes for RTAs.
- The definition of RIDDOR events.

- The emerging duty on employers to investigate occupational accidents.

Each of these could have implications for liability assignment and foreseeability of recurrences. Reasonably practicable control measures were suggested. These included:

- Employee empowerment to select less hazardous alternatives e.g. use of public transport, avoidance of built up areas, avoidance of travel in peak periods, regular rest breaks...
- Disciplinary action against drivers found to be under the influence, or using mobile 'phones while in control of a vehicle.
- Routine daily checks of occupational road vehicles.
- Annual training in safe driving.



Discussion groups at the conference raised a number of issues relating to insurance:

- Guidance from insurers on the occupational use of vehicles.
- The possibility of removing block insurance (i.e. fleet insurance) as this contradicts the individuality of risk assessment, a key feature of Health and Safety legislation.

It was reassuring to note that official speakers at the conference made very little reference to EL as an effective mechanism for improving risk performance in this arena.