

# 26

## Safe driving and work-related road risk

members' guide

experts at work



# contents

	<b>introduction</b>	<b>1</b>
<b>1</b>	<b>driven to death</b>	<b>2</b>
<b>2</b>	<b>the regulatory framework</b>	<b>3</b>
<b>3</b>	<b>the law in brief</b>	<b>4</b>
<b>4</b>	<b>assessing the risks</b>	<b>6</b>
<b>5</b>	<b>managing the risks</b>	<b>10</b>
<b>6</b>	<b>experience from the courts</b>	<b>17</b>
<b>7</b>	<b>research</b>	<b>19</b>
<b>8</b>	<b>useful references</b>	<b>20</b>

# introduction



## fact

**Being killed in a car crash is the greatest risk most Prospect members will ever face.**

## risk control

Requires **your employer and you** to share responsibility for:

- your organisation's driving policy, culture and performance
- the vehicle you use
- the journey you make
- how you drive and
- the ergonomics: your interface with the vehicle.

## this guidance aims to

- safeguard you as a road user
- protect you as a duty-holder
- enable Prospect reps to measure and promote their employer's compliance.

# driven to death

## 1

**1.1** It's a tragedy when anyone is killed or maimed on the road. But it's even worse when they were simply trying to do their job, especially if it turns out their workload was overstretching them. Around 1,000 road deaths and 13,000 serious road injuries every year are work-related.

**1.2** The facts are that:

- up to 1 in 3 crashes involves a vehicle being driven for work
- every week, around 200 road deaths and serious injuries involve someone at work
- research suggests that company car drivers who drive at least once a week are 40-50% more likely to have an incident.

**1.3** These figures include road users driving for a living, such as road haulage and delivery drivers. However, studies of drivers with **high work-related mileage** (be that for work or long car journeys after work) demonstrate that they tend to have an elevated accident rate and to drive while **fatigued**, under time **pressure** and **distracted** by in-car tasks. **These risk factors are clearly relevant to Prospect members.**

# the regulatory framework

## 2

**2.1** The significance of work-related road deaths is rarely highlighted by the Health and Safety Executive, because primary enforcement of road traffic law is the responsibility of the police, not HSE. But this doesn't eradicate the health and safety requirements on the employer to control and manage work-related road risk, alongside other occupational risks. To this end, HSE and the Department for Transport have published '*Driving at work: managing work-related road safety*' to assist ([www.hse.gov.uk/pubns/indg382.pdf](http://www.hse.gov.uk/pubns/indg382.pdf)).

**2.2** In recent years many employers have significantly enhanced their precautions and safety checks. This may have been prompted by the insurance industry telling employers to be more 'defensive' to address the rise in insurance claims; or it may be because of the introduction of the Corporate Manslaughter and Corporate Homicide Act 2008, when it was widely expected that the police would prosecute companies for work-related road fatalities.

**2.3** However, many companies still focus on driver-centred interventions such as selection and training. They pay scant attention to the day-to-day working practices and pressures that mean their staff drive thousands of business miles a year, often at peak times, against deadlines and with the expectation that they will respond to work-related phone calls. **Drivers often feel compelled to divide their attention between driving and an imminent meeting or task. This is dangerous and undermines both employer and driver compliance with the law.**

# the law in brief

## 3

**3.1** Work-related road risk is no different from any other work-related risk: the employer has common law duties of care and statutory duties under the Health and Safety at Work Act 1974 and its associated regulations. So health and safety management duties on policy, risk assessment, maintenance, staff training, monitoring and auditing apply equally. This is required by the Management of Health and Safety at Work Regulations and the Provision and Use of Work Equipment Regulations, because a car is included as 'work equipment'.

**3.2** Typically, success requires commitment from the top, employee consultation and involvement (to ensure shared ownership) and proper policy implementation by line management. It also requires you as an employee to adhere to the standards that are agreed and to report any problems that arise in the course of your work. After all, there may be a flaw or something impractical in the policy or procedure that you are meant to follow which, if left uncorrected, is subsequently held against you as the basis for non-compliance. **So if you spot a problem, report it!**

Your employer	You
Create a safe driving culture that staff support	Ensure a workable driving policy. Report known deficiencies
Ensure vehicle suitability and roadworthiness	Maintain own vehicle. Check pool/hire/supply car
Ensure driver fitness, competence and compliance	Comply with road traffic law
Set realistic meeting times and journeys	Agree realistic meeting times and journeys

**3.3** This members' guide considers the law in practice: what your employer should be doing to assess and manage the risks, what you as a driver can do to help yourself, and some of the case law that highlights how everyone has responsibilities. Reps can use

the questions listed as a basis for monitoring, negotiating and as always, making a difference!

**3.4** For more details of specific statutory requirements, members should refer to government sources kept up to date electronically such as the websites provided by Directgov, the Driver and Vehicle Licensing Agency and HSE.

# assessing the risks

## 4

**4.1** Driving is arguably one of the most skilled and demanding tasks we undertake. Drivers must control their vehicle while taking account of and reacting to the constantly changing environment. This requires sustained attention, vigilance, decision making, memory and perceptual motor skills.

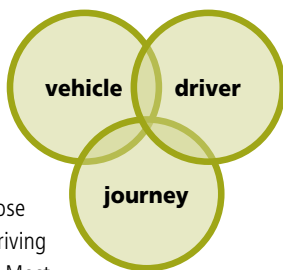
**4.2** Risk assessment for driving is no different from any other risk assessment. It's about the hazards that can cause harm, who could be injured or killed and the likelihood or chance of this happening.

**4.3** Your employer should have a generic risk assessment for the driving typically expected in the course of its business and which takes account of the vehicle, driver and journey. More specific risk assessments may be required in circumstances that go outside the general norm: for instance, in the event of a serious deterioration in the weather. But let's start with the norms.

### Key considerations of generic risk assessment

#### employer's checklist?

**4.4** The questions that follow are those that employers should cover in their driving policy and/or generic risk assessment. Most are reproduced from guidance jointly developed by HSE and the Department for Transport. Prospect reps and members can use them as a checklist, to benchmark employer compliance.



### vehicle suitability – is it fit for purpose?

- Do you take account of ergonomic considerations before purchasing or leasing new vehicles? According to HSE, people who drive more than 25,000 miles a year have far more sick leave than low-mileage drivers. A good proportion are likely to be 'repetitive driving injury' such as back or neck pain as a result of poor driving posture.



- Do you ensure that privately-owned vehicles are not used for work unless they are insured for business use and, where applicable, have an MOT?

### **vehicle condition – are vehicles safe and fit?**

- Do you have suitable planned preventive maintenance arrangements? How do you verify standards are met? Are you clear about who has responsibility for vehicle checks, when and to what extent? [This includes fleets and rentals].
- Is safety and emergency equipment appropriate, in good working order and maintained?
- Do you believe the employee has responsibility to look after a company vehicle, lease or rental car? If so, think again – if you require employees to check safety systems, you must document this, train employees how to do the checks and monitor that they do them. It may be better to have internal systems or outsource to competent contractors – in either case, auditing is imperative.
- Are appropriate provisions in place for carrying and securing items, goods and equipment in the vehicle? There are specific legal duties for the carriage of dangerous goods.

### **training and information**

- Do you ensure that staff are instructed in the use of new vehicle technologies? Many drivers lack experience in the latest advances.
- Do you ensure that hire car companies provide a user handbook?
- Do you provide drivers with guidance on good posture and how to set their seat correctly?

## driver competence

Are you satisfied that your drivers are competent and capable of doing their work in a way that is safe for them and other people?

- Do you assess the driving capabilities of all new drivers, for instance, using online driving assessments? When did your employees last have a driving lesson: was it for their driving test? Safe driving techniques have advanced considerably and 'defensive driver training' is provided by the Institute of Advanced Motorists. Updating driver skills and awareness can be a life-saver and IAM qualifications can also reduce the insurance premium. Employers should put anyone who routinely drives for work through this sort of training with refreshers.
- Do you screen driving licences, DVLA records, experience, training records and knowledge of the Highway Code? Do you outsource DVLA vetting? In order to meet Data Protection Act requirements you must use DVLA-accredited contractors.
- Do you evaluate whether additional or refresher training is necessary or stipulate company training standards you expect to be met?
- Do you prioritise drivers, for instance those who do high mileage or those who are only occasional business drivers?
- Do you ensure drivers know how to carry out vehicle checks (tyre pressures, oil and screenwash levels, adjusting headlamp beam to compensate for load, adjusting seat belts and head restraints)?
- Do drivers know what action to take in the event of an incident, near miss or vehicle breakdown?

## fitness

Are you satisfied that your drivers are fit and healthy to drive safely and will not put themselves or others at risk?

- Do you ensure drivers know and meet the health and fitness requirements set out by DVLA and the Highway Code?
- Are drivers aware of the dangers of fatigue? Do they know what they should do if tired or drowsy?
- Is company policy supportive of driver autonomy regarding breaks and overnight stays? If not, what is the strategy for fatigue management and how is it checked?

- Do you monitor driving hours? Do you ensure personal appraisals include the management of work-related road risk?

### **distractions**

- Do you consider how to make contact with your drivers? Good employers ban driver use of hand-held mobile phones or other mobile communication devices and ban or restrict the use of hands-free equipment. They expect drivers to activate their voicemail and make calls when their engine is switched off.
- Do you explain to your drivers the purpose of any driver monitoring devices or vehicle trackers and ensure their use is positive, not detrimental to safe driving?

### **journey suitability**

- Is the journey necessary? Could the activity be achieved instead via a telecon, videoconference, net meeting/webinar or by using public transport?

### **planning and scheduling**

- Sleep-related accidents are most likely between 2-6am and 2-4pm. Do you consider this when planning work schedules?
- Are schedules realistic – do they allow for rest breaks, planned highway maintenance, weather conditions, shift patterns?
- Are you satisfied that company policy does not put drivers under pressure to work long hours, make excessively long journeys, or take risks such as exceeding safe speeds because of agreed arrival times?

# managing the risks

## 5

**5.1** In addition to providing the risk assessment checklist, the HSE/DfT publication *Driving at Risk* reinforces the need for developing a **safe driver policy** and integrated health and safety management arrangements that include monitoring and checking that the policy is applied and works. There should be **blame-free** mechanisms for reporting incidents, including near-misses and any impacts, regardless of fault. Understanding any **trends** or incident patterns will help target resources to maximise the impact of preventive measures and to investigate (jointly with union health and safety reps) where appropriate help will take forward the lessons learned.

### work-driving policy checklist

- company rules and procedures covering vehicles, drivers, journeys and management
- arrangements for staff consultation and involvement
- safe driving standards and performance indicators
- responsibility for the policy and its enforcement
- resources for compliance
- information gathering and sharing with staff
- arrangements for driver assessment, information, instruction and training
- mobile phone use
- arrangements for tackling fatigue
- surveillance (eg vehicle tracking and/or driver monitoring devices).

**5.2** Prospect has experience of many company policies that adopt these key HSE/DfT principles. Only a few go further and create expectations of **careful scheduling and realistic meeting times**. It appears that corporate ideals often flounder within the management chain and become overshadowed by business demands and performance pressures.

**5.3** Prospect advises reps and members to be alert to the pressures, be they external and from line management or self-imposed from a sense of professional responsibility. **It is you who may be at greater risk of an accident and who may unintentionally kill or be killed.** So Prospect urges reps to push their employer to consider such policies as:

- examining work schedules to ensure that drivers are not pressured by time
- ensuring that staff do not drive long journeys after a full day's work (for instance by enabling overnight stays for employees attending a distant meeting)
- limiting in-car distractions.

## your role in risk management

**5.4** Remember, road traffic law has primacy over health and safety law. This means that when you drive, you are likely to be the principal duty-holder. There are at least 25 pieces of legislation, guidance and protocol relating to at-work driving, covering a range of matters such as speed, insurance, vehicle roadworthiness, mobile phone use and drink-driving. **You must comply.**

**5.5** So don't let work pressures undermine your compliance, your driving licence, your health, your employment or the lives of you, your passengers and/or other road users. Assert your right as an employee and your duties as a driver to travel from A to B safely, without putting you or other road users at risk, and without jeopardising your good record or the reputation of your employer.

## questions you should ask yourself

### insurance

- Do you have the necessary insurance cover for driving on official business? If using an official vehicle, carry only official passengers – other passengers may not be insured. If using a hire car that is delivered to your home, check the insurance cover is tailored to your professional needs. Warning: Prospect MOD Group reports that it does not recommend the use of pool or hire cars in the Ministry of Defence because MOD only provides third party cover, a shortfall from fully

comprehensive. You may wish to check the cover your employer provides.

## competence

- When did you last have a driving lesson? Was it for your driving test? Safe driving techniques have advanced considerably and 'defensive driver training' is provided by the Institute of Advanced Motorists. Updating your skills and awareness can be a life-saver and IAM qualifications may reduce your motor insurance premium. If you routinely drive for work, your employer should provide targeted training and refreshers (about every three years is considered sensible).

## vehicle

- If you use your own car, it is likely you will be responsible for ensuring its roadworthiness and that routine checks and any required servicing are maintained. Your employer may request proof and you are advised to cooperate. This includes reasonable requests for proof of maintenance and servicing. Some employers now ban the use of private cars to avoid the vicarious liability that arises if an employee drives dangerously.
- If you are provided with a company or hire car, you may expect your employer's contract with the provider to guarantee roadworthiness and maintenance. While this is a reasonable expectation, as a driver you are also expected to make checks.
- For hire car users in particular, it makes sense to make safety-critical checks prior to your journey. Certainly you must ensure familiarity with vehicle controls before setting off.

### Safety-critical checks include:

tyre condition and pressures, oil and screen wash levels, lights, windscreen wipers, emergency equipment.

- An all-too common complaint from members is that a hire car is provided without a handover or handbook – insist that these are prerequisites to your journey if the vehicle is unfamiliar and leaves you in any doubt as to its operation. Remember your rights to safety, your duties as an employee to ensure your own safety (and that of others) and your duty to cooperate with your employer. Do not accept a vehicle if you

have doubts about its safety. Speaking up for your safety is an essential right that Prospect will defend.

## planning

- Route planning and weather forecasting are sensible for journeys that are out of the ordinary. This is about considering the most appropriate route, finding out whether there are planned road works, anticipating the weather, having due regard to the likelihood of fatigue and so on. The AA has excellent web advice with practical driver tips: for instance, in snow, pull away in second gear to enhance vehicle control. The Directgov website journey planner is similarly helpful.

## distractions

**5.6** Safe driving requires your full attention. Drivers are faced with many distractions but many are in-car and therefore within your control, eg:

- having a phone conversation
- map reading
- using mobile communication devices (BlackBerry, laptop, vehicle navigation systems, etc)
- changing CDs/tapes
- loud music (which may mask other sounds)
- eating and drinking
- arguing with other road users!

**5.7** The use of a hand-held phone while driving is now illegal. So too in some circumstances is the use of a hands-free kit. Talking on a mobile phone is not like talking to a passenger who is aware of your driving considerations. The likelihood of distraction is greater and may stop you paying due attention or maintaining proper control of your vehicle. The Attorney General has stated in relation to fatal road traffic incidents that: 'Any mobile phone use at the time of an accident, whether hands-free or not, will result in prosecution for death by dangerous driving.'

**5.8** Rest assured that in the event of an incident the police will check your phone use. Yes yours – it may be work but it's your call whether you make or take it! **Prospect's policy line is therefore: phone ON = engine OFF.**

**5.9** RoSPA says drivers using their mobile, whether hands-free or not:

- are less aware of what's happening on the road around them
- fail to see road signs
- fail to maintain good road position and steady speed
- are more likely to tailgate
- react more slowly and take longer to break
- are more likely to enter unsafe gaps in traffic
- get more frustrated and stressed

**....are four times more likely to crash!**

## fitness

**5.10** As a license and duty-holder it is for you to ensure you meet the DVLC health and fitness (including eyesight) requirements. High mileage drivers will wish to have regard to their back health.

## fatigue

**5.11** Surveys suggest that as many as 60% of drivers admit to driving while feeling drowsy. Up to 30% have fallen asleep at the wheel and up to 8% have had a road accident due to fatigue. Not surprisingly, studies link accidents to a lack of sleep and/or poor quality sleep (for instance, when on stand-by) before driving and night-time driving.

**5.12** Many accidents occur as drivers return from work, and company car drivers and shift workers are among those identified at greater risk. Higher rates of fatigue-related accidents are associated with monotonous roads such as motorways. Simulator studies suggest the most consistently reported effects include lane meandering, decreases in speed, increases in speed variability, increased off-road events and slower reaction times.

## breaks

**5.13** Research that looked at Prospect energy sector members revealed how common it is for our members to work through breaks, with a third reporting that they never or rarely took the



breaks to which they were entitled. The study found that almost three-quarters of drivers regularly experienced fatigue while driving for work and a fifth experienced it frequently. Below, we report on relevant case law, including dual convictions of a company manager and driver in respect of death by dangerous driving associated with working long hours. See Prospect *Members' Guide to Working Time and the Law*.

**Please try to take your breaks and work your contracted hours – if we all did this employers would soon realise the staffing levels they ought to resource!**

## your attitude

**5.14** Research shows that company drivers tend to be more hostile to traffic laws, more likely to drive under time-pressure while tired or undertaking distracting or cognitively demanding tasks, and less likely to consider themselves responsible and safe drivers. Their willingness to perform dangerous violations is reportedly greater.

**5.15** Prospect reps in the Ministry of Defence report that MOD is using technology to manage driver attitude. An electronic monitoring device with set parameters of vehicle control and speed is fitted to the vehicle, to monitor how it is driven and provide instant feedback to the driver. For instance, on cornering, braking, acceleration and speed, a green LED on the dashboard indicates good driving; amber warns and red indicates dangerous driving.

**5.16** Following a consultation exercise, the system (called 'DRIVES') was accepted by management and Prospect MOD Group as a **positive tool to help lower the risk of accidents**. We expect this sort of initiative to be mirrored elsewhere so we can advise about the consultation if requested.

**5.17** The key point is that road safety law requires you to be in control of your driving. Your compliance with the law, your technique on the road, whether you alarm other road users including pedestrians, are all **your responsibility and your choice**.

## emergencies

**5.18** All vehicles should be equipped with the essentials: a high-viz vest or jacket, warning triangle, torch, cloth, ice-scraper and/or de-icer.

**5.19** As a duty-holder, you should know what to do in the event of vehicle breakdown. Refresh yourself if necessary by looking at the advice in the 'travel and transport' Directgov webpages or those provided by the AA. Remember, special care is required to deal with a motorway breakdown, because:

- the risk of a fatal or serious accident to an occupant of a parked vehicle is about three times that of driving along the motorway
- 32% of accidents on the hard shoulder are fatal or serious, compared with 13% of all motorway accidents
- on average around 50 people every year are killed or seriously injured in hard shoulder accidents.

**5.20** Consider storing the leaflet '**Surviving the Hard Shoulder**' ([http://www.survivegroup.org/download\\_files/Leaflet%2022-06-07.pdf](http://www.survivegroup.org/download_files/Leaflet%2022-06-07.pdf)) in your glove box as a reminder should you need it.

# experience from the courts

## 6

**6.1** Criminal and civil case law arising from prosecutions, litigation and personal injury claims has strongly influenced work-related road risk management and the expectations of insurance companies for their clients. Members need to be alive to developments.

### vehicle maintenance

**6.2** It used to be the case that liability for road traffic accidents involving a work vehicle rarely went beyond the driver. However, increasingly the courts have recognised that a work vehicle falls under the Provision and Use of Work Equipment Regulations. As such, the previous degree of protection from claims enjoyed by car leasing and rental companies has changed. They used to be regarded as mere owners of the vehicle and their maintenance contractors. This is no longer the case. For instance, a garage was blamed for a fatal crash because it failed to carry out a proper service and check the braking system.

**6.3** Indeed, for daily rental it is unlikely that the courts will now place any responsibility for checking safety-critical systems upon occasional drivers. It may be different for longer hires, but in this case employers are likely to have to train the driver as to what to check, when and how.

### long hours and fatigue

**6.4** Pressures to work long hours and the risks of driver fatigue are taken seriously by the courts.

- In one case, the judge remarked that a managing director's words of "eating's cheating!" and "you can sleep when you're dead" summed up the company's philosophy. Companies need to be sure that their employees are in a fit condition to drive and have had adequate quality sleep before getting behind the wheel.

- In another case, a company was fined £30,000 after it admitted breaching health and safety law following the fatal crash of an employee who had worked four consecutive 19-hour days and the previous 11 days without a day off.
- A road haulage company manager was jailed in one case for failing to prevent his drivers from working excessive hours; but so too was the driver, for causing death by dangerous driving. So both driver and employer can face criminal prosecution.

### 6.5 But how much work is too much for employees to drive?

- A driver was returning home from Yorkshire to Bournemouth on the day of an incident which occurred around 11pm. In Hampshire she struck a recovery truck and killed a man working under a parked car. The jury in the trial heard that she had been awake for more than 16 hours at the time of the incident. In sentencing her, the judge noted she must have fallen asleep at the wheel but he did not believe that when she set out she realised she was as tired as she obviously was. **Sixteen hours wakefulness** is seen by many employers as an absolute limit in expecting people to work and then drive. It is good practice to consider this limit when agreeing risk assessments.

## mobile phones

- An employee spent 6½ minutes on his hand-held mobile phone (while driving his own car for work) during a 15-minute journey in which he ignored 15 road signs. He then made an illegal turn onto the M6 motorway, killing a motorcyclist driving in the opposite direction. He was jailed for five years followed by a five-year driving ban. His employer escaped prosecution because the call was to the driver's wife, and not a business call.
- An employee using a hand-held mobile phone lost control of his car and collided with another, killing its driver. He received a three-year jail sentence plus a four-year driving ban. His employer was able to show that the policy and procedures were in line with good practice and that specific instructions had been issued to all employees regarding the use of mobile phones while driving. The employer was therefore cleared of any blame.

# research

## 7

**7.1** Research suggests that company car drivers who regularly drive at least once a week have an increased road accident liability of around 40% to 50% above ordinary drivers. A number of theories have been advanced to explain this, including high mileage, the use of new high performance cars, low personal costs in terms of repairs and inconvenience, personality traits such as aggression and extraversion and organisational factors such as time pressure and work-related fatigue.

**7.2** Studies that have explored **risk-taking behaviour** suggest that company car users drive faster than other road users and often exceed the speed limit. Those who do so frequently consider arriving on time to be more important than exceeding the speed limit.

**7.3** Others have identified time pressure/haste as an important influence on driving behaviour, suggesting that organisational changes which reduce time pressures might be beneficial. However, others have suggested that since the increased accident liability of company car drivers appears to extend to non-work driving, then driving style should also be addressed.

**7.4** More recent studies highlight the significance of the **safety culture** of an organisation, as lower accident rates have been found in companies with clear policies, rules, formal training and effective communication/reporting systems compared to companies that do not. Relatively few studies have explored these issues in any detail.

# useful references

## 8

- Travel and transport, including the Highway Code  
<http://www.direct.gov.uk/en/TravelAndTransport/index.htm>
- HSE web pages  
<http://www.hse.gov.uk/roadsafety/index.htm>
- Think! Fatigue pages  
<http://think.direct.gov.uk/fatigue.html>
- Driving for better business  
<http://www.drivingforbetterbusiness.com/>
- ROSPA road safety  
<http://www.rospa.com/roadsafety/>
- Institute of Advanced Motorists  
<http://www.iam.org.uk/>

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# experts at work



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