



How to manage your company's grey fleet

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Foreword

Effective management of your grey fleet is crucial in respect of an organisation's financial, environmental and duty of care obligations. Findings from a number of studies and fleet consultancy projects have shown that many organisations are unaware of the costs, environmental impact, and duty of care risks associated with employees using their own vehicles in the course of their work.

There are an estimated 14 million grey fleet vehicles on UK roads made up of more than 11.8 million associated with the private sector and 2.2 million from the public sector. The benefits of having a grey fleet are numerous and tend to represent lower total costs than having to lease or buy vehicles for employees travelling for work purposes.

Whilst mileage disbursements tend to cover the cost of petrol, which includes a premium to cover vehicle wear and tear, it can still prove more cost-effective for companies that don't have high business mileage.

However, it can be confusing to work out exactly who is in charge of managing your grey fleet. In larger organisations, you may have the luxury of having a dedicated fleet manager, but for most UK businesses, this isn't the case.

This report takes a specific look at managing the duty of care of your grey fleet, aiming to clarify any unclear areas regarding grey fleet obligations. It outlines the risks and implications to your business and helps you to understand how to develop an effective duty of care process to both safeguard your employees and reduce your organisational risk.

Practical guidance for organisations includes how implementing a driver and vehicle document checking system, as part of your business expenses process, can be most effectively deployed to deliver substantial time and costs savings, and improve risk management; ultimately reducing the number of dangerous or illegal vehicles on the roads.

What is grey fleet?

Grey fleet vehicles or drivers is a term used to describe vehicles that do not belong to the company, but which are used for business travel. This is most often an employee's own vehicle. When these vehicles are used for work purposes in return for fuel expenses of other disbursements, they become grey fleet vehicles. The employee is reimbursed on a pence per mile basis for using their private vehicle on business journeys.



“The Driver Compliance Pack will remove a significant amount of the admin associated with duty of care, whilst ensuring that the Trust remains compliant with the legislation, freeing up staff time to be spent on what they do best for the Trust.”

*Stuart Smith,
Assistant Finance Director,
Newcastle upon Tyne Hospitals NHS
Foundation Trust*

Introduction

Driving can be considered one of the most dangerous activities you can do whilst at work. Road accidents are the biggest cause of work-related accidental death, with the Health and Safety Executive (HSE) estimating costs arising from 'at-work' road traffic accidents are in the region of £2.7 billion per year .

Employers across the country have a legal duty of care under the Health & Safety at Work Act 1974, to protect their employees from the risk of foreseeable injury, which includes when employees make work-related journeys. This means anyone driving on company business, regardless of who owns the vehicle.

This covers all staff who need to drive as part of their work - those who drive as a job and those who drive occasionally or for short distances e.g. travelling to and from meetings or site visits and travelling to and from home to a non-permanent place of work.

It also includes people who you ask to do you favours.

For example, a member of your staff, a family member, or friend who you ask to take the post on their way home, or to collect a parcel on their way to work, or to run an errand while they are out shopping. All of these activities constitute driving on business and come under the remit of the new legislation.

In the unfortunate event of an accident involving an employee, the HSE will look at your company and check you are, as far as reasonably possible, carrying out your duty of care. Practically speaking, you cannot control employees driving, but you can put measures in place to limit the risks associated with grey fleet drivers such as developing a driving at work policies, checking driver and vehicle documentation, and providing training on good driving practices.

There are:

- 14 million grey fleet vehicles in the UK today
- 8 million people driving on company business every day
- The Occupational Road Safety Alliance recorded in 2015: 45,859 work-related road casualties, 4,822 of them serious including, 541 killed.

What are the risks?

Legislation

There are a number of legislative acts that come into place when dealing with driving at work. This includes people that your organisation pays money for driving on works business, whether that be in their own vehicle, or a company vehicle.

The Road Traffic Act 1988 makes it a criminal offence under Section 87(2) for an employer to 'cause or permit another person to drive on the road a motor vehicle.....otherwise than in accordance with a licence authorising that other person to drive...' The offence is punishable by an unlimited fine.

The Health & Safety at Work Act 1974 states organisations have a legal duty of care to protect their employees from the risk of foreseeable injury, which includes when employees make work- related journeys.

Deaths on the road are classified as manslaughter, the fine for conviction under the Corporate Manslaughter Act, a large organisation would face a fine of between £4.8m and £20m and imprisonment.

In the event of an accident, you risk:

- Going to jail - the police are mandated to investigate road accident fatalities as manslaughter
- Being fined - unlimited fines based on your turnover, not profit, i.e. big enough to close you down
- Civil action being taken by your own staff, and/or a third-party insurer.

Penalties for non-compliance

Criminal prosecution

Line Managers and Company Directors can be charged even when they are not directly responsible for the offence. The Government has recommended that reckless driving should attract the same penalty as that at present for manslaughter.

Not only could businesses, directors and managers face criminal prosecutions in the event of an employee being involved in a road traffic accident, there are increasing warnings that civil proceedings could be instigated by employees disgruntled at the workload, unsuitable vehicle condition and lack of care shown towards them by employers.

If your organisation is paying employees for business journeys that do not have a valid driving licence or their vehicle is not taxed, with a valid MOT and insured for business purposes, your senior managers and directors are liable for criminal prosecution.

Financial

Failure to comply with the regulations could lead to a criminal prosecution and/or an unlimited financial penalty based on company turnover.

For corporate manslaughter, the fine will seldom be less than £500,000 (and may be measured in millions of pounds.)

Companies found guilty under the Health and Safety at Work Act face a fine with a starting point ranging from £250,000 for a micro organisation to £4m for a large company.

If a person employed by your company is involved in an accident which results in serious injury or death of another, the families of victims will also be able to seek compensation via the civil courts.

Reputation

The Corporate Manslaughter Act allows courts to impose a Publicity Order, requiring the organisation to publicise details of its conviction and fine. They are an important new tool designed, in particular, to punish large corporations that will be less affected by having to pay a big fine but which will additionally be punished by the impact of adverse publicity upon its reputation.

Serious accidents are also always covered by the local, and sometimes the national press. Breaches of Health and Safety regulations by local firms are also considered 'newsworthy'. Negative publicity like this will have significant consequences too.

'We were drawn to Selenity Expenses by the duty of care functionality, having a team out on the road the vast majority of the week now means we can ensure the safety of colleagues and also ensure that the business meets its legal obligations.'

Duty of care documentation

If we take a look at what processes and documentation are needed, we can break this down into three parts. The driver, the vehicle, and the journey.

The driver

Drivers' responsibilities and obligations:

- Their motor insurance must include insurance for the correct class of business use
- They must hold a current driving licence for the correct vehicle type
- They must inform you of medical issues, including details of medication prescribed by their GP etc.
- Their vehicle must have been serviced and maintained to the manufacturer's schedule
- Tyre tread depths must be within legal limits
- A current MOT test must be passed and certificate issued if required

The vehicle

What constitutes a business vehicle?

We immediately think of company cars, vans, trucks etc. but it also includes mini-buses, motorbikes and any other vehicle used on the road. Anyone who uses their own vehicle for your business – however trivial – falls under the jurisdiction of the legislation.

The vehicle's condition

Your business is required to keep records of every vehicle used (however infrequently) on company activities.

Documented evidence is required to show that the following have been considered:

- Routine servicing – is it up to manufacturer's standards?
- Maintenance schedule – has the vehicle been serviced on time?
- MOT and road tax - is it up-to-date? You can check on the Gov.uk website
- Tyres – are they within legal tread depths?
- Insurance – is it current and of the right type?
- Suitability of use – is the vehicle overloaded?
- Is it the right type of vehicle for the job?

The journey

The more obvious are journeys to:

- a work site
- a client's office
- a customer's home
- a training venue

However, the definition of a business journey can also include:

- going to the bank
- picking up a parcel
- going to the chip shop
- taking a colleague to the station
- route planning pointers

In the event of an accident, investigating bodies (including police, insurers, and the HSE) are likely to look into the following:

- Was a journey risk assessment carried out and was the journey necessary?
- Are you satisfied that drivers were not being put at risk from fatigue caused by driving excessive distances without a break?
- Has company policy eliminated the need for long journeys or reduced them by combining other transport methods e.g. rail or plane?
- Are drivers allowed to make an overnight stay, rather than having to complete long journeys at the end of the working day?

How does duty of care relate to business expenses?

If your organisation is reimbursing employees money for business mileage, then you need to ensure your duty of care process is aligned with your business expense process and policies.

If in the event of a business travel related accident, investigating bodies such as the police, insurers and the HSE are likely to look into the following internal policies to ensure they all satisfactorily reduce exposure to risks:

- Expenses policies
- Human resource policies
- Health and safety policies
- Workplace culture
- Vehicle management

If we take a closer look at how duty of care relates to expenses policies, we can see that reducing the exposure to risks can include:

- a: Detailing within the policy provisions for overnight stops and ease of gaining approval and claiming for overnight accommodation, which in turn satisfies any investigator that the driver was not being put at risks from fatigue caused by excessive distances without a break.
- b: Ensuring that you can evidence documentation to support the condition of the vehicle, driving record or insurance class of use before reimbursing any mileage expenses.

When you consider the level of scrutiny that comes into play during an investigation it becomes clear just how important your duty of care process is.

Mythbusting

During the course of preparing this report we came across many misconceptions.

Here are a few:

This legislation won't affect me because..."

"...My business is too small" **FALSE**

The legislation applies equally to all businesses who are employers, from sole traders to PLCs. There are additional requirements placed on businesses that employ over 5 people.

"...I don't run company vehicles" **FALSE**

If you drive (or ask a third party to drive) a vehicle on company business – whoever it belongs to, or however short the journey - it applies to you.

"...My staff run their own cars" **FALSE**

Whoever the vehicle belongs to, it becomes your company's responsibility to ensure that it is roadworthy and maintained as per the manufacturer's service schedule, that it is taxed and insured for business use, and carries a current MoT certificate etc.

"...Employees tick a declaration on their expenses claim therefore it's their responsibility" **FALSE**

Regardless of this declaration, it is still your responsibility to ensure you've collected the appropriate duty of care documentation.

"...all this is handled by our Leasing Company/ Accountants/ Insurance Brokers/ Bankers/ Lawyers etc...." **FALSE**

The law is quite clear in this respect: It is the responsibility of Directors and Line Managers and cannot be transferred to a third party.

Recommendations

To address the issues raised throughout this paper, Allocate offers the following proposals, which are aimed at encouraging the implementation of a duty of care policy linked to your business expenses process.

The various benefits achievable through these recommendations will make a significant contribution in delivering substantial time and costs savings and improving risk management, whilst alleviating organisation challenges around duty of care obligations.

Having considered the risks, and what is involved, the first step is to create a company duty of care policy. This should detail the duty of care records you need to collect, along with the measures in place to ensure things such as business travel are not approved and reimbursed until the documentation/records are evidenced.

Once you have this in place, the next step is to review and implement a process to carry this out. Whilst it is more than achievable to functionally carry this out using a manual process, it doesn't provide full compliance that it is being executed. Like any process, the key to compliance is through a structured workflow which has measures in place for managing and reporting that each stage is being properly carried out. Manual processes often suffer the same 'symptoms' of inaccuracies, bottlenecks, human error, plus can be inextricably lengthy and time-consuming. It is for this reason we recommend using a digital approach to recording and managing your duty of care process. This enables you to quickly and easily manage and report on your driver and vehicle documentation.

Once you have started using a system to help manage your obligations, this whole process should be revisited and audited periodically.

An audit ensures that the process is considered systematically, is relevant, and continues to develop; helping you identify where further improvements can be made to policy or training as an example. By taking steps to develop and maintain a good duty of care policy around driving, you're not only ensuring that you're adhering to your legal obligations, you're likely helping to improve the safety of your employees as well.

If we revisit the chapter above 'How does duty of care relate to business expenses' we outlined how reimbursing any mileage expenses before you can evidence documentation to support the condition of the vehicle, driving record or insurance class of use, poses a threat in the event of a business travel related accident.

For this reason, we recommend considering a system that allows you to prohibit the payment of business mileage expenses until the correct documentation has been evidenced.

Managing duty of care through your expenses system

Duty of care

The Duty of Care function within Selenity Expenses gives you the ability to store and manage driver and vehicle documents. You can prevent the submission of mileage claims until the current documents are in place. Users upload their duty of care documents such as driving licence, vehicle tax and MOT, along with breakdown cover and business class insurance. Email notifications alert the relevant people when documents are due to expire.

Selenity Expenses includes added Duty of Care functionality that enables you to record, scan, attach and manage:

- Employee details
- Vehicle insurance
- MOT certificate
- Tax details
- Driving licence
- Roadside recovery membership

Key Benefits

- **Reduce risk**
Protect your organisation from the risk of fines and convictions.
- **Compliance**
A compliant duty of care process will ensure your practices are in line with the HSE.
- **Accuracy**
Accurate and up-to-date records with alerts and reports to ensure data integrity.
- **Efficiency**
Reduce administration with centralised documents and automatic renewal reminders.

Selenity Expenses will remind Administrators, through simple scheduled reports, when these records need to be checked again. Mileage claims can be stopped until the employee has produced the required documentation, ensuring a timely response to keeping their details and documentation up-to-date.

Your obligations

Your organisation has a legal duty of care towards employees making work-related journeys regardless of vehicle ownership. To put it simply this means that if an employee is banned from driving or has no vehicle MOT and you haven't taken reasonable steps to check, you could be responsible for any accident that occurs on the road. This includes imprisonment or large fines of up to £20m in cases of corporate manslaughter.

Driver Compliance Pack

The enhanced duty of care feature within Selenity Expenses, allows you to carry out automatic checking of driver and vehicle data. The modular feature automatically retrieves and populates employee driver and vehicle data, with the insurance validation service providing accurate checks that ensure you're legally compliant, along with saving you time.

Driver Check

Automatic checking of driving licence validity along with records of entitlements and endorsements. Electronic consent is given by the claimant. Licence checks can be set at intervals of 1, 3, 6 and 12 months. Provides significant efficiency savings.

Vehicle Check

Standard within Selenity Expenses, automatically retrieving and checking the validity of MOT and TAX, all from your employee's car registration number. Vehicle Check not only alleviates the need for your claimants to manually upload documents, there is no requirement for administrators or managers to validate and authorise documentation.

Insurance Check

Expert insurance validators ensure the information claimants have entered is correct, and their insurance allows them to travel on business. If the insurance validation fails, the claimant is blocked from making a mileage claim that is linked to the car on the insurance document. The service provides an efficient and cost-effective way of ensuring your employees are insured to drive for business.

1 in 5 have the wrong insurance.

To help organisations efficiently manage insurance validation, Allocate provides an outsourced insurance validation service, which check employees' insurance records within their Selenity Expenses system. In helping customers, Allocate discovered a worrying trend – 21 percent of drivers are failing insurance checks and may not be eligible to drive for work purposes.

Specifically, 12 percent don't have business insurance so it is illegal for them to make work-related journeys of any kind. A further nine percent failed due to out of date insurance policies; these employees were not insured to drive at all.

It's an issue you cannot ignore as part of managing your grey fleet and your duty of care – employees are breaking the law, either inadvertently or, potentially, on purpose. In one instance, Allocate discovered that an employee didn't have a driving licence, yet was regularly making work-related journeys.

The implications for employees having the incorrect insurance are fairly obvious; roadside fine of £300 and six penalty points and, if the case goes to court then there is an unlimited fine, driving disqualification and the vehicle seized and destroyed.

However, employers too, can be on the hook for fines and potentially worse, if it's deemed they haven't carried out the necessary checks of driving licences, MOT certificates, and insurance documents.

Assign responsibilities.

Last, but not least, you need to assign the responsibility of managing your grey fleet to a person, or team within your company. It's not uncommon to find that there is no one person that is responsible for a company's duty of care. More often than not, this means that tasks such as checking vehicle and licence documents tends to fall through the cracks.

As grey fleet drivers do often claim expenses for their journeys, it's recommended that the full responsibility is given to the team that manages or processes these expenses

To find out more about any of the topics discussed in this report, please email: marketing@allocatesoftware.com
