



managing occupational road risk

# driven to death

# introduction

It is a tragedy when anyone is killed or injured on the roads, but it is a double tragedy if the driver's employer could have done something to stop it happening.

Unions, as this report shows, are taking up the challenge of helping the Government to meet its ambitious, but necessary, targets for reducing the annual toll of death on the roads. The TUC supports the strategy that the Government has produced, and we welcome that, for the first time, Ministers have recognised that occupational road use contributes to the carnage on the carriageways. And that managing those risks can play a part in reducing the toll of death and injury.

We want employers to play their part, too. Some are, and have negotiated excellent agreements with their trade unions to deal with the risks involved in driving for work. Others need the clarification of the existing common law duty of care that a legal duty to produce a safety case would bring.

Until we manage to reduce road risks significantly, however, union members will still need to be able to call on their unions for help when they or their families suffer injury or worse, whether they are at work or not when the incident happens. So unions will continue to expand the provision of legal services to road traffic accident victims.

Road safety is a trade union issue, as a resolution to the 1998 TUC Congress made clear. I hope that this report will be the start of a new approach to occupational road risk, and that unions will be able to work in partnership with employers, with Government and with campaigners like RoSPA, Transport 2000 and BRAKE to make our roads safer for all users – whether they are at work or not.

**John Monks**  
**TUC General Secretary**

# summary

Three hundred of the 1200 drivers killed on Britain's roads every year are driving for their work. Road traffic accidents are the biggest single cause of sudden death at work.

Each road fatality costs the UK economy over £1 million, including over £300,000 in lost output.

Occupational road use is more dangerous than working in construction, coal mining or agriculture. It should be controlled by the same health and safety laws and principles as apply to all hazardous work.

The TUC supports the Government's road safety strategy, and welcomes the creation of an inter-agency task group to develop responses to occupational road risk.

Whether by negotiation or through consultation with union workplace safety reps, the TUC wants to see employers and unions working in partnership to manage road risk, and we are committed to issuing guidance for union officials and safety reps as part of our contribution to the Government strategy.

In terms of legal changes, the TUC wants to see the Health and Safety Executive take responsibility for enforcing health and safety laws relating to occupational road risk. Employers with substantial road users in employment should have to submit a "safety case" to the HSE in return for a licence to operate. In addition, the TUC wants to see the Working Time Regulations extended to cover occupational road use.

Meanwhile, the toll of death and injury on the roads continues, so the victims and their families need compensation. Unions are steadily increasing their legal assistance to members and their families, whether their road traffic accident was part of their work or not.

# paying the road death toll

The TUC estimates that, of the 1200 drivers of cars, buses, trucks and lorries every year, about one in four, 300 people, were at work when they lost their lives. Many more workers will have been killed as passengers, pedestrians and on motorbikes and bicycles. And tens of thousands will have been injured.

This makes occupational road use the single biggest cause of workplace death. In fact, road traffic accidents while at work comprise the majority of all workers' accidental (as opposed to illness-related) deaths. In 1998, about 250 workers were killed in workplace accidents excluding road deaths – fewer than died while at work on the roads!

And according to pioneering research by the Royal Society for the Prevention of Accidents, people who drive more than 25,000 miles a year – a fairly standard mileage for someone who is driving for a living, even if only part of the time – is at least as likely to be killed going about their business as a coal miner or construction worker.

Working on the roads is a dangerous business, and the TUC believes that it ought to be controlled in the same way as any other dangerous business.

## **The hidden facts**

One reason why occupational road risk is inadequately controlled is because the figures above can only be estimates derived from general statistics on road use, the likelihood of business car users to have accidents and so on. No one collects the information needed to be more accurate.

When the police complete accident reports for the Government, there is nowhere on the form to record whether the driver had been at work at the time of the accident.

Employers are not under the same duty to report the deaths of their workers who are out driving at the time of the fatal incident as they would be if the worker was killed on their

(or indeed anyone else's) premises. And coroners rarely record the employment status of the people whose deaths are the subject of a formal inquest.

We do know how many light goods vehicles and heavy goods vehicles drivers are killed every year (46 and 52 respectively), and we can be fairly certain these are people at work. 885 people were killed altogether by crashes involving such vehicles, showing that it isn't only working drivers who suffer as a result of occupational road risk.

We also know that, although company cars make up less than 10% of the cars on the road, they account for one in six (16%) of all road miles travelled, because people who drive as part of their job do far more miles than people who don't. And we know that company car drivers are between 29% and 50% more likely to have accidents than people driving their own cars.

### **The cost**

According to the Department of Transport in 1995, each road fatality costs the British economy just under £1 million, mostly in terms of the cost to the victim, but including an average cost of £305,310 in lost output.

This suggests that the costs of preventing work-related road traffic accidents would almost certainly pay for itself in the long run. Because of the general improvements in management which would flow from a more coherent approach to managing occupational road risk, these measures might even pay for themselves in the short term, too.

### **Research or action?**

Some people argue that the lack of absolutely definitive statistics is a reason to postpone taking action to tackle occupational road risk. This is not the approach taken by progressive employers who have done the sums about their own workforce drivers and who have tackled the issue as a result. And, even if the death toll from occupational road risk was half what the TUC estimates (and the number of drivers of goods vehicles alone account for a third of our estimate), there would still be 50% more workers killed on the roads than in construction or agriculture put together.

There is always a case for more research – it would be useful for employers to know more about what interventions reduce road traffic accidents so that they can tailor their general approach, for example. But the need for more research is no excuse for inaction.

We don't need more grim statistics. We need a strategy that addresses the problem.

# the Government's response

On 1 March 2000, the Government unveiled its strategy for road safety – *Tomorrow's roads: safer for everyone*. It sets out a bold set of initiatives and commits the Government to challenging targets for reducing still further the number of deaths and serious injuries on Britain's roads.

But there have been road safety strategies before, and none have addressed the problems of occupational road risk. This new strategy is different. For the first time, Ministers have listened to the voices of trade unionists, health and safety experts and road safety campaigners.

The Government's work-related road safety strategy covers all the workers likely to be affected by road safety. Drivers, of course, of every sort of vehicle, including bicycles. But also pedestrians, and people who work on the actual roads themselves. It notes that the activities of people who drive for their work (and who face the risks of occupational road use) also expose others, especially the most vulnerable, to risks.

The Government has also listened to those, including trade unions, who have advocated a clear role in this strategy for the Health and Safety Commission and Executive (HSC/E). We have argued that, since occupational road risks are similar to those in other dangerous industries, they should be controlled in the same way, by health and safety law. The Government has listened.

The Commission's own advice was to establish an inter-departmental task group, and the Government has accepted that advice. Its terms of reference commit it to:

- establish accurate casualty and incident statistics for work-related activities on or near our roads;
- establish the main causes and methods of preventing work-related road incidents;
- promote a public debate on best practice in relation to prevention of work-related

road incidents;

- agree minimum standards for employers and others in managing the road safety implications of work-related journeys and other work activities on the highway;
- propose mechanisms that will help dovetail road traffic law and its enforcement with health and safety at work law and its enforcement; and
- propose mechanisms for effective liaison between those who enforce road traffic law and those who enforce health and safety at work law.

The TUC has welcomed this strategy, and the appointment of Richard Dykes, Group Managing Director of the Post Office to chair the inter-agency group, which will also involve trade union representatives. The Post Office is one of the companies which has worked with its unions to develop better safety standards for its drivers.

The group will be looking at a number of possible initiatives, including a Discussion Document, a publicity campaign aimed at company car drivers, an action plan to combat work-related driver fatigue, and a possible Occupational Highway Code, all of which the TUC would welcome. The TUC's initial proposals are set out later in this report.

# driving: a hard bargain

As part of RoSPA's Managing Occupational Road Risk campaign, a meeting was held between the main stakeholders in 1998, which developed the "Stoke Court consensus declaration". This declaration, to which the TUC was a party, urged unions to seek the co-operation of employers in developing effective preventive programmes.

The legal obligations on employers, which are referred to elsewhere, include a requirement to consult union safety reps over health and safety matters, and therefore it could be argued that the process for consultation and negotiation over occupational road risk should be dealt with through safety reps – certainly they will have a key role in any discussions between unions and management.

But occupational road risk is a negotiating issue, as well as a health and safety issue. It affects many other aspects of an employee's terms and conditions, and can, in many workplaces, be critical to the business itself – this is especially true for employers whose business is entirely transport-related.

Whatever the route chosen by the employer and the union, however, the agenda is fairly clear.

RoSPA have suggested the following (non-exhaustive) checklist of issues, which the TUC would endorse:

- eliminating unnecessary vehicle movements;
- changing the mode of transport used (which also has implications for the balance between air, rail and road);
- avoiding driving in adverse conditions (eg at night or during icy weather);
- reducing the distances travelled;
- controlling driver hours (see below);
- specifying "safer" routes;

- optimising schedules and planning journeys better;
- specifying appropriate vehicles, ensuring that they are fit for purpose and also ensuring that ICT like mobile phones are used appropriately;
- effective vehicle maintenance;
- selecting appropriate drivers;
- setting driver fitness standards;
- developing clear policies on alcohol and other substances; and
- driver improvement, eg training, awareness briefings etc).

In terms of driver hours, the TUC is aware that 10% of all road traffic accidents involves someone suffering from fatigue, and there is plenty of evidence that driver fatigue can cause as many problems with safe driving as alcohol. Many people who drive for a living are covered by rules on hours of work and of driving, although they are often excluded from the Working Time Regulations 1998. The TUC wants to see the proposed new Working Time Directive cover all the currently excluded sectors, but there is no reason why employers and unions could not introduce analogous measures immediately, or, indeed, go further.

### **Developing a bargaining agenda**

The TUC will, on the basis of this report, develop a bargaining agenda (and brief guidance) for safety reps and others on how to negotiate better road safety standards from employers, and what such agreements should contain.

# picking up the pieces

Unions have traditionally assisted their members who are injured while at work. Every year, union lawyers secure over £300 million in compensation for people injured or made ill by their work.

In recent years, unions have extended these legal services to cover people who have been injured in road traffic accidents, and more recently still, coverage has been extended by many unions to those of their members injured while not at work, and also to members' families.

Compensation is needed by road traffic accident victims because of their lost earnings, their medical and care bills, and because of their pain and suffering.

## **Justice for victims**

Three case studies demonstrate the sort of services that unions already provide.

*John Calvert*, a teacher with a promising sideline in rugby refereeing, found his life turned upside down on 26 May 1989 when he was seriously hurt in a car accident. The year before, he had been the match referee for the under-elevens curtain raiser to the Rugby League Challenge Cup Final at Wembley. The next time he attended in 1992, he was in a wheelchair.

John had been the passenger in a colleague's car, taking three A level history students to visit Helmsley Castle in Yorkshire. They only used the car because the school minibus had failed a safety check the day before. John's injuries left him an in-patient for 13 weeks, with multiple fractures to his legs, feet, hip and hands.

But the driver of the other car was uninsured, and John's union, the NASUWT, had to call on expert legal help to fight his claim before the Motor Insurer's Bureau. They eventually secured a settlement of £376,117.

Postwoman *Lisa*, a CWU member, was riding her moped towards Letchworth in Hertfordshire when a car travelling in the opposite direction skidded and knocked her to the ground. Lisa's right leg was amputated above the knee, and her union's solicitors were able to negotiate a payment of £190,000 in compensation.

In 1994, AEEU member *John* (not his real name) set off on a bicycle ride with his two sons, aged in their 20s. Tragedy struck when John stopped at a set of lights while his sons carried on through, expecting him to catch up. When he failed to do so, they went back to find him dead, run over by a lorry. No one knows exactly what happened, and the lorry driver never accepted that he was at fault, nor explained properly what happened. The union advised the family at the inquest, and then represented not only the widow (who was awarded damages for the loss of her husband) but also the adult sons, who were awarded compensation for the psychological effects of the accidents.

### **Extending the safety net**

Unions continue to expand the coverage of their legal services, which is especially important in view of the restrictions placed on the Legal Aid budget.

In the three years between 1996 and 1999, the number of major unions providing members with representation and legal advice in all road traffic accidents regardless of whether they were work-related rose from 19 to 24 – an increase of one every seven months. But in the six months since the TUC published our 1999 Survey of Union Legal Services, two more unions have started offering this service.

Even more clear is the increase in the number of unions providing such services to the families of their members. In 1999, eleven of the unions offering this service to members also offered it to their families. Within six months, that number has grown to sixteen and a further two unions have reported to the TUC that they are actively negotiating such a package with their lawyers.

The pattern of provision is clear. Within the next few years, every union member, and their families (up to twenty-five million people) will be able to access a basic safety net of compensation when the worst happens on the road.

# learning to do better

Driving for work is a dangerous occupation, and the TUC believes that it needs to be controlled under the same principles of health and safety law as other hazardous occupations. The key principles of risk management should therefore apply.

Employers should accept their responsibility for the performance of their employees while they are on the road. This does not mean that individual drivers should not be held responsible for their actions – in all work, the individual worker has a legal obligation to behave safely, and not to endanger themselves or others. But it does mean that where a worker has been put in a dangerous situation by their employer, or their employer could have prevented an accident, it is the employer who bears the principle liability.

Secondly, and following on from that, the TUC believes that the Health and Safety Executive are best placed to enforce the health and safety law that applies to occupational road use. Again, this is not intended to replace the role of the police in investigating road traffic accidents. The role of the HSE Inspectors would be to ensure that employers were taking adequate steps to manage the risks faced by their workforce, and to investigate the management implications of any particular accident.

The key risk management tool that employers should be using to control the risks of occupational road use is risk assessment, as prescribed in the Management of Health and Safety at Work Regulations 1992. The Royal Society for the Prevention of Accidents has produced guidance on how to assess occupational road risks, and what action to take subsequently, so this could be done now, without any further formal legal requirements.

Having assessed the risks, employers will need to take various steps to control those risks, and there is a hierarchy of measures which could be taken (recently written into the Management Regs), starting with substitution. In terms of occupational road use, this would mean employers considering whether journeys were really necessary. Other possible measures are set out in the section on union negotiating agendas.

One further piece of legislation which has major implications for the way in which managers deal with occupational road risk is the 1977 Safety Representatives and Safety Committees Regulations. These require employers to consult with union safety reps (where unions are recognised, otherwise other legal duties apply to employers to consult the workforce) about any major health and safety issue in good time. Genuine consultation means putting proposals to safety reps, rather than fully formed proposals, and being willing to change those proposals in the light of comments received.

Safety reps are likely to be particularly valuable in this process, because the drivers whose safety is at risk are very likely to be isolated, and not under direct management supervision. They are therefore more likely to report problems to a colleague (such as a union safety rep) than to their manager, whom they may see very infrequently.

### **A licence to operate**

The measures outlined above could all be implemented without any change to the legislation. But the TUC believes that one further change should be considered.

In many of the most hazardous industries (eg offshore oil, nuclear power and railways), employers are required to meet additional requirements to those in general health and safety legislation, usually by developing a “safety case” which they are required to submit to the Health and Safety Executive (in the case of railways, Railtrack’s Safety Standards Directorate has in the past fulfilled this role, although that may change) for approval.

The “safety case” sets out how the employer intends to discharge their obligation to run a safe operation, and in return, they receive a licence to operate. The TUC believes that a similar approach should be adopted to employers who require a certain amount of road use from their employees. This would provide them with the same sort of driving “licence” as their drivers, although the employer’s licence would allow him/her to commit others to the road.

# contacts

The TUC works closely with a number of other organisations to promote better safety standards for working drivers. In particular, we work with the following four organisations, all of whom can be contacted for further information.

## **The Health and Safety Executive**

Based at Rose Court, 2 Southwark Bridge, London SE1 9HS, the HSE enforces health and safety law in workplaces across Great Britain, and advises employers and others on good practice. Its Safety Policy Division is responsible for developing health and safety approaches to occupational road risk, and its web site is at [www.hse.gov.uk](http://www.hse.gov.uk)

## **The Royal Society for the Prevention of Accidents**

RoSPA is a world-leader in campaigning for improvements in road safety generally, but they have also driven the British campaign to manage occupational road risk. They are based at Edgbaston Park, 353 Bristol Road, Birmingham B5 7ST, tel: 0121 248 2000.

## **BRAKE**

A road safety charity with the support of a number of trade unions, BRAKE has been instrumental in developing good practice for employers (many of whom are corporate sponsors of the organisation), as well as working for bereaved victims. They can be contacted at PO Box 272, Dorking, Surrey RH4 4FR or at [www.brake.org.uk](http://www.brake.org.uk)

## **The Association of Personal Injury Lawyers**

APIL represents solicitors and barristers who represent the victims of injury and illness caused by the negligence of others, including road traffic accidents (also dealt with by the Motor Accident Solicitors Society) and workplace incidents. They can be contacted at 33 Pilcher Gate, Nottingham NG1 1QF, or on 0115 958 0585.

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