

Infringement disciplinary matrix

This document aims to set out some advice for dealing with correcting various drivers' infringements and is intended as a guideline to decide upon appropriate action; advice, training or disciplinary action. It has been effectively used as such in many situations.

A summary matrix is given below and an example spreadsheet for recording incidents is available for download, but consideration should be given to all of the explanatory notes herein.

	Interview & disregard	Interview then note as a strike	Disciplinary Escalation
Drive time / break / rest <15 mins	1 per 5 shifts	2 – 5 per 5 shifts	6 or more per 5 shifts
Drive time / break / rest 16 - 60 mins	Not Applicable	1 per 5 shifts	2 or more per 5 shifts
Drive time / break / rest > 60 mins	Not Applicable	Not Applicable	Any one incident
Incorrect use of Mode Switch	Not Applicable	Any one incident	Optional to start with disciplinary
Failure to evidence Daily Walk Around 10 mins	Not Applicable	Any one incident	Optional to start with disciplinary
Other daily walk around issues	Depends upon type, severity and circumstances of offence – anything from training and disregard to gross misconduct!		
Driver Downloading	Over 7 days	Over 14 days	Over 28 days
Late handing in, analogue charts	Not Applicable	Any one incident	Optional to start with disciplinary
Failure to hand in Analogue chart	Not Applicable	Not Applicable	Any one incident
Defacement	Not Applicable	Any one incident	Optional to start with disciplinary
Driving without card or chart / Falsification	Depends upon type, severity and circumstances of offence – anything from training and one strike to gross misconduct!		
Over loading, weight distribution,	Not Applicable	Not Applicable	Any one incident
Driving skills	Assessment reports and other information should inform decisions – very subjective!		

Each operator has an obligation to ensure that arrangements are made to ensure compliance with the various regulations. Whilst some driver infringements will not automatically result in action against the operator, such action could be taken if the operator has either failed to make correct arrangements (e.g. designed a run in such a way as will require or cause infringements) or failed to correct such infringements (e.g. allowed a driver to repeat offences month after month with no corrective action taken).

It is intended that this document should assist the operator in designing an appropriate and fair method to fulfil at least the latter of those obligations, and to be informed if the former is the case.

There are various matters to consider before looking at the below guidance and it has to be said that it is not possible to formularise disciplinary action in any situation, thus this document is not meant to set hard and fast rules and using it as such could easily land the employer before an employment tribunal.

It is not the intention of this document to offer advice on employment law, but some information is given below. Such information as is given herein, including the matrix itself, is given 'as is' and without any acceptance of liability for any loss by the user howsoever that loss occurs.

It is the responsibility of the user to ensure that all relevant and current legal requirements are fulfilled, including employment law and undertakings in connection with the operating licence. This document is meant to provide assistance in the form of food for thought, but it is the user's own responsibility to ensure that any action taken is fit for purpose in their own organisation.

Every employee has a right to be treated fairly. This means not only being consistent (which is where formularising is beneficial), but also properly considering the employee's account and explanation of events (which is where formularising is not beneficial). Thus it is beneficial to formularise when to *consider* disciplinary action but NOT when to *take* such action. Where the disciplinary escalator is indicated herein, an investigatory hearing should take place.

The employer considering disciplinary action MUST take steps to investigate and offer the employee chance to explain. Proper consideration of the employee's account and explanation should be given prior to a decision on such action. The employer must act in accordance with the disciplinary and grievance procedure issued to the employee as part of the employment contract.

Some assumptions are made herein. It is assumed that:

1. the driver will perform 260 HGV shifts in year and / or keep good records etc on domestic runs (van driving)
2. a "strike" referred to below (where an infringement needs to be considered in future for repetition) is held valid for six months unless otherwise detailed (as is a warning of any kind).

3. Where a strike is referred to, three strikes in the repetition period given requires moving to the disciplinary escalation procedure (start with formal discussion, escalate to your own disciplinary procedure thereafter).
4. Data will be obtained regularly and drivers seen quickly and regularly following obtaining the data.

If the driver does not drive HGV every day then adjustments should be made as necessary. For example, a driver performing HGV duties every day will usually incur many more infringements than a driver performing a mixture of HGV and domestic (van driving) shifts – so the two should not be compared as like for like. A driver only driving HGV one day per week, for example, should be allowed only one fifth of the repetitions on HGV infringements, since a “week” should refer to five HGV shifts, (noting that domestic infringements are much less likely to occur and / or be detected since detection relies on driver report or examination of other evidence (trackers, covert surveillance etc). Our transport manager training details some good, time-efficient detection methods for these infringements.

Finally, the employer has to consider fair opportunity for the employee to correct his errors – the matrix assumes that the employer interviews the driver each month and promptly at the end of each period. If not more leniency must be shown to satisfy employment law; it can not be fair to see a driver on May 29th with infringements committed during April then discipline that driver for repetition during May! Note that in these cases the operator could be accused of failing in the undertaking of the operating licence in not having taken corrective action and the only safeguard is to have an organised and efficient method of rectification to include a sensible timescale for obtaining data from analysis and for seeing each driver with said data.

Having set out the ‘rules of engagement’, let us look at the advice. Below is a guide to inform decisions on corrective action to be taken and a suggestion for record keeping to provide easy reference of previous infringements.

Offences from analysis reports:

The most regular offences are simple drive time, break and rest offences. These should be detailed by any good analysis service but the transport manager needs a very good understanding of current law in order to be able to understand them in full and demonstrate to drivers where errors have been made.

For example, often a driver will get a notification of, for example, 14 hours driving in one day where no individual record will show 14 hours; or less than 9 hours rest where every period between shifts is longer than 9 hours. Unless the transport manager has a good understanding of the law (including daily driver periods with insufficient rest and rest requirement in a 24 hour period thus limiting ‘spread over’) then the infringement rectification process will be fatally flawed.

This section, therefore, includes advice upon:

- Exceeding daily driving limit of 9 or 10 hours; or domestic (van driving) limit of 10 hours.
- Exceeding domestic driving work limit of 11 hours in one day
- Failure to take sufficient breaks (exceeding 4.5 hours driving or 6 hours working);
- Failure to take sufficient rest in 24 hour or 30 hour (2 man) period (reduced 9 hours, regular 11 hours, split 3, 9 or 12 hours)

It should be noted that reducing rest could be synonymous with exceeding “spread-over” (not that such a term legally exists). Basically, if a driver works (including breaks) over a period longer than 15 hours then he can not fit in a 9 hour rest within a 24 hour period. Thus if he starts work at 06:00 he must finish at 21:00. If he finishes at 21:10 then no matter how long a rest he takes, he will still be judged to have taken 8 hours and 50 minutes, 10 minutes short of the minimum. This assumes that he has not reduced the rest period three times already, otherwise the driver is required to take 11 hours rest (or 12 if by split daily rest) in the 24 hour period. This subject is covered extensively in our transport managers’ refresher training.

Further, one should treat daily driving time extensions differently if extension occurs due to failure to take adequate rest. The driver should be dealt with for the rest offence only unless repetition occurs in less than three months, whereupon second and subsequent occurrences within three months of each other should be treated as two separate offences, the driving time one of which may result in fairly strong action. Caution is noted here not to effectively be taking serious action against a driver who has, for example, shortened his daily rest by one minute due to a calendar minute error once every three months but by doing so has committed several extended driving offences of more than one hour each. Each case must be assessed on merit and again the subject is comprehensively covered in our transport managers’ refresher training.

We recommend dealing with these offences in total, but you may equally well separate them down. If a driver has committed a range of infringements you may deal with this slightly differently than a driver committing the same one offence each and every day.

For extending drive time and / or reducing rest by up to 15 minutes:

- not more than once per week – interview and disregard
- two to five times per week – interview and count as one strike (to refer to in the three months)*
- six or more times per week – start with formal discussion and follow escalation procedures*

For extending drive time and / or reducing rest by up to 16 - 60 minutes:

- not more than once per week – interview and count as one strike (to refer to in the following three months);

- twice per week – start with formal discussion and follow escalation procedures*
- three or more times per week – start with disciplinary and follow escalation procedures*

For extending drive time and / or reducing rest by over 60 minutes:

- for one occurrence formal discussion should take place
- for more than one in a month disciplinary should be considered
- for repetition within six months escalation from previous disciplinary should be considered

* = depends upon repetition both within and across periods; for example if a driver has extended drive time by, say 30 minutes twice per week in a couple of weeks and repeats once in the following month more leniency can be shown than if a driver extends drive time by 55 minutes twice every week in two monthly periods.

If the driver pleads that there was an unforeseen delay and the infringement was committed to reach a place of safety, this incident can be considered as a total disregard if the driver has followed correct procedure (making a note on print out or chart as soon as possible, handing in said print out etc).

Use of Mode Switch & 10 mins walk around

We recommend not relying purely upon the analysis reports, but also taking a look at some example tachograph charts (this can be done on screen with our analysis service). The things that you are looking for here are lack of evidence of a walk around check and evidence of incorrect use of a mode switch.

Dealing with the latter first, you are looking for evidence that the driver has used other duties mode when making deliveries etc. If a driver is showing only driving and rest, on a day when deliveries have been performed, then this is clear evidence of incorrect use of a mode switch. There are arguments brought to bear against this by drivers, but we have not heard an effective one yet and our transport manager refresher training will cover common defences by drivers and the relevant rebuttables.

More complex is dealing with drivers' daily walk around checks. If a driver has conducted a walk around check on a morning and used the tachograph correctly, there should be 5 – 15 minutes of other duties recorded at the outset of every shift. These should average at least 10 minutes, if the driver is constantly under 10 minutes, or not showing these at all then this should be dealt with accordingly.

Recommended action for this is virtually impossible to put both simply and comprehensively, you will need to evaluate other evidence such as the existence of nil defect reports, the lack of obvious defects on PMI, visual evidence or spot checks – see below for a fuller explanation.

If you suspect that the driver is negligently ignoring the requirement for walk around checks, or not performing them sufficiently then this may be treated as a major issue, requiring a serious disciplinary measure; you should not go through monthly five steps allowing a driver to neglect this for five months before dismissal due to the risk to road safety.

On the other hand, if the driver is just being daft or forgetful in occasionally not inserting a card or chart prior to the check (but is making manual entry and is not falsifying – see below) then you may correct this by training or formal discussion before moving through disciplinary steps (though we still advise a follow up check within a week or two).

We would recommend looking at defect notes completed and 6 weekly PMI reports. Here you are looking for the following (all of which is evidence that your defect report method might be ineffective):

1. Forms completed incorrectly (see notes below)
2. Defects reported but not rectified or listed as advisory (see below)
3. Existence of 'obvious' faults on PMI reports (see below)

It is not the purpose of this document to fully explain these issues, and refresher training is recommended for transport managers fulfilling this function, as it is often an operator's weak point. However, as a quick point of reference, please see the numbered points below:

1. If using combined forms (which can be used for goods or passenger vehicles, articulated or rigid) then evidence such as fifth wheel checked on a rigid, emergency hammer checked on goods vehicle etc. shows that the driver is not sufficiently knowledgeable and requires training.
2. If a defect is reported and not signed off as rectified then this is evidence that either it should have been reported as an advisory or that the driver has used the vehicle in an unroadworthy condition. Depending upon the nature and severity this might just be a training issue or it might be a serious disciplinary.
3. If a six weekly PMI report is detailing such faults as "bulb inoperative" regularly, then this is evidence that the walk around checks are not being performed or that drivers are not rectifying blown bulbs. Blown bulbs should be rectified when noticed and it would be an extraordinary (and unbelievable) coincidence if every blown bulb occurs on the day of PMI (as some operators seem to expect VOSA to believe). Similarly, if longer term defects are mentioned on PMI but not on drivers' daily walk around checks, then this is evidence that the check is not being completed sufficiently.

We would also advise a spot checking procedure, which should be documented, showing that you ensure that drivers conduct their checks.

Further information and advice on these matters is given in our transport managers' refresher training. As a rule of thumb, minor issues such as less than 5

minutes (or 10 minutes average over a week) could be dealt with in a similar way to a <15 min driver time offence (above) whereas the lack of a walk around check on any one day should result in, at the very least, a formal discussion for first offence and disciplinary escalation thereafter – at worst it can be considered an act of Gross Misconduct but drivers should be regularly informed of this.

Driver Card Downloading

We would advise requiring your drivers to download digital cards weekly and to note any instance of more than 14 days between downloads as one strike, begin at training then go through formal discussion etc. We recommend any unexplained repetition (i.e. allow for holidays) in a three month period as being valid. Failure to download in 21 days should be a strike considered valid for six months and failure to download within 28 days should be dealt with by formal discussion for first offence and disciplinary escalation thereafter. Our analysis service can give you a weekly report on this matter.

Handing in Analogue Charts

We strongly recommend keeping an audit trail record of analogue charts and can advise on this (it is really easy to set up). By using such a system it is then easy to see each week which tachograph charts need to be collected from drivers. We recommend that any instance of over 42 days before giving in the chart should constitute a strike (and we do NOT need to allow for holidays in this regard, but should allow for other explanations such as sickness).

Further, total failure to hand in a chart should always constitute a formal discussion for first offence and disciplinary escalation thereafter.

Defacing Charts

Discretion is required in dealing with this matter, and again it is not easy to formularise. Put over simply, any instance (or set of instances dealt with at one time) should form a strike and any repetition within three months considered valid. The starting point may differ from case to case though; if a driver is new and has defaced by writing on the envelope with charts in it then this might be considered a training issue to be dealt with as above, yet if the driver has received training in the past (even over three months ago) you might start with a formal discussion or even the first rung of your disciplinary procedure (usually resulting in a verbal warning). If, however, the defacement is a deliberate act you might start at a higher level of disciplinary.

Driving without card or chart

Evidence that drivers are driving without their digital driver card or analogue tachograph chart will come from reports into 'unaccounted distance' or 'vehicle continuity' (respectively).

For the purpose of this document we have used titles from our own analysis reports. If you are using a different tachograph analysis service, or are using none at all, then you will need to locate this information in order to correctly deal with this infringement category.

Unaccounted distance shows mileage driven in vehicles without a card inserted. A look at the vehicle file report for the day in question will show at what times this occurred. The odd mile, at base in the night, is usually shunting in the yard and is not to get concerned about. Even a few miles on a PMI or MOT day is probably going to be an out of scope road test. What we are really looking for here is evidence of drivers interrupting their rest on nights out (to move the vehicle without their card), withdrawing their card to get home after driving 9 or 10 hours or driving complete days without their card due to forgetting it!

Other evidence needs to be considered (did the driver report card lost / faulty and did the driver use a print out correctly; what times are PODs etc) and this is covered in some depth on our transport managers' refresher training. Detecting serious infringements is easy with this training. If VOSA spot them and you haven't done then you'll likely end up in a Public Inquiry and the Traffic Commissioner is going to be hard pressed to distinguish you from an operator who is complicit or not concerned about it.

Depending upon circumstances and severity, demonstrated by all of the evidence, an item may be considered one strike (commence with training, repetition within six months should be considered valid) or may be immediately gross misconduct. It is impossible to specify herein and factors such as other evidence, driver account, history, training received etc needs to be considered in entirety.

Whilst looking at the unaccounted distance reports, you should notice any drivers whose names appear in pink with # by them. This tells you that they have not yet downloaded their card. This might point to occasional drivers (casual, agency etc) failing to download and this would need to be corrected with your office staff and the occasional driver concerned.

Vehicle continuity is a similar indicator for analogue tachographs. It reports on any incidence where a vehicle finish mileage from one tachograph does not match the start mileage from the next. This could evidence that some miles have been driven without a chart (see above for action) or that charts have been completed incorrectly (which should be treated in conjunction with and in a similar way to failure to hand in charts and defacement above).

Falsification of Records

Falsification is a category which 'covers a multitude of sins'; from a mistakenly incorrect completion of a chart to an act of deliberate fraud in order to conceal illegal driving. Obviously, therefore, it is difficult to advise simply and comprehensively on action to be taken.

Faults such as failure to correctly record daily rest, failure to make manual entry where required and other basic errors in completing a chart which will result in an act of falsification should be handled as a simple strike for each occasion and the first step should be training. Repetition within six months should be considered valid for escalation to disciplinary.

An act such as falsification of date, end location etc in order to facilitate driving home or the like should be dealt with in conjunction with the offence covered and may warrant a gross misconduct charge.

The likelihood is that you will encounter many instances that are somewhere between the two. It is for the good of all concerned that these are noticed, action taken and repetition eliminated.

Correct loading (weight, distribution and security)

This is an issue that we do need to cover in any driver assessment / training / disciplinary advice, but the methodology differs from operator to operator.

If you, as a company, load the vehicles and calculate the weights then the driver is much less culpable in any overload situation than an operator where the driver loads the goods that a customer at a remote site offer him – where trust is placed in both to monitor the weight and distribution.

Overloading can not be monitored by tachograph (obviously) so we have to have another criteria. If you have a weighbridge then this is fairly easy, or if you have paperwork which records what a driver has collected and delivered this can be used.

This will only tell part of the story though, and some spot checking and visual monitoring might need to be put into place and used in conjunction with reports by other staff (warehousemen etc) to assess that drivers are spreading their weight correctly and securing loads. Similarly reports by drivers concerning a loader not properly securing a load should always be acted upon, otherwise you risk being accused of negligence which, if an incident occurs resulting in injury, could cost time, money and even liberty!

We would suggest that any incidence of insecure loads or overloading (including axle weight – weight distribution incidents) be treated as first offence formal discussion and escalation onto disciplinary procedures thereafter.

Driving Skills

The tachograph, again, can only tell part of the story with regard to driving skills; it can report on harsh acceleration, harsh braking and number of overspeeds but little else.

How much distance does the driver allow between vehicles? How alert is the driver to hazards? How good a judge of hazards is the driver? What are the driver's reactions to hazards (panic, swerve)?

Many of these questions can only be answered by claims history or by assessment. We recommend regular assessment both by way of accompanied days on duty and, where necessary, by way of covert surveillance. We can assist with either of these methods.

In terms of correction, an assessment should be used to inform any decision about formal hearings, requirement for improvement, training requirement etc. It is incredibly difficult to write a hard and fast rule in regard to this area as these matters are very difficult to objectively quantify.