

8. SOP Section 7

CHAPTER 8

ACCIDENT AND LEGAL PROCEDURES, AND OTHER NON-OPERATIONAL MATTERS

This chapter contains advice and guidance on legal and other administrative matters with which examiners may become involved during the course of their work.

8.1 ACCIDENT ON TEST INVOLVING CANDIDATE'S VEHICLE

If the candidate's vehicle is involved in an accident and they show no sign of stopping to comply with legal obligations, the examiner should inform them that they are required by law to do so and, if necessary, give advice about exchanging names and addresses. Bumper touches should be judged on merit; in most cases, provided there is no damage, an examiner may consider them insufficiently serious to be treated as accidents.

If the candidate's vehicle is rendered unroadworthy, or compliance with legal obligations leaves insufficient time to complete the test, then the test should be terminated

The test should also be terminated if the candidate indicates that they do not wish to continue, or if the examiner considers it would be unwise to continue because the candidate appears to be suffering from shock or other adverse reaction, or is unduly nervous

If the test is terminated, and the accident was clearly and totally the fault of the candidate, a DL25 should be issued. If the accident was clearly not the candidate's fault then the test should be terminated without any result. If the examiner feels that it would not be appropriate to issue the DL25 at the time, e.g. candidate injured or very upset, it may be completed after the test and posted to the candidate.

8.2 ACCIDENT REPORTING PROCEDURE IN DSA

DSA now classifies accidents or injuries into two types as follows: -

Those that occur during driving tests should be reported, via the SE, to the area ACDE using form HS3.

- (b) Those that occur in or around DTCs or offices should be reported, via the SE, to the AM using the form HS4.

Examiners are reminded that the HS3 report might be used by the Agency's legal advisers in anticipation of legal proceedings against the Agency or officials, and professional privilege may be claimed for it in appropriate cases. It should not be shown to the police or to any other person outside the Agency. The AM should be notified immediately of any request for it.

8.3 INSURANCE DETAILS

The driver of a vehicle involved in an accident which causes damage or injury to any other person, vehicle, animal or roadside property is required by law to Stop, give the owner's name and address, and vehicle registration details, and produce a Certificate of Insurance to any person who has reasonable grounds for requiring its production, or report the accident to the police as soon as reasonably practicable, and in any case within 24 hours and produce a Certificate of Insurance.

If an examiner is injured in an accident on test, they are advised to exercise their rights under these provisions and obtain the necessary insurance details at the time of the accident or as soon as possible thereafter, either from the parties concerned or from the police.

8.4 CIRCUMSTANCES NOT COVERED BY THESE INSTRUCTIONS

Separate instructions follow for England and Wales and for Scotland. If circumstances arise which do not appear to be covered by these instructions, they should be considered in the first instance by the SE and the area ACDE. If it appears to them that further advice is needed, this should be obtained from Technical Standards Branch at HQ.

8.5 INSTRUCTIONS - ENGLAND AND WALES

The following instructions are based on the principles that:

- All reasonable assistance must be given to the police and judicial authorities;
- Examiners must remain impartial and avoid giving reason to be identified with the police or other parties;
- A clear distinction is drawn between statements given to the police or other parties, and reports which an examiner makes to the Agency. Reports to the Agency are made in confidence and are not for publication; and
- Statements are confined to observed facts. A statement should not contain deductions or other expressions of opinion. Examiners must not prejudge or appear to prejudge matters, which are for a Court to decide.

8.6 ACTION TO BE TAKEN BY AN EYE WITNESS OF AN ACCIDENT

Examiners have the same duties and obligations as any other person going about their daily business. If they witness an accident during the course of their duties they should:

- If the candidate's vehicle is involved, make themselves known to any other persons involved in the accident; or
- If the candidate's vehicle is not involved, exercise discretion in deciding whether or not to stop and make themselves known to the parties involved. They should take account of the circumstances at the time, and bear in mind such considerations as their responsibility towards the candidate, the presence of other witnesses, and the seriousness of the accident.

8.7 REQUEST FOR ORAL STATEMENT OR INTERVIEW

If an examiner is asked by the police to make an oral statement they should offer to submit a written statement instead; if the police persist in their request the examiner should comply, confining the statement to facts of what they actually saw.

In the case of a fatality, any request for an oral statement from the coroner or his representative should be met in the same way.

8.8 REQUEST FOR WRITTEN STATEMENT

Requests from the police or from, or on behalf of, any party involved in the accident should be met.

8.9 LEGAL PROCEEDINGS

If legal action arises from an accident, the Agency must act impartially; written information or statements must be sent to all parties to a dispute. An examiner's statement should be confined to matters of observed fact on which they are in a position to give evidence in Court; it should exclude expressions of opinion and avoid the expression of any Agency view or policy.

The statement should normally be submitted to the SE, together with the request for it and the official accident report. The SE will check the statement and forward the papers to the AM.

Where an oral statement has been given to the police, and a subsequent request for a written copy of that statement is received from any party to legal proceedings, the AM should pass the request to the police and request copies of the statement so that one can be sent to the enquirer and one retained on the Agency's file.

8.10 INTERVIEWS

Requests for an oral statement or an interview from any party to legal proceedings should be refused. A copy of the written statement already provided to the police or the written factual statement should be offered.

If however the other party continues to request an interview, the facts should be reported immediately to the AM so that advice can be obtained from Technical Standards Branch at HQ.

8.11 ATTENDANCE AT COURT

Except when appearing in a case to which the Secretary of State, the Agency or the Traffic Commissioners is a party, or in a case brought by police or the Director of Public Prosecutions, an examiner should attend Court only when served with a witness summons or a subpoena.

Attendance in response to a witness summons or subpoena is compulsory.

Receipt of a subpoena should immediately be reported to Technical Standards Branch at HQ via the area ACDE.

8.12 SUMMONS OR SUBPOENA TO APPEAR

Evidence given by an examiner in Court should be confined to the facts. Witnesses are entitled to refresh their memory by reference to notes made by them at the time of the accident or incident. They should not refer to official reports or documents.

If pressed to express an opinion as to the cause of an accident, an examiner cannot refuse to do so, but must make clear that it is their personal view arising out of the observed facts.

8.13 SUMMONS TO PRODUCE DOCUMENTS

If an examiner is asked to produce a report or official document not available to the public, a note of the circumstance of the case together with the documents in question should be sent to the AM, who will seek advice from the Treasury Solicitor as to whether the documents may be released.

An official report or any document not available to the general public should not be taken to Court by an examiner unless advice has been obtained from the AM.

8.14 EXPENSES

Examiners who are called upon to attend Court to give evidence in their official capacity are regarded as being on official duty; travelling and subsistence expenses should be claimed from the Agency under the normal rules.

Recovery of expenses from the Court should be dealt with as follows:

For attendance at Court in connection with criminal proceedings, no claim should be made for recovery of expenses.

Examiners summoned in connection with a private lawsuit, should claim witness's expenses from the solicitors who issued the summons. They should be asked beforehand for an undertaking that the proper expenses will be paid whatever the outcome of the proceedings. However, if such an undertaking is not given, the examiner must nevertheless attend Court and claim the witness expenses later.

Witness expenses should be based on the examiner's gross salary and calculated as follows:

Gross monthly salary, (plus London weighting if applicable)
divided by
Number of days in month in question
multiplied by
Number of days in Court
plus
Travelling and subsistence expenses

The expenses should be scaled down appropriately for absences of less than a day. The amount of expenses which may be paid in County Court cases, is restricted by the County Court Rules. It is therefore important that the persons calling the examiner as a witness are informed of the amount that they will claim.

To avoid difficulties over the payment of claims an undertaking should, if possible, be obtained from the solicitors issuing the citation that the witness's attendance fee and subsistence and travelling expenses will be paid. Any sums recovered should be remitted to the Area Office.

8.15 INSTRUCTIONS - SCOTLAND

An examiner in Scotland is an ordinary citizen with a citizen's rights and duties even when they are on official duty. They must be impartial and avoid giving reason to be identified with the police. The procedures in Scotland follow broadly those for England and Wales but there are differences in law and practice to be remembered.

8.16 ACTION TO BE TAKEN BY AN EYE-WITNESS OF AN ACCIDENT

Examiners who have seen an accident should offer their name and address to any person involved or any person, e.g. the police, reasonably requiring it.

8.17 STATEMENTS

If asked at the time, or subsequently, to give a statement of what they observed, examiners should offer a written statement of facts provided the person making the request has reasonable grounds for doing so, e.g. a person involved in the accident, the solicitor or representative of such a person, a police officer, or a member of the Procurator-Fiscal's department. If the person making the request presses for an interview (called precognition) either instead of, or following, a written statement, the examiners must make themselves available. A copy of any written statement should be sent to the Supervising Examiner. In civil cases, a copy should be provided to other parties to a dispute if requested.

8.18 EXPENSES

Attendance at Court is regarded as official duty. No claim for travelling or subsistence expenses should be made on the Court. These should be claimed from the Agency under the normal rules.

If examiners are cited to appear as witnesses in a civil action they should claim a witness fee, the amount of which should be negotiated with the litigant or their solicitor subject, in the case of dispute, to the decision of the Auditor of Court.

The witness fee should be based on the examiner's gross salary and calculated as follows:

Gross monthly salary for the month
divided by
Number of days in the month in question
multiplied by
Number of days in Court
plus
Travelling and subsistence expenses

Claims should be scaled down appropriately for absences of less than a day. It should be noted that the amounts payable are limited by Court regulations.

To avoid difficulties over the payment of claims, an undertaking should, if possible, be obtained from the solicitors issuing the citation that the witness's attendance fee and subsistence and travelling expenses will be paid. Any sums recovered should be remitted to the Area Office.

8.19 INJURIES

If an examiner sustains an injury, however slight, during working hours, a report must immediately be sent to the AM for entry in the Accident Book.

8.20 ASSAULTS ON EXAMINERS

All cases of physical assault should be reported immediately to the police and the SE. A full written report should be sent on form HS2 the same day to the Area Office for the personal attention of the AM and onward transmission to HQ. If the examiner who was assaulted cannot make a report, the most senior examiner on duty should make it.

If the police decide to take proceedings against the assailant(s) they should be given whatever assistance they require, e.g. by provision of statements or by the giving of evidence.

If the police decide not to prosecute, and the assault clearly happened as a result of an examiner performing his official duties, DSA will take legal advice and pursue cases where they are advised that there is a reasonable chance of obtaining a conviction. Cases will be considered on the basis of available evidence and the seriousness of the assault.

Alternatively, if they so wish, examiners may seek support from either the TUS or may institute legal proceedings through their own solicitor.

In Scotland corroborative evidence of the occurrence will always be necessary. Prosecutions are the responsibility of the Lord Advocate and carried out by the Procurator Fiscal service. Private prosecutions are virtually unknown nowadays, and the examiner cannot initiate court action himself.

8.21 EXAMINERS AND THE LAW ON THIRD PARTY INSURANCE

The Road Traffic Act requires the use of a motor vehicle to be covered by an insurance policy which insures the user of that vehicle against any liability they may incur for the death of, or personal injury to, a 'third party': for these purposes, the term 'third party' includes any passenger in that vehicle. It should be noted that a user of a motor vehicle does not incur a liability unless they are held to be negligent.

An examiner is in no different position from any member of the public if they are injured as the result of negligence on the part of the driver of a motor vehicle. In relation to such a driver, an examiner is a 'third party', and the liability of that driver towards the examiner is one which must be covered by an insurance policy. An examiner who is injured in these circumstances (or if they are killed, his dependants) is entitled to claim damages against the negligent driver; if negligence is not admitted, the examiner (or the dependants) can bring a civil action in the Courts. The insurers of the negligent driver will normally pay damages agreed or awarded in such cases.

If, for any reason, an insurance policy does not exist or is invalid, the Motor Insurers' Bureau, under an Agreement with the Secretary of State, will pay any damages and costs which may be awarded, or which they may agree, provided that they are in respect of liabilities which the law requires to be covered by insurance. There are certain other conditions attaching to the Bureau's agreement to act in this way, the most important of which is that they should be given prior notice of an intention to bring an action against the uninsured driver.

If it appears that an accident in which an examiner is injured was caused by the negligence of both the driver of the vehicle in which they were travelling and the driver of another vehicle, a claim can be brought against both drivers.

In accordance with advice given in the Staff Handbook, any damages awarded to an examiner against a negligent driver may be taken into account in awarding any allowance under an Injury Benefit under the Principal Civil Service Pension Scheme. An examiner who intends to pursue a claim against a negligent driver should comply with the provisions incorporated in the Staff Handbook.

8.22 PRIVATE INSURANCE

An examiner is, of course, free to effect private insurance against injury or death during a driving test. The terms and conditions of such insurance are for them to arrange with the insurance company. A company will not necessarily agree to pay damages under such private insurance if they are covered by other means, but any payments made under such insurance would not prejudice any payments which may be due to an examiner as a civil servant, nor affect their right to claim civil damages.

8.23 EXAMINERS TAKING CIVIL LEGAL PROCEEDINGS AS A RESULT OF THEIR DUTIES

If a member of staff is injured by the wrongful act of any person, it is open to them to institute civil legal proceedings against that person. Financial assistance towards the costs may be given by the Agency; applications for assistance should be made through the AM.

In the case of an examiner injured in the course of his official duties:

- The examiner should notify the AM if they propose to take legal proceedings

Provided an application for financial assistance is made and approved beforehand, the Agency will pay for an examiner to consult a solicitor of their choice as to whether a claim for compensation or damages would be likely to succeed. The account, together with a copy of the solicitor's opinion, should be sent through the AM to Technical Standards Branch at HQ.

In the event of a claim for damages by an examiner being met by a defence of contributory negligence, the examiner should report the facts to the AM immediately. The Agency can then consider the extent, if any, to which it might want to become involved in the action.

8.24 POWER OF POLICE TO REQUIRE PRODUCTION OF DRIVING LICENCES

The law gives the police power to require a person supervising a provisional licence holder to produce his licence for examination, and to give his name and address, and those of the owner of the vehicle. An examiner is not responsible for supervision but if, whilst conducting a test, they are asked by the police to produce their licence they should:

- Explain that they are a Driving Standards Agency driving examiner conducting a driving test
- Produce their warrant card, and their licence if they have it with them
- If they do not have their licence with them, offer to produce it within 7 days if the police so wish; this can be done at any nominated police station.

8.25 LEGAL PROCEEDINGS AGAINST STAFF

Examiners must report in writing to their AM on receipt of any notification that they are to appear before a Court in connection with any criminal charge, giving details of the alleged offence and the date and venue at which the case will be heard. A representative of the Agency will attend the hearing.

Additionally, an examiner who is involved in any incident arising out of their driving, whether or not in the course of official duties, and which might result in them being prosecuted for an offence, or who receives a notice of intended prosecution for such an offence, (or, in Scotland, a complaint), or the offer of a fixed penalty, should immediately inform the AM giving details of the incident together with any other relevant information. A copy of the report should be sent to the SE for onward transmission, via the AM & ACDE, to the CDE.

The examiner should also notify the AM and the SE immediately of all subsequent action, such as: -

The receipt of any notice of Court proceedings or of an adjournment thereof;

Any other development, e.g. if they decide to plead guilty by post, when they should also let them have a copy of their letter to the Court; and

The result of the case.

Failure to comply with these instructions will be viewed seriously, and disciplinary measures may be taken.

All convictions for motoring offences will be subject to disciplinary review, which could result in the termination of an examiner's appointment. The examiner's appointment will be terminated automatically if they are convicted of any offence resulting in disqualification from driving, or any motoring offence involving drink or drugs whether or not disqualification is the penalty.

8.26 DISCLOSURE OF OFFICIAL INFORMATION

8.27 PUBLICATIONS, STATEMENTS TO THE MEDIA

Examiners are reminded that, as in the case of other civil servants, any letter or document which comes into their possession in their official capacity automatically becomes an official document, and it is a breach of the Official Secrets Act to show it, or communicate any part of its contents, to any person to whom they are not authorised to communicate it.

This applies to letters, which may be received direct at driving test centres as well as those passed to examiners for their observation or information. If a letter or document contains remarks, which may be construed as being personal or of an objectionable nature, it is for the Agency to decide whether to seek legal advice about possible action. Furthermore, any information, e.g. about candidates or instructors, which comes to the knowledge of examiners as a result of their official duties is official information and may not be disclosed outside the Agency without authority.

An examiner wishing to take part in an outside activity involving the disclosure of official information or the use of official experience must first obtain written permission from the Personnel Directorate through the AM. Examiners must not publish any written material, deliver or agree to deliver a lecture or speech, without first obtaining such permission.

Anyone who is considering writing a book or contributing to one and wishes to draw on their official experience or official information should not enter into any commitment or negotiation with a private publisher unless the proper authority has been obtained. Difficulties can arise with copyright material if this is not done before negotiations reach an advanced stage.

Examiners should not write to or make statements to the press about their official duties, or take part in any radio or television broadcast, or participate in the production of promotional material without obtaining prior authority from External Communications Branch Stanley House, 56 Talbot Street Nottingham NG1 5GU telephone number 0115 901 2851.

Failure to obtain prior authority or permission when required is a disciplinary offence.

8.28 PUBLICITY ABOUT DRIVING TESTS

Occasionally the Press or other media may give misleading publicity to certain aspects of particular driving tests. The following procedure is part of the general process of protecting examiners individually and collectively in these circumstances.

An examiner who conducts a test and becomes aware of any publicity about it, from which they are identifiable, should send a full report of the facts, as they know them direct to the AM with a copy to the area ACDE and SE. In the case of Press comment the report should be accompanied by the Press cutting, showing the full name of the publication and the date of issue. This should be done at the earliest possible moment. If they need to refer to documents relating to the particular test to refresh their memory they should arrange to obtain these at once through their SE and forward them with the report.

Driving test centres may occasionally receive requests from the Press or other bodies to interview examiners, or to visit centres. The approach is often made personally or by telephone. Examiners are not authorised to grant such requests and must not commit the Agency in any way. On the other hand, they should avoid giving any impression of being uncooperative. The caller should be referred to the External Communications Branch at HQ and the SE notified.

8.29 OUTSIDE ACTIVITIES

Because of the nature of their work, examiners have a particular responsibility to be constantly vigilant and alert to potential criticism at all times. For this reason, and because some activities can place them very much in the public eye, they are required to obtain prior approval before taking up ANY outside activity, paid or unpaid. Written applications should be made to Personnel Directorate through the AM with a copy to the area ACDE and SE.

Examiners who wish to take up part time employment driving e.g. LGVs/PCVs or mini cabs will, when seeking prior approval, be required to comply with the conditions laid down by Personnel Directorate.

Examiners who wish to perform Special Constable duties may do so subject to obtaining prior approval from Personnel Directorate.

8.30 ACCEPTANCE OF GIFTS, REWARDS AND HOSPITALITY

It is most important that examiners should not only be honest but be clearly seen to be beyond any suspicion of dishonesty.

Examiners must not, at any time, seek or accept any gift, benefit, privilege or concession whatsoever, from any candidate, driving instructor, driving school, or their representatives, or other member of the public with whom their official duty brings them into contact. Neither should they engage in any business transaction, which may compromise, or appear to compromise, their official position.

Any attempt on the part of a member of the public to offer a gift or reward in any shape or form, with the object of obtaining a concession or in recognition of a service rendered, e.g. a favourable decision on a test, should be immediately reported, via the SE to the AM.

Casual gifts offered - as, for example, at Christmas time - may not be connected in any way with performance of official duties so as to constitute an offence under the Prevention of Corruption Acts. Nevertheless gifts of any sort should be politely but firmly declined and, if received through the post, be returned with a covering letter from the SE. If an examiner is pressed to accept a gift they should at once inform the AM.

Similar considerations apply to offers of hospitality, where the utmost discretion should be exercised. Acceptance may make it difficult to avoid some obligation to the person offering it. Examiners should therefore be on their guard against accepting offers, which might appear to prejudice their strict independence and impartiality in dealing with official matters or be capable of misconstruction. In general, all offers of hospitality should be refused. If anyone with whom examiners might have official dealings persists with offers, which might be open to objection, the matter should be brought to the AM's attention immediately. An examiner who is doubtful about the propriety of accepting any offer of hospitality should consult their SE.

If corrupt practices are suspected, the Agency will take all possible action, including reference to the police, to investigate the matter. Failure to comply with these instructions could therefore have serious consequences and lead to dismissal and prosecution.

8.31 RELATIONSHIPS WITH INSTRUCTORS

During official hours relationships with instructors from any field, i.e. L, LGV/PCV, MC, should be kept pleasant and courteous, rather than friendly and familiar, level. Beyond a pleasant acknowledgement or greeting in the waiting room, or remarks in the way of 'passing the time of day', examiners should not engage in conversation with instructors. Any approaches from them by way of complaints or enquiries, other than about very routine matters, should be referred to the SDE.

There is no wish on the part of the Agency to interfere with examiners' private lives, but a close association or friendship with an L, LGV/PCV or MC instructor, whether or not in the same geographical area as the instructor, can throw doubt on the impartiality of an examiner when testing. This might be construed as improper conduct, and attention is drawn to the general principles on conduct in the Staff Handbook.

Therefore, if an examiner finds themselves involved in, or developing, an association or friendship with an instructor outside official hours they should ensure that their SDE and SE are made aware of the situation at a very early stage. Notification of an association should be made in writing to line manager(s) and written confirmation of this knowledge should be given to the examiner concerned. This correspondence must be copied to Personnel Directorate. The necessary steps can then be taken to avoid potential embarrassment to the Agency.

New entrant examiners must relinquish any ties with a driving school. In the case where any relative, including husband or wife, is involved with a driving school, the situation **MUST** be reported to line managers.

8.32 DRIVING INSTRUCTION BY EXAMINERS

An examiner may not give driving instruction to anyone without first obtaining authority from the SE; if the person concerned is a member of his immediate family, authority will not normally be withheld. The SE must be informed of the starting and finishing dates of instruction. The examiner must not, in any circumstances, conduct the driving test of their pupil. The SE should be informed when a member of an examiner's family is taking a test, so that they can conduct the test.

An examiner must not seek or accept any payment, either in money or in kind, for driving instruction or for any service connected with driving instruction, e.g. acting as an accompanying driver or supplying a vehicle.

8.33 EXAMINER BECOMING AN ADI

An examiner who intends to become an ADI after leaving the Agency must pass the ADI qualifying examinations. This is because the Agency cannot treat present or former members of its staff differently from other applicants for registration.

So that the necessary processes may be completed before an examiner leaves, once a retirement/leaving date has been established, any member of the driving examiner grades may take the Register examinations during the last 6 months of their service. They must not however give instruction on a professional basis until they have left the Agency.

Applications to take the examinations under these arrangements should be made in writing through the SE to the ADI Registrar.

8.34 HEALTH AND SAFETY AT WORK

A Health, Safety and Working Environment Manual containing advice and generic risk assessments that apply to the Agency, prepared in consultation with the TUS, is available in every permanent centre. The manual must be kept where it is readily accessible to all DSA staff.

8.35 PROTECTIVE CLOTHING

Examiners are provided with suitable protective clothing according to the circumstances under which they have to work. Enquiries relating to protective clothing (for repair and ordering etc) should be made through the examiner's line manager.

8.36 REPAIRS TO PROTECTIVE CLOTHING

Faulty or damaged motorcycle clothing should, with the SE's agreement, be returned to the supplier for repair. Examiners may arrange for other items to be repaired locally

provided the cost would be less than about half the cost of replacement, and subject to approval of an estimate by the SE and the Area Office.

8.37 APPOINTMENT FEES

Examiners should know the current fee for a test appointment, but should not otherwise concern themselves with questions relating to fees. It is the responsibility of booking section to ensure that candidates have paid for their appointments, and to advise on and implement the rules relating to forfeiture of fees. Candidates, or others, who make enquiries relating to fees should be referred to the national booking number.

8.38 INSTITUTE OF ADVANCED MOTORISTS

The Council of the Institute of Advanced Motorists has agreed that the Agency's examiners are eligible for membership of the IAM without having to take the Institute's driving test. Examiners wishing to take advantage of this facility may obtain application forms from SE or, in the case of examiners successfully completing the new entrant training course, the Training Establishment. The appropriate fee to cover the first year's membership must accompany applications.