

## Vehicle & Operator Services Agency Operations Manual

**30.06.09 Section 3 Vehicle Testing Scheme**

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### **Disciplinary Action - Overview**

To provide a deterrent to improper operation of The MOT Scheme, thereby contributing to an improvement in testing standards and a reduction in fraudulent activity, the operation and administration of The MOT Scheme is continuously monitored through a number of activities (e.g. site assessment visits (MOTSA), re-examination of recently tested vehicles (MOT55/MOTMCS), mystery shopper exercises (MS/MOTMSD), etc. The outcome of these activities determines whether formal disciplinary action (i.e. formal warnings or suspension/cessation), should be taken against entities or individuals who have demonstrated serious shortcomings in their operation or administration of The MOT Scheme.

Disciplinary action may be considered against one or more NTs, in which case action will be considered against the AE/AEs as appropriate. Disciplinary action considered against an AE is not always applicable to an NT.

### **Service Standard**

If an incident is considered to warrant formal disciplinary action this should be reflected in the time that VOSA takes to write to the parties concerned. We have a published service standard which states:

- Where a formal disciplinary interview is conducted; inform relevant parties of proposed action within 25 working days, or advise within the same timescale where no further action is to be taken.

## 7.1

### **Multi-Site AEs**

Disciplinary action may be taken against the VTSs under the control of a multi-site AE, on a local basis. Copies of disciplinary letters produced locally must be forwarded to the Lead Area

Office for inclusion in the AE Master file. Additionally, the Lead Area Office can also take action against the Authorised entity. HQ will give guidance where doubts exist as to whether such action is appropriate, but the final decision must rest with the appropriate AM.

The Lead AM should meet each Group AEDM for which they are the Lead Area at least once a year to discuss issues/problems. The Lead AM's meeting with a Group AEDM should look at the record of the AEs as a whole, not at one specific problem in one specific VTS. The Lead AM is not necessarily conducting a mathematical exercise adding up points but looking at patterns across the Group to see whether there is a Group wide problem and to help the AEDM to analyse and overcome identified issues/problems.

The Lead AM should also note any inconsistencies between different Area Offices when dealing with the Group VTSs for discussion with his AM colleagues.

## **7.2 Minor Shortcomings**

Minor Shortcomings in the operation of the MOT Scheme or test standards applied attract disciplinary points, and when the number of points for a particular case exceeds certain defined thresholds (refer to the current edition of The MOT Testing Guide) formal disciplinary action may be taken.

Where the disciplinary points do not exceed the defined threshold informal disciplinary action may be taken forward, in the form of advice/counselling being given to the AE/NT, or an Advisory Warning Letter may be sent.

## **7.3 Assemble Documentation**

Where circumstances have been identified that indicates formal disciplinary action may be appropriate, the relevant AE/VTS and/or NT file(s) must be reviewed.

Typically a VE will produce a report following an investigation.

Place the documentation within a separate paper file, on the VTS/NT master file(s) ready for assessment. This documentation may include checklists, reports, and photographs and may additionally require enquiries and reports to be produced using MOT Computerisation. Place the results of these enquiries and the reports on the appropriate files.

Any previous disciplinary action occurring within the preceding 5 years must be flagged and brought to the attention of the

AM/SVE.

## 7.4 **AM/SVE Review**

When the documentation is on file and complete, the AM or SVE will normally review the file. They will allocate disciplinary points for each shortcoming (refer to the current edition of The MOT Testing Guide) and determine the action to be taken.

Where the disciplinary points accrued exceed the defined threshold the VE's disciplinary report will be annotated to show how the total score was achieved and a Contemplated Disciplinary Letter (CDL) must be prepared.

### 7.4.1 **Advice/Counselling**

Where informal disciplinary action is to be taken advice/counselling is given to the AE/NT, this must be recorded in writing. The VE will provide written notification detailing the date and circumstances of the observed shortcomings and listing the individual items.

Apart from the issue of a VT58 (MOTDSV) and Part B of the VT56 (Site Assessment) no AWLs in the letter packs on VOSA Documentation require a reply.

### 7.4.2 **Contemplated Disciplinary Letter (CDL)**

Where formal disciplinary action is to be taken, produce Contemplated Disciplinary Letter(s).

**Only** the standard VOSA disciplinary letters must be used and individual letters must **always** be sent to the NT and AE.

The opening paragraphs however, can and must be altered slightly where there are unusual circumstances in the case or where the standard paragraphs do not quite suit the events. Standard letters must not be permanently altered to suit an individual style.

The letter must detail the date and circumstances of the observed shortcomings and must list, in detail, the individual items of concern and the disciplinary points accrued.

The letter may detail any credit points accrued.

For a very few serious cases where VOSA believe there is a very significant risk to road safety and/or the integrity of The Scheme, notice of cessation action may not be given. A "contemplated" letter will not be issued therefore no initial representations will be

invited.

#### 7.4.2.1 Previous Warnings

If the case is likely to lead to cessation the letter must refer to all unspent Formal Warnings issued within the last 5 years and the subsequent disciplinary points accrued for each case.

Representations will be invited for all previous Formal Warnings, but where a Formal Warning has already been subject to the Formal Warning Review process representations will not normally be accepted unless new evidence is being provided. The CDL letters on VOSA documentation have been amended to include options to specify which previous formal warnings have and haven't been subject to a review. The dates of all previous Formal Warning to be considered must be entered into option 2 and then option 2a or 2b, or combination of both, used to identify which have been subject to a previous review.

#### 7.4.2.2 Primary Evidence

Copies of all documentary evidence used by VOSA in determining disciplinary action must accompany the letter otherwise it will be regarded as inadmissible. This may include:

- VE's report
- Photographs (an individual set each for the AE and NT)
- Statements
- Appropriate logs e.g. SI
- Copies of appropriate test documentation
- **Note:** Ensure that this documentation does not reveal the name or address of a complainant or other party.

#### 7.4.2.3 Secondary Evidence

MOT Computerisation now provides data surrounding tests such as the time taken, average test times and failure rates which may be taken into consideration **but only as secondary evidence** to support a physical investigation or observation. Where this is the case, copies of source reports or screen prints must also be copied to the AE and NT.

Where this secondary evidence is being introduced to support primary evidence it is important that the letter makes it clear that this data will be taken into consideration by means of an 'In addition..' paragraph.

#### 7.4.2.4 Processing and Monitoring CDLs

- Place a copy of all letter(s) and accompanying documents on the relevant file(s).
- Record the issue of the letter(s) in the Disciplinary Letters Register or Area Office B/F system.
- Suspend the relevant VTS Plan. Refer to Section 36.5 – [Disciplinary Action is instigated](#). (This only applies if a CDL has been issued **to the AE**)
- **Note:** This action will be taken by the CRT team for all cases dealt with by them.
- The letter(s) invites replies/representations from the addressee, for both the present and any previous action, which must be submitted to the Area Office within 15 working days. This time period must be tracked carefully using the Disciplinary Letters Register or Area Office B/F system.
- If a timely reply is not received a [Representations Reminder letter](#) - SL1-081 notifying the party(ies) that a further 7 days grace will be granted must be sent. It must clearly state that after the 7-day period a decision will be taken with or without representations.
- When received, record receipt of the reply(ies) on the Disciplinary Letters Register or Area Office B/F system and place them on the appropriate file(s).
- Pass the file to the AM/SVE for formal review to determine the outcome of the case.
- If a reply is not received the file pass to the AM/SVE for review, with an explanatory file note.

## 7.5 Consideration of Representations

When and only when the deadline for the receipt of representations has passed, should the AM/SVE re-assess the case, carefully considering the representations from the AE and NT(s). Formal consideration of the case should be recorded on the dedicated page in the DAR pack of standard letters (*VOSA Documentation*) where the relevant text is intended to be cut and pasted into the decision letters. Failure to record on file that such consideration has taken place could lead to an appeal being allowed. The Agency must be able to demonstrate to an investigating authority that proper consideration of representations has taken place including any secondary evidence.

### Service Standard

VOSA has a published service standard which states that we will:

- Give a decision to contemplated disciplinary action representations within 20 working days from the reply deadline advising the outcome and how it has been reached. In exceptional circumstances and in the case of a complex/large scale case, we will provide a timescale as to when decisions will be provided.

### **7.5.1 Merits of previous Formal Warnings**

Before a decision is taken regarding cessation, the merits of previous Formal Warning letters should be re-examined even if no further representations have been received or formal review taken place. A Formal Warning letter may be part of the cessation process and its merits and its validity will be taken into account by Appeals before an appeal is decided. Formal Warning letters, will not be regarded as valid unless they were preceded by full opportunity for AEs & NTs to understand the criticisms made, and to make representations against them.

The result of any considerations must be communicated to relevant parties in [writing](#).

### **7.6 Final Decision**

A person has a right to a reasoned judgement. There is a risk of challenge if we do not give reasons for every decision we take.

#### **7.6.1 Judgement Process:**

The reason for any decision must always be recorded on the file and incorporated into the decision letter to the NT and or AE. This does not have to be a detailed argument for the decision, however each point of the representations must be covered and a brief explanation given as to why the points raised have or have not been accepted.

Every decision must be supported on a balance of probability based on the facts. Balance of probability will be satisfied if there is sufficient evidence to lead a reasonable person to conclude that it is at least more likely than not that an offence has been committed and there are reasonable grounds to establish that belief.

If you wish to make or take into consideration material comments on the representations which you wish Appeals or review bodies outside the Department to take into consideration, either:

- Make these available to the AE or NT before you issue your decision, and give him or her an opportunity to respond, or

- Include these comments in your decision letter.

The Guide gives advice on the normal sanctions that can be taken and decisions should be taken with discretion, based on the overall threat to road safety and not on any obligation to follow the published sanctions. The AM/SVE has the discretion to reduce the disciplinary action taken even if the adjusted points total meets or exceeds the cessation threshold.

Where there is doubt, the benefit should be given to the AE and or NT.

### **7.6.2 Switch of Vehicles Claims**

If the AE or NT alleged a switch of vehicles at the re-examination, and further comment is made in the representations, a check should be made on the progress of any Police investigation before the decision is made. The outcome or progress should be recorded on file and mentioned in the decision letter.

### **7.6.3 Completeness of Evidence**

Papers on file must provide a true and accurate record of all events that occur. Throughout the Civil Service, files have to be relied upon as the record of what has actually happened. Criticisms against an AE or NT must be fully and properly described on file, and photographs and drawings provided to illustrate alleged defects. In a PCA case the Department's report concluded:

" the lack of supporting evidence about the condition of the defects and the absence of any information about the treatment of the vehicle in that time (between test and inspection) means there must be some doubt about the conclusions of the evidence".

### **7.6.4 Decision Options**

After reviewing all of the evidence and re-scoring where benefit of doubt has been given, one of the following actions must be taken:

- NFA, advice/counselling given.
- Formal Warning issued.
- Formal Warning issued with a requirement for the AEDM to attend an MOT Managers' course or an NT to successfully attend a Directed Re-training course, in a specified time period (refer to section 16.9 – [NTTD Directed Retraining](#)). As an option Managers should note whether a Refresher Training course is imminent and possibly consider bringing the due date of this course forward instead.

- Formal Warning issued with a requirement for an NT to give a practical demonstration.
- The cessation of an NT's approval or an AE's authorisation.

If exceptionally, anything occurs following the issue of a statutory notice of disqualification or withdrawal that is likely to affect the timing of the effective date given in the notice (e.g. new evidence comes to light), the AM/SVE should seek immediate advice from HQ on procedure.

### 7.6.5 Notification of Decision(s)

Where the AE is a partnership one letter may be sent to all partners but must be addressed to each individually named partner. Where the AE is a company, letters must be addressed to The Company Secretary and sent to the Company's registered office address.

See [7.10](#) for where an NT works for more than one AE.

**Note:** There is a service standard regarding the timescales for notifying parties of decisions (see [7.5](#)).

### 7.7 NFA, advice/counselling (Advisory Warning Letter)

- Notify the outcome to the relevant parties in writing.
- Unsuspend the relevant VTS Plan. Refer to Section 37.7 – [Unsuspending a VTS Plan](#). (This only applies to an AE decision.)

**Note:** Unsuspending the VTS plan must always be carried out by the Area Office, including cases dealt with by the CRT team when they (i.e. the Area Office) receive the e-mailed copy of the outcome letter sent by the CRT team.

### 7.8 Formal Warning

When the issue of a Formal Warning is recommended the appropriate letter must be prepared. The letter must include the considerations of the AM/SVE when reaching their decision and will detail the period of time the warning will remain extant. The letter(s) may additionally instruct that an NT or the AEDM undertake appropriate re-training by a specified date. Where an NT is associated to more than one AE see [7.10](#).

The attendance of an AEDM on the MOT Managers' course must be tracked manually by the AO. If the AEDM has not attended by the due date then the authorisation may be subject to cessation, if this is the case refer to section 5.3 – [Suspend Testing](#) for details

on updating MOT Computerisation.

Where an NT is required to attend a Directed Re-training course enclose a VT78D form ([Application for Nominated Tester Directed Re-training \(Class 3, 4 & 7 only\)](#)), annotated by the AM/SVE, with the Formal Warning. Refer to section 16.9 – [NTTD Directed Retraining](#) for further details.

The formal warning letters will always ask for assurances that steps have been put in place to avoid any future occurrences of the same issues.

- Enter the issue of the Formal Warning onto MOT Computerisation as an Event. Refer to Section 10.3 – [Event Details](#) for full details. **Note:** The subject of this disciplinary action and any managers have access to this information via the Personnel Information Report from the VTS Device.
- Unsuspend the VTS Plan. Refer to section 37.7 – [Unsuspending a VTS Plan](#) for details. (This only applies to an AE decision.)
- **Note:** Entering the issue of the Formal Warning onto MOT Computerisation as an Event and Unsuspending the VTS plan must always be carried out by the Area Office, including cases dealt with by the CRT team when (i.e. the Area Office) they receive the e-mailed copy of the Formal Warning letter sent by the CRT team.
- Record a new Disciplinary Assessment onto MOT Computerisation after checking the VTS file and counting the number of unspent AE Formal Warnings in each of the two categories. Refer to section 17.1 – [When to carry out a DA](#) for details
- **Note:** The Disciplinary Assessment will be entered by the CRT team for all cases dealt with by them.
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- Record the issue of the Formal Warning in the Disciplinary Letters Register or Area Office B/F system.
- Place a copy of the letter on all relevant files.

The formal warning letter instructs that the assurances should be received at the Area Office within 15 workings days. The reply should detail the remedial action taken by the AE and the assurance that there will be no similar cause for concern in the future.

- If a timely reply is not received a [Formal Warning Assurance Reminder](#) letter - SL1-149 notifying the party(ies)

that a further 7 working days grace will be granted must be sent. It must clearly state that a reply **must** be received within the 7-day period. If a reply is not received then the file must be passed to the AM/SVE, with an explanatory file note.

Place a copy of the reply on all relevant files.

### 7.8.1 **Review of a Formal Warning**

There is no right of appeal against a Formal Warning at the time it is issued, however, the recipient may request to have the decision reviewed where they believe that the Formal Warning itself is unjustified, or the disciplinary points allocated is considered to be excessive. Refer to section 1.4 – [Review of Formal Warning](#) for details.

### 7.8.2 **Further action while FW under review**

If while a Formal Warning is under review the NT or AE is subject to further formal disciplinary action, the disciplinary process should be followed and Contemplated Disciplinary Letters issued. If the likely outcome is cessation then all Formal Warnings must be cited and representation sought. The final decision and outcome of the case must then be deferred, unless it meets the criteria for single case cessation, until the outcome of any pending Formal Warning review is known.

### 7.9 **Notice of Cessation**

When Cessation of Authorisation or Approval is chosen, a letter(s) notifying the party(ies) of this decision must be prepared. The letter must include the considerations of the AM/SVE when reaching their decision.

**Note:** Where an NT is associated to more than one AE see [7.10](#).

The letter gives notice of the intended date of cessation, and details the process of how to appeal against the decision. [Written](#) representations from an appellant **must** be received within 14 working days. If the appellant requests an Informal Hearing this also **must** be lodged in [writing](#) within 14 working days. Refer to section 1.3 - [Appeal against Decision to Cease Authorisation / Approval](#) for details. Following this:

- Enter the issue of the Notice of Cessation onto MOT Computerisation as an Event. Refer to Section 10.3 – [Event Details](#) for full details. **Note:** The subject of these notices and any managers have access to this information via the Personnel Information Report from the VTS Device.
- Unsuspend the VTS Plan. Refer to section 37.7 – [Unsuspending a VTS Plan](#) for details. (This only applies to an

AE decision.)

- **Note:** Entering the issue of the Notice of Cessation onto MOT Computerisation as an Event and Unsuspending the VTS plan must always be carried out by the Area Office, including cases dealt with by the CRT team when they (i.e. the Area Office) receive the e-mailed copy of the Notice of Cessation sent by the CRT team.
- Record the issue of the Notice of Cessation in the Disciplinary Letters Register or Area Office B/F system.
- Place a copy of the letter on all relevant files.
- Record the effective start date of the cessation and reason against the AE/NT record(s) as appropriate. Prior to the date being reached the Area Office will be reminded in a report to change the status of the impending cessation implementation. MOT Computerisation will send [Alert Message 66](#) to the Area Office if a person, subject to a pending disqualification, takes any additional Role appointments (becomes an NT at another VTS) during the interim period.

Once the notice period has expired the cessation becomes effective and the appropriate AE-VTS/NT statuses need to be updated. This process is not automatic. Refer to Section 5 - [Cessation of Authorisation](#) and Section 16.13.1 – [Cessation of Approval](#) for instructions covering these processes.

If exceptionally, anything occurs following the issue of a statutory notice of Cessation that is likely to affect the timing of the effective date given in the notice (e.g. new evidence comes to light), the AM/SVE will consider the new evidence and may amend his original judgment.

## 7.10 Decision Letters where NTs work for more than one AE

In cases where an NT works for more than one AE and disciplinary action has been taken, the other AE(s) must be notified by the AM, of the final decision and allocation of points but only after the 14 day appeal or review request period has passed, or a decision has been reached following an appeal of review request. **No other details must be released**, to do so may result in the user contravening the DPA and FOI Act.

Before doing so it is important that checks are made to see if the NT is actually carrying out tests at other listed sites or whether the removal of his association could be an oversight. If there is no recent record of activity the other AE(s) should be asked to confirm that the NT does indeed still work there. The AE/VTS

must not be informed of the reason for the enquiry prior to receiving the letter and even then the case should not be explained further apart from to reassure the AE that his authorisation is not affected.

'Notification letters' are at the end of the relevant disciplinary letters in VOSA Documentation.

### 7.11 AEs Surrendering before the Outcome of Disciplinary Action

Occasionally, when disciplinary action is taken against an AE which is likely to lead to their withdrawal from the MOT Scheme, the AE will voluntarily surrender their Authorisation before the final decision has been made.

Area Offices should process the surrender of Authorisation as requested by the AE, but the disciplinary action will continue through to a conclusion. This may result in the AM/SVE deciding that the AE's Authorisation should be recorded as 'Withdrawn'. Refer to section 5.2 – [Withdrawal of Authorisations already Surrendered](#).

### 7.12 Use of e-mail Communications

Wherever the terms 'written' or 'in writing' are used in connection with communication from AE's and NTs, they should be taken to cover correspondence via e-mail. All initial correspondence should now include the area office e-mail address ([area??mail@vosa.gov.uk](mailto:area??mail@vosa.gov.uk)) in order to invite such responses.

For the purpose of meeting receipt deadlines, a date of receipt should be taken to be the date of transmission so long as no material delay has occurred due to delayed replication. The receipt of all e-mails must be acknowledged.

Although decision letters to 'on-line' AEs and NTs may be e-mailed back as attachments, the original hard copy must also be posted in the normal way. Copies to consultants etc need only be e-mailed if the representations have been received via e-mail.

- **Note:** Copies of all e-mails received and sent must be printed and placed on file.

### References

[Section I of the MOT Testing Guide](#)