



Office of the
Traffic Commissioner

A Guide to Driver Conduct Hearings

**This guide contains important information you should
read in advance of a hearing**

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[www.gov.uk/government/publications/traffic-commissioners-
vocational-driver-conduct-january-2016](http://www.gov.uk/government/publications/traffic-commissioners-vocational-driver-conduct-january-2016)

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1. THE ROLE OF THE TRAFFIC COMMISSIONERS

- 1.1 Traffic commissioners are appointed by the Secretary of State and have responsibility in their region or country for licensing and regulation of the operators of goods and public service vehicles and those who drive them. There are eight traffic commissioners covering six regions in England, Scotland and Wales.
- 1.2 The Secretary of State (SoS) may refer applicants or holders of large goods vehicle (LGV) and/or passenger carrying vehicle (PCV) driving entitlement if there are concerns into their fitness to hold such entitlement because of how they have conducted themselves. This might be because of their driving record, or in the case of PCV drivers any other relevant matter, e.g. offences for theft or violence in order to protect the general public, children and vulnerable adults.
- 1.3 Referrals, on behalf of the SoS, are usually sent through the Driver and Vehicle Licensing Agency (DVLA), but they can also be received from the Driver and Vehicle Standards Agency, the Police, or other Bodies.
- 1.4 Their work in relation to drivers is often referred to as 'vocational driver conduct'.

2. THE TRAFFIC COMMISSIONERS' POWERS

- 2.1 A traffic commissioner has a range of powers that relate to a driver's authority to drive LGV or PCVs. It should be remembered that it is not a traffic commissioner's role to punish drivers, that is a matter for the courts. A traffic commissioner's role is to determine whether the driver can be trusted to driver large vehicles safely and to comply with the law. This may include requiring a driver to get used to driving again in a small vehicle following a disqualification before allowing him/her entitlement to drive larger vehicles.
- 2.2 Cases referred to the traffic commissioner can be broadly divided into those:
 - a) where a driver is applying for provisional entitlement
 - b) when a driver is coming to the end of a period of disqualification and consideration is to be given on whether a future application for return of the LGV/PCV entitlement would be granted
 - c) where a driver has current entitlement and has committed offences and a traffic commissioner needs to consider whether the LGV/PCV entitlement should be retained
- 2.3 There are other reasons for referrals, but these make up the majority of cases.
- 2.4 The powers of the traffic commissioners vary depending on the nature of the case, but could include refusing an application for entitlement, imposing an additional disqualification on the LGV/PCV driving entitlement at the end

of a driving disqualification, or suspending or revoking (taking away) a current entitlement so that the driver no longer has the right to drive LGVs or PCVs. When taking away entitlement a traffic commissioner may disqualify the driver from holding LGV/PCV driving entitlement for a period of time or indefinitely.

- 2.5 It should be noted that a traffic commissioner has no jurisdiction over the entitlement to drive vehicles other than LGVs or PCVs. If a traffic commissioner suspends entitlement, it only applies to the LGV/PCV entitlement of a driving licence.

3. EXAMPLES OF ACTION THAT A TRAFFIC COMMISSIONER MAY TAKE

- 3.1 The Senior Traffic Commissioner has issued Statutory Guidance and Statutory Directions (collectively known as a Statutory Document) that set out the approach a traffic commissioner should take when determining vocational driver conduct matters. Each case will be considered on its own merits and the traffic commissioner will take into account representations made by a driver when determining the case. However, the Statutory Document provides a useful indication of what a driver may expect.

Example 1:

A driver who is reported to a traffic commissioner for using a mobile phone in a commercial vehicle can expect a traffic commissioner to suspend the LGV/PCV driving entitlement for four weeks.

Example 2:

A driver who is found to have deliberately falsified driving hours records can expect their LGV/PCV licence to be revoked and be disqualified for 12 months.

Example 3:

A driver who disregards routing information or road signs and strikes a bridge can expect their LGV/PCV licence to be revoked and be disqualified for six months.

Example 4:

A second offence of speeding in a commercial vehicle may lead to a driver receiving a suspension of their LGV/PCV entitlement for six weeks.

Example 5:

A driver who wishes to resume their driving career after a three year driving disqualification can expect that the traffic commissioner will impose an additional disqualification of the LGV/PCV driving entitlement of at least 12 weeks.

4. WHAT IS A DRIVER CONDUCT HEARING?

- 4.1 A traffic commissioner is likely to determine a number of referrals based on the papers before him/her. This will usually include allowing a driver the opportunity to make representations on the offences, or the impact of not being allowed to drive larger vehicles.
- 4.2 However, in more serious cases a driver will be called to attend a driver conduct hearing (DCH). These are formal tribunal hearings before a traffic commissioner, similar to a court hearing. A driver may have to attend the relevant traffic area office for the area in which they live, or may be given the opportunity for the hearing to take place remotely using digital technology. The letter advising the driver of a hearing will advise whether the hearing will be conducted virtually or 'in-person'.
- 4.3 Common examples of where a driver will be called to attend a hearing are:
- Provisional applicants applying for LGV/PCV entitlement with a disqualification of over a year and which has ended within the last two years
 - Drivers who have had a driving disqualification over three years, or where there have been multiple disqualifications
 - Drivers who have had two or more convictions for using a mobile phone in any vehicle, or a single offence in a commercial vehicle
 - Drivers with offences relating to drivers' hours and tachographs
 - PCV drivers found to have committed a criminal offence
- 4.4 A traffic commissioner sits as a single person tribunal. Where appropriate, they may call witnesses to present evidence. This is usually for cases referred by the Driver and Vehicle Standards Agency for drivers' hours infringements, or similar. If the offences are as a result of endorsements on a driving licence, it is unlikely that witnesses will be called.
- 4.5 A driver will be given opportunity to explain why the offences were committed and any mitigating factors, including how the steps they have taken to ensure that they will be a safe and law-abiding driver in the future. The traffic commissioner will ask questions and a driver should be prepared to answer them honestly and openly.

5. HOW WILL A DRIVER BE NOTIFIED OF A DRIVER CONDUCT HEARING?

- 5.1 The letter calling a driver to the hearing will explain why the hearing is being held and give details of the legislation that it has been called under, together with the evidence that the traffic commissioner will consider. This will be sent to the correspondence address recorded on the driving licence. Therefore, it is important for drivers to ensure that the DVLA are advised of any changes.
- 5.2 The letter will provide information on the hearing and the action that the driver should take. It is important that the driver complies with any

instructions contained the letter promptly. The failure to do so may result in a delay in the consideration of an application to drive large vehicles and in other cases it may result in a traffic commissioner suspending or revoking the LGV/PCV driving entitlement.

- 5.3 The notification will usually be dispatched at least 21-days prior to the hearing. This period can be shortened with the agreement of the driver. The timescales do not apply for cases which have been adjourned from an earlier date.
- 5.4 If a driver does not attend a hearing without good reason, the traffic commissioner is likely to refuse any application for entitlement or suspend or revoke any existing entitlement.

6. PUBLICATION OF HEARINGS

- 6.1 Although driver conduct hearings are usually open to the public to attend, they are not publicised in advance. A traffic commissioner may call an operator and driver to a conjoined public inquiry and driver conduct hearing. The public inquiry for the operator will be publicised in advance but drivers who are called will not be named.
- 6.2 Unless it is a conjoined hearing, an employer will not usually be notified of the hearing by the Office of the Traffic Commissioner. It is important that drivers advise employers if they are called to a hearing as the outcome may impact on their business.

7. ATTENDANCE

- 7.1 Regardless of whether the hearing is 'in-person' or virtual, the driver called to a hearing must attend the hearing. A driver cannot send someone to attend in their place. A failure to attend the hearing may lead to the matter being determined in the driver's absence.
- 7.2 If the driver cannot attend on the date given for the hearing, a request for an adjournment can be made. However, hearings will not usually be adjourned unless there is a good and compelling reason to do so. The traffic commissioner will therefore need to know the reasons why the driver cannot attend. Where for instance there is a pre-booked holiday the traffic commissioner may ask for evidence that it was booked before the date of the letter calling the driver to the hearing.
- 7.3 A traffic commissioner is not automatically bound to accept a medical certificate. Requests for adjournments on medical grounds must be supported by medical evidence which states if and why the driver cannot attend a hearing. No hearing is automatically bound by a medical certificate and may use its discretion to disregard a certificate, particularly where:
- the certificate states that the driver is unfit to work (as opposed to unfit to attend a hearing);
 - the nature of the ailment, (e.g. a broken arm), does not seem to be

- capable to prevent attendance at the hearing;
- a driver is certified as suffering from stress / anxiety / depression and there is no indication of recovering within a realistic timetable.

8. PREPARING FOR A DRIVER CONDUCT HEARING

SPECIFIC REQUIREMENTS

- 8.1 If anyone attending the hearing have any specific requirements or needs to be taken into account e.g. for religious purposes, wheelchair access, hearing or sight impairment, or require an interpreter, they must notify the relevant Office of the Traffic Commissioner at least two weeks before the date of the hearing in order that the necessary arrangements can be made.
- 8.2 Traffic commissioners understand that a wide range of conditions may present difficulty for those attending hearings. As well as the obvious visual physical conditions, some people may have conditions that are not obvious, but which may present additional challenges. Attendees at hearings can be assured that any matter raised with staff, or the commissioners will be handled in full confidence. All reasonable steps will be taken to accommodate individual needs, but it is important that the Office of the Traffic Commissioner is given suitable notice.
- 8.3 If attendees have particular preferences on how they are addressed, for example the use of pronouns, or on any other matter that they consider sensitive, they should raise it with staff either before the day of the hearing or before it commences.

REPRESENTATION

- 8.4 A driver can ask that that someone represents him/her at the hearing. This can be a qualified advocate: Counsel (barrister in England and Wales or member of the Faculty of Advocates in Scotland), or a solicitor. Anyone else, including a transport manager, trade union representative, transport consultant or friend can only speak if the agreement of the traffic commissioner is obtained in advance. There is no duty solicitor present at the hearing nor is 'Legal Aid' available for representation. It is for the driver to consider whether to seek independent advice as soon as possible after receiving the letter notifying of the hearing. A traffic commissioner is unlikely to accept a request to adjourn the hearing on the day on the grounds that the driver now wishes to be represented.
- 8.5 If a driver decides to be represented, the letter advising of the hearing should be passed to the representative as soon as possible to allow sufficient time for proper preparation of the case and notification made to the Office of the Traffic Commissioner.
- 8.6 Before entering any agreement to be represented a driver should ensure that the proposed representative has a good knowledge of the legislation and the requirements of the traffic commissioners. These are specialist matters and not all lawyers or consultants will have sufficient experience to represent drivers effectively. If a driver is a member of a trade association

or trade union, they may be able to recommend a representative.

- 8.7 A driver contacted by someone wishing to represent them may be advised to try to establish their experience before making any agreement. This might be done by asking for references from previous clients or asking them to explain guidance contained in the Statutory Documents (specifically [Statutory Document 6](#)) issued by the Senior Traffic Commissioner. The Office of the Traffic Commissioner is unable to make recommendations of representatives, but can confirm factual information, such as whether a particular representative is known to the traffic commissioner and whether they are likely to be approved to represent a driver at the hearing.
- 8.8 Once appointed a representative should familiarise themselves with the facts of the case and the traffic commissioner should be advised in advance of the name of the person who will be attending.
- 8.9 There is no provision to apply for the costs or the expense of attendance at a hearing and the traffic commissioner has no power to make any such award.

PROVISION OF DOCUMENTS

- 8.10 The letter advising a driver of a hearing will also include specific directions and instructions. These should be complied with in full. Where certain documents are required to be sent in advance of a hearing it is important that they are sent to the relevant Office of the Traffic Commissioner in the time period stated, so that there is sufficient time for it to be properly considered. If documents are not received in accordance with instructions, a traffic commissioner may decide not to take them into account. This could have a negative impact for the driver's case.

9. THE HEARING

VIRTUAL HEARINGS

- 9.1 Virtual hearings can be beneficial in allowing cases to be heard without a driver having to travel long distances to a hearing. It is solely a matter for the traffic commissioner on whether a virtual hearing is suitable, and this will depend on a number of factors. These include the complexity of the case and the circumstances of the participants. The traffic commissioner will make an assessment of whether a virtual hearing is suitable on the information before him/her.
- 9.2 If the hearing is to be held virtually, instructions of how to participate will be set out in the letter calling the driver to the hearing. Virtual hearings can be more complicated to hear so it is important that participants take all reasonable steps to ensure that the hearing is effective. This includes ensuring prior to the hearing that:
- there is access to a suitable device, it is better to use computers, laptops or tablets rather than mobile phones. Consideration should be given on

borrowing a suitable device if a driver does not have access to one. A mobile phone can only be used if it is securely placed in a cradle or in a similar manner to prevent movement. It must not be handheld.

- that the equipment is capable of supporting Microsoft Teams. Tablets and smart phones will need to have the MS Teams Application downloaded. A driver should also ensure that s/he is confident in the operation of the equipment prior to the commencement of the hearing.
- that there is a suitable and stable internet connection.
- that the participant is in a quiet room or area, with no background noise and where s/he will not be disturbed. It is not appropriate to conduct the hearing from a vehicle.

9.3 A person dialling in to the hearing will be taken to a virtual lobby. The clerk will be aware of this and know that someone is waiting. At the appropriate time the clerk will join the call and invite attendees into the hearing.

9.4 Cameras should remain on at all times and a driver should have ID ready to show on the screen. The clerk will check the ID and advise attendees how the hearing will proceed and answer any questions in advance of the hearing starting.

9.5 The clerk will then invite the traffic commissioner into the hearing and introduce the case. Once the recording of the hearing has commenced the clerk will turn off their own camera but will remain in the hearing to take notes and deal with any issues that arise.

9.6 At the end of the hearing the Commissioner will sign out and the clerk will appear again to answer any further questions and advise on the decision process.

IN-PERSON HEARINGS

9.7 Unless instructed otherwise, it is advisable to arrive at the venue at least 15 minutes before the hearing is due to start and to bring any correspondence regarding the hearing together with any case papers that were sent with the letter, and photographic identification.

9.8 Those providing representation should ensure that they have registered their attendance with the Hearing Clerk who will make a note of names of people attending, and of those who want to speak at the hearing. Any failure to register could result in losing the opportunity to be heard.

9.9 Drivers attending a hearing will be asked to produce photographic identification, such as a passport or driving licence, to confirm their identity. Failure to present the required identification may lead to the traffic commissioner refusing to continue with the hearing. If anyone is uncertain as to what identification is acceptable, they should contact the Office of the Traffic Commissioner for clarification.

9.10 The Hearing Clerk will advise attendees of where to sit and will try to answer any questions that they may have about the proceedings. The actual start

time may depend on other cases listed for hearing that day. Please ensure that mobile phones are switched off before entering the hearing room.

THE PROCEEDINGS

- 9.11 Both 'in-person' and virtual hearings are formal proceedings and persons attending are expected to show respect to others and for the proceedings themselves. The traffic commissioner should be addressed simply as 'Commissioner'.
- 9.12 Evidence is not given under oath, but drivers, representatives and any witnesses are required to tell the truth at all times. Any failure to do so could impact on the weight given to that person's evidence. Furthermore, the giving of false evidence to a traffic commissioner could refer to the matter being referred to the police and criminal charges could follow.
- 9.13 The hearing is open to members of the public and any other interested parties. The traffic commissioner will consider, on request, whether to hear certain sensitive evidence in private session, such as financial information or personal medical information.
- 9.14 After the clerk has announced the case and given brief details, the traffic commissioner will outline the nature of the proceedings to ensure that everyone understands why it is taking place and the procedures to be followed.
- 9.15 Everyone who is entitled to give evidence, make submissions, or make representations will be given the opportunity to speak and to ask relevant questions. It is for the traffic commissioner to determine what is relevant for the purposes of the proceedings. Anyone giving evidence to the hearing can expect to be asked questions by you, or by a representative acting on your behalf. The traffic commissioner will also put questions to all parties.
- 9.16 During the proceedings the traffic commissioner may ask the driver what the effects may be if action were to be taken against the vocational entitlement.
- 9.17 Finally, the traffic commissioner will consider all the evidence which has been put before the hearing.
- 9.18 It may be helpful for drivers to prepare some notes in advance, listing the relevant points that are wished to be made at the hearing, bearing in mind the factors the traffic commissioner may take into account.

RECORDING OF THE HEARING

- 9.19 The proceedings will be recorded so that a transcript can be produced, should one be required. (Normally transcripts are ordered only in cases where there is an appeal against the traffic commissioner's decision.) Please note that during the hearing personal information may be recorded and could be put into the public domain unless a driver asks for this

information to be given in private. Any such request may be granted at the discretion of the traffic commissioner.

- 9.20 Please note that any information that is provided to the hearing may be disclosed to third parties for enforcement purposes.
- 9.21 It is not permitted for any other recording of the proceedings to be made by anyone attending the hearing.

THE DECISION

- 9.22 The standard of proof in proceedings before a traffic commissioner is the civil standard. This means that the traffic commissioner only needs to be satisfied that the case has been proved on the 'balance of probabilities', in other words 'is it more likely than not' that a particular thing happened. This is different to the standard required for a criminal court case, where the test is 'beyond all reasonable doubt'.
- 9.23 In most cases the traffic commissioner will inform attendees of the decision on the day and this will be confirmed in writing within a few days. In some cases, the traffic commissioner might want to consider their decision further, in which case the written decision will be sent as soon as possible, usually within 28 days of the traffic commissioner receiving all the relevant information.

10. APPEALS

- 10.1 Details of how to appeal will be set out in the decision letter, which will be sent out after the hearing.
- 10.2 In England and Wales, an appeal will be heard before a Magistrates' court. In Scotland, an appeal will be held before a Sheriff's Court.
- 10.3 Appeals must be lodged within six months of the traffic commissioner's decision in England and Wales. In Scotland an appeal must be lodged not later than 21 days after the date on which you were notified of the decision, although on special cause being shown the Sheriff may hear an appeal which is lodged after the 21-day limit.
- 10.4 Prior notice of intention to appeal must be made to the Secretary of State and the Traffic Commissioner who made the decision.