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# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No.6

### VOCATIONAL DRIVER CONDUCT

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). It has been the subject of public consultation.	
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<b>Issued:</b>	

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Acting Senior Traffic Commissioner  
2 December 2011

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the requirements for vocational driver conduct.

### Legislation – The Road Traffic Act 1988 as amended

2. When dealing with vocational licence holders and applicants for such licences traffic commissioners act at the request of the Secretary of State who may from time to time issue general directions which may for instance set out the threshold at which conduct cases will be referred to traffic commissioners. In doing so traffic commissioners take account of the relevant legislation and determine each case on its own merits and completely free from any interference from the Secretary of State – this is guaranteed by section 111(2) of the Road Traffic Act 1988. The decision of a traffic commissioner in a specific case is binding upon the Secretary of State unless it is overturned on appeal at the Magistrates or Sheriff Courts.
3. The relevant legislation is set out in Sections 110 – 122 of The Road Traffic Act 1988 as amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989, the Road Traffic (New Drivers) Act 1995 and in the Motor Vehicles (Driving Licences) Regulations 1999.
4. The legislation draws a clear distinction between LGV licence holders and applicants and PCV licence holders and applicants. This distinction reflects the nature of the work carried out by PCV licence holders in carrying passengers who are entitled to place their trust in the driver of that passenger carrying vehicle.
5. Section 112 of the Road Traffic Act 1988 provides that the Secretary of State shall not grant to an applicant a large goods vehicle driver's licence or a passenger carrying vehicle driver's licence unless he is satisfied, having regard to his conduct, that he is a fit person to hold the licence applied for. Section 121(1) defines that conduct as
  - (a) in relation to an applicant for or the holder of a large goods vehicle driver's licence or the holder of a LGV Community licence, his conduct as a driver of a motor vehicle, and
  - (b) in relation to an applicant for or the holder of a passenger-carrying vehicle driver's licence or the holder of a PCV Community licence, his conduct both as a driver of a motor vehicle and in any other respect relevant to his holding a passenger-carrying vehicle driver's licence or (as the case may be) his authorisation by virtue of section 99A(1) of this Act to drive in Great Britain a passenger-carrying vehicle of any class, including, in either case, such conduct in Northern Ireland.
6. The regulation of vocational licence holders and applicants by traffic commissioners complements their role as specialist independent regulators of the licensed commercial vehicle industry and enables them to promote road safety and fair competition within that industry with regard to operators and drivers alike whilst following the differing legislation.

7. Section 113(1) of the 1988 Act provides that any question arising under section 112 of the Act relating to the conduct of an applicant for a licence may be referred by the Secretary of State to the traffic commissioner for the area in which the applicant resides. This also complements the regional nature of traffic commissioners' regulation who generally (but not exclusively) regulate operators based in their own traffic areas. Indeed in many cases traffic commissioners will deal with drivers employed by operators in their own traffic area.
8. However the numbers of vocational licence holders and applicants are too great for traffic commissioners to deal with individually and so it has been agreed that certain categories of vocational licence holders and applicants will be referred to traffic commissioners by the Secretary of State. In practice referrals are made by the executive agency. DVLA.
9. Section 113(3) of the 1988 Act provides that a traffic commissioner to whom a reference has been made may require the applicant for the licence to furnish the commissioner with such information as he may require and may, by notice to the applicant, require him to attend before the commissioner at the time and place specified by the commissioner to furnish the information and to answer such questions (if any) relating to his application as the traffic commissioner may put to the applicant.
10. Section 113(4) of the 1988 Act provides that if the applicant fails without reasonable excuse to furnish information to or attend before or answer questions properly put by a commissioner when required to do so under subsection (3) above, the traffic commissioner may decline to proceed further with the application and, if s/he does so, the traffic commissioner shall notify the Secretary of State of that fact and the Secretary of State shall refuse to grant the licence.
11. This therefore gives the traffic commissioner discretion to determine a case either in writing or by the requirement of the person concerned to attend a hearing. It has previously been agreed that the following cases should be referred to traffic commissioners:
  - Section 113 of the 1988 Act – first time applicants for a provisional vocational licence who have accumulated 9 penalty points on their ordinary driving licence (ODL) over the past 3 years or who have been disqualified as well as previous holders of vocational licences whose ordinary driving entitlement has already been returned;
  - Section 113 of the 1988 Act – any holder of a vocational licence aged 21 or more who has achieved 6 penalty points within 2 years of obtaining his or her ODL and has therefore reverted to learner status under the Road Traffic (New Drivers) Act 1995;
  - Section 117 of the 1988 Act – persons who have previously held a vocational licence, whether full or provisional, but who have been disqualified by a court for 56 days or more, and whose ODL has not yet been restored;
  - the Secretary of State may also, under Section 116 of the 1988 Act, refer to traffic commissioners holders of LGV or PCV licences whose fitness may be in doubt. These may include drivers with non-endorsable offences, convictions, cautions or fixed penalties (such as drivers' hour's offences), relevant criminal convictions, cautions or fixed penalties in the case of PCV drivers, or others where, for instance, tachograph evidence demonstrates persistent speeding.

## General principles

12. Whilst the status of previous general directions in regard to vocational drivers has usefully been clarified by the Administrative Court<sup>1</sup> it was not asked to consider the applicability of the principle of deterrence<sup>2</sup>. The Administrative Court considered the extent to which the 'conduct' of a vocational driver, following the commission of offences which led to the matter being referred to a traffic commissioner, should be taken into account in determining fitness to hold such a licence. Personal circumstances which go to mitigate the conduct itself (such as illness, or emergency, or momentary lapse of attention, or carelessness) will be relevant to a decision on fitness to hold a licence, while personal circumstances which would, in the ordinary sentencing exercise by a criminal court go to mitigation of penalty (such as loss of work, or other hardship, or the dependence of others upon the licence-holder) may have limited application. A driver's conduct since the time of the offence(s) may be relevant both to whether the licence holder's conduct as a driver made him unfit to hold a vocational licence and whether the sanction required was suspension or revocation. This may include completion of the Driver Certificate of Professional Competence (Driver CPC). Documents such as references may be relevant to that determination<sup>3</sup>. In cases involving an element of dishonesty (for example deliberate falsification of tachograph records), subsequent conduct may be of limited weight. That is for the presiding traffic commissioner to determine.
13. Compliance is necessary to keep the public safe from the dangers that can be caused by large vehicles. A key part of ensuring compliance is through effective regulation and inspection. Vocational licence holders and applicants are expected to fully acquaint themselves with the relevant legislation before undertaking employment as a professional driver. They are also subject to the Driver Certificate of Professional Competence. Where offences threaten the safety of the public, those who commit offences of this kind should expect serious consequences<sup>4</sup>. The likelihood of future offending is relevant to the traffic commissioner's decision. The suggested directions set out in the attached Statutory Directions should be viewed as a starting point for the traffic commissioner determining the matter. Each case must be dealt with on its own facts. A case may involve many variables including different variations of alleged breaches, negative and balancing features. What appears on the face of the papers to be very serious may not in fact warrant severe regulatory action (and vice versa). As a result, whilst the Statutory Directions can provide for consistency in approach by suggesting starting points for regulatory action they cannot be used to predict the outcome of a driver conduct hearing or give rise to a legitimate expectation. The presiding traffic commissioner retains absolute discretion to move up or down from the suggested starting points if their judgement deems it appropriate.

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<sup>1</sup> Meredith and Others v Traffic Commissioner for the Western Traffic Area (2009) EWHC 2975 (Admin)

<sup>2</sup> Thomas Muir Haulage v The Secretary of State for the Environment, Transport and the Regions (1998) Scott CS13

<sup>3</sup> Secretary of State for Transport, Local Government and the Regions v Snowden [2002] EWHC 2394 (Admin)

<sup>4</sup> R v Saunders, Hocking and Williams (Times Law Report 21 02 2001) in which the Court of Appeal appeals against sentences of eight months imprisonment for offences of making false entries on tachograph charts.

## Driver conduct hearings

14. Section 113 of The Road Traffic Act 1988 is silent as to whether when the person concerned attends before them it should be in private or at a public hearing. Historically traffic commissioners have held the vast majority of their drivers conduct hearings in public but there has been no specific guidance. Conducting the hearing in public not only complements their role as regulators of the licensed commercial vehicle industry where the legislation is clear that public inquiries are just that but also complies with Article 6 of the European Convention for the Protection of Human Rights which states that *“in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”*.
15. The Senior Traffic Commissioner considers it desirable to issue guidance to ensure a consistency of approach and to provide clarity to vocational licence holders and applicants appearing before traffic commissioners. In addition to Article 6 referred to above the public interest demands that traffic commissioners regulate in an open and transparent manner. That way the public can see that traffic commissioners carry out their role free from undue influence, from any party, whether that is Government or industry. The governing legislation is clear that when an operator is called to inquiry that it is in public but it also provides specific safeguards for the presiding traffic commissioner to exclude the public in certain cases.
16. The Senior Traffic Commissioner therefore issues guidance that follows the governing operator legislation and consequently expects traffic commissioners to conduct drivers conduct hearings in public. However the presiding traffic commissioner may direct that the whole or any part of a driver conduct hearing be held in private if he or she is satisfied that by reason of
- the likelihood of disclosure of intimate personal or financial circumstances;
  - the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
  - exceptional circumstances not falling within the above

it is just and reasonable for him or her to do so.

17. There will be many occasions when traffic commissioners are asked to regulate both an operator and the drivers who are or were employed by that operator. The traffic commissioner will be dealing with different legislation but will be concerned with the same objectives namely the promotion of road safety and fair competition as well as seeking to ensure compliance with that legislation by both driver and operator. It would clearly be unsatisfactory for the traffic commissioner to come to what might be seen as inconsistent conclusions. In those circumstances it will be desirable to list those related cases so that a driver's conduct hearing is held at the same time as an operator's public inquiry<sup>5</sup>.
18. There will also be cases where the drivers and operator will each seek to blame the other and the presiding traffic commissioner will have to make specific findings of fact regarding culpability that will have a direct bearing on the traffic commissioner's decisions for both operator and drivers. Little guidance has so far been given but traffic commissioners are reminded that the interests of fairness are paramount, that it is only fair for drivers and operators to hear the evidence that each is giving about the other so that they might admit or deny that evidence, and that it is right that the presiding traffic commissioner should hear the whole of the evidence and should not be actively prevented from doing so by separate hearings for the drivers and the operator. Traffic commissioners are reminded that they can still attach such weight to the evidence as they see fit. The drivers' and operator's rights are safeguarded by the appeals processes albeit to different appeal courts and with different time limits
19. Traffic commissioners are also reminded of the useful guidance given by the Transport Tribunal that where there is the possibility of conflicting evidence a driver conduct hearing might be held at the same time as an operator's inquiry<sup>6</sup>. This will allow other parties to test any evidence<sup>7</sup>.

## Retesting

20. Regulation 56(5) of The Motor Vehicles (Driving Licences) Regulations 1999 (as amended) authorises a traffic commissioner, acting for the licensing authority, to order a person to be disqualified from holding a full vocational licence until he passes a test (i.e., to revert to provisional status), if it appears appropriate owing to that person's conduct. "Conduct" is defined in section 121 of the Road Traffic Act 1988 – see paragraph 5. Whereas Regulation 53 specifically refers to individuals who are currently disqualified from any driving by virtue of section 37(1) of the Road Traffic Offenders Act 1988, and who are therefore referred to commissioners under section 117 of Road Traffic Act 1988, it appears appropriate to apply similar consideration to previous holders of a vocational licence who are referred under section 113 because their ordinary driving licence has already been restored.

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<sup>5</sup> 2001/068 Dukes Transport (Craigavon) Ltd and 2002/025 HJ Lea Oakes Ltd

<sup>6</sup> 2001/68 Dukes Transport (Craigavon) Ltd, and 2002/025 H J Lea Oakes Ltd

<sup>7</sup> See Statutory Guidance and Statutory Directions on Case Management

## **Spent Convictions & The Rehabilitation of Offenders Act 1974**

- 21.** Section 1 of the Rehabilitation of Offenders Act 1974 provides that a person is to be treated as a rehabilitated person and applies equally in Scotland for the purposes of a traffic commissioner. A conviction is to be treated as “spent” provided the following conditions are satisfied in relation to any offence or offences committed before or after commencement of the Act:
- the sentence imposed is not excluded from rehabilitation under the Act;
  - since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
- 22.** Driver conduct hearings are “proceedings before a judicial authority” for the purposes of section 7(3) of the Act (see below).
- 23.** A person can only become a rehabilitated person if the sentence has been served in full or there has been full compliance with the requirements of the sentence. A failure to pay a fine or breach of a community penalty does not exclude a person from subsequently becoming rehabilitated. A sentence of imprisonment is deemed to have been served as at the time that the order requires the offender to be released from prison.
- 24.** Section 4 of the Act sets out the effect that rehabilitation has on an offender. A person who has become a rehabilitated person shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offences which were the subject of the conviction. As a result:
- no evidence is admissible in any proceedings before a judicial authority in Great Britain to prove that the individual has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of the spent conviction; and
  - no question can be put to that individual in any such proceedings, which cannot be answered, without acknowledging or referring to a spent conviction;.
  - by virtue of any enactment, law, custom or practice;
  - under the rules governing any association, institution, profession, occupation or employment; or
  - under any provision of an agreement providing for arbitration with respect to questions arising;
  - to determine any question affecting the rights, privileges, obligations or liabilities of any person or to receive evidence affecting such matters.
- 25.** Section 5 sets out the rehabilitation periods as summarised below

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:
Life imprisonment or imprisonment/ detention in a Young Offenders Institute (YOI)/ a sentence of preventative detention or a sentence of detention during Her Majesty's pleasure, FOR TERMS EXCEEDING 30 MONTHS	Excluded from rehabilitation
Imprisonment in a YOI, Corrective Training for MORE THAN 6 MONTHS but not exceeding 30 months	10 years*
Imprisonment NOT EXCEEDING 6 MONTHS	7 years*
Fine (or other order not specified below)	5 years*
Borstal Training	7 years
Detention (PCC(S)A 2000, s.91) under CYPA 933, s.53 for MORE THAN 6 MONTHS but not exceeding 30 Months	3 years
Detention under PCC(S)A 2000, s.91, s.53 for NOT MORE THAN 6 MONTHS	3 years
Detention in a YOI	3 years
Probation (Community) Order, where offender 18 years or over at date of conviction;	5 years
Where offender under 18 at date of conviction	2½ years from conviction or a period beginning with date of conviction and ending when order ceases to have effect (whichever is the longer)
Detention and Training Order under CDA 1998, S.73	In the case of a person aged 15 or over a date of conviction, 5 years if order was, 3½ years if it was not, for a term exceeding 6 months. In the case of a person under 15, a period beginning with date of conviction, and ending 1 year after the date on which the order ceases to have effect
Secure Training Order, Bind Over (to keep the peace or be of good behaviour), Care Order, Supervision Order under PCC(S)A 2000, s.63(1), Care order under CYPA 1933, S.57, Supervision order under CYPA 1933 or CYPA 1963	1 year or duration of order (whichever is longer)
Attendance at an Attendance Centre	Duration of the order plus 1 year
Hospital Order (with or without restriction order)	5 years or duration of the order plus 2 years (whichever is longer)
Disqualification, disability, prohibition or other penalty	The duration of the order

Reduced by half if the offender was under 18 at the date of conviction.

- 26.** Section 6 sets out the rehabilitation period applicable where multiple convictions apply:
- where only one sentence covered by this Act is imposed the rehabilitation period is as set out by section 5.
  - where more than one sentence covered by this Act is imposed in respect of a conviction (whether or not in the same proceedings) the applicable rehabilitation period is that for the longer sentence.
  - where a person is conditionally discharged or a probation order is made and after the end of the applicable rehabilitation period he is dealt with, in consequence of a breach of the order for the offence for which the order then he shall not be treated as having become rehabilitated until the end of the rehabilitation period for the new sentence.
  - If during the rehabilitation period the person convicted is convicted of a further offence (other than a summary offence) and no sentence excluded from rehabilitation is imposed any rehabilitation period which would end the earlier shall be extended so as to end at the same time as the other rehabilitation period.
  - the rehabilitation period applicable to another conviction cannot be extended by reference to an order imposing on a person any disqualification, disability, prohibition or other penalty.
- 27.** It does not apply to a conviction in another country which would not have constituted an offence if it had taken place in any part of Great Britain,
- 28.** Section 7(3) of the Rehabilitation of Offenders Act 1974 (as amended) allows a “spent” conviction to be admitted in evidence where the judicial authority, i.e. a traffic commissioner, is satisfied, in the light of any considerations which appear to the authority to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person’s “spent” convictions. Section 7(3) ensures that “spent” convictions stay “spent” unless it is in a class where it is permissible to do so and the party applying to put the “spent” conviction in (for example the Police or VOSA); can satisfy the traffic commissioner that there is no other way of doing justice.
- 29.** Reference to “a conviction” is not the same as a court hearing resulting in a finding of guilt, for instance a conditional discharge is not strictly a conviction<sup>8</sup>. The same will apply to other alternative court disposals including an absolute discharge. A discharge from a court will not be a disposal that renders a licence liable to automatic revocation but authorities are entitled to ask the question. The application of the Rehabilitation of Offenders Act 1974 can prove difficult when concerned with multiple offences and it is important to differentiate between summary only offences and offences which can be dealt with by the higher courts<sup>9</sup>.

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<sup>8</sup> R v Rupal Patel No 2006/4890/B5

<sup>9</sup> 2009/530 Boomerang Travel Ltd

- 30.** Useful parallels can be drawn from other licensing regimes<sup>10</sup> when determining the relevance of previous convictions to proceedings before a traffic commissioner:
- where a judicial authority is considering whether justice cannot be done in a particular case except by admitting evidence of spent convictions, it would be contrary to the purpose of the legislation to receive all spent convictions and then decide which ones to take into account;
  - when asked to provide information an enforcing authority should identify the issue to which the spent convictions would relate if they were admitted and then should not only limit disclosure to those convictions which are relevant but should also provide a covering note indicating in general terms the class, age and seriousness of each of those offences in order to help the licensing authority to decide whether, once it has heard the applicant on the matter, it wishes to be informed of the details of the spent convictions so that it may treat them as material convictions;
  - any advocate should indicate in general terms the class, age and seriousness of the offences in order to help a tribunal decide whether, once it has heard the applicant on the matter, it wishes to admit evidence of the convictions;
  - it may be that only some of the spent convictions should be received and the applicant should be given an opportunity to persuade the tribunal that any spent convictions which have been disclosed are either irrelevant or should not prejudice the application because of their age, circumstances or lack of seriousness;
  - the tribunal should come to its own dispassionate conclusion having regard to the interests of both the applicant and the public in whose interests the exceptional power to have regard to spent convictions is being exercised.

### *Cautions*

- 31.** The Criminal Justice and Immigration Act 2008 amends the Rehabilitation of Offenders Act 1974 to bring warnings, reprimands, simple cautions and conditional cautions within the scope of that Act. Section 8A and Schedule 2 of the Rehabilitation of Offenders Act 1974, as amended mean that reprimands and warnings are spent at the time they are given; conditional cautions are spent after three months. A person who is given a caution which is spent shall be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence and no evidence is admissible in any proceedings before a judicial authority in England and Wales to prove that person has committed, been charged with or prosecuted for, or been given a caution for the relevant offence. That person cannot be asked in the course of any proceedings any question which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.

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<sup>10</sup> *Adamson v Waveney District Council* [1997] 2 All ER 898, where the court was concerned with the grant of hackney carriage licence to 'a fit and proper person'.

## **DIRECTIONS**

**32.** The Senior Traffic Commissioner for Great Britain issues the following Statutory Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981. These Directions are addressed to the traffic commissioners in respect of:

- the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions;
- the starting point for decisions on vocational driver licences.

### **Basis of Directions**

**33.** These directions are issued under section 4C(1)(b) of the 1981 Act to provide practical advice on the administrative arrangements to those who support the traffic commissioners in fulfilling their statutory functions and the procedure to be adopted by traffic commissioners in conducting hearings under the legislation set out in the attached Statutory Guidance.

**34.** The criminal courts are concerned with punishing those who have committed criminal offences whereas traffic commissioners are concerned with the question of whether the person concerned is fit to obtain or to continue to hold a vocational licence. Those two exercises are different and consequently what is appropriate proportionate and purposive will vary in each individual case. The suggested starting points are intended to ensure consistency in approach not uniformity in decision.

**35.** The value of hearing all the relevant evidence and submissions at a driver conduct hearing is long established and traffic commissioners will be careful to ensure that each case is dealt with on its own facts. Traffic commissioners will note that a case that may appear to be very serious from an initial reading of the papers may in fact turn out not to require severe regulatory action once all the evidence and submissions have been heard and conversely that a case that initially appears not to be serious can then in fact require severe regulatory action.

**36.** The presiding traffic commissioner retains discretion to move up or down from the recommended guideline if the particular facts of a case justify it. There are many types of driver conduct which cannot be set out in detail in these Statutory Directions. This document therefore refers to the more common matters. Traffic commissioners will take into account any others that are raised and take whatever action appears to be appropriate in the individual circumstances.

### **Referrals to traffic commissioners**

**37.** Traffic commissioners can only take action on a vocational conduct case upon the referral of that case to them by the Secretary of State. Referrals will have been properly made in the following circumstances:

- for endorsable convictions: by DVLA;
- for non-endorsable offences and third-party notifications: under authority of the Secretary of State see letter (updated version of original communication of 21 May 1998) at Annex 2.

## Traffic commissioner's decisions

### *On the papers*

38. As a traffic commissioner may deal with a case in writing or require the person concerned to attend a hearing a great number of cases are dealt with by traffic commissioners "on the papers". In practice letters will be sent by staff at the Office of the Traffic Commissioner to the vocational licence holder or applicant stating that the traffic commissioner is considering taking a particular course of action and inviting the person concerned to accede to the course of action, to make written representations or to request a hearing where they can give full oral evidence.
39. Where the person concerned has received one previous order for disqualification, and then fails to respond to the invitation letter within 4 weeks, the commissioner should be invited to proceed to make his or her decision on the papers.<sup>11</sup>
40. Should an applicant for a licence not respond to a request for written information, or fail more than once without good reason to attend a hearing, the traffic commissioner will normally decline to proceed further with the application in which case the application for the licence will be refused without further consideration. This decision will be entered into the system as refused (until 70th birthday); to ensure that DVLA will be alerted if a subsequent application is made.

### *Driver Conduct Hearings*

41. First-time applicants (referred under Section 113) who have 9 or more penalty points on their licence, the last points or disqualification having been received within the last 2 years from the date of application (and none within the last six months – see Annex 1) should be required to attend a hearing to give the traffic commissioner the opportunity to assess the individual. As part of that exercise the traffic commissioner will wish to stress upon the applicant the additional standards and responsibilities of professional drivers, to explain the further legal implications of the vocational licence, and to demonstrate the connection between vocational entitlement, the traffic commissioner and conduct, and even the implications for an employer's operator's licence.
42. Hearings are inquisitorial in nature and provide an opportunity for the driver to address or to offer any explanation for the matters leading to the Secretary of State's referral. In respect of applications section 112 of the 1988 Act provides that "*the Secretary of State shall not grant to an applicant a large goods vehicle driver's licence or a passenger-carrying vehicle driver's licence unless he is satisfied, having regard to his conduct, that he is a fit person to hold the licence applied for*". Whilst this appears to refer to the burden being on the Secretary of State it does in fact only relate to the decision to refer the decision to the traffic commissioner. Convictions or other formal records such as Fixed Penalty Notices will be treated as a formal finding unless challenged in the course of the hearing. In most cases drivers are unrepresented and therefore the traffic commissioner will ensure by asking questions about the relevant conduct that the driver is given a chance to admit all relevant evidence. The driver may also ask for references and/or testimonials to be taken in to consideration. All hearings will be digitally recorded.

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<sup>11</sup> see Annex 4

43. The majority of hearings will be as a result of convictions, which are a matter of public record; whilst it is unusual for members of the public or press to attend, publicity may also draw attention to the responsibilities of vocational drivers and the powers of commissioners. As stated at paragraphs 9 – 11 above all hearings will therefore be in public subject to the circumstances referred to at paragraph 11.
44. Any driver called to a hearing by a commissioner will be dealt with on the merits of that particular case. Annex 1 sets out the starting point for consideration of a decision and traffic commissioners are expected to give reasons for departing from the starting point, for example, where particularly aggravating features require a more robust approach in that particular case.

#### *Written Warnings*

45. The traffic commissioner may choose to issue a warning letter, which the driver or applicant is expected to adhere to. This should emphasise in full:
- the additional requirements and standards expected of a professional driver,
  - the link between vocational entitlement, the traffic commissioner and conduct,
  - the potential implications for the driver's employer's operator licence.

#### *Retests*

46. A traffic commissioner is authorised to order a person to be disqualified from holding a full vocational licence until he or she passes a test if it appears appropriate owing to that person's conduct. The criminal courts will usually already have considered whether to order a re-test. A traffic commissioner should not seek to usurp that function of the courts. If, however, a person as a result of his driving conduct has not or will not have driven on a vocational licence for 5 years or longer or where there are doubts concerning his professional driving, a traffic commissioner should consider requiring him or her to take the appropriate test.
47. Traffic commissioners should not impose this requirement as a punishment but may require a qualified testing officer to be satisfied that the individual still meets the appropriate standard in the interests of road safety. This will probably involve some cost so it will not always be appropriate to order an additional further period of disqualification.

#### **Offenders under the Road Traffic (New Drivers) Act 1995 (referred under Section 113)**

48. LGV and PCV drivers under the age of 21 who under the regulations hold this type of licence are automatically disqualified from holding a vocational licence until age 21 if they accumulate more than 3 penalty points. The New Drivers Act requires that the licence of any new driver who amasses 6 penalty points within the first 2 years of passing his or her test be revoked. If the driver is over 21, all of his or her previous entitlements will be restored once he or she passes a test in any of his previously held categories. The driver's LGV/PCV entitlement, however, will be referred to a traffic commissioner.

## Endorsable offences

49. Annex 1 provides the starting point in relation to offences where an ordinary driving licence has been endorsed with penalty points. Annex 6 sets out the different traffic offence codes.

### *Use of mobile phones*

50. A specific starting point is provided in respect of the use of hand held devices such as mobile telephones because of the prevalence of this offence in recent years. Parliament has recognised the inherent dangers caused by drivers of motor vehicles when using mobile telephones whilst driving and brought forward specific legislation. There has been an unacceptable increase in the number of vocational licence holders using mobile telephones without a hands free device whilst driving large goods and passenger carrying vehicles. This practice is unacceptable and presents an undue risk to road safety. Studies have indicated that even the use of hands-free devices can distract a driver to the extent that they may be prevented from applying the requisite care and attention.. A report for an offence received from an enforcement agency that a vocational driver has used their mobile telephone whilst driving without a hands free device in the last three years will result in that driver being called to a hearing before the traffic commissioner. Each case will be decided on its own facts and merits and the presiding traffic commissioner will be keen to ascertain the reason the driver is engaged in the telephone call. In cases where drivers are speaking with their employers or their customers the traffic commissioner may consider the effect this might have upon the operator's repute.

### **Drivers who have previously held a licence but are disqualified (referred under section 117)**

51. Previous holders of a vocational licence who are still disqualified are dealt with under section 117 (their ordinary driving licence having been revoked). Previous holders whose ordinary driver's licence has been returned after disqualification are referred under Section 113. There is no practical difference except that where the ordinary licence has been returned they are dealt with (under Section 113) as applicants. The example letter at Annex 3 refers to both sections 113 and 117 of the Act, and staff should amend it accordingly.

52. DVLA usually refers details of disqualified vocational drivers to the Office of The Traffic Commissioners 4 months in advance of the due date for the restoration of the licence. This may be before the individual has re-applied for his or her ordinary licence(s), but should be referred to the traffic commissioner in any event as the traffic commissioner's decision may assist an individual in making an informed decision for the future.

53. Annex 1 provides the starting point for traffic commissioners when deciding on what action to take in respect of drivers who have been disqualified. It differentiates between disqualifications for 12 months or less, for more than 12 months and less than 3 years (example letter at Annex 4), those with 2 or more disqualifications totalling more than 12 months, and a first disqualification of 3 years or more.

54. The Senior Traffic Commissioner has noted that many people with a 3 year disqualification change address without notifying the DVLA and attempts to call them to a hearing in the 4 months leading to the restoration of their ordinary licence can frequently fail. To avoid an unnecessary waste of resources they will only be called once they have made an application.

#### **Specific guidance for non-endorsable offences:**

55. There is currently no central record of non-endorsable offences committed by vocational licence holders. These cases will result in referral on information obtained through VOSA, the police, other enforcement agencies, or media reports (See Annex 2). The Senior Traffic Commissioner considers that it would be beneficial for the promotion of road safety and the promotion of effective enforcement for the Office of the Traffic Commissioner to compile and retain a record of all offences reported to a traffic commissioner, at the same time ensuring cross-reference with any cases referred by DVLA.

56. The example letter at Annex 5 provides a template for calling a driver to a hearing.

#### *Speed limiters*

57. Speed limiters are designed and fitted to ensure that road safety for drivers themselves and other road users is preserved. They serve to limit the speed at which vehicles above a certain weight can travel on the roads. Braking and stopping distances are greatly affected by speed in any motor vehicle and this is never more evident than in a large goods vehicle or passenger carrying vehicle. Furthermore, they ensure that fair competition between operators is upheld. Enforcement agencies have previously detected widespread abuse of speed limiters, and the Senior Traffic Commissioner is keen to reflect the seriousness of speed limiter breaches in the way that traffic commissioners deal with transgressions by the drivers. Disabling a speed limiter should be treated as an expression of intent to exceed the legally permitted speed.

#### *Falsification of tachograph charts*

58. Tachograph recording equipment is installed in commercial vehicles to enable a record to be kept of the work undertaken by the driver of that vehicle. The recording equipment is a sophisticated device that is calibrated for accuracy and provides a reliable record to many parties including the driver's employer as well as the enforcement agencies. They have powers to examine the records produced by that equipment and to prosecute if certain offences are detected as a result of that examination. Regulations set the limits of work that can be undertaken by such drivers and establish the ways in which drivers must comply with the recording requirements. Traffic commissioners will note that these rules are designed to ensure road safety and to protect drivers from fatigue and from exploitation from unscrupulous employers as well as to protect other road users from the consequences which inevitably flow from tired drivers in commercial goods and passenger vehicles.

59. There are some drivers within the industry who have either falsified the records made by that equipment or who have tampered or interfered with the equipment itself to allow a false tachograph record to be made. The result of this is that the enforcement agencies will, in many cases, be prevented from establishing whether or not the particular driver has complied with the legal requirements. On many occasions the

driver will have falsified the record with the express intention of hiding such breaches of the hours and tachograph regulations from the authorities or from his employer who is also required to ensure compliance with them. In many cases the falsification itself will be an offence of dishonesty for which the driver may have been prosecuted. Traffic commissioners will be likely to regard the falsification as more serious than the offence that it may be designed to conceal and will remind themselves that conscientious operators regard falsifications of tachographs and interference with recording equipment as so serious as to warrant summary dismissal in many cases. Case law indicates that those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. Traffic commissioners will adopt a similar approach when dealing with those who use devices to interfere with the recording equipment itself (either to make a false recording or to stop any recording at all being made) .

### *Drivers' hours and tachograph rules offences*

The drivers' hours and tachograph rules and regulations are set out in Regulations which provide the standards for the limits of work that can be undertaken by such drivers and establish the ways in which drivers must comply with the recording requirements. These rules are also intended to ensure road safety, to protect drivers from fatigue and exploitation as well as to protect other road users. Vocational licence holders must fully acquaint themselves with the relevant legislation before undertaking employment as a "professional driver" of commercial goods or passenger vehicles. Furthermore vocational licence holders and applicants are reminded that free advice and assistance on the relevant legislation is available from the Vehicle and Operator Services Agency<sup>12</sup> and that free written guidance is available from VOSA on the internet. The Trade Associations and many trade publications also offer a wealth of advice to drivers on their obligations as professional drivers.

### **Other criminal offences: PCV drivers**

60. These Directions cannot cover all eventualities. The list of offences at Annex 1 is not exhaustive but indicates the types of cases where traffic commissioners should be considering suspension of the entitlement or revocation and disqualification.
61. A wide range of offences might also call into question a person's suitability to hold a PCV licence. Serious convictions for assault, theft or the supply of drugs will require the traffic commissioner to consider whether that person is an appropriate person to be driving a bus or coach with the opportunities such work provides for close contact with the public. Again factors such as whether the offence was isolated or part of a course of conduct; whether it was planned; whether it was committed in the course of a licence holder acting as a PCV driver; and the degree of risk of future offending, will be relevant to whether action is required and at what level.
62. Convictions for unlawful possession of drugs will result in the person concerned being called to a hearing before the traffic commissioner and may result in suspension or revocation of the driving entitlement because of the effects that drugs can have on a person's driving ability.

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<sup>12</sup> [www.vosa.gov.uk](http://www.vosa.gov.uk)

63. Convictions or the circumstances leading to police cautions, for sexual offences will frequently warrant the revocation of a person's PCV licence due to the particular risk that sexual offenders can pose to the travelling public. Traffic commissioners should treat any offences as listed in Schedule 3 of the Sexual Offences Act 2003 as particularly serious and should in almost all cases disqualify the licence holder for an indefinite period. Other sexual offences of a lesser nature may also call into question a person's suitability to hold a PCV licence but each case must be decided on the facts, taking into account such factors as whether the offence was an isolated one or part of a course of conduct; whether it was planned; whether it was committed in the course of a licence holder acting as a PCV driver; and the degree of risk of future offending.
64. Traffic commissioners are also reminded of the specific requirements of the Sex Offenders Register and that they may be asked to take further action (in the unlikely event that an order for indefinite disqualification has not been made) where a person concerned has not, for example, complied with the terms of their registration. When doing so traffic commissioners are reminded that the protection of the public is paramount.

#### *Sex offenders register*

65. The sex offenders register contains the details of anyone convicted, cautioned or released from prison for sexual offence against children or adults since September 1997, when it was established. The Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003) requires those convicted of sexual offences to register with the police within three days of their conviction or release from prison. Failure to register is an offence which can carry a term of imprisonment. The police receive notification from the courts, prisons and the probation service following an offender's release into the community. Police forces can also apply for sex offender orders that bar offenders from certain activities and areas frequented by children. High-risk offenders are subject to further surveillance.
66. Offenders are given strict licence conditions and can be sent back to prison if they fail to co-operate. Sex offenders have to register with their local police every year. They must also inform the police within three days if they change their name or address, and disclose if they are spending seven days or more away from their home, if they change their name, and plan to travel outside the United Kingdom. The police can photograph offenders every time they register, and exchange information about the movements of such offenders.
67. How long the offender remains on the register depends on the offence. Those given a prison sentence of more than 30 months for a relevant offence are placed on the register indefinitely. Those imprisoned for between six and 30 months remain on the register for 10 years, or five years if they are under 18. Those sentenced for six months or less are placed on the register for seven years, or three and a half years if under 18. Those cautioned for a sexual offence are put on the register for two years, or one year if under 18.

## Previous convictions/cautions

### *Rehabilitation*

- 68.** It is for the traffic commissioner to decide whether sufficient time has passed to allow the convictions and/or conduct to be disregarded, taking in to account the evidence and circumstances of the case balancing that conduct against other relevant material such as the driver's record. Spent convictions, however, should not generally be referred to or taken into account in respect of a driver appearing before a traffic commissioner. The conduct itself, however, might be relevant (see below). A traffic commissioner has discretion as to whether to disregard others, which are not spent, applying the principle of proportionality. The Guidance above sets out the provisions of the Rehabilitation of Offenders Act 1974 as they apply to proceedings before a traffic commissioner and the principles which can be drawn from the available case law. The convictions of corporate bodies are not subject to the Rehabilitation of Offenders Act 1974.
- 69.** Since section 4 of the Rehabilitation of Offenders Act 1974 states that a person who has become a rehabilitated person shall be treated for all purposes in law as though there has been no conviction and/or caution against that person, no evidence is admissible in any proceedings to prove that conviction/caution where it is "spent" and an individual cannot be questioned in any proceedings if the questions cannot be answered without referring to a "spent" conviction/caution. This provision relates to proceedings before any judicial authority including a Tribunal, and as a result, includes proceedings before traffic commissioners. Members of staff should therefore satisfy themselves as to whether:
- the sentence imposed is not/excluded from rehabilitation under the Act;
  - since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.
  - the sentence was served in full. (A sentence of imprisonment is deemed to have been served as at the time that the Order requires the offender to be released from prison.)
- 70.** Whilst in relation to conduct a "spent" conviction shall be disregarded in so far as the actual recorded conviction is concerned, the traffic commissioner can have regard to any other information which appears to relate to the individual's fitness to hold a licence (for example, a course of conduct which may be revealed by convictions for similar offences over a period of time). As a result, whether a "spent" conviction should be raised with a driver should be referred to the traffic commissioner.
- 71.** The final decision as to whether it may be relevant to the proceedings before the traffic commissioner and should, therefore be admitted notwithstanding that it is "spent", is a matter for consideration by the traffic commissioner. The traffic commissioner will need to be satisfied that there is no other way of doing justice in the case other than putting in the spent conviction. Accordingly, in such cases, caseworkers should refer issues concerning the admissibility of spent convictions to the traffic commissioner for a preliminary ruling as to whether they should be taken into account. Each case will have to be considered on its own individual merits.

## *Endorsements*

**72.** Where an endorsable offence has been committed call up letters and correspondence should refer to endorsements rather than convictions. Details of some driving offences may remain on a driving licence for longer than the years for which staff at the Office of the Traffic Commissioner are used to dealing with, for instance an endorsement for a drink or drugs related road traffic offence remains on a driving licence for 11 years. Another example might be where a court imposes a fine for travelling at excessive speed and endorses a licence. If it was committed, say 8 years ago, it would be more than 5 years old and the driver would be treated as rehabilitated. If, however, there was another similar offence 4 years earlier, both offences would strictly be disclosable under the Rehabilitation of Offenders Act 1974.

### ANNEX 1: Endorsable Offences

Offence details	Circumstances	Referral	Starting Point
First time applicants and renewals (excluding drink/drive offences) with 9 or more penalty points	Penalty points within the last 6 months,		Send a 'minded to refuse' (for a period of 6 months) letter;
	Penalty points accumulated between a 6 month and 3 year period,		Grant application with a "requirements warning" letter
First disqualification (excluding drink/drive offences)	Drivers covered by New Drivers Act (see above)	Call to a hearing	Refuse vocational licence for one month beyond the restoration date
	Applicants whose disqualification has ended in the last 6 months.		Send a 'minded to refuse' (for a period of 3 months) letter.
	Existing licence holders disqualified for 12 months or less		Warning letter
	Existing licence holders disqualified for more than 12 months and less than 3 years (with no previous convictions, conduct hearings or warnings)	Can agree to be dealt with by correspondence or at a hearing	Disqualify from holding a vocational licence for up to 3 months on a sliding scale of one month per year of disqualification
	More than 12 months with previous conduct history	Call to a hearing	
	More than 3 years	Call to a hearing	
Second and/or subsequent disqualifications (excluding drink/drive offences):	Applicant's disqualification is more than 6 months old	First application:	Grant with a "requirements warning" letter
	Applicants with 2 or more disqualifications, the last of which has expired less than 6 months previously,		Send 'minded to refuse' (for a period of 6 months) letter.
	Applicants where the sum of disqualifications over the previous 3 years is less than 12 months then;	Renewal or referral:	Granted with a "requirements warning" letter sent
	Applicant and the sum of the disqualifications over the previous 3 years is more than 12 months		'minded to refuse' (for a period of 3- 6 months or more in extreme cases) letter will usually be sent.

	Existing licence where the sum of the disqualifications over the previous 3 years is more than 12 months or a first disqualification of 3 years or more	Call to a hearing	Disqualify for 3-6 months, or more in extreme cases
Offenders under the Road Traffic (New Drivers) Act 1995:			Send 'minded to refuse' letter advising them that the return of the vocational licence will normally be refused for 1 month beyond the restoration of other licences.
Drink/drive disqualifications (within the previous ten years)	First disqualification: for 12 months or less		Grant with a "requirements warning" letter will be sent
	First disqualification for more than 12 months but less than 3 years		Further period of disqualification on a sliding scale of one month per year of disqualification to be imposed.
	Second and/or subsequent disqualifications:	All multiple disqualifications must be referred to a traffic commissioner.	Disqualify for 3-6 months, or more in extreme cases
Use of mobile telephone or other hand held device whilst driving		Call to a hearing (to show cause why an order should not be made)	Suspend vocational entitlement for 14 days, 21 days if driving a commercial vehicle, to commence with immediate effect; On second and/or subsequent multiply accordingly, e.g. second offence in a commercial vehicle 2 x 21 days.
Failure to co-operate, e.g. to provide a specimen or information as to identity of driver			Treat as seriously as the conduct which the offence prevented from being detected.

Speed limiters	Speeding in a vehicle with speed limiter not working (no evidence of tampering or interference by the driver and evidence of the driver bringing the matter to his employer's attention via the tachograph or the driver defect reporting system).		Formal warning;
	Speeding in a vehicle with speed limiter not working (no evidence of tampering by the driver but with no evidence of the driver bringing the matter to his employer's attention).		14 – 28 days suspension period;
	Speeding in a vehicle with disabled speed limiter and evidence of tampering or interference by the driver.		Suspend or revoke and disqualify for 1 to 3 months;
	Use of any device to disable the speed limiter.		Revoke and consider disqualification for between 3 to 9 months.
Falsification of tachograph charts	Failure to keep a full record of the complete driving period.		Formal warning to 1-month suspension;
	Deliberate falsification of a chart		Suspend on a sliding scale of one month's suspension per offence for up to 3 false records offences, Up to 5 offences: revoke and disqualify for up to 6 months Over 6 offences: revoke and disqualify for 12 months;
	Use of any device to interfere with the recording equipment.		Revoke and disqualify for 12 months.
Drivers' hours and tachograph rules offences  Excuses that the offence was 'just over' the limit are rarely acceptable as professional drivers have a	Drivers' hours offences committed on infrequent or isolated occasions	In certain cases this warning will be in written form from a traffic commissioner and in certain cases it will be necessary for the driver to appear at a	Formal warning upon receipt of evidence of education and/or training regarding the driver's hour's rules.

duty to keep within the law;		conduct hearing before a traffic commissioner.	
	Persistent and/or habitual transgressions of drivers' hours offences.		A minimum of 28 days suspension period, to be increased in accordance with the number of offences found.
<b>Non-endorsable offences (including criminal convictions of PCV drivers)</b>			
Minor offence	First referral for an offence		Warning letter
	First referral for an offence (where 9 points or more or a disqualification have previously been imposed)	Call to a hearing	14 – 28 days suspension period
	Second referral for minor offence within 2 years of a warning or previous hearing	Call to a hearing	Lengthy suspension. 6 months or more
	Repeated convictions for tachograph infringements or similar	Call to a hearing	Revocation and disqualification
More serious offence			Lengthy suspension 6 months or more
Convictions for sexual offences, violence, serious theft	PCV drivers		Revocation and indefinite disqualification. Restoration might be considered depending on probation, medical and social worker reports
Convictions for unlawful possession of drugs		Call to a hearing	Suspension or revocation depending on the type of drugs concerned and evidence of scale of use

The above table is not intended to be an exhaustive list.

## ANNEX 2

To the Senior Traffic Commissioner

### **REFERRAL OF NON-ENDORSABLE OFFENCES AND THIRD-PARTY NOTIFICATIONS**

This letter provides updated information about the mechanics of referrals to traffic commissioners following notification to VOSA by third parties on non-endorsable offences committed by vocational drivers, which merit a review of their conduct.

Following an extensive review of driver conduct work undertaken by DVLA and traffic commissioners between 2005 and 2008, in respect of referrals of cases through VOSA to traffic commissioners for both endorsable and non-endorsable offences, which were approved by the Secretary of State for Transport, it is now appropriate to confirm in writing how existing arrangements operate in the context of directions and guidance issued by the senior traffic commissioner under section 4C(1) of the Public Passenger Vehicles Act 1981 as inserted by Section 3(1) of the Local Transport Act 2008.

A streamlined process of referrals to traffic commissioners in respect of endorsable offences was introduced in May 2005 and the procedures adopted in the light of experience gained during an initial pilot are contained in senior traffic commissioner's directions No.08 to which this annex is attached.

As far as non-endorsable offences are concerned, I am also aware that traffic commissioners are notified by VOSA, other agencies and outside sources (such as the media) of drivers who are convicted of non-endorsable offences which merit a review of their fitness (on conduct grounds) to hold the relevant vocational driving licence entitlement.

In 1998, the predecessor department of the Department for Transport wrote to the senior traffic commissioner indicating that traffic commissioners had authority to deal with non-endorsable offences under a general direction from the Secretary of State for Transport. As a result, any question arising under Section 112, 115 or 115A of the Road Traffic Act 1988 as to the conduct of an applicant for or the holder of a large goods or passenger carrying vehicle driver's licence is hereby referred to the relevant traffic commissioner in the following cases:

- a. where the police or other enforcement agency notifies in writing that a person has been convicted of a non-endorsable offence which would call into question his or her fitness to hold a large goods or passenger carrying licence covered by the conduct regime;
- b. where a holder of a licence is reported in the media or by an employer or any other source to have been convicted of a non-endorsable offence which would call into question his or her fitness to hold such a licence; and
- c. where a holder of a licence has been reported by the police or other enforcement agency alleged to have been guilty of conduct which would call into question his or her fitness to hold such a licence, even though that person has not been prosecuted for an offence (in such cases, a traffic commissioner would need to be satisfied that the evidence is sufficient for action to be considered against the licence holder).

The categories of offence which may be relevant include tachograph, drivers' hours, overloading, financial impropriety, fraud, violence of any description, theft, sexual misbehaviour, illicit drug use or trafficking and contrabanding. This list is not, however, exhaustive.

If there are cases that are brought to a traffic commissioner's attention which do not fall into the above categories, but which traffic commissioners nevertheless feel should be considered are to be sent to VOSA, which will consider whether to make a formal referral. Cases referred by VOSA automatically qualify as being referred on behalf of the Secretary of State.

I should be grateful if you would attach this letter to the senior traffic commissioner's statutory Guidance and Directions for the information of all traffic commissioners, VOSA and stakeholders.

Hugh Evans  
Head of Policy Unit, DVLA

## ANNEX 3

[ADDRESSEE]

[TAO]  
[REFERENCE]  
[DATE]

Dear Sir/Madam

**THE ROAD TRAFFIC ACT 1988 (AS AMENDED)**  
**LARGE GOODS VEHICLE (LGV) AND PASSENGER CARRYING VEHICLE (PCV)**  
**DRIVER LICENSING**

The Secretary of State is aware that the following conviction(s) and disqualification(s) have been recorded against you, and so has referred the matter to a traffic commissioner under Section 113/117 of the 1988 Act to review your conduct as defined by Section 121(1) of that Act and determine whether your [LGV/PCV] licence should be restored at the end of the disqualification period.

DATE	COURT	OFFENCE	PENALTY
[			]

The traffic commissioner has the power to disqualify you from holding a [LGV/PCV] licence for longer than the period of the court's disqualification in order to give you time to rehabilitate yourself on the roads in smaller vehicles before once again driving large vehicles and to demonstrate that you are a fit person to hold such a licence again. Before making a decision, the traffic commissioner requires you to attend a driver conduct hearing where you can give evidence and make any representations. You may be accompanied by a friend, representative, trade union official, solicitor or anyone you consider competent to speak on your behalf.

The hearing will be at [time/date/location]. As a general rule the traffic commissioner will hear your case in public but there are certain circumstances where they may decide to hear the case in private. This could be, for example, where you need to disclose intimate personal or financial circumstances; or where there is a likelihood of disclosure of commercially sensitive information or information obtained in confidence; or if there are other exceptional circumstances.

If you are unable to attend you should notify this office by telephone and in writing as soon as possible. Failure to attend or notify the traffic commissioner of your reasons for not attending may lead to refusal of your application.

This letter does not in any way affect your Ordinary Driving Licence for which you may apply to DVLA Swansea if you have not already done so, but this will not give you authority to drive large goods vehicles until that additional entitlement is granted.

Yours faithfully

## ANNEX 4

[TAO]  
[REFERENCE]  
[DATE]

[ADDRESSEE]

Dear Sir

**THE ROAD TRAFFIC ACT 1988 (AS AMENDED)**  
**LARGE GOODS VEHICLE (LGV) AND PASSENGER CARRYING VEHICLE (PCV)**  
**DRIVER LICENSING**

The Secretary of State is aware that the following conviction and disqualification have been recorded against you, and so has referred the matter to a traffic commissioner under Section 117 of the 1998 Act to review your conduct as defined by Section 121(1) of that Act and to determine whether your [LGV/PCV] licence should be restored at the end of the disqualification period should you apply for it.

DATE	COURT	OFFENCE	PENALTY
[			]

Subtitle

The traffic commissioner has the power to disqualify you from holding a [LGV/PCV] licence for longer than the period of the court's disqualification in order to give you time to rehabilitate yourself on the roads in smaller vehicles before once again driving large vehicles, and to demonstrate that you are a fit person to hold such a licence. The traffic commissioner is considering an additional period of disqualification of [length] beyond the restoration of your Ordinary Driving Licence.

Before making a decision, the traffic commissioner would normally require you to attend a driver conduct hearing where you can give evidence and make any representations. You could be accompanied by a friend, representative, trade union official, solicitor or anyone you consider competent to speak on your behalf.

In your case, however, the traffic commissioner is aware that this is your first disqualification and you may, if you so elect, have the matter dealt with by letter. In this case you should submit a written explanation about the circumstances of your conviction and of any other factors that you wish the traffic commissioner to take into account. Whether you elect to attend a hearing or to submit a written explanation, you should be aware that the traffic commissioner would have to be persuaded that some exceptional circumstances applied to the offence for which you were disqualified for them to consider any shorter period of further disqualification of your vocational licence than has been indicated above.

You may therefore either request a driver conduct hearing (in which case further details will be sent to you) or you may make a written submission.

**PLEASE NOTE** If you do not reply to this letter within 4 weeks the traffic commissioner will regard this as acceptance of the suggested order and will disqualify you for the additional period indicated .

This letter does not in any way affect your Ordinary Driving Licence which you may apply for to DVLA Swansea if you have not already done so, but this will not give you authority to drive large vehicles until that additional entitlement is granted.

Yours faithfully

[ ] \_\_\_\_\_

Please tear off and return this slip as soon as possible.

Driver No: [ ].

- \* a. I want to attend a hearing before a traffic commissioner, OR
- \* b. I enclose a written submission, and I acknowledge that the traffic commissioner will reach a decision in my absence.

Signed:

Date:

\* Delete as appropriate

\_\_\_\_\_

\_\_\_\_\_

## ANNEX 5

[ADDRESSEE]

[TAO]  
[REFERENCE]  
[DATE]

Dear Sir

**THE ROAD TRAFFIC ACT 1988 (AS AMENDED)**  
**LARGE GOODS VEHICLE (LGV) AND PASSENGER CARRYING VEHICLE (PCV)**  
**DRIVER LICENSING**

The Secretary of State is aware that the following conviction(s) have been recorded against you, and so has referred the matter to a traffic commissioner under Section 116 of the 1988 Act to review your conduct as defined by Section 121(1) of that Act and determine whether you are still fit to continue to hold a [LGV/PCV] driving licence.

DATE	COURT	OFFENCE	PENALTY
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[ ]

Before reaching a decision, the traffic commissioner requires you to attend a driver conduct hearing where you can give evidence and make any representations. You may be accompanied by a friend, representative, trade union official, solicitor or anyone you consider competent to speak on your behalf.

The hearing will be at [time/date/location]. As a general rule the traffic commissioner will hear your case in public but there are certain circumstances where they may decide to hear the case in private. This could be, for example, where you need to disclose intimate personal or financial circumstances; or where there is a likelihood of disclosure of commercially sensitive information or information obtained in confidence; or if there are other exceptional circumstances.

Should the traffic commissioner find that you are not fit to hold a [LGV/PCV] licence they may, in accordance with Section 116 of the 1998 Act, either suspend or revoke your [LGV/PCV] licence. If an order for revocation is made the traffic commissioner can also order your disqualification under Section 117 of the 1988 Act.

If you are unable to attend you should notify this office by telephone and in writing as soon as possible. Failure to attend or notify the traffic commissioner of your reasons for not attending may lead to the revocation of your [LGV/PCV] licence in your absence.

PLEASE NOTE that you are required to produce your driving licence to the traffic commissioner.

This letter does not in any way affect your Ordinary Driving Licence.

Yours faithfully

## ANNEX 6

### TRAFFIC OFFENCE CODES

AC10 Failing to stop after an accident

AC20 Failing to give particulars or to report an accident within 24 hours

AC30 Undefined accident offences

BA10 Driving while disqualified by order of court

BA20 Attempting to drive while disqualified by order of court

BA30 Attempting to drive while disqualified by order of court

CD10 Driving without due care and attention

CD20 Driving without reasonable consideration for other road users

CD30 Driving without due care and attention or without reasonable consideration for other road users

CD40 Causing death through careless driving when unfit through drink

CD50 Causing death by careless driving when unfit through drugs

CD60 Causing death by careless driving with alcohol level above the limit

CD70 Causing death by careless driving then failing to supply a specimen for analysis

CD80 Causing death by careless, or inconsiderate driving

CD90 Causing death by driving: unlicensed, disqualified or uninsured drivers

CU80 Breach of requirements as to control of the vehicle, mobile telephones and so on

DD40 Dangerous driving

DD60 Manslaughter or culpable homicide while driving a vehicle

DD80 Causing death by dangerous driving

DD90 Furious driving

DR10 Driving or attempting to drive with alcohol level above limit

DR20 Driving or attempting to drive while unfit through drink

DR30 Driving or attempting to drive then failing to supply a specimen for analysis

DR40 In charge of a vehicle while alcohol level above limit

DR50 In charge of a vehicle while unfit through drink

DR60 Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive

DR70 Failing to provide specimen for breath test

DR80 Driving or attempting to drive when unfit through drugs

DR90 In charge of a vehicle when unfit through drugs

IN10 Using a vehicle uninsured against third party risks

LC20 Driving otherwise than in accordance with a licence

LC30 Driving after making a false declaration about fitness when applying for a licence

LC40 Driving a vehicle having failed to notify a disability

LC50 Driving after a licence has been revoked or refused on medical grounds

MS50 Motor racing on the highway

MS60 Offences not covered by other codes

TT99 To signify a disqualification under 'totting up' procedure

UT50 Aggravated taking of a vehicle

NE96 Disqualification imposed under the Child Support, Pensions & Social Security Act 2000

NE97 Non endorsable offence with a possible on going reductions in the disqualification period. Non endorsable offence as a result of interim disqualification not being sentenced within 6 months

NE98 Non endorsable miscellaneous offences from 1/1/2044. Power under Section 146 of the Power of Criminal Courts (Sentencing) Act 2000 to order a defendant to be disqualified from driving - Anti-Social Behaviour

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Or similar offences or offences which replace the above offences

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MS10 Leaving a vehicle in a dangerous position

MS20 Unlawful pillion riding

MS30 Play street offences

MS40 Driving with uncorrected defective eyesight or refusing to submit to a test

MS70 Driving with uncorrected defective eyesight

MS80 Refusing to submit to an eyesight test

MS90 Failure to give information as to identity of driver, etc.

MW10 Contravention of Special Road Regulation (excluding speed limits)

PC10 Undefined contravention of Pedestrian Crossing Regulations

PC20 Contravention of Pedestrian Crossing Regulation with moving vehicle

PC30 Contravention of Pedestrian Crossing Regulations with stationary vehicle

TS10 Failing to comply with traffic light signals

TS20 Failing to comply with double white lines

TS30 Failing to comply with a "stop" sign

TS40 Failing to comply with direction of a constable or traffic warden

TS50 Failing to comply with traffic sign (excluding "stop" sign, traffic lights or double white lines)

TS60 Failing to comply with school crossing patrol sign

TS70 Undefined failure to comply with a traffic direction sign

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)  
Or similar offences or offences which replace the above offences

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CU10 Using vehicle with defective brakes

CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition

CU30 Using a vehicle with defective tyres

CU40 Using a vehicle with defective steering

CU50 Causing or likely to cause danger by reason of load or passengers

SP10 Exceeding goods vehicle speed limit

SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)

SP30 Exceeding statutory speed limit on a public road

SP40 Exceeding passenger vehicle speed limit

SP50 Exceeding speed limit on a motorway

SP60 Exceeding speed limit offence

*Aiding, abetting, counselling or procuring*

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

*Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

*Inciting*

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

Or similar offences or offences which replace the above offences