



# 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). Representative organisations have been consulted in accordance with that provision.	
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Senior Traffic Commissioner  
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# GUIDANCE

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

## Legislation

2. The relevant legislation is set out in Sections 110-122 of The Road Traffic Act 1988 ('the 1988 Act').<sup>1</sup> The legislation draws a clear distinction between Large Goods Vehicle (LGV) licence holders and applicants and Passenger Carrying Vehicle (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 PCV.

## Conduct

3. Section 121(1) of the 1988 Act defines conduct<sup>2</sup> as:
  - in relation to an applicant for or the holder of a LGV driver's licence or the holder of a LGV Community licence, his conduct as a driver of a motor vehicle; and
  - in relation to an applicant for or the holder of a PCV 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 PCV 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 PCV of any class.

## Referrals

4. When dealing with vocational licence holders and applicants for such licences, traffic commissioners act at the referral of the Secretary of State who may from time to time issue general directions. 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.<sup>3</sup>
5. Section 113(1) of the 1988 Act provides that any question arising under section 112 relating to the conduct of an applicant for a licence may be referred by the Secretary of State to a traffic commissioner. Section 116 outlines the referral of matters of conduct to traffic commissioners by the Secretary of State in relation to revocation or suspension of licences.
6. Sections 113(3) and 116(3) of the 1988 Act provides that a traffic commissioner to whom a reference has been made may require the applicant for the licence or the licence holder to furnish the commissioner with such information as he may require

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<sup>1</sup> As amended by the Road Traffic (Driver Licensing and Information Systems) Act 1989, the Road Traffic (New Drivers) Act 1995 and the Motor Vehicles (Driving Licences) Regulations 1999.

<sup>2</sup> For both LGV and PCV, this includes such conduct in Northern Ireland.

<sup>3</sup> As guaranteed by section 111(2) of The Road Traffic Act 1988.

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 / subject matter of the reference as the traffic commissioner may put to the applicant. Sections 113(4) and 116(4) provide powers in the event that the applicant or licence holder does not furnish information or attend before the traffic commissioner without reasonable excuse, and effectively gives the traffic commissioner discretion to determine a case either in writing or by the requirement of the person concerned to attend a hearing.<sup>4</sup>

7. Regulation 56(3) of The Motor Vehicles (Driving Licences) Regulations 1999 ('the 1999 Regulations') 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 traffic commissioners under section 117 of the 1998 Act (their ordinary driving licence having been revoked). Previous holders of a vocational licence are referred under section 113 of the 1998 Act because their ordinary driving licence has already been restored and therefore treated as applicants.
8. Section 22(2) of the Goods Vehicle (Licensing of Operators) Act 1995 requires, by conditions attached to a licence, a licence-holder to inform the traffic commissioner of any event which could affect the fulfilment by the licence-holder that they are of good repute, appropriate financial standing and professionally competent. In addition to this, Section 19 of the Public Passenger Vehicles Act 1981 requires the holder of a PSV operator's licence to give notice in writing (within 28 days) to the traffic commissioner of relevant convictions of the holder and any relevant convictions of any officer, employer or agent of the holder of an offence committed in the course of the holder's road passenger transport business.

### *Powers*

9. Section 112 of the 1988 Act provides that the Secretary of State shall not grant to an applicant a LGV driver's licence or a PCV driver's licence unless he is satisfied, having regard to his conduct, that he is a fit person to hold the licence applied for.
10. Section 115 of the 1988 Act provides the power to revoke or suspend a LGV or PCV driver's licence in prescribed circumstances or if the driver's conduct is such as to make him unfit to hold a licence. Section 117(1) outlines the requirement to disqualify a driver indefinitely or for a determined period following revocation of a licence.
11. Section 117(2)(b) and Section 117(5) of the 1988 Act (as amended by Regulation 56 of the 1999 Regulations) gives the traffic commissioner the power to revert the driver to provisional status and require the driver to pass the prescribed test of competence. The legislation enables the traffic commissioner to allow the test pass to provide all previously held vocational categories, or to apply a test pass condition to each vocational category previously held.
12. Regulation 12(3) of the 1999 Regulations states that an applicant for a LGV trainee driver's licence who is under the age of 21 must not be a person who has four or more penalty points or is disqualified. Regulation 55 provides that people under 21 with LGV entitlement will have their licences revoked once they have four or more penalty points. The disqualification can be indefinite or for a specified period, but

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<sup>4</sup> See Paragraph 60 for further information,

must remain until at least the age of 21. The legislation is silent on a similar restriction applying to PCV entitlement.<sup>5</sup>

13. Section 2 and 3 of the Road Traffic (New Drivers) Act 1995 provides that the licence of any new driver who amasses 6 penalty points within the first 2 years of passing his or her test will be revoked. If the driver is over 21, Section 4 provides that all of his or her previous entitlements will be restored once he or she passes a test in any of his or her previously held categories.

### *Appeals*

14. The driver's rights are safeguarded by the appeals processes outlined in section 119 of the 1988 Act. 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' courts (England and Wales) or Sheriff Courts (Scotland).<sup>6</sup>
15. In England & Wales an appeal from the traffic commissioner is to the magistrates' court which is local to the driver. This means that if there are ten drivers living in ten areas, there can be ten separate appeals. Appeals are by way of complaint. Appeal hearings are usually complete re-hearings although often a transcript of the traffic commissioner's decision is obtained and referred to. As the hearings are fresh hearings the magistrates are free to deal with the case how they wish and they may hear new evidence. The principal restriction to the discretion of magistrates, as articulated in paragraph 46 below, is the Meredith case.<sup>7</sup>
16. Appeal from the magistrates' court is restricted to appeal on a point of law only to the High Court. Magistrates' courts are not courts of record and individual decisions are not precedents, accordingly precedent is only made when there is a High Court appeal. There are very few High Court appeal decisions in England & Wales.
17. In Scotland an appeal from the traffic commissioner is to the sheriff court which is local to the applicant or licence holder. Unlike in England and Wales it is not a rehearing of the evidence presented to the traffic commissioner. It focuses on whether the traffic commissioner exercised their discretion reasonably in arriving at the decision. The decision of the sheriff can be appealed to the sheriff principal, and appeal against that decision can be taken to the Court of Session. The decision of a sheriff principal is authoritative and should be followed by a sheriff.
18. Whilst any Scottish decision is not binding in England and Wales, it may be persuasive and may help the magistrates or High Court in reaching a decision.
19. In England and Wales, the starting point for appeal courts is that the successful party is awarded costs by the other side. However, costs will not be ordered against a regulatory body (including traffic commissioners) unless there has been conduct which warrants a different order (the traffic commissioner is manifestly not a prosecuting authority but carries out the regulatory function on behalf of the Secretary of State).<sup>8</sup> The situation in Scotland may not have been argued and, as such,

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<sup>5</sup> Although not covered by this specific legislation, under-21 PCV holders will still fall under section 116 of the 1998 Act.

<sup>6</sup> Also see Statutory Document No. 12 on Appeals for further information.

<sup>7</sup> Meredith and Others v Traffic Commissioner for the Western Traffic Area (2009) EWHC 2975 (Admin)

<sup>8</sup> Meredith and Others v Traffic Commissioner for the Western Traffic Area CO/4501/2009

whoever wins an appeal will have an expectation that the other side pays the costs (although this is a judicial decision with discretion).

20. There are no specific provisions for a stay in relation to vocational drivers. If a driver lodges an appeal to the magistrates' or Sheriff Court then any stay application must in the first instance be directed to them and not the traffic commissioner.<sup>9</sup>

## Other Relevant Legislation

### *The Rehabilitation of Offenders Act 1974*

21. Section 1 of the Rehabilitation of Offenders Act 1974 ('the 1974 Act') 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 1974 Act:

- the sentence imposed is not excluded from rehabilitation under the 1974 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. 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.

23. Section 4 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. The result is specifically limited and refers to convictions rather than the conduct itself:

- 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.

24. For the purposes of section 4 of the 1974 Act "proceedings before a judicial authority" include, in addition to proceedings before a court of law, proceedings before any tribunal, body or person having power:

- by virtue of any enactment, law, custom or practice;

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<sup>9</sup> Also see Statutory Document No. 12 paragraphs 26-30

- 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 under there;
  - 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 in the attached Statutory Directions.<sup>10</sup>
- 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 at 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 was made 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.** The provisions do 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) provides that:
- 'If at any stage in any proceedings before a judicial authority in Great Britain... the authority is satisfied, in the light of any considerations which appear to it 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 or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question..., and*

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<sup>10</sup> Subject to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

*may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.'*

29. Any 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>11</sup> The same will apply to other alternative court disposals including an absolute discharge. A discharge from a court will therefore not make a licence liable to automatic revocation but authorities are entitled to ask question.
30. The application of the 1974 Act 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>12</sup>
31. Useful parallels can be drawn from other licensing regimes<sup>13</sup> when determining the relevance of previous convictions to proceedings before a traffic commissioner. Commissioners are reminded of the principles set out below when deciding whether to consider spent convictions:
  - 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.

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<sup>11</sup> R v Rupal Patel No 2006/4890/B5

<sup>12</sup> e.g. 2009/530 Boomerang Travel Ltd

<sup>13</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.



- 32.** The Senior Traffic Commissioner has identified some examples where justice might require a traffic commissioner to consider admitting evidence of a spent conviction:
- Non-disclosure of relevant evidence or information – this has always been considered to be a serious matter although driver conduct cases follow referral from the Secretary of State.
  - Rebuttal - to refute a positive assertion. For example if a driver has made a positive statement about an incident or offence that is not correct, this might require a traffic commissioner to revisit an earlier preliminary indication not to seek to admit the relevant spent conviction.
  - Similar fact – i.e. evidence of prior conduct which demonstrates the same driver conduct. This may be necessary to assess the attitude of a driver to reach a view on fitness to hold a licence. In some cases, such as repeat convictions for driving with excess alcohol, the fact of previous convictions may be obvious from the penalty imposed for a second or third offence.

### *Cautions*

- 33.** The Criminal Justice and Immigration Act 2008 amended the 1974 Act to bring warnings, reprimands, simple cautions and conditional cautions within the scope of that Act. Section 8A and Schedule 2 of the 1974 Act (as amended) mean that reprimands and warnings are spent at the time they are given and 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 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.

### *Sexual Offenders: Notification Requirements and Civil Orders*

- 34.** Registered Sexual Offenders (RSOs) are individuals who have been convicted or cautioned for a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003. As an RSO, the individual is required to notify the police of their personal details on a yearly basis, as well as at any time when those details change. The length of time an RSO remains subject to the notification requirements (commonly referred to as the 'sex offenders' register') depends on how they were dealt with for the offence and the sentence given. Failure to notify is a criminal offence, which attracts a maximum term of 5 years imprisonment.
- 35.** A RSO may also be subject to licence conditions on release from prison, or be subject to a Sexual Harm Prevention Order (SHPO), which prohibits offenders from doing certain activities in order to protect the public, depending on the case. These prohibitions may include, for example, not to be in the company of potential victims, or not to be alone in a car with them. Convicted sexual offenders may also be barred from any employment in which they would come into contact with children and/or adults.



36. Similarly, people who are considered to pose a risk of sexual harm, but who have not previously been convicted, can be made the subject of a Sexual Risk Order (SRO) which prohibits them from doing certain activities for the purpose of protecting the public, depending on the case. Further information about the notification requirements and civil orders can be found in the statutory guidance on Part 2 of the Sexual Offences Act 2003. More information on Disclosure and Barring Service can be found on the Gov.uk website.

## Case Law

37. This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner, however, has extracted the following principles from existing case law.
38. The 1988 Act clearly draws a distinction between conduct as a driver of a motor vehicle and conduct in any other respect relevant to holding a LGV / PCV driver's licence. In section 121(1)(a), which relates to the holder of a LGV driver's licence, only conduct as a driver of a motor vehicle is relevant. In terms of section 121(1)(b) in relation to a PCV driver's licence, both conduct as a driver of a motor vehicle and his conduct in any other respect relevant to holding a licence are relevant. The provisions of section 121(1)(b) do not apply to the holder of a LGV driver's licence.<sup>14</sup>
39. Care should be taken to avoid automatically applying case law that applies to operator licensing, which is a jurisdiction with separate legislation, appellant body and case law. The only full appellant review of the traffic commissioner jurisdiction is in the Thomas Muir Haulage<sup>15</sup> case and this is helpful guidance from a full five judge Court of Session.

## Standard of proof

40. In the vast majority of driver conduct cases, a traffic commissioner will be able to proceed on the basis of the facts following a conviction, fixed penalty, an endorsement or an admission of guilt. However, where no such findings have been made, the standard of proof required (in such civil proceedings) is the balance of probabilities, but the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.<sup>16</sup>
41. The utilisation of copies of press reports on any incident or court hearing by the traffic commissioner is regarded as being a reasonable practice.<sup>17</sup>

## Deterrence

42. The Administrative Court in the Meredith<sup>18</sup> case was not asked to consider the applicability of the principle of deterrence and was not referred to the Thomas Muir Haulage<sup>19</sup> case. In operating licensing cases the Upper Tribunal has given

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<sup>14</sup> Cameron John Young v Secretary of State for Transport (2011) B434/10

<sup>15</sup> Thomas Muir Haulage v The Secretary of State for the Environment, Transport and the Regions (1998) Scott CS13

<sup>16</sup> Re Dellow's Will Trusts [1964] 1 WLR 451 at p455 as approved in Re H and R (1996)(1) FLR 80 and Re L (1996)(1) FLR 116

<sup>17</sup> Andrew Ramsay v The Right Honourable Lord Wallace of Tankerness QC (2014) B276/14

<sup>18</sup> Meredith and Others EWHC 2975 (Admin) (as above)

<sup>19</sup> Thomas Muir Haulage (as above)

considerable weight to the five-judge Court of Session decision in the Thomas Muir Haulage case:

*“We have to say that it appears that the Anglorom<sup>20</sup> case was decided without consideration of all relevant cases. In particular, we have also to say that references in the Court of Appeal to “punishment” and to “this most draconian order” are not consistent with the approach of the five-judge Court of Session decision in the Thomas Muir case. Until the matter is considered again by an appellat court we consider that the Thomas Muir approach should be followed.....”<sup>21</sup>*

43. The Thomas Muir Haulage case outlines that a traffic commissioner can take into account, where appropriate, some considerations of a disciplinary nature and doing so in particular for the purpose of deterring the operator or other persons from failing to carry out their responsibilities under the legislation. However, taking such considerations into account would not be for the purpose of punishment per se, but in order to assist in the achievement of the purpose of the legislation.<sup>22</sup>

#### *Double jeopardy*

44. The concept of double jeopardy is sometimes raised in relation to traffic commissioner led regulatory action taking place in parallel with criminal proceedings. However, the principle of double jeopardy does not apply. Case law clearly indicates that regulation would be turned on its head if disciplinary proceedings could only be taken in the less serious of cases, where there are no concurrent criminal proceedings.<sup>23</sup> However, if a traffic commissioner decides to proceed in advance of the criminal proceedings elaborate steps may have to be taken to protect the fairness of those proceedings.<sup>24</sup> Ultimately the decision whether or not to continue is one for the traffic commissioner hearing the matter.

#### *Conduct & fitness*

45. Drivers are expected to fully acquaint themselves with the relevant legislation before undertaking employment as a professional driver. Drivers cannot evade their personal responsibility by stating that they bowed to their employer’s orders on issues related to their obligations under the regulations.<sup>25</sup>
46. The judgement on whether the licence holder’s conduct as a driver makes him unfit to hold the licence cannot be focused exclusively upon the matters which gave rise to the referral to the traffic commissioner, but should embrace the licence holder’s conduct as a driver as a whole, good and bad, relevant to the question whether, at the time of making the judgment, the licence holder is unfit. For example, it may be relevant to fitness whether the matters of complaint took place in isolation or against a background of repeated disregard for the law of the road.<sup>26</sup>

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<sup>20</sup> Anglorom Trans (UK) Limited v. Secretary of State for Transport; 2004 EWCA Civ 998. Note: This was a 3 judge Court of Appeal case from England where the Court was not referred to the Thomas Muir Haulage case.

<sup>21</sup> 2005/355 Danny W Poole International

<sup>22</sup> Thomas Muir Haulage (as above)

<sup>23</sup> e.g. 2004/255 M Oliver

<sup>24</sup> 2006/149 A & C Nowell Ltd

<sup>25</sup> Scott Craig Walker v Secretary of State for Transport (2010) B1942/09

<sup>26</sup> Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

47. As indicated above, it is important that traffic commissioners take into account any prolonged period of post-offence good (or bad) conduct when determining fitness to hold a licence and whether revocation and disqualification or suspension of the licence is warranted, and clearly document any such considerations at or following a driver conduct hearing.<sup>27</sup>
48. The personal circumstances of the driver are, at the preliminary stage of consideration of fitness, irrelevant to the question whether his conduct as a driver has been such as to make him unfit, save to the extent that those circumstances concern his conduct as a driver. Personal circumstances which go to mitigate the conduct itself (such as illness, or emergency, or momentary lapse of attention, or carelessness) will be relevant, 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) would not.<sup>28</sup>
49. When exercising judgement whether the conduct must lead to revocation and disqualification or suspension, personal circumstances may be relevant. If the experience of referral and the risk of revocation have sufficiently brought home to the licence holder that his livelihood is in jeopardy, such that the traffic commissioner is persuaded that further offences are unlikely, the traffic commissioner is open to conclude that the sanction of revocation is not required.<sup>29</sup> The vocational licence holder's conduct must be considered in context and in the round and references from an employer, for example, are relevant. Explanations as to the detail of a person's life (both private and commercial) after the incident and/or the conviction should also be taken into account. Any other approach would be too arid and would not allow an applicant's personal circumstances to be considered.<sup>30</sup>
50. Traffic commissioners are entitled, in the exercise of discretion, to consider a cumulative and longer period of disqualification in instances where the conduct has aggravating factors (see Annex B for examples), such as for offences of false record keeping through the use of an interfering device. However, traffic commissioners are not entitled to take into account offences not brought before a driver's hearing.<sup>31</sup>
51. Traffic commissioners are free to take into account the fact that a driver has been found to be an unreliable witness and lack credibility when making a decision and, in significant cases, are entitled to set down a marker regarding deterrence.<sup>32</sup>
52. Traffic commissioners are reminded that the fact that a driver is a Registered Sexual Offender does not automatically mean that they are unfit to drive.<sup>33</sup> However, a conviction for a sexual offence will usually 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 also consider revocation of a PCV licence for

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<sup>27</sup> Scott Craig Walker (as above)

<sup>28</sup> Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

<sup>29</sup> Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

<sup>30</sup> Secretary of State for Transport, Local Government and the Regions v Snowdon [2002] EWHC 2394 (Admin).

<sup>31</sup> Martin Smith v Secretary of State for Transport (2011) B429/10; Bruce Kirkpatrick v Secretary of State for Transport (2011) B435/10

<sup>32</sup> Martin Smith (as above); Bruce Kirkpatrick (as above)

<sup>33</sup> Snowdon (as above) made it clear that Parliament could have said so but did not; also refer to Annex D for Case Example re: sex offenders

any drivers subject to a Sexual Risk Order, taking into account the circumstances of the case.

- 53.** Due to the specific wording of section 121(1) of the 1988 Act on conduct, there is no justification for traffic commissioners to apply the criminal law concept of aiding and abetting to civil cases involving LGV drivers.<sup>34</sup>

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<sup>34</sup> Cameron John Young (as above)

# DIRECTIONS

54. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). 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 in relation to vocational driver conduct.

## Referrals

55. Traffic commissioners can only take action on a vocational conduct case upon the referral of that case to them by the Secretary of State.<sup>35</sup> The Secretary of State has given approval to traffic commissioners to deal with any matter that any individual traffic commissioner considers should be referred. However, the number of vocational licence holders and applicants are too great for traffic commissioners to deal with every potential referral. Annex A outlines the type of vocational licence holders and applicants who are likely to be referred to traffic commissioners by the Secretary of State.

## Decision Making<sup>36</sup>

### *On the papers (without a driver conduct hearing)*

56. A significant number of cases are dealt with by traffic commissioners on the papers. In practice, letters will be sent by staff 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. The most common occurrence is where a driver has been disqualified by a court for driving with excess alcohol and is offered an extended disqualification on behalf of a traffic commissioner.

### *Driver conduct hearings*

57. The value of hearing all the relevant evidence and submissions at a driver conduct hearing is long established. Driver conduct 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.
58. 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. The driver may also ask for references and/or testimonials to be taken in to consideration.
59. If there has been no court hearing then a traffic commissioner may hear evidence and effectively make a decision on the balance of probabilities. The more serious an issue or allegation the more cogent the evidence is required before making an adverse finding.

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<sup>35</sup> In practice referrals are usually made by DVLA on behalf of the Secretary of State.

<sup>36</sup> See Statutory Document No. 9 on Case Management and Statutory Document No. 10 on The Principles of Decision Making & the Concept of Proportionality for further guidance.

- 60.** Where there has been a court hearing the driver appearing before a traffic commissioner may attempt to present the circumstances of the case in a manner that differs from that upon which the driver was sentenced. The following principles may assist:
- traffic commissioners will not normally need independent verification of the facts in simple cases before them. However, they are more likely to do so in serious cases, such as any case involving a death, or a sexual assault involving a PCV applicant or driver;
  - if the case involves a custodial sentence (including suspended sentences) there is a presumption that an applicant or driver will be required to produce independent evidence to assist the traffic commissioner in assessing the seriousness of the offence;<sup>37</sup>
  - In England & Wales a pre-sentence report can be utilised to ascertain the facts of a case, however if this is used it is essential that the report be copied to the applicant or driver. This is a requirement of natural justice;<sup>38</sup>
  - if there was a guilty plea, but the facts as initially set out by the prosecutor were not accepted, there is often a written ‘basis of plea’ which would form the best evidence as to the circumstances of the offence.<sup>39</sup>
- 61.** Although Sections 113 and 116 of the 1988 Act are silent as to whether a driver conduct hearing should be in private or at a public hearing, traffic commissioners seek to 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. Conducting the hearing in public also complies with Article 6 of the European Convention for the Protection of Human Rights (‘the Convention’), which indicates that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The Convention also states that judgment shall, in most circumstances, be pronounced publicly.
- 62.** There will be 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.<sup>40</sup> Where there are obvious issues in common, it would clearly be unsatisfactory for the traffic commissioner(s) to reach what might be seen as inconsistent conclusions. It is therefore desirable to list those related cases together. This also applies where there is the possibility of conflicting evidence so that a driver’s conduct hearing might be held at the same time as an operator’s public inquiry.

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<sup>37</sup> See Sections 113(3) and 116(3) of the 1988 Act

<sup>38</sup> Contrast with Scotland where permission of the court is required before use.

<sup>39</sup> The principle of a trial to establish the basis of a plea was set out in *E v Newton* 77 Cr. App. R. 13 CA and is commonly called a Newton hearing.

<sup>40</sup> See Statutory Guidance and Statutory Directions on Case Management and Statutory Document No. 10 on The Principles of Decision Making & the Concept of Proportionality for further information.

63. There will also be cases where the driver 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 driver. 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 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 driver and the operator.
64. To ensure a consistency of approach / procedure to driver conduct hearings, and to provide clarity to vocational licence holders and applicants, driver conduct hearings are undertaken in public (which follows the governing legislation for operators). However, the presiding traffic commissioner may decide that the whole or any part of a driver conduct hearing be held in private if he or she is satisfied that it is just and reasonable to do so by reason of:
- the likelihood of disclosure of intimate personal or financial circumstances;
  - the likelihood of disclosure of commercially sensitive information;
  - information obtained in confidence; or
  - exceptional circumstances not falling within the above.
65. Should an applicant for a vocational licence fail without good reason to attend a hearing, the traffic commissioner will normally decline to proceed further with the application. 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. It is open to the driver whether they wish to make a fresh application in such circumstances.
66. Where a valid vocational licence is currently held and the traffic commissioner is considering revocation and disqualification, suspension or renewal of the licence, then failure to attend on the first occasion will usually result in a second hearing being offered. This reflects the fact that some vocational drivers may be working away.

#### *Written warnings*

67. The traffic commissioner may choose to issue a warning letter, which the driver or applicant is expected to adhere to. This will emphasise:
- 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.

#### **Starting Points for Submissions**

68. Whilst the criminal courts are concerned with punishing those who have committed criminal offences, 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 and proportionate will vary in each individual case.

69. A case may involve many variables including different variations of alleged breaches, negative and positive features. 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. Conversely, a case that initially appears not to be serious can then in fact require severe regulatory action.
70. Whilst it is intended to ensure a consistency in approach (and not uniformity in decision) by prescribing starting points for regulatory action, it cannot be used to predict the outcome of a driver conduct hearing or give rise to a legitimate expectation. Each case must be dealt with on its own evidence and facts, taking into account the offences (including type and number), aggravating and mitigating features, whether it was planned, whether it was committed in the course of a licence holder acting as a LGV or a PCV holder or as a non-vocational driver, whether it was a repeat offence and the likelihood of future offending. Any conduct as a driver is relevant, irrespective of whether it is committed whilst driving a vehicle which requires a vocational licence. Traffic commissioners are also reminded that they may attach such weight to the evidence as they see fit.
71. Annex A outlines starting points. Whilst the Annex is not exhaustive, it does cover the most frequent and common types of driver conduct. Annex B presents a non-exhaustive list of aggravating and mitigating features. Annex C presents a number of case examples by way of illustration. Offence codes can be found at Annex D.

#### *Driving resulting in a death*

72. Any case involving a death (e.g. death by careless or dangerous driving) will be referred to the traffic commissioner. In the most serious of cases, a driver is likely to be disqualified from vocational driving for a significant period of time and for a period that may mean they will no longer have a future in the profession.

#### *Mobile phones and other electronic devices (and other CU80 offences)*

73. The practice of vocational licence holders using a hand held mobile phone and other electronic devices, and especially whilst driving a HGV or PSV, is unacceptable and presents an undue risk to road safety. A report for an offence that a vocational driver has used a hand held device whilst driving will trigger the action set out in Annex A.
74. The presiding traffic commissioner will be keen to ascertain the reason the driver is using a hand held device. 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' hours (EC & domestic) / working time and tachograph offences*

75. The drivers' hours, working time and tachograph rules assist in keeping the public safe when using public roads and it is always serious when a deliberate false record is made by a vocational driver.

- 76.** The Court of Appeal has confirmed that it is appropriate in principle to pass a custodial sentence of significant length for offences related to falsifying records which involve the use of commercial vehicles on the roads in a way that concerns public safety and has potentially serious consequences.<sup>41</sup> The concealment of evidence required for effective regulation of drivers' hours should therefore result in a traffic commissioner taking a very serious view.<sup>42</sup>
- 77.** Traffic commissioners are likely to regard the falsification as more serious than the offence that it may be designed to conceal. Those who commit offences of this kind must understand that there will be serious consequences if and when the matter comes to light. A cumulative and significant period of disqualification which reflects the offence that has been subject to concealment, the falsification of records and/or use of a manipulation device, is the likely outcome. Subsequent conduct is also likely to be of limited weight.

#### *Sexual offences (PCV applicants and drivers)*

- 78.** Although the person's conduct must be considered in context and in the round<sup>43</sup>, convictions or the circumstances leading to police cautions for sexual offences will usually warrant the refusal or revocation of a person's PCV licence due to the particular risk that sexual offenders can pose to the travelling public.
- 79.** Any offences as listed in Schedule 3 of the Sexual Offences Act 2003 are particularly serious and should in almost all cases result in the disqualification of the licence holder for an indefinite period. Other sexual offences of a lesser nature will also call into question a person's suitability to hold a PCV licence.
- 80.** Where the traffic commissioner becomes aware of a driver being arrested for a sexual offence but not yet convicted, the traffic commissioner will need to undertake a balancing exercise between the need for public safety and the rights of the individual pending trial.
- 81.** If the decision regarding bail was made by a court, the court will have already had the opportunity to hear representations before coming to its decision, as opposed to a situation where a driver is released on police bail. In the latter situation staff should normally write to the driver inviting written representations within 72 hours. A traffic commissioner, of course, retains discretion to convene a hearing in appropriate cases. A traffic commissioner may make an order of suspension ex-parte, without notification to the driver. In such circumstances staff must write immediately to the driver and to any employer (if known). If such a bail condition was removed, the suspension should be revisited promptly. Where the bail condition is imposed by the police (i.e. without a court hearing) there should be notice immediately issued by staff to the driver, inviting written representations within 72 hours. A traffic commissioner retains discretion to convene a hearing in exceptional cases.
- 82.** Similarly, where the traffic commissioner becomes aware of a driver being made subject to a Sexual Risk order by the courts, they will need to undertake a balancing exercise between the need for public safety and the rights of the individual subject to the order. If the prohibitions of the order limit the drivers contact with for example,

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<sup>41</sup> R. v Saunders [2001] EWCA Crom 93

<sup>42</sup> Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

<sup>43</sup> Snowdon (as above)

children or women, then the traffic commissioner should consider making an order to suspend the vocational driver's licence for the period of the order.

83. If conditions of any bail include not having any contact with, for example, children, then the traffic commissioner should consider making an order to suspend the vocational driver's licence pending the outcome of criminal proceedings. In such circumstances traffic commissioners will not be making any findings of fact regarding the commission of any sexual offences as this will be a decision of the court. Once the court's decision is made the traffic commissioner will have to revisit the issue.

#### *Other conduct / offences*

84. Serious offences / conduct committed as a driver of a LGV or PCV, such as the supply / transport of contra-band and people smuggling, or civil penalties under the Home Office's prevention of clandestine entrants code of practice, will require the traffic commissioner to consider whether that person is a fit and proper person to hold a vocational licence.
85. For PCV drivers, serious offences / conduct committed in any other respect relevant to holding a PCV vocational licence, will also require the traffic commissioner to consider whether that person is a fit and proper person to hold a vocational PCV licence where there is close contact with the members of the public. This could include conviction/s for such matters as offences of dishonesty or violence or unlawful possession of drugs.

#### *Retests*

86. 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 or her 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 or her professional driving, a traffic commissioner should consider requiring him or her to take the appropriate test in order 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.

#### *Awareness courses*

87. There are occasions when drivers are offered awareness course as alternatives to prosecution / conviction / endorsement. Whilst this is most common for speeding offences, it may also be offered for other offences including using a mobile phone whilst driving. In the normal course of events the traffic commissioner will not be aware of the offer of an awareness course. In order to ensure a consistent and fair approach, the starting point should be that attendance at an awareness course should be treated as an offence in the event that a subsequent offence is referred to the traffic commissioner. In the unlikely event of an awareness course being offered where it subsequently transpires that they should not have been offered an awareness course, the traffic commissioner is not precluded from taking action.

## Rehabilitation

88. Commissioners and their staff are specifically referred to the Guidance above which 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. Spent convictions should not generally be referred to or taken into account in respect of an operator appearing before a public inquiry but the conduct itself might be relevant (see below). Care must be taken when recording and retaining the details of the spent convictions to ensure that when the commissioner or their staff become aware that they are in possession of information about spent convictions, that only the commissioner and a senior member of the Office of the Traffic Commissioner have access to those spent convictions.
89. Ultimately the traffic commissioner retains a discretion to allow convictions and/or conduct to be considered, but must take into account the evidence and circumstances of the case, balancing that conduct against other relevant material such as the operator's record. A traffic commissioner also has discretion to disregard other convictions, which are not spent, applying the principle of proportionality. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 amends the rehabilitation period as follows:

Where on a conviction the sentence (or equivalent) imposed is:	The rehabilitation period begins on conviction and lasts for:	
	Adult	Offenders under 18
A custodial sentence of more than 30 months and up to, or consisting of, 48 months	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	Up to 48 months - The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of more than 6 months and up to, or consisting of, 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 6 months or less	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 18 months beginning with the day on which the sentence (including any licence period) is completed
A fine	The end of 12 months beginning with the date of conviction in respect of which the sentence is imposed	The end of 6 months beginning with the date of conviction in respect of which the sentence is imposed
Compensation Order	The date on which the payment is made in full	The date on which the payment is made in full
Community or youth rehabilitation order	The end of the period of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect	The end of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect.
A relevant order	The day provided for by or under the order as the last day on which the order is to have effect	

**90.** Since section 4 of the 1974 Act 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 against that person, no evidence is admissible in any proceedings to prove that conviction 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. This provision relates to proceedings before any judicial authority including a Tribunal, and as a result, includes proceedings before traffic commissioners. Commissioners and their 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).

**91.** 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, which demonstrates propensity). 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 the traffic commissioner alone. The traffic commissioner will need to be satisfied that there is no other way of doing justice in the case other than taking account of the spent conviction. Each case will be considered on its own individual merits. The Senior Traffic Commissioner has therefore directed that the following procedure be adopted:

- A. When notification of a conviction is received within the Office of the Traffic Commissioner (OTC) the caseworker must consider each conviction separately and determine as against the Senior Traffic Commissioner's Statutory Documents whether that conviction appears to be spent.
- B. The caseworker should try to identify why the OTC was not notified sooner. They must identify if the conviction(s) relates to any other relevant conduct with regard to the driver whose entitlement is being considered. The caseworker must ask themselves if the spent conviction is capable of relating to an issue which the traffic commissioner may have to decide.
- C. If the spent conviction is capable of being relevant then reference to it must be included in a submission to the traffic commissioner identifying where possible the date of conviction, penalty and the type of offence. The traffic commissioner should be asked to give a preliminary indication of whether the spent conviction might be admitted and whether to make a request for explanation or to identify the conviction in the calling in letter and invite representations in writing and/or at the hearing.
- D. The traffic commissioner will then decide whether to seek further details and admit any of the spent convictions in the light of representations from the driver, having in mind not only the interests of the individual who has the spent convictions but also the public in whose interests the exceptional powers are being exercised.

### *Endorsements*

**92.** Where an endorsable offence has been committed call up letters and correspondence should refer to endorsements rather than convictions. Details of most driving offences remain on a driving licence for up to 4 years. However, 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 provisions of the Rehabilitation of Offenders Act 1974.

- 93.** Current DVLA practice is to hold endorsements for between 4 or 11 years depending on the offence, in line with section 45 of the Road Traffic Offenders Act 1988. It follows that information about disclosable endorsements which might be put before the criminal courts for the purposes of sentencing following similar offences may not be brought to the attention of the traffic commissioner.



## Annex A: Entry Points

### Applicants for provisional vocational entitlement

Offence details	Circumstances	Referral	Starting Point	Note
<b>9 or more penalty points</b>	Any penalty points received in last 6 months	Can be dealt with 'in office' (unless the applicant requests a hearing)	Send a 'propose to refuse' letter <sup>44</sup> for a period of 6 months from the date of the last endorsement	See Case Example 1 at Annex C
	Penalty points accumulated between 6 months and 4 year period	Can be dealt with 'in office'	Grant application with a warning letter <sup>45</sup>	
<b>Record includes CU80 offence</b>	Single CU80 offence in last 4 years with no more than 8 points on licence	Can be dealt with 'in office'	Grant application with a warning letter <sup>46</sup>	
<b>Record includes CU80 offences</b>	Multiple CU80 offences in last 4 years	Call to a hearing	Grant application with a warning letter <sup>47</sup> but with a delayed commencement date of 3 weeks from the date of the hearing	See Case Example 2 at Annex C
<b>Record includes 1 disqualification (up to 12 months) excluding any drink / drug driving related offences</b>	Disqualification ended more than 6 months ago	Can be dealt with 'in office'	Grant application with a warning letter	
<b>Record includes 1 disqualification (up to 12 months) excluding any drink / drug driving related offence</b>	Disqualification ended within the last 6 months	Can be dealt with 'in office' (unless the applicant requests a hearing)	Send a 'propose to refuse' letter for a period of 6 months from the end of the disqualification	See Case Example 3 at Annex C

<sup>44</sup> Letter to include reference to any points received for CU80 offences

<sup>45</sup> Letter to include reference to any points received for CU80 offences

<sup>46</sup> Letter to include reference to points received for CU80 offences

<sup>47</sup> Letter to include reference to points received for CU80 offences

<b>Record includes 1 disqualification (over 12 months), or any drink/drug driving related offence (including those where the disqualification period is nine months)</b>	Disqualification ended more than 2 years ago	Can be dealt with 'in office'	Grant application with a warning letter	
<b>Record includes 1 disqualification (over 12 months) or any drink/drug driving related offence - (including those where the disqualification period has been reduced to nine months)</b>	Disqualification ended within the last 2 years	Call to a hearing		See Case Example 4 & 5 at Annex C
<b>Record includes 2 or more disqualifications</b>		Call to a hearing		See Case Example 6 at Annex C
<b>Any offence involving taking without owners consent / driving whilst disqualified</b>		Call to a hearing		
<b>Offences / convictions - in any other respect relevant to holding a PCV driver licence</b>	Any 'non-driving' offence where the outcome was a community penalty and/or custody including suspended sentence	Call to a hearing		
<b>Convictions for drug or sexual offences, violence and dishonesty (including theft) in any other respect relevant to holding a PCV driver licence</b>		Call to a hearing		See Case Example 7 at Annex C

## Restoration of vocational entitlement following disqualification

Offence details	Circumstances	Referral	Starting Point	Note
<b>1<sup>st</sup> disqualification for 12 months or less excluding any drink / drug driving related offence</b>		Can be dealt with 'in office' (unless aggravating features – see Annex B)	Grant with warning letter	See Case Example 8 at Annex C
<b>1<sup>st</sup> disqualification for 12 months or less for any drink / drug driving related offence</b>		Can be dealt with 'in office' (unless aggravating features – see Annex B - and/or the applicant requests a hearing)	Extended disqualification offer of 4 weeks	See Case Example 9 & 10 at Annex C
<b>1<sup>st</sup> disqualification (over 12 months to less than 36 months)</b>		Can be dealt with 'in office' (unless aggravating features – see Annex B – and/or the applicant requests a hearing)	<p>Offer extended vocational disqualification on the following basis:</p> <p>Over 12 months to 15 months + 5 weeks</p> <p>Over 15 months to 18 months + 6 weeks</p> <p>Over 18 months to 21 months + 7 weeks</p> <p>Over 21 months to 24 months + 8 weeks</p> <p>Over 24 months to 27 months + 9 weeks</p> <p>Over 30 months to 33 months + 11 weeks</p> <p>Over 33 months to less than 36 months + 12 weeks</p>	See Case Example 11 & 12 at Annex C

<b>1<sup>st</sup> disqualification 36 months or more<sup>48</sup></b>		Call to a hearing		
<b>Any disqualification regardless of period of time</b>	Specified offences: <ul style="list-style-type: none"> <li>- causing death or very serious injury in any motor vehicle;</li> <li>- taking any vehicle without the owner's consent; or</li> <li>- any resulting in a suspended or immediate prison sentence or community penalty</li> </ul>	Call to a hearing		See Case Example 13 & 14 at Annex C
<b>1<sup>st</sup> disqualification over 12 months</b>	Previous adverse conduct history <sup>49</sup> before any commissioner within last 5 years	Call to a hearing		
<b>2 or more disqualifications</b>		Call to a hearing		See Case Example 15 at Annex C

<sup>48</sup> Where it is known from the record that it is a second drink or drug driving offence but the disqualification shown is less than 36 months the case will be called to a hearing. This may occur where the driver has attending a rehabilitation course to reduce the disqualification period and/or a court has subsequently reduced the disqualification period after serving at least 2 years.

<sup>49</sup> Any reference to 'previous conduct history' in this Annex includes driver conduct hearings and warning letters.

## Current entitlement holders or renewals

Offence details	Circumstances	Referral	Starting Point	Note
<b>1<sup>st</sup> CU80 (type of vehicle not known)</b>			DVLA staff to issue warning letter	See Case Example 16 at Annex C
<b>2<sup>nd</sup> CU80 (type of vehicle not known)</b>	No previous adverse conduct history for CU80 offence	Call to a hearing	3 week suspension	
<b>2<sup>nd</sup> CU80 (type of vehicle not known)</b>	Previous adverse conduct history for CU80 offence	Call to a hearing	6 week suspension	
<b>3<sup>rd</sup> or more CU80 (type of vehicle not known)</b>	No previous adverse conduct history for CU80 offence	Call to a hearing	6 week suspension for third offence, longer for further offences	
<b>3<sup>rd</sup> or more CU80 (type of vehicle not known)</b>	Previous adverse conduct history for CU80 offence	Call to a hearing	12 week suspension for third offence, longer for further offences	
<b>1<sup>st</sup> CU80 in a commercial vehicle</b>	No previous adverse conduct history for CU80 offence	Call to a hearing	4 week suspension	See Case Example 16 at Annex C
<b>1<sup>st</sup> CU80 in a commercial vehicle</b>	Previous adverse conduct history for CU80 offence (including in non-commercial vehicle)	Call to a hearing	8 week suspension	
<b>2<sup>nd</sup> CU80 in a commercial vehicle</b>	No previous adverse conduct history for CU80 offence	Call to a hearing	12 week suspension	
<b>2<sup>nd</sup> CU80 in a commercial vehicle</b>	Previous adverse conduct history for CU80 offence (including in a non-commercial vehicle)	Call to a hearing	16 week suspension	
<b>3<sup>rd</sup> or more CU80 in a commercial vehicle</b>	No previous adverse conduct history for CU80 offence	Call to a hearing	16 week suspension for third offence, longer for further offences	

<b>3<sup>rd</sup> or more CU80 in a commercial vehicle</b>	Previous adverse conduct history for CU80 offence	Call to a hearing	26 week suspension for third offence, longer for further offences	
<b>Exceeding statutory speed limit</b>	Speeding in a commercial vehicle (SP10)	Can be dealt with 'in office'	DVLA staff to issue warning letter	See Case Example 17 at Annex C
<b>Exceeding statutory speed limit – 2<sup>nd</sup> offence</b>	Speeding in a commercial vehicle (SP10)	Call to a hearing	6 week suspension	
<b>Disablement of speed limiter</b>		Call to a hearing	Formal warning (if evidence of driver bringing matter to employer's attention), otherwise up to 4 week suspension	
<b>Speed limiter – interference</b>	Including the use of any device to disable or produce false readings	Call to a hearing	Revoke and disqualify for 12 months	
<b>Falsification: by failure to keep required records (EC and domestic driver' hours &amp; WTD)</b>	Deliberate falsification (e.g. deliberately driving without using a tachograph, deliberately failing to keep records or pulling tachograph chart/s / digicard/s) or using a digicard belonging to another	Call to a hearing	4 week suspension per offence up to 6 offences & revoke and disqualify for 12 months for more than 6 offences	See Case Example 18 at Annex C
<b>Falsification: domestic drivers' hours &amp; WTD</b>	Deliberate falsification or forgery of records	Call to a hearing	Revoke and disqualify for 12 months for a single offence - longer for 2 or more offences	
<b>Falsification: tachographs</b>	Use of any device to interfere with the recording equipment (e.g. use of a magnet or interrupter switch)	Call to a hearing	Revoke and disqualify for 12 months for a single offence - longer for 2 or more offences	See Case Example 19, 20 and 21 at Annex C

<b>Other drivers' hours, tachograph &amp; WTD offences</b>	Less serious offences committed on isolated or infrequent basis	Can be dealt with 'in office'	Staff to issue warning letter	
<b>Other drivers' hours, tachograph &amp; WTD offences</b>	Serious offences committed on infrequent basis	Call to a hearing	7 day suspension	
<b>Other drivers' hours, tachograph &amp; WTD offences</b>	Persistent and/or very serious and/or habitual offences	Call to a hearing	4 week suspension increasing with the number and severity of offences	See Case Example 22 and 23 at Annex C
<b>DCPC – failure to carry card</b>		Can be dealt with 'in office'	Staff to issue warning letter	
<b>DCPC – not undertaken required training</b>		Call to a hearing	4 week suspension	
<b>DVSA Fixed Penalty Notifications<sup>50</sup></b>	Total of 12 FPN points reached	Call to a hearing	4 week suspension	
<b>Any convictions for sexual offences - regardless of sentence imposed relevant to holding a PCV driver licence</b>		Call to a hearing	Revocation and disqualification	See Case Example 25 and 26 at Annex C
<b>Any convictions for drug related, harassment, violence, public order and/or dishonesty (including theft) offences - regardless of sentence imposed relevant to holding a PCV driver licence</b>		Call to a hearing	Suspension	
<b>Civil Penalty imposed for</b>	Civil penalty imposed by	Can be dealt with 'in office'	Staff to issue warning letter	

<sup>50</sup> For the purposes of monitoring repeated and/or serious offending, DVSA maintain information on all offences whether they have attracted a court conviction or been dealt with by way of fixed penalty. Drivers may be referred to traffic commissioners if the level or nature of offending requires consideration of further action.



<b>breaching the Home Office Border Force (HOBf) prevention of clandestine entrants code of practice – first offence</b>	HOBf and appeals/objections process exhausted.			
<b>Civil Penalty imposed for breaching the Home Office Border Force prevention of clandestine entrants code of practice – repeat offence</b>	Civil penalty imposed by HOBf and appeals/objections process exhausted. Previous history of offences.	Call to a hearing	Suspension	

## **Annex B: Examples of Aggravating and Mitigating Features**

### **All offences**

#### *Aggravating features*

- Causing death or serious injury in any vehicle
- Causing death or serious injury to a vulnerable road user (e.g. cyclist or pedestrian) in a commercial vehicle
- Previous convictions / persistent offending
- Present or historic offences committed in a commercial vehicle
- Taking any vehicle without the owner's consent
- Imposition of custodial or suspended sentence
- Flagrant disregard of a court order
- Insurance invalid at the time of the offence or a result of the offence
- No valid driving licence at the time of the offence
- Offending caused by or led to fatigue resulting in undue risk to road safety
- Offending caused by the use of a hand-held electronic device (e.g. mobile phone or tablet)
- Serious or prolonged period of offending either during the course of the journey (e.g. dangerous or careless driving) or over a period of time and not just the journey (e.g. driving whilst disqualified)
- Offender was in excess of the drink / drug drive limit at the time of the offence<sup>51</sup>
- Failure to respond adequately to previous alcohol or drug rehabilitation programmes
- High or very high alcohol / drug level at the time of the offence
- Failure to co-operate with or deliberate obstruction of Police or other enforcement agency investigation

#### *Mitigating features*

- No previous conviction/s
- Less serious offences which come to light in a single encounter
- Contributory negligence by other driver or road user
- No death or serious injury caused to any third party
- Imposition of community based penalty with reparation to the victim or their family and/or positive response to that penalty
- Insurance / driving licence valid at the time of the offence
- Offending not caused by or did not lead to fatigue
- Momentary or short lapse of concentration
- Isolated incident
- Offence caused by exceptional circumstances
- Full co-operation with Police or other enforcement authorities
- If offence (e.g. careless driving) was the subject of a graduated fixed penalty then it can be assumed to be less serious than an offence which was the subject of a court prosecution
- Positive response to rehabilitation / training programmes (e.g. alcohol / drugs)

### **Note – the above list is not exhaustive**

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<sup>51</sup> Note: there are lower drink drive limits in Scotland (50 mgs of alcohol in 100 ml in blood) than in England and Wales (80 mgs of alcohol in 100 ml of blood)

**In addition to the above features the following are also to be taken into account when considering the following specific matters**

### **Tachograph, drivers' hours (EC & domestic) and working time directive offences**

#### *Aggravating features*

- Use of any device (e.g. magnet or interrupter switch) to disable or interfere with the tachograph recording equipment or the speed limiter
- Deliberate falsification of tachograph or other records
- Evidence of use of duplicate digicards, driving licences or tachographs (e.g. ghost drivers)
- Deliberate failure to keep a record of duties undertaken
- Offending committed over a sustained period of time
- Offending committed with the express intention of misleading either the Police and/or other enforcement authorities and/or the driver's employer
- Driver deliberately disregarding appropriate instruction from employer
- Commercial advantage gained by the operator
- Failure by driver to respond to effective management control and systems and procedures in place to detect falsification & infringements
- Failure by driver to respond to effective driver training and/or subsequent monitoring and disciplinary procedures

#### *Mitigating features*

- No use of any device (e.g. magnet or interrupter switch) to interfere with the tachograph recording equipment or the speed limiter
- No commercial advantage
- Compliance with driver's hours / working time legislation (EC & Domestic)
- Positive response to effective management control and systems and procedures
- Driver's employer caused or permitted the falsification and offending

**Note – the above list is not exhaustive**

## **Use of hand-held devices (including mobile phones and tablets)**

### *Aggravating features*

- Offending committed in a PCV with passengers on board
- Driver deliberately disregarded appropriate instruction from employer
- Use of electronic device to text or type whilst driving or in control of the vehicle
- Failure by driver to respond to effective management control, systems and procedures in place to prevent use of electronic devices whilst driving

### *Mitigating features*

- Driver responded positively to effective management control, systems and procedures to prevent use of electronic devices whilst driving
- Driver responded positively to effective driver training and/or subsequent monitoring and disciplinary procedures
- Driver's employer caused or permitted the offending

**Note – the above list is not exhaustive**

## **Annex C: Case Examples**

### **Introduction**

The presiding traffic commissioner retains absolute discretion to move up or down from the suggested starting points when exercising their judicial decision. The starting points in Annex A can assist in achieving consistency of approach but as each case is considered on its merits, taking into account any aggravating and/or mitigating features (see Annex B), they cannot predict the outcome of a particular hearing. A number of examples are presented below by way of illustration as to how a traffic commissioner might approach certain facts. They may be useful in the instruction of drivers by an operator or transport manager, and they will be subject to review from time to time.

### **Applications for Provisional Vocational Entitlement**

#### **Case Example 1**

Mr Smith makes an application for provisional LGV and PCV licences. He has 9 penalty points on his ordinary driving licence, the oldest of which is a CU80 offence (no warning letter sent). The last offence was committed 4 months ago.

**Action:** A letter is sent by staff to Mr Smith, proposing the refusal of his application for a further period of 2 months (and therefore 6 months from the date of the last endorsement). Mr Smith does not request a hearing following receipt of the letter. Mr Smith reapplies for a licence 3 months later (no additional offences have occurred) and his application is granted by staff, with a warning letter which includes reference to the CU80 offence.

**Note:** If Mr Smith had applied 6 months after his last offence then his application would have been granted by staff, with a warning letter (including a reference to the CU80 offence).

#### **Case Example 2**

Mr Smith makes an application for provisional LGV and PCV licences. He has 2 offences on his ordinary driving licence, both CU80 offences (6 penalty points) committed within the last 4 years.

**TC Action:** Mr Smith is called to a driver conduct hearing. His application is granted but with a delayed commencement date of 3 weeks from the date of the hearing. The traffic commissioner also issues a formal warning to Mr Smith regarding his future conduct, which includes a reference to the CU80 offences.

#### **Case Example 3**

Mr Smith has been disqualified (his first) from driving for 6 months under the totting up procedure. He applies for provisional LGV and PCV licences immediately upon the return of his ordinary driving licence.

**TC Action:** A letter is sent by staff to Mr Smith, proposing the refusal of his application for a period of 6 months from the date of return of his ordinary driving licence. Mr Smith does not request a hearing following receipt of the letter. Mr Smith successfully reapplies for his provisional LGV and PCV licences after the 6 months have elapsed.

#### **Case Example 4**

Mr Smith has been disqualified (his first) for 24 months for dangerous driving. He applies for provisional LGV and PCV licences 6 months after the return of his ordinary driving licence.

**TC Action:** Any dangerous driving endorsement shown on the record automatically triggers a driver conduct hearing. At the hearing the traffic commissioner refuses the application but informs Mr Smith that he can reapply after a period of 12 months (which will be 18 months from the time of the return of his ordinary driving licence).

**Note:** If dangerous driving includes any immediate or suspended custodial sentence there is an expectation that there will be an independent verification of the circumstances of the case.

#### **Case Example 5**

Mr Smith has been disqualified for 12 months (reduced to 9 months following attendance at an alcohol awareness course) for driving with excess alcohol. The blood / alcohol reading was 100mg of alcohol in 100ml of blood. He applies for provisional LGV and PCV licences immediately on the return of his ordinary driving licence.

**TC Action:** Mr Smith is called to a driver conduct hearing. His application is granted, but with a delayed commencement date of 8 weeks from the date of the hearing.

**Note:** The decision reflects that the driver is new to the Industry and needs to be made aware of the higher standards expected of vocational drivers. The equivalent of an extended disqualification runs from the date of the hearing to impress the point on the applicant.

#### **Case Example 6**

Mr Smith has received two previous disqualifications from driving. The first disqualification (committed 7 years ago) of 12 months was for driving with excess alcohol, and the second disqualification (committed 2 years ago) of 18 months was for dangerous driving. He passed his extended test soon after the expiry of the court disqualification. He applies for provisional LGV and PCV licences 1 month after the return of his ordinary driving licence.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner establishes that the disqualification for dangerous driving related to an overtaking manoeuvre which resulted in a collision with another vehicle (nobody was killed, but people in the other vehicle were hospitalised for a short period of time). The 12 month disqualification for drink driving followed a reading of 45 microgrammes per 100 millilitres of breath (10 microgrammes above the legal limit in England, Wales and Scotland at the time of the offence).

Mr Smith presented a letter of support from his current employer to support his application for a provisional licence (he is currently working in a warehouse attached to a transport haulage operation and if he is granted a provisional LGV / PCV licence he will be offered employment as a driver by his uncle who owns a coach company).

The traffic commissioner refuses the application for a provisional licence but informs Mr Smith that he can reapply after a period of 12 months. Mr Smith reapplies for a licence 15

months later (no additional offences have occurred) and his application is granted by the office staff under delegated authority, with a warning letter which includes reference to the previous offences.

### **Case Example 7**

Mr Smith has previously been convicted of a sexual offence, and his details are on the Sex Offenders Register. Mr Smith has applied for a provisional PCV licence.

**TC Action:** Mr Smith is called to a driver conduct hearing where he claims his innocence of the convicted offence. The legislation is clear that a person's existence on the Sex Offenders Registers does not automatically make him/her unfit to hold a PCV licence and case law confirms that each case must be dealt with on its merits. However, the traffic commissioner refuses the application due to the particular risk that this sex offender can pose to the travelling public, and indicates that any future application for a PCV licence would be refused until he is fully rehabilitated (according to legislation). However, the traffic commissioner also indicates that Mr Smith would be able to apply for a LGV licence without encountering such restrictions (for LGV drivers the legislation only relates to conduct connected to driving).

## **Applications for Restoration of Vocational Entitlement Following Disqualification**

### **Case Example 8**

Mr Smith is currently disqualified from driving for 6 months under the totting up procedure for speeding (x3) and CU80 (x1) offences. He applies for the restoration of his LGV entitlement 1 month prior to the expiry of his disqualification.

**TC Action:** Mr Smith's PCV and LGV licences are returned at the same time as his ordinary driving licence. A warning letter is sent by staff (which includes a reference to the CU80 offence).

### **Case Example 9**

Mr Smith is currently serving a 12 month disqualification for a first offence of driving with excess alcohol. He applies for the restoration of his LGV and PCV entitlements prior to the expiry of his disqualification.

**TC Action:** A letter is sent by staff to Mr Smith, offering an extended vocational disqualification of 4 weeks. Mr Smith accepts the offer and does not request a hearing.

**Note:** The offer of a 4 week extended disqualification is on the basis that there are no aggravating features. If there are other offences shown on the record an extended disqualification or attendance at a driver conduct hearing may be required.

### **Case Example 10**

Mr Smith is currently serving a 12 month disqualification (his first) for a first offence for drug driving whilst driving his private car. He applies for the restoration of his LGV entitlement prior to the expiry of his disqualification.

**TC Action:** Mr Smith is called to a driver conduct hearing due to the possibility of aggravating / mitigating features. It becomes apparent that the drugs detected were

cocaine and cannabis which had been consumed recreationally. Mr Smith states that he did not think that his driving was affected, however he had illegal drugs in his bloodstream above the prescribed limit which triggered the offence. Mr Smith presents a letter from his doctor stating that he is no longer using any form of illegal drugs. Having heard detailed evidence from Mr Smith about why he became a drug user and how he stopped using them the traffic commissioner decides to extend the disqualification of his vocational licence for a period of 4 weeks with a warning that any further similar offences will be likely to lead to indefinite revocation of his LGV entitlement.

### **Case Example 11**

Mr Smith is currently serving a 24 month disqualification for a first offence of driving with excess alcohol. He applies for the restoration of his PCV and LGV entitlements prior to the expiry of his disqualification.

**TC Action:** A letter is sent by staff to Mr Smith, offering an extended vocational disqualification of 9 weeks. Mr Smith refuses the offer and requests a hearing. The traffic commissioner considers the details of the case further at the hearing, including that Mr Smith was a small amount above the legal limit. However, the traffic commissioner considers that the initial offer of a 9 week extended disqualification remains appropriate, noting that the court considered that a disqualification amounting to double the minimum period was appropriate. The traffic commissioner also felt that the period of an extended disqualification should be proportionate to the extended period off the road.

### **Case Example 12**

Mr Smith is currently serving a 24 month disqualification (his first) for driving whilst under the influence of drugs. He applies for the restoration of his LGV entitlement prior to the expiry of his disqualification.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner considers the details of the case further, including that the drug detected was amphetamine and, at the driver's admission, was being used to keep awake and mitigate tiredness whilst driving at night. Due to the aggravating factors, namely the premeditated use of a stimulant which poses a particular risk to road safety, the traffic commissioner decides that the starting point of a 8 week extended disqualification is not sufficient, and that Mr Smith would present an undue risk to road safety. The traffic commissioner therefore refuses the application. The traffic commissioner informs Mr Smith that he can apply again in the future once he has established a suitable period of no further offences of driving whilst under the influence of drugs and states that this is likely to be in 18 months time.

### **Case Example 13**

Mr Smith is currently serving a 24 month disqualification (his first) for causing death by careless driving whilst driving his private car. He was also given a 6 month prison sentence, suspended for 2 years. He applies for the restoration of his LGV entitlement prior to the expiry of his disqualification.

**TC Action:** Any driving offences shown on the record involving a death automatically triggers a driver conduct hearing. The traffic commissioner refuses the application for the



restoration of the vocational licence and indicates that Mr Smith should spend at least 12 months driving a non-commercial vehicle to demonstrate that he is a safe driver.

**Note:** If the offence was committed in a commercial vehicle the 12 months would almost certainly be extended. Other features also need to be considered including the vulnerability of particular road users, including cyclists. In the most serious cases there should be an expectation that, whilst each case will be dealt with on its merits, the vocational driver will need to find an alternative career.

#### **Case Example 14**

Mr Smith has served a 30 month prison sentence for causing death by dangerous driving (he was also disqualified from driving for 4 years). The disqualification ended 6 months ago, he has recently passed an extended test enabling him to drive a car and he applies for the restoration of his LGV entitlement. According to press reports (copied to the driver), the offence was committed whilst driving a LGV when he failed to observe two stationary cars which were both displaying warning lights and were visible for a distance of 1 mile.

**TC Action:** Any driving offences shown on the record involving a death automatically triggers a driver conduct hearing. The traffic commissioner refuses the application for the restoration of the vocational licence and indicates that Mr Smith will be required to show evidence of safe driving for several years before any future application is approved.

#### **Case Example 15**

Mr Smith is currently serving a 36 month disqualification for a second offence of driving with excess alcohol (the first offence was committed 8 years ago). He applies for the restoration of his LGV and PCV entitlements prior to the expiry of his disqualification.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner establishes that the first offence was committed in a commercial vehicle and the second in a private car. Mr Smith informs them that he is a recovering alcoholic and that he has not drunk alcohol for 6 months. Despite his assurances that he will never drink again the traffic commissioner is concerned that Mr Smith may do so and therefore refuses the application. The traffic commissioner informs Mr Smith that he can apply again in the future once he has established a suitable period of no further offences of driving with excess alcohol and states that this is likely to be 18 months after the expiry of his disqualification.

**Note:** The length will depend on the circumstances of the case (including alcohol levels), the assurances given that there will be no repetition and whether drinking behaviours have changed.

### **Current entitlement holders or renewals**

#### **Case Example 16**

Mr Smith holds a LGV licence and received 3 penalty points for a CU80 offence whilst driving a commercial vehicle. Mr Smith previously had a clean licence and had not previously appeared at a driver conduct hearing. He received a warning letter for this offence.

**TC Action:** Mr Smith is called to a driver conduct hearing. The warning letter points out that if the offence was committed in a commercial vehicle then disciplinary action could still be taken by the traffic commissioner (staff would not necessarily know at the time of the issue of the warning letter that the offence was committed in a commercial vehicle). The traffic commissioner suspends Mr Smith's LGV licence for a period of 4 weeks.

### **Case Example 17**

Mr Smith holds a LGV licence. He was stopped by the Police for exceeding the LGV specific speed limit on a single carriageway road, and received 3 penalty points.

**TC Action:** A warning letter is sent by DVLA staff to Mr Smith.

### **Case Example 18**

Mr Smith was stopped at the roadside whilst driving a PCV and 3 offences of falsifying drivers' hours records were detected. The enforcement agency referred the case to the traffic commissioner.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner concludes that the failure to keep the required record (in this case by 'pulling' the card) was a deliberate act. The traffic commissioner issues a 4 week suspension for each offence – a total of 12 weeks.

### **Case Example 19**

Mr Smith was caught using a magnet to manipulate the tachograph whilst driving a LGV.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner accepts that this was an isolated act and revokes and disqualifies Mr Smith's vocational licence for a period of 12 months.

### **Case Example 20**

Mr Smith was caught using a magnet to manipulate the tachograph whilst driving a LGV. There was also an interrupter switch fitted to the vehicle. A DVSA investigation reveals that Mr Smith and a number of other drivers were committing large numbers of false record offences by the use of magnets and interrupter switches. In addition, the operator (and driver's employer), states in interview that it did not know that the switches were fitted to the vehicles and that it did not put any pressure on the drivers to commit false record offences.

**TC Action:** The traffic commissioner hears both the driver conduct hearings and the public inquiries together and imposes substantial periods of revocation and disqualification for the drivers ranging from 12 months in the least serious cases to four years in the most serious cases.

### **Case Example 21**

Mr Smith was stopped at the roadside whilst driving a LGV where it was discovered that Mr Smith was using another person's driver digicard. The case was referred to the traffic commissioner.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner revokes and disqualifies Mr Smith's vocational licence for a period of 12 months. The use of another person's card is regarded as being as serious as the use of any device to interfere with the recording equipment.

### **Case Example 22**

Mr Smith was stopped at the roadside whilst driving a LGV and drivers' hours offences were detected relating to mode switch and rest periods. The enforcement agency referred the matter to the traffic commissioner.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner is satisfied that the offences were a combination of ignorance of the legal requirements and negligence in regards to the regular breaches of rest periods (averaging around 10 to 15 minutes). Mr Smith indicated that he was genuinely sorry, that he would change his behaviour and that he has now attended a driver CPC course on drivers' hours and so he now has a proper understanding of the rules. The traffic commissioner suspends Mr Smith's vocational licence for a period of 2 weeks. This reflects the 4 week starting point which is reduced as a result of the persistent offences being of a less serious nature.

### **Case Example 23**

Mr Smith was stopped at the roadside whilst driving a LGV and 8 drivers' hours offences (exceeded daily driving limit/ insufficient daily and weekly rest) were identified. The enforcement agency referred the case to the traffic commissioner.

**TC Action:** Mr Smith is called to a driver conduct hearing. The traffic commissioner considers the frequent and persistent breaches of the rules (daily driving limits and minimum rest periods) and, as a result, suspends Mr Smith's licence for a period of 8 months.

**Note:** There is a need to consider the extent and the frequency of the breaches.

### **Case Example 24**

Mr Smith was driving an LGV and failed to respond to the directions of a DVSA Enforcement Support Officer, who, while driving a fully-liveried DVSA stopping car, signalled Mr Smith to follow him to a checksite. Mr Smith drove aggressively during the incident and his alleged conduct appeared to fall far below that expected of professional drivers.

**TC Action:** Mr Smith is called to a driver conduct hearing. Video evidence from the rear-facing camera of the stopping vehicle was presented and it was clear that Mr Smith had attempted to evade the DVSA stopping car. It was also clear that Mr Smith had deliberately tried to intimidate the DVSA Officer by driving extremely close to the rear of the stopping car. The traffic commissioner considered that Mr Smith had shown himself unwilling to cooperate with the enforcement agency and that he put the life of innocent

road users in danger. The traffic commissioner concluded that the issue at hand was Mr Smith's attitude, and that he needed a very significant period in which to reflect upon his action. The traffic commissioner suspended Mr Smith's vocational entitlement for 6 months.

### **Case Example 25**

Mr Smith, a PCV driver, was referred to the traffic commissioner by his present employer for a sexual offence which took place outside the course of his work.

**TC Action:** Mr Smith is called to a driver conduct hearing. Following the referral by his (previous) employer, it has been established that Mr Smith had been arrested and is awaiting trial. The conditions of court bail stipulate that Mr Smith should have no contact with children. As Mr Smith is a PCV driver, wider conduct away from driving can be considered by the traffic commissioner. The traffic commissioner makes an order to suspend Mr Smith's vocational licence pending the outcome of criminal proceedings.

**Note:** In the above example, bail conditions were imposed by a court after an opportunity for representations. In such a case, the suspension can be imposed without a driver conduct hearing. However, if the circumstances involved police bail conditions (as opposed to court bail), written representations should be sought before any final decision is made. The final decision should be made within an extremely tight timescale. Paragraphs 78 and 79 of the Directions outline the procedure to follow in such cases.

Such a course of action could not be taken for a LGV driver as traffic commissioner action in relation to conduct is related to driving only.

### **Case Example 26**

Mr Smith, a LGV driver, was referred to the traffic commissioner by the police for a sexual assault on a hitch hiker.

**TC Action:** Mr Smith is called to a driver conduct hearing. As the assault occurred during the course of driving a motor vehicle the traffic commissioner is able to consider taking further action. In this case the traffic commissioner decided to revoke Mr Smith's licence and disqualify him.

**Note:** The legislation refers to 'conduct as a driver of a motor vehicle' and the view of traffic commissioners is that behaviour with hitch hikers falls within this definition. The length of the revocation and disqualification will depend on the seriousness of the offence.

## **Annex D: Offence Codes**

### **Accident offences**

<b>Code</b>	<b>Reason</b>
AC 10	Failure to stop after an accident
AC 20	Failing to give particulars or to report within 24 hours
AC 30	Undefined accident offences

### **Disqualified driver**

<b>Code</b>	<b>Reason</b>
BA 10	Driving while disqualified by order of court
BA 30	Attempting to drive while disqualified by order of court
BA 40	Causing death by driving while disqualified
BA 60	Causing serious injury by driving while disqualified

### **Careless driver**

<b>Code</b>	<b>Reason</b>
CD10	Driving without due care and attention
CD 20	Driving without reasonable consideration for other road users
CD 30	Driving without due care and attention or without reasonable consideration for other road users
CD 40	Causing death through careless driving when unfit through drink
CD 50	Causing death by careless driving when unfit through drugs
CD 60	Causing death by careless driving when alcohol level above limit
CD 70	Causing death by careless driving then failing to supply a specimen for analysis
CD 80	Causing death by careless, or inconsiderate, driving
CD 90	Causing death by driving: unlicensed, disqualified or uninsured drivers

### **Construction & Use offences**

<b>Code</b>	<b>Reason</b>
CU 10	Using a vehicle with defective brakes
CU 20	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
CU 30	Using a vehicle with defective tyre(s)
CU 40	Using a vehicle with defective steering
CU 50	Causing or likely to cause danger by reason of load or passenger
CU 80	Breach of requirements as to control of the vehicle, mobile telephone etc

### **Reckless / dangerous driving**

<b>Code</b>	<b>Reason</b>
DD 10	Causing serious injury by dangerous driving
DD 40	Dangerous Driving
DD 60	Manslaughter or culpable homicide while driving a vehicle
DD 80	Causing death by dangerous driving
DD 90	Furious driving

## Drink or drugs

Code	Reason
DG 10	Driving or attempting to drive with a drug level above the specified limit
DG 40	In charge of a vehicle while drug level above the specified limit
DG 60	Causing death by careless driving while drug level above the specified limit
DR 10	Driving or attempting to drive with alcohol level above limit
DR 20	Driving or attempting to drive while unfit through drink
DR 30	Driving or attempting to drive then failing to supply a specimen for analysis
DR 31	Driving or attempting to drive then failing to allow a specimen to be subjected to a laboratory test
DR 40	In charge of a vehicle while alcohol level above limit
DR 50	In charge of a vehicle while unfit through drink
DR 60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR 61	Failure to allow a specimen to be subjected to a laboratory test other than driving or attempting to drive
DR 70	Failing to provide specimen for breath test
DR 80	Driving or attempting to drive when unfit through drugs
DR 90	In charge of a vehicle when unfit through drugs

## Insurance offences

Code	Reason
IN 10	Using a vehicle uninsured against third party risks

## Licence offences

Code	Reason
LC 20	Driving otherwise than in accordance with a licence
LC 30	Driving after making a false declaration about fitness when applying for a licence
LC 40	Driving a vehicle having failed to notify a disability
LC 50	Driving after a licence has been revoked/refused on medical grounds

## Miscellaneous offences

Code	Reason
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS 30	Play street offences
MS 50	Motor racing on the highway
MS 60	Offences not covered by other codes
MS 70	Driving with uncorrected defective eyesight
MS 80	Refusing to submit to an eyesight test
MS 90	Failure to give information as to identity of driver etc

## Motorway offences

Code	Reason
MW 10	Contravention of Special Roads Regulations(excluding speed limits)

## Pedestrian crossing

Code	Reason
PC 10	Undefined Contravention of Pedestrian Crossing Regulations
PC 20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC 30	Contravention of Pedestrian Crossing Regulations with stationary vehicle

## Speed limits

Code	Reason
SP 10	Exceeding goods vehicle speed limits
SP 20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicle)
SP 30	Exceeding statutory speed limit on a public road
SP 40	Exceeding passenger vehicle speed limit
SP 50	Exceeding speed limit on a motorway

## Traffic direction and signs

Code	Reason
TS 10	Failing to comply with traffic light signals
TS 20	Failing to comply with double white lines
TS 30	Failing to comply with a 'stop' sign
TS 40	Failing to comply with direction of a constable/warden
TS 50	Failing to comply with a traffic sign (excluding 'stop' signs, traffic lights or double white lines)
TS 60	Failing to comply with a school crossing patrol sign
TS 70	Undefined failure to comply with a traffic direction sign

## Special codes

Code	Reason
TT 99	To signify a disqualification under 'totting up' procedure. If the total penalty points reach 12 or more within 3 years, the driver is liable to be disqualified.

## Theft or unauthorised taking

Code	Reason
UT 50	Aggravated taking of a vehicle

## Short period disqualification

Code	Reason
SPD	N.B. If a driver has been disqualified for 55 days or less the record will not expire, this is known as a short period disqualification (SPD)

## Non-endorsable offences

Code	Reason
NE96	Non payment of child support (under the Child Support, Pensions & Social Security Act 2000) must carry a disqualification period
NE97	For misc offences, burglary, assault etc.
NE98	Not recognised by court as an endorsable offence but carries a disqualification period (England & Wales)
NE99	Certain anti-social misbehaviour must carry a disqualification period (Scotland)

**Note:** A non-endorsable offence is an offence which courts do not endorse onto the driving licence. No penalty points are attributed to these offences but these offences do carry a period of disqualification. At the end of the disqualification (56 days or over) the driver will have to apply for a renewal licence together with the appropriate fee. The offence codes detailed in the table below are used by DVLA to record the offence on the drivers' database so that the status of the individual's driving entitlement can be confirmed.

**Aiding, abetting, counselling or procuring**

Offences as coded but 0 is changed to 2 (e.g. LC10 becomes LC12).

**Causing or permitting**

Offences as coded but 0 is changed to 4 (e.g. LC10 becomes LC14).

**Inciting**

Offences as coded but 0 is changed to 6 (e.g. DD40 becomes DD46).



## Annex E: Referrals from the Secretary of State



Department  
for Transport

Duncan Price  
FREIGHT OPERATOR LICENSING AND  
ROADWORTHINESS  
DEPARTMENT FOR TRANSPORT  
3RD FLOOR  
GT MINISTER HOUSE  
33 HORSEFERRY ROAD  
LONDON  
SW1P 4DR

Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)

4<sup>th</sup> December 2015

Dear Mrs Bell

### **VOCATIONAL DRIVER CONDUCT: REFERRAL OF NON-ENDORSABLE OFFENCES AND THIRD-PARTY NOTIFICATIONS**

1. Questions as regards fitness to hold a large goods vehicle (LGV) or passenger-carrying vehicle (PCV) driver's licence are referred by the Secretary of State (SoS) to the relevant traffic commissioner (TC) for the relevant area under sections 113, 115, 115A or 116 of the Road Traffic Act 1988. Such a referral may follow a notification to the traffic commissioners by third parties of non-endorsable offences committed by vocational drivers where the person's conduct is such that his fitness to hold such a licence must be considered.
2. A review of how TCs handle issues relating to driver conduct was undertaken in 2015. Following this review, it is now appropriate to confirm in writing how existing arrangements operate in the context of Statutory Guidance and Directions 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.
3. In relation to non-endorsable offences, traffic commissioners are notified by the Driver and Vehicle Standards Agency (DVSA), other agencies and outside sources (such as the media) of drivers who are convicted of non-endorsable offences which may merit a review of their fitness (on conduct grounds) to hold the relevant vocational driving licence.
4. Questions as to fitness to hold a LGV or PCV driver's licence (including conduct) arising under sections 112, 115, 115A and 116 of the Road Traffic Act 1988 are referred to the TCs by the SoS in accordance with that Act. Referrals may occur in the following cases:
  - a. Where the police or other enforcement agency notifies the traffic commissioner in writing that a person applying for or holding such a licence has been convicted of a non-endorsable offence which involved conduct that may call into question that person's fitness to hold or be issued with a licence (covered by the conduct regime);
  - b. Where the traffic commissioners become aware through the media or a report from a third party that an applicant or holder of a licence has been convicted of a non-endorsable offence which involved conduct that may call into question that person's fitness to hold or be issued with such a licence; and

- c. Where the police or other enforcement agency informs the traffic commissioners that an applicant for or holder of such a licence is alleged to have committed an offence which involves conduct which may 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).
5. The non-endorsable offences referred to above may include tachograph, drivers' hours, overloading, financial impropriety, fraud, violence of any description, theft, sexual misbehaviour, illicit drug use or trafficking and contra-banding. This list is not, however, exhaustive. Referrals by the police and enforcement agencies related to alleged conduct offences may also relate to endorsable offences.
6. Where cases are brought to a TC's attention in a way other than as described in paragraphs 4 (a) to (c) above, which traffic commissioners nevertheless feel should be considered, the case must be sent to the SoS (through the DVSA). The DVSA will consider whether to make a specific referral to the relevant TC.
7. Please include this letter in the Senior Traffic Commissioner's Statutory Guidance and Directions for the information of all traffic commissioners, DVSA and stakeholders.

Yours sincerely



**Duncan Price**