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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GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 ("1981 Act") and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 ("1995 Act") 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. Traffic commissioners refer to vocational drivers as those with driving entitlement for Large Goods Vehicles and/or Passenger Carrying Vehicles. Section 121 of the Road Traffic Act 1988 ('the 1988 Act') defines these as:

"large goods vehicle" means a motor vehicle (not being a medium-sized goods vehicle within the meaning of Part III of this Act) which is constructed or adapted to carry or to haul goods and the permissible maximum weight of which exceeds 7.5 tonnes;

"passenger-carrying vehicle" means —
(a) a large passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers which is constructed or adapted to carry more than 16 passengers, or
(b) a small passenger-carrying vehicle, that is to say, a vehicle used for carrying passengers for hire or reward which is constructed or adapted to carry more than 8 but not more than 16 passengers.

3. Entitlement to drive these classes of vehicles is shown by holding the following category on a driving licence:

Category C	Entitlement to drive vehicles over 3,500kg (with a trailer up to 750kg Maximum Authorised Mass).
Category CE	Entitlement to drive category C vehicles with a trailer over 750kg.
Category D1	Entitlement to drive vehicles with: • no more than 16 passenger seats • a maximum length of 8 metres • a trailer up to 750kg
Category D1E	Entitlement to drive D1 category vehicles with a trailer over 750kg Maximum Authorised Mass. The combined Maximum Authorised Mass of both cannot exceed 12,000kg.
Category D	Entitlement to drive any bus with more than 8 passenger seats (with a trailer up to 750kg Maximum Authorised Mass).
Category DE	Entitlement to drive D category vehicles with a trailer over 750kg.

4. Category C1 and C1E indicate an entitlement to drive vehicles between 3,500 and 7,500kg maximum authorised mass (with a trailer up to 750kg) and to drive C1 category vehicles with a trailer over 750kg respectively.[1] These vehicles fall

[1] The combined MAM of both cannot exceed 12,000kg

within the definition of a "medium-sized vehicle under section 108 of the 1988 Act. It follows that a traffic commissioner does not have jurisdiction over these entitlement categories.

5. A vocational entitlement is normally used by those drivers in the course of an occupation or employment. Professional drivers of larger vehicles are expected to meet a higher standard[2] than those with ordinary driving entitlement.[3] Most drivers of these vehicles will also require a Driver Certificate of Professional Competence.[4] Where there is a question over a driver's fitness to hold vocational entitlement, the Secretary of State may refer the case to a traffic commissioner, so that they can consider their conduct and make a determination.

6. The relevant legislation is set out in Sections 110-122 of the 1988 Act.[5] The legislation draws a clear distinction between Large Goods Vehicle 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.

7. Traffic commissioners have no jurisdiction over a driver's medical fitness, this is a matter for the Driver and Vehicle Licensing Agency[6].

8. Regulation 4 of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007/605 requires both Large Goods Vehicle and PCV drivers to obtain their own Driver Qualification Card. Under Regulation 11, this card must be carried at all times to confirm a driver has completed the Driver Certificate of Professional Competence (DCPC) test. The Regulations set out compulsory periodic training (35 hours every five years) which is designed to expand on and revise some of the subjects referred to in section 1 of Annex I, including at least one road safety related subject.

9. DCPC forms part of a driver's continuing professional development. The specific training needs of the driver should be taken into account when selecting training subjects. As best practice, traffic commissioners expect drivers to actively engage in identifying the training from which they will benefit most, to undertake any required training as soon as practicable, and to space the remainder evenly throughout the period. While completing training late in the cycle is not, in itself, a compliance breach, a traffic commissioner may consider last minute completion as a negative feature, particularly where delayed training results in a driver operating without the required knowledge, leading to an offence. The Driver & Vehicle Standards Agency (DVSA) has powers to revoke a DCPC and remove accreditation from training providers where the requirements are not met.

Conduct

10. Section 121(1) of the 1988 Act defines conduct[7] as:

[2] https://www.gov.uk/government/collections/national-driving-and-riding-standards
[3] Drivers under 21 can hold vocational entitlement where they meet the criteria set out in Regulation 9 of The Motor Vehicles (Driving Licences) Regulations 1999
[4] https://www.gov.uk/become-lorry-bus-driver
[5] 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
[6] https://www.gov.uk/health-conditions-and-driving
[7] For both LGV and PCV, this includes such conduct in Northern Ireland

- in relation to an applicant for or the holder of a Large Goods Vehicle driver's licence or the holder of a Large Goods Vehicle 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

11. When dealing with vocational licence holders and applicants for such licences, traffic commissioners act on referral from the Secretary of State[8] who may from time-to-time issue general directions. In making a determination, traffic commissioners take account of the relevant legislation and determine each case on its own merits, free from any third-party interference or influence from the Secretary of State.[9]

12. Section 113(1) of the 1988 Act provides that any question arising under section 112 relating to the conduct of an applicant for a Large Goods Vehicle or PCV licence may be referred by the Secretary of State to a traffic commissioner. It follows that a traffic commissioner will not consider a driver's ordinary driving entitlement but may consider conduct in vehicles (for which vocational entitlement is not required) insofar as it relates to their fitness to drive. 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.

13. 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 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 that, in the event the applicant or licence holder does not furnish information or attend before the traffic commissioner without reasonable excuse, 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.[10]

14. 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] See Annex F, in practice referrals are made by staff in DVLA and DVSA acting on behalf of the Secretary of State
[9] As guaranteed by section 111(2) of The Road Traffic Act 1988
[10] See below Directions on driver conduct hearings for further information

15. Section 29 of the Road Traffic Offenders Act 1988 refers to penalty points. The Courts take the view that penalty points can only be added together for the purposes of totting, where those points accrued from the most recent conviction and any penalty points accrued from any previous conviction are for offences committed within three calendar years of each other. The only exception is where a driver has been made subject to a totting disqualification since the previous penalty points were ordered by the court and before conviction for the current offence.

16. Section 45A(3) of that Act provides that an endorsement remains effective for four years unless someone is disqualified under the totting up provisions. Where there is a totting disqualification, the endorsements leading to the disqualification may be wiped clean. The relevant date for fixed penalties is the date of offence and will be treated in the same way. However, the DVLA system can distinguish court convictions, where the date of a previous offence and the date of conviction for a subsequent offence was before the totting disqualification. In practice, the DVLA system records all the endorsements which led to the totting up disqualification (TT 99) until it has ended. The endorsements are then shown as 'invalid'. The record of totting (TT 99) remains on the database for four years from the date of the disqualification.

17. As part of their general duty at work[11], a driver should inform any operator that they work for of convictions which relate to their conduct to drive Large Goods Vehicles or Passenger Carrying Vehicles. This enables an operator to comply with the obligations under their operator's licence and notify a traffic commissioner.

Powers

18. Section 112 of the 1988 Act provides that the Secretary of State shall not grant to an applicant a Large Goods Vehicle driver's licence or a PCV driver's licence unless he is satisfied, having regard to his conduct, that the driver is a fit person to hold the licence applied for.

19. Section 115 of the 1988 Act provides the power to revoke or suspend a Large Goods Vehicle or PCV driver's licence in prescribed circumstances or if the driver's conduct is such as to make the driver 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 due to prescribed circumstances, relating to the driver's conduct.

20. Section 117(2)(a) outlines the requirement to disqualify a driver indefinitely or for a determined period following revocation of a licence due to conduct that is such to make the driver unfit to hold such a licence. In cases where a driver is disqualified for a period in excess of two years, Regulation 57 of the 1999 Regulations sets out the minimum period of disqualification which must be served before an application for removal can be considered by the Secretary of State. Where the disqualification was imposed following a referral to a traffic commissioner, the Secretary of State must consult the traffic commissioner before determining any application to remove the disqualification. An application

[11] Section 7 of the Health and Safety at Work etc. Act 1974

for removal must be refused if the applicant has been convicted of a driving offence and/or has incurred penalty points during the currency of the period of disqualification of their vocational entitlement. Where an application for removal of disqualification is refused, no further application shall be considered within three months of the date of refusal.

21. Section 117(2)(b) and Section 117(5) of the 1988 Act give the traffic commissioner the power, when revoking an LGV or PCV licence, to revert the driver to provisional status and require the driver to pass the prescribed test of competence. Regulation 56 of the 1999 Regulations applies where an LGV or PCV licence is revoked by a court-ordered disqualification. In cases where the driver's conduct is in question, the traffic commissioner, on referral from the Secretary of State, may allow only provisional entitlement and require the driver to pass the prescribed test of competence. The legislation enables the traffic commissioner to allow the test pass to either allow all previously held vocational categories, or to require a test pass for each vocational category previously held.

22. Regulation 12(4) of the 1999 Regulations[12] states that an applicant for a Large Goods Vehicle 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 Large Goods Vehicle 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 must remain until at least the age of 21. The legislation is silent on a similar restriction applying to PCV entitlement.[13]

23. Section 2 and 3 of the Road Traffic (New Drivers) Act 1995 provides that the licence of any new driver who amasses six penalty points within the first two 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.

Community Licences

24. A driving licence issued by a state within the European Economic Area is referred to as Community licence. [14] Those drivers holding that entitlement and who become resident in Great Britain are authorised to drive (without the need to exchange their licence for a British one) for a year after taking up residence. On or before the expiry of a year the driver must notify the Secretary of State and provide the prescribed information under Section 99B of the 1988 Act. Those drivers retain the right to exchange their Community licence for a Great British one. Community licence holders who hold a licence entitling them to drive Large Goods and Passenger Carrying Vehicles are subject to the driver conduct regime provided for under the Road Traffic Act.

25. Section 115A of the Road Traffic Act 1988 applies to a holder of a Large Goods Vehicle or PCV Community licence who is normally resident in the United Kingdom and where his conduct immediately before the relevant date (as set out

[12] As amended by the Driving Licences (Amendment) (EU Exit) Regulations 2018/1251

[13] Although not covered by this specific legislation, under-21 PCV holders will still fall under section 116 of the 1998 Act

[14] The Motor Vehicles (Driving Licences) (Amendment) Regulations 2024 enables those returning to live in GB with an EEA driving licence, issued in exchange for a GB licence granted on or after 1 January 2021, to use that licence for as long as it is valid

in section 99A(8)) or after that date is such as that either prescribed or, otherwise, as to make him unfit to be authorised by virtue of section 99A(1) of the Road Traffic Act 1988 to drive in Great Britain a Large Goods Vehicle or Passenger Carrying Vehicle. The Secretary of State must serve notice on the holder requiring that driver to deliver the Community licence immediately to the Secretary of State and it shall be the duty of the holder to comply with that requirement.

26. Where a notice is served in pursuance of subsection (1)(a) or (b) above on the holder of a Large Goods Vehicle Community licence or a PCV Community licence, he shall cease to be authorised by virtue of section 99A(1) of this Act to drive in Great Britain a Large Goods Vehicle or Passenger Carrying Vehicle from the date specified by the notice.

27. Where a notice is served on a Community licence holder in pursuance of section 115A(1)(a), the Secretary of State must, in accordance with the regulations made in pursuance of section 115(3), order that person to be disqualified indefinitely or for the period determined in accordance with the regulations.

28. The starting points set out in Annex A will be applied to Community licence holders and those applying to exchange a Community licence for a licence in Great Britain.

Appeals

29. 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 to the magistrates' court (England and Wales) or Sheriff Court (Scotland).[15]

30. In England and 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 made by way of a '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 as they think appropriate and they may hear new evidence. The principal restriction to the discretion of magistrates, as articulated below, is the Meredith case.[16]

31. 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 binding on other courts and tribunals, accordingly precedent is only made when there is a High Court appeal. There are very few High Court appeal decisions in England and Wales.

32. 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

[15] Also see Statutory Guidance and Statutory Directions on Appeals for further information
[16] Meredith and Others v Traffic Commissioner for the Western Traffic Area (2009) EWHC 2975 (Admin)

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.

33. 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, as a decision of the High Court of England and Wales might assist a Sheriff.

34. 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. Notably, the traffic commissioner is manifestly not a prosecuting authority, but carries out the regulatory function on behalf of the Secretary of State.[17] The situation in Scotland has not been fully litigated and, as such, whoever wins an appeal may have an expectation that the other side pays the costs (although this is a matter of judicial discretion).

35. 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.[18]

Driving after driving licence has expired

36. There are circumstances where a driver is able to continue driving after their driving licence has expired. Section 88 of The Road Traffic Act 1988 applies where the following criteria are met[19]:

- the driver is medically fit to drive;
- the driver has held a valid driving licence[20], only drives vehicles applied for under the current application and was entitled to drive those vehicles under the previous licence;
- vocational entitlement has not been suspended, revoked or refused by a traffic commissioner;
- any conditions that were specified on the previous licence, that still apply, are met;
- DVLA received a correct and completed application within the last 12 months;
- the previous licence was not revoked or refused on medical grounds;
- there is not an active disqualification from driving by a court;
- the driver is not reapplying for a driving licence following a disqualification as a high risk offender[21].

37. Section 88 ends once the current application has been issued, withdrawn, refused or the licence is surrendered and does not apply after a period of one year.

[17] Meredith and Others v Traffic Commissioner for the Western Traffic Area CO/4501/2009
[18] Also see Statutory Guidance and Statutory Directions on Appeals
[19] https://www.gov.uk/government/publications/inf1886-can-i-drive-while-my-application-is-with-dvla
[20] Full GB licence, a GB provisional licence, a European Community licence, a Northern Ireland licence, a British external/British Forces licence or an exchangeable licence
[21] Conviction for a serious drink driving offence

Other Relevant Legislation

The Rehabilitation of Offenders Act 1974[22]

38. Section 1 of the Rehabilitation of Offenders Act 1974 ('the 1974 Act') provides that a person is to be treated as a rehabilitated person if the sentence is not excluded under the 1974 Act and since the conviction during the rehabilitation period, there has been no subsequent conviction or sentence which is excluded from rehabilitation. These provisions apply equally in Scotland[23] for the purposes of a traffic commissioner.

39. 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, subject to any additional period of supervision and compliance with conditions under licence.

40. Section 4 sets out that 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[24] 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.

41. Section 5 sets out the rehabilitation periods as summarised in the attached Statutory Directions.[25]

42. 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;

[22] https://check-when-to-disclose-caution-conviction.service.gov.uk/steps/check/kind
https://www.mygov.scot/convictions-higher-level-disclosures/spent-convictions
[23] Although the periods differ as set out in the below Statutory Directions
[24] This includes traffic commissioners who undertake a tribunal function under an enactment law to regulate driver conduct affecting the right to drive
[25] Subject to the Police, Crime, Sentencing and Courts Act 2022

- 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.

43. 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.

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

45. 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.[26] 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.

46. 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.[27]

47. Useful parallels can be drawn from other licensing regimes[28] 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;

[26] R v Rupal Patel No 2006/4890/B5
[27] e.g. 2009/530 Boomerang Travel Ltd
[28] 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

- 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.

48. 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

49. 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

50. 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.

51. 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.

52. 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.

Public Service Vehicle Accessibility

53. The Public Service Vehicle Accessibility Regulations 2000 (PSVAR) and The Public Service Vehicles (Accessible Information) Regulations 2023 create equality of opportunity for disabled bus and coach users, enabling all passengers to travel easily, confidently, and safely. Operators need to ensure that services are accessible and drivers play an important role in ensuring that the objectives of the Regulations are delivered.

54. The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers (Amendment) Regulations 2002 require a bus driver or conductor to provide reasonable assistance to disabled people, including wheelchair users, to board and alight vehicles covered under PSVAR. In order to meet this requirement, drivers must know how to use the accessible equipment on their vehicle and that this assistance will vary depending on the equipment available on the vehicle.[29] Drivers should therefore ensure that they are trained in the use of accessibility equipment available on vehicles they operate, as failure to provide reasonable assistance will be regarded as a conduct issue.

[29] https://www.gov.uk/government/publications/providing-accessible-information-onboard-local-bus-and-coach-services
https://www.gov.uk/government/publications/buses-and-coaches-features-and-help-for-disabled-people

Agreement on the Mutual Recognition of Driving Disqualifications between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland ("the Agreement")

55. The Agreement was signed on 30 October 2015 and provides for the mutual recognition of specified driving disqualifications between the United Kingdom and the Republic of Ireland. The effect of this is that a driving disqualification for certain offences imposed in Ireland on a UK resident, or a holder of a UK driving licence will be recognised and given effect in the UK. Likewise, it makes provision for a driving disqualification imposed by the UK on an Irish resident, or a holder of an Irish driving licence to be notified to the appropriate Irish authority so that the disqualification may be recognised and given effect in Ireland.

56. The disqualifications specified by the Agreement are:

- Reckless or dangerous driving (MR09);
- Hit and run driving (MR19);
- Driving whilst under the influence of alcohol/drugs (MR29);
- Refusal to submit to a drug/alcohol test (MR29);
- Speeding (MR39);
- Driving whilst disqualified (MR49);
- Other road traffic offences resulting in a disqualification period of 6 months or more, (or a lesser duration where this has been agreed) (MR59).

57. If a traffic commissioner is notified of a driver disqualified by the relevant authority in the Republic of Ireland the traffic commissioner will consider the relevant details of the case as if the driver had committed the offence in GB and the starting points set out in Annexes A and B will apply.

58. Further details of the Agreement are set out in Annex G.

Case Law

59. 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. The Upper Tribunal has held that a traffic commissioner will not be wrong in law if they follow lawful directions given by the Senior Traffic Commissioner.[30]

60. 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 Large Goods Vehicle / PCV driver's licence. In section 121(1)(a), which relates to the holder of a Large Goods Vehicle 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 Large Goods Vehicle driver's licence.[31]

[30] 2023/511 Morgan J Ltd
[31] Cameron John Young v Secretary of State for Transport (2011) B434/10

61. Care should be taken to avoid automatically applying case law that applies to operator licensing, which is a jurisdiction with separate legislation, appellate body and case law. The only full appellate review of the traffic commissioner jurisdiction was in the Thomas Muir Haulage[32] case providing helpful guidance from a full five judge Court of Session.

Conduct & fitness[33]

62. 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.[34]

63. 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.[35]

64. As indicated above, it is important that traffic commissioners take into account any prolonged period of good conduct post-offence or bad conduct when determining fitness to hold a licence and whether revocation and disqualification or suspension of the licence is warranted. A traffic commissioner should clearly document any such considerations at or following a driver conduct hearing.[36]

65. 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.[37] The driver should understand that, even where a sentencing court is persuaded not to disqualify on the basis of exceptional hardship, a traffic commissioner may still take regulatory action against the driver's vocational entitlement.

66. 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

[32] Thomas Muir Haulage v The Secretary of State for the Environment, Transport and the Regions (1998) Scott CS13

[33] Reference to fitness relates to conduct of the driver as opposed to any medical condition. Notifiable medical conditions must be notified to DVLA. Further information can be found at: https://www.gov.uk/health-conditions-and-driving

[34] Scott Craig Walker v Secretary of State for Transport (2010) B1942/09

[35] Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

[36] Scott Craig Walker (as above)

[37] Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)

commissioner is persuaded that further offences are unlikely, the traffic commissioner is open to conclude that the sanction of revocation is not required.[38] 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.[39]

67. Traffic commissioners are entitled, in the exercise of discretion, to consider a cumulative and longer period of disqualification in instances where the conduct has negative features (see Annex C for examples), such as for offences of false record keeping through the use of an interference device. However, traffic commissioners are not entitled to take into account offences not brought before a driver's hearing.[40]

68. 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.[41]

69. 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.[42] 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 any drivers subject to a Sexual Risk Order or Sexual Harm Prevention Order, taking into account the circumstances of the case.

70. 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 Large Goods Vehicle drivers.[43]

Standard of proof

71. The driver conduct jurisdiction is forward looking and different to a sentencing exercise in the criminal courts. 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. The utilisation of copies of press reports on any incident or court hearing by the traffic commissioner is regarded as being a reasonable practice.[44] However, the more serious the allegation the

[38] Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)
[39] Secretary of State for Transport, Local Government and the Regions v Snowdon [2002] EWHC 2394 (Admin)
[40] Martin Smith v Secretary of State for Transport (2011) B429/10; Bruce Kirkpatrick v Secretary of State for Transport (2011) B435/10
[41] Martin Smith (as above); Bruce Kirkpatrick (as above)
[42] 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
[43] Cameron John Young (as above)
[44] Andrew Ramsay v The Right Honourable Lord Wallace of Tankerness QC (2014) B276/14

more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.[45]

Deterrence

72. The Administrative Court in the Meredith[46] case was not asked to consider the applicability of the principle of deterrence and was not referred to the Thomas Muir Haulage[47] case. In cases related to operator licensing, the Upper Tribunal has given 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[48] 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 appellant court we consider that the Thomas Muir approach should be followed....." [49]

73. The Thomas Muir Haulage case established that a traffic commissioner can, where appropriate, consider regulatory action not just to address the specific case at hand, but also for the purpose of deterring others from failing to meet their legal responsibilities. 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.[50]

Double jeopardy

74. 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.[51] 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.[52] Ultimately the decision whether or not to continue is one for the traffic commissioner hearing the matter.

[45] 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
[46] Meredith and Others EWHC 2975 (Admin) (as above)
[47] Thomas Muir Haulage (as above)
[48] 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
[49] 2005/355 Danny W Poole International Ltd
[50] Thomas Muir Haulage (as above)
[51] e.g. 2004/255 M Oliver
[52] 2006/149 A & C Nowell Ltd

DIRECTIONS

75. 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) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995. 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

76. Traffic commissioners can only take action on a vocational conduct case upon the referral of that case to them by the Secretary of State.[53] 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.

Starting Points for Submissions

77. 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.

78. Traffic commissioners are required to carry out a risk assessment which determines whether a driver is fit to hold vocational entitlement based on their conduct. This process involves examining the risks associated with the driver's past behaviour and assessing whether adequate precautions are in place to prevent future harm. The goal is to implement reasonable control measures to eliminate or reduce these risks.

79. There are inherent dangers in operating large vehicles, vocational drivers are therefore held to a higher standard and typically need to hold a Certificate of Professional Competence. In some cases, deterrent actions are necessary to influence a driver's future behaviour. These actions may include temporarily preventing the driver from operating large vehicles for a period of reflection or, in serious cases, indefinitely. Additionally, drivers may be required to undertake rehabilitation.

80. 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.

[53] In practice referrals are usually made by DVLA on behalf of the Secretary of State

81. 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), negative and positive features, whether it was planned, whether it was committed in the course of a licence holder acting as a Large Goods Vehicle 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.

82. Annexes A and B outline the starting points. Whilst the Annexes are not exhaustive, they do cover the most frequent and common types of driver conduct. Annex C presents a non-exhaustive list of negative and positive features. Annex D presents a number of case examples by way of illustration. Offence codes can be found at Annex E.

83. Staff members should identify the starting point, by reference to the type of offence, so that they can determine whether it is a case which they can deal with under delegation or that it falls outside and requires a submission to a traffic commissioner.[54]

Driving resulting in a death or serious injury

84. Any case involving a death (e.g. death by careless or dangerous driving) or serious injury[55] 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

85. 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. The penalty was increased from three penalty points to a mandatory six penalty points for offences taking place from 1 March 2017 reflecting Parliament's view of the seriousness of the offence.[56]

86. A report for an offence that a vocational driver has used a hand-held device whilst driving will trigger the action set out in Annexes A and B. 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.

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[54] See Statutory Guidance and Statutory Directions on Delegation

[55] Section 2C of the Road Traffic Act 1988 as inserted by the Police, Crime, Sentencing and Courts Act 2022

[56] Offences related to mobile phones are given the offence code and description of 'CU80 - Breach of requirements as to control of the vehicle, such as using a mobile phone'. Prior to 1 March 2017 any CU80 offence attracted a sanction of 3 penalty points. With effect from 1 March 2017 the sanction for offences related to mobile phones were increased to a mandatory 6 penalty points whereas other offences under the code CU80 retained the 3 penalty points sanction

Drivers' hours (EC, AETR & domestic) / working time and tachograph offences

87. 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.

88. 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.[57] The concealment of evidence required for effective regulation of drivers' hours should therefore result in a traffic commissioner taking a very serious view.[58]

89. 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.

Collisions with infrastructure

90. Vehicles striking bridges or other road infrastructure pose a significant risk to occupants of those vehicles and other road users amongst others. Such collisions also result in disruption to the road and rail networks, resulting in a negative economic impact on businesses, particularly those such as Network Rail. Traffic commissioners understand that the majority of collisions might be avoidable and caused as a result of negligence and poor training.

91. Traffic commissioners expect drivers, operators and transport managers to make use of the guidance that is publicly available[59], particularly the guidance on how to avoid bridge strikes[60]. As a result, when incidences are brought to the attention of a traffic commissioner the driver can expect to be called to a hearing and may face a period of suspension. The traffic commissioner will also consider the culpability of the operator and transport manager and they may be called to attend a public inquiry.

Sexual offences (PCV applicants and drivers)

92. Although the person's conduct must be considered in context and in the round[61], 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.

93. 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

[57] R v Saunders [2001] EWCA Crim 93
[58] Meredith and Others EWHC 2975 (Admin) (as above); Scott Craig Walker (as above)
[59] https://www.hse.gov.uk/roadsafety/
[60] www.gov.uk/government/publications/prevention-of-bridge-strikes-good-practice-guide
[61] Snowdon (as above)

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.

94. 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.

95. 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.

96. Similarly, where the traffic commissioner becomes aware of a driver being made subject to a Sexual Risk Order or Sexual Harm Prevention 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, 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.

97. If any bail or licence conditions prevent 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

98. Serious offences / conduct committed as a driver of a Large Goods Vehicle or PCV or where the use of a vehicle is relevant (either during the act or afterwards), 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.

99. 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.

100. Traffic commissioners are entitled to expect that drivers will treat public officials with respect at all times. If a traffic commissioner receives a report that a driver has been abusive or intimidating to officials, they will consider whether such conduct affects the driver's fitness to continue holding vocational entitlement.

101. Where a traffic commissioner receives notification from an operator that a driver has failed a drink or drugs test, indicating that an offence under the law may have been committed rather than simply a breach of company policy, an assessment will need to be carried out to determine whether the evidence is admissible and whether an offence has been committed. The more serious the allegation, the more compelling the evidence must be. When assessing the robustness of evidence, key considerations include:

- whether the test was conducted by a qualified individual or an independent third-party provider;
- whether the testing method and equipment were approved and properly calibrated;
- the timing of the test in relation to the alleged incident and whether it was carried out promptly;
- whether the test was a screening test or a confirmatory laboratory test, and whether any confirmatory analysis was undertaken;
- whether the driver's consent was obtained and documented, and whether the driver was informed of their rights;
- whether there is a documented chain of custody for the sample, including sealing, labelling, and storage to prevent contamination or tampering;
- whether the results are supported by a formal report and, where applicable, independent verification;
- whether there are corroborating indicators of impairment, such as CCTV footage, telematics data, witness statements, or observed driver behaviour;
- whether the driver has made an admission; and
- whether there is any relevant previous history of positive tests or related conduct issues.

All of these factors contribute to whether the civil standard of proof is met before a traffic commissioner can consider taking regulatory action.

102. Similarly, where an operator reports that a driver used a mobile phone whilst driving, an assessment will need to be carried out to determine the admissibility and reliability of the evidence. Questions to consider include:

- the source of the allegation and how the evidence was obtained (e.g., CCTV, dashcam, body-worn camera, telematics, police report, eyewitness);
- whether the recording device was properly installed and maintained;
- whether the footage or images clearly show a hand-held device and the driver's identity;
- whether call records, messaging/app logs, or handset data corroborate the timing and nature of use;
- whether evidence collection and retention complied with applicable legal requirements.

Retests

103. 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 five 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. A traffic commissioner should clearly state the category of test required.

104. It should be noted for the avoidance of any doubt that a traffic commissioner does not have any jurisdiction over a person's entitlement to drive vehicles other than those which fall within the Large Goods Vehicle or PCV regime. Nor can a traffic commissioner take action to prevent a person who received D1 or C1 entitlement as a result of holding an ordinary driving licence prior to 1 January 1997 from using that entitlement.

Awareness courses

105. 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.

Decision Making[62]

On the papers (without a driver conduct hearing)

106. A significant number of cases are dealt with by traffic commissioners on the papers. In practice, letters will be sent under delegation 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.

107. DVLA has developed practice whereby, four months prior to the expiry of a disqualification of a driver with a vocational entitlement, DVLA will notify the traffic

[62] See Statutory Guidance and Statutory Directions on Case Management and Statutory Guidance and Statutory Directions on The Principles of Decision Making & the Concept of Proportionality for further guidance

commissioner so that their conduct can be considered and thereby reduce the need for section 88 to be relied upon.

108. Members of staff, acting under delegation, will write to the driver and refer the driver to the starting point for intervention. Where regulatory action is proposed, the driver will have the opportunity to submit representations regarding the offence which led to the disqualification. A driver may also be asked whether there is any intention to resume driving Large Goods or Passenger Carrying Vehicles.

109. The letter should put the driver on notice that a failure to respond will either result in the starting point being applied or, in the case of disqualifications over 12 months, a refusal will be recorded. That will remain in force until such time as a renewal application is made and duly considered by a traffic commissioner. Where a response is received, a traffic commissioner will balance the available information and provide a reasoned decision.

Driver conduct hearings

110. 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 a traffic commissioner or to offer any explanation for the matters leading to the Secretary of State's referral.

111. Convictions or other formal records such as Fixed Penalty Notices and prohibitions 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.

112. If there has been no court hearing, 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.

113. Where there has been a court finding, 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;[63]

[63] See Sections 113(3) and 116(3) of the 1988 Act

- in England and Wales, a pre-sentence report (where available) 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;[64]

- 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.[65]

114. 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. The Senior Traffic Commissioner therefore directs that, unless there is a reasonable request from a driver, all driver conduct hearings will be conducted in public. This 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. As part of their commitment to transparency, traffic commissioners publish regulatory decisions made about the conduct of professional drivers on a weekly basis.[66]

115. The 1988 Act also does not specify whether hearings are to be held in person or virtually. Following the precedent set by the courts[67], there are some circumstances where a remote hearing would not be fair, but in many circumstances, with careful case management, a remote hearing can deliver the interests of justice. Many relevant factors are identified in the Annex to the Statutory Guidance and Statutory Directions on Case Management. Driver conduct hearings are different from regulatory public inquiries for operator's licences in that they generally deal with a single or a limited number of issues which results in them being much shorter, typically 15 minutes. The number of attendees is normally limited, and drivers are not often represented. This can make it more difficult for a driver to understand the totality of the hearing and adhere to case management directions.

116. While many such hearings may be suitable for remote listing, in-person hearings remain available and may be required where fairness or the nature of the case demands it. Cases which require a more extensive evaluation are unlikely to be suitable for a virtual hearing. Facts indicating the need for an in-person hearing include:

- motoring convictions that resulted in imprisonment including suspended sentences;
- any offence involving a death or serious injury including careless driving causing death or serious injury;
- dangerous driving;

[64] Contrast with Scotland where permission of the court is required before use
[65] 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
[66] https://www.gov.uk/government/publications/regulatory-decisions-made-about-the-conduct-of-professional-drivers
[67] SC v University Hospital Southampton NHS Foundation Trust [2020] EWHC 1445 (QB)

- excess alcohol where the offender is deemed a “high risk”;
- more than one drug driving conviction;
- offence where court not only disqualified but also required a further test to be passed;
- two or more current CU80 offences;
- driving whilst disqualified or other flagrant disregard of a court order;
- failure to co-operate with or deliberate obstruction of police or other enforcement agency investigation;
- bridge strikes;
- careless driving where disqualification imposed;
- provisional licence applications when there is a previous for Taking a vehicle without consent or two or more disqualifications (including totting) ordered;
- hearing which are to be conjoined with an operator/transport manager public inquiry;
- all non-driving conduct cases involving PCV drivers;
- hearings where an interpreter is required.

117. Decisions on the listing of cases will be made by or on behalf of the traffic commissioner with responsibility for the respective traffic area, to determine the appropriate venue. When conducting virtual hearings, the presiding commissioner will be located in a tribunal facility.

118. There will be occasions when traffic commissioners are required 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 and facts, namely the promotion of road safety and fair competition as well as seeking to ensure compliance with that legislation by both driver and operator.[68] 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.

119. 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.

120. 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:

[68] See Statutory Guidance and Statutory Directions on Case Management and Statutory Guidance and Statutory Directions on The Principles of Decision Making & the Concept of Proportionality for further information

- 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.

121. 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 (the system will record this as until his 80th birthday) to ensure that the Driver and Vehicle Licensing Agency (DVLA) will be alerted if a subsequent application is made. However, it is open to the driver whether they wish to make a fresh application in such circumstances.

122. Where a valid vocational licence is currently held and the traffic commissioner is considering revocation and disqualification, suspension or renewal of the licence and the driver fails to attend the hearing without explanation the traffic commissioner will determine the case on the papers available.

123. If the driver requests an adjournment in advance of the hearing[69], the traffic commissioner will consider whether it is appropriate to adjourn to a second date. This reflects the fact that some vocational drivers may be working away. Drivers who wait until the last moment to apply for an adjournment will justifiably arouse suspicion as to their motives. There is a considerable public interest in hearings taking place on the date set and so hearings should not be adjourned unless there is a good and compelling reason to do so and it is very unlikely for a second adjournment to be granted to a driver. The presiding commissioner should examine the likely consequences of the proposed adjournment and its likely length. The reason for the adjournment should also relate to the driver called to the hearing and not a third party.

124. Requests for adjournments on medical grounds should be supported by medical evidence which states if and why a party cannot attend a hearing. A court is not automatically bound by a medical certificate and may exercise its discretion to disregard a certificate, which it finds unsatisfactory and in particular where:

- the certificate indicates that the driver is unfit to work[70] (rather than to attend the hearing);
- the nature of the ailment (e.g. a broken arm) does not appear to be capable of preventing attendance at a hearing;
- the driver is certified as suffering from stress/anxiety/depression and there is no indication of the driver recovering within a realistic timetable.

125. Any material application for an adjournment which is supported by relevant evidence requires a decision and must be referred to a traffic commissioner. The decision whether to adjourn must be communicated to the driver but where there is a tight turnaround, or the driver does not receive a decision prior to the hearing they are advised to check that the application was correctly received and confirmation as to whether it has been granted. If the traffic commissioner accepts that a driver's absence from the hearing is not their fault the general rule is to not proceed in absence unless there is a compelling reason to proceed. If

[69] See Statutory Guidance and Statutory Directions on Case Management
[70] https://www.gov.uk/government/publications/fit-note-guidance-for-employers-and-line-managers

the traffic commissioner does not believe the explanation, reasons should be given. Where a driver has opportunity to engage in a professional and cooperative way but fails to do so then repeated avoidance may result in the loss of that vocational licence.

126. If the traffic commissioner considers that a driver has been properly served with the papers, and who on the evidence before the traffic commissioner poses a risk to road safety or passengers, it is open to the traffic commissioner to consider the case at the first listing. It is a matter of proportionality for the traffic commissioner, who should balance the risk that the driver presents to road safety and fairness to the driver.

127. It is important that the proceedings are clearly understood by all parties. This enables the traffic commissioner to give full consideration to the actions of the driver when determining the matter and ensures that a driver is given the opportunity to fully present their case along with any mitigation they wish to give to the traffic commissioner. In a case involving a driver whose first language is not English or Welsh the traffic commissioner will follow the current advice followed by other courts for non-committal hearings and will provide an interpreter if that is the only way that a driver can take part in a hearing[71]. The relevant circumstances are where a driver:

- cannot speak or understand the language of the court well enough to take part in the hearing;
- cannot afford to privately fund an interpreter, **and** has no family member, or friend, who can attend to interpret for them and who is acceptable to the court.

128. There may be occasions where the traffic commissioner has concerns that the person used to interpret for the driver does not have the relevant understanding or that there may be a conflict of interest. The traffic commissioner may then consider that the interests of justice would be better served by the appointment of an independent interpreter from public funds.

129. In cases where a driver is hearing impaired many will have a friend or relative who will usually interpret for them. If the driver wishes for a friend or relative to interpret, the traffic commissioner must be satisfied that the friend or relative can interpret exactly what is being said to the traffic commissioner and what the traffic commissioner is saying to the driver. If the traffic commissioner has any doubt they should consider appointing a qualified and independent interpreter to aid the hearing. This will be paid out of public funds.

Written warnings

130. 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.

[71] See Statutory Guidance and Statutory Directions on Case Management

Armed Services Personnel

131. Regulation 81 of the Motor Vehicles (Driving Licences) Regulations 1999 sets out that service personnel who are holders of a vocational driver licence fall under the jurisdiction of the South Eastern and Metropolitan Traffic Commissioner. This ensures a consistency of approach and provides a single point of contact for the military and the traffic commissioner. For the purpose of these Directions, service personnel refers to those employed by the British military and not reserve forces.

132. Service personnel are often based outside of the United Kingdom (sometimes in combat roles) and are, therefore, difficult to contact and are unavailable to attend hearings before a traffic commissioner. For this reason, cases involving service personnel are mainly dealt with through written correspondence.

133. The traffic commissioners recognise that qualified service personnel play a significant role in the British military capability and that they are more closely managed than civilian drivers and subject to British military disciplinary procedures. The nature of their driving is also different to civilians as it usually occurs in closely supervised convoy operations. For these reasons the starting points set out in Annex A will not apply to those drivers who are to remain in the armed forces for a period of time. When concluding which sanctions to apply to a military driver a member of staff should seek to establish whether the driver is due to leave service in the near future. If this is found to be the case a traffic commissioner may consider that the sanctions applicable to a civilian driver should apply. Annex B details the starting points for service personnel.

Rehabilitation

134. 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 a driver appearing before a driver conduct hearing 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 staff with the appropriate delegations within the Office of the Traffic Commissioner have access to those spent convictions.

135. 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 Police, Crime, Sentencing and Courts Act 2022 amends the rehabilitation period for England and Wales as follows:

Where on a conviction the sentence (or equivalent) imposed is:	End of rehabilitation period for:	
	Adult offenders	Offenders under 18 at date of conviction
A custodial sentence of more than 4 years	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed.	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 1 years and up to, or consisting of, 4 years	The end of the period of 4 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 2 years beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 1 year or less	The end of the period of 12 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 6 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 the relevant conviction	The end of 6 months beginning with the date of the relevant conviction
Compensation Order	The date on which the payment is made in full	
A relevant order (e.g. a community or youth rehabilitation order, Conditional Discharge, Bind over to keep the peace, Hospital Order, Supervision or Care Order, Disqualification, disability, prohibition or other penalty - this list is not exhaustive)	The day provided for by or under the order as the last day on which the order is to have effect	

136. The Management of Offenders (Scotland) Act 2019[72] sets the disclosure period for Scotland as follows:

Where on a conviction the sentence (or equivalent) imposed is:	Disclosure period:	
	Aged 18 or over	Aged under 18
A custodial sentence of more than 30 months up to and consisting of, 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A custodial sentence more than 12 months and up to, or consisting of, 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
A custodial sentence of 12 months or less	The term of the sentence plus 2 years	The term of the sentence plus 1 year
A fine or compensation order	12 months	6 months

[72] Due to be amended further by the Disclosure (Scotland) Act 2020 at a date in the future

An order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2 ½ years

137. 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).

138. 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 could relate to an issue which the traffic commissioner may have to consider.

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

139. 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 four 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 eight years ago, it would be more than five years old and the driver would be treated as rehabilitated. If, however, there was another similar offence four years earlier, both offences would strictly be disclosable under the provisions of the Rehabilitation of Offenders Act 1974.[73]

140. Current DVLA practice is to hold endorsements for between 4 or 11 years depending on the offence, in line with section 45A 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.

[73] As amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 9, Saving Provision and Specification of Commencement Date) Order 2014

Annex A: Starting Points

The tables below set out indicative starting points for regulatory action, based on different types of conduct and offences. The list of offences is not exhaustive, a traffic commissioner will identify the closest equivalent and explain the reasoning behind their approach. Where the referral is identified as suitable for handling 'in office', it will usually be dealt with under delegated powers, provided it does not exceed the parameters of the delegation and the driver does not request a hearing.

A traffic commissioner will carry out an assessment of the entire driving history of the driver in order to form an overall picture of the driver's fitness and the risks they may pose to other road users. This includes evaluating the likelihood of harm arising from those risks and considering what control measures have been implemented to reduce them to an acceptable level.

When issuing a decision, a traffic commissioner will identify the starting point for the offence and may refer to relevant Case Examples. A traffic commissioner is not bound by the starting point and will provide reasons for the level of regulatory action decided on, using the negative and positive features in Annex C as a basis to move up or down.

Each case must be dealt with on its own facts. As a result, whilst the following guidance can provide for consistency in approach, by suggesting starting points for regulatory action, this Annex cannot be used to predict the outcome of a driver conduct hearing or give rise to a legitimate expectation. The presiding traffic commissioner retains absolute discretion to move up or down from the suggested starting points.

Applicants for provisional vocational entitlement

Offence details	Circumstances	Referral	Starting Point	Note
9 or more penalty points	Any penalty points received in last 6 months	Can be dealt with 'in office'	Send a 'propose to refuse' letter[74] for a period of 6 months from the date of the last endorsement	See Case Example 1 at Annex D
	Penalty points accumulated between 6 months and a 4-year period	Can be dealt with 'in office'	Grant application with a warning letter[75]	

[74] Letter to include reference to any points received for CU80 offences
[75] Letter to include reference to any points received for CU80 offences

Record includes CU80 offence[76]	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[77]	
Record includes 1 disqualification (less than 9 months)[78]	Disqualification ended more than 6 months ago	Can be dealt with 'in office'	Grant application with a warning letter	
Record includes 1 disqualification (less than 9 months)	Disqualification ended within the last 6 months	Can be dealt with 'in office'	Send a 'propose to refuse' letter for a period of 3 months from the end of the disqualification	See Case Example 2 at Annex D
Record includes 1 disqualification for 9 to 12 months inclusive (excluding any disqualifications for dangerous driving or driving without due care and attention)	Disqualification ended more than a year ago	Can be dealt with 'in office'	Grant application with a warning letter	
Record includes 1 disqualification for 9 to 12 months inclusive (excluding any disqualifications for dangerous driving or driving without due care and attention)	Disqualification ended within the last year	Can be dealt with 'in office'	Send a 'propose to refuse' letter for a period of 6 months from the end of the disqualification	See Case Example 3 at Annex D
Record includes 1 disqualification (over 12 months or includes a disqualification for	Disqualification ended more than 2 years ago	Can be dealt with 'in office'	Grant application with a warning letter	

[76] The offence description for CU80 is for Breach of requirements as to control of the vehicle, such as using a mobile phone. In this document CU80 refers to all recorded offences prior to 1 March 2017 but for any received since 1 March 2017 the reference is only to those which relate to mobile phone usage (usually distinguished as the penalty in these cases is a mandatory six penalty points). Any CU80 offences received from 1 March 2017 not relating to mobile phone usage will be considered as for any other offence

[77] Letter to include reference to points received for CU80 offences

[78] Some drivers will receive lesser periods of disqualification as a result of attending rehabilitation courses. In any circumstance the starting point will be considered from the period of disqualification after credit has been given for attending any such course

dangerous driving or driving without due care and attention)				
Record includes 1 disqualification (over 12 months or includes a disqualification for dangerous driving or driving without due care and attention)	Disqualification ended within the last 2 years	Call to a hearing		See Case Example 4 at Annex D
Record includes 2 or more disqualifications		Call to a hearing		See Case Example 5 at Annex D
Any offence involving taking without owners consent / driving whilst disqualified		Call to a hearing		
Offences / convictions - in any other respect relevant to holding a PCV driver licence	Any 'non-driving' offence where the outcome was custody including suspended sentence	Call to a hearing		
Convictions for the intent to supply drugs, sexual offences, violence and dishonesty (including theft) in any other respect relevant to holding a PCV driver licence		Can be dealt with 'in office'	Propose to refuse with offer to request a hearing	See Case Example 6 at Annex D

Restoration of vocational entitlement following disqualification

Offence details	Circumstances	Referral	Starting Point	Note
1st disqualification for less than 9 months		Can be dealt with 'in office'	Grant with warning letter	See Case Example 7 at Annex D

1st disqualification for 9 to 12 months inclusive		Can be dealt with 'in office'	Extended disqualification offer of 4 weeks	See Case Example 8 & 9 at Annex D
1st disqualification (for 12 months to 24 months inclusive)		Can be dealt with 'in office'	Offer extended vocational disqualification on the following basis: Over 12 months up to and including 18 months + 6 weeks Over 18 months up to and including 24 months + 8 weeks	See Case Example 10, 11 & 12 at Annex D
1st disqualification over 24 months[79]		Call to a hearing[80]		
Any disqualification regardless of period of time	Specified offences: - causing death or serious injury in any motor vehicle; - any resulting in a suspended or immediate prison sentence	Call to a hearing		See Case Example 13 & 14 at Annex D
1st disqualification over 12 months	Previous adverse conduct history[81] before any commissioner within last 5 years	Call to a hearing		
2 or more disqualifications		Call to a hearing		See Case Examples 15 & 16 at Annex D

[79] 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

[80] In these cases the driver may be requested to advise the traffic commissioner on whether it is their intention to re-apply for entitlement at the end of the disqualification period prior to them being called to attend a hearing. If there is no intention to apply for a licence a marker will be placed to ensure that the case is referred back to the traffic commissioner should the position change – there will be no entitlement to drive vocational vehicles until the traffic commissioner has considered any future application

[81] 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
Licence renewal with 12 or more current penalty points	Referrals as a result of an application to renew a licence or exchange a licence	Request an explanation	Refer explanation to a traffic commissioner	
CU80 in any vehicle	No previous adverse conduct history for CU80 offence - this does not include the warning letter issued by DVLA staff for the first offence and only refers to any subsequent offences that have been formally referred	Can be dealt with 'in office'	1 offence – 4-week suspension 2 offences – 12-week suspension 3 offences or more – 26-week suspension for third offence, longer for further offences	See Case Example 17 at Annex D
CU80 in any vehicle	Previous adverse conduct history for CU80 offence	Call to a hearing	1 offence – 8-week suspension 2 offences – 16-week suspension 3 offences or more – 26-week suspension for third offence, longer for further offences	
Exceeding goods or passenger vehicle speed limit	Speeding in a goods or passenger vehicle (SP10 or SP40) excluding SP30	Can be dealt with 'in office'	DVLA staff to issue warning letter 2nd offence – propose 6-week suspension with offer to request a hearing	See Case Example 18 at Annex D

One CU80 (type of vehicle not known) and one speeding offence in a goods or passenger vehicle (SP10 or SP40)	No previous adverse conduct history for either offence	Request an explanation and proposed period of suspension	If any offence committed in a Large Goods or Passenger Carrying Vehicle, propose 6-week suspension with offer to request a hearing. If neither offence in a Large Goods or Passenger Carrying Vehicle, propose 2-week suspension with offer to request a hearing.	
Disablement of speed limiter		Call to a hearing	Formal warning (if evidence of driver bringing matter to employer's attention), otherwise up to 4-week suspension	
Speed limiter – interference	Including the use of any device to disable or produce false readings	Call to a hearing	Revoke and disqualify for 12 months	See Case Example 19 at Annex D
Drink (DRXX) or Drug (DGXX) offences	Singular endorseable offence with 11 or less current penalty points	Can be dealt with 'in office'	Staff to issue warning letter	
Falsification: by intent or deliberate failure to keep required records (EC, AETR and domestic drivers' hours & WTD)	Deliberate falsification (e.g. deliberately driving without using a tachograph, deliberately failing to keep records or pulling tachograph chart/s / digital tachograph card/s)	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 20 at Annex D
Falsification: failure to keep required records without intent to deceive	Falsification (e.g. destroying a record or failing without reasonable excuse to make a relevant record without	Call to a hearing	1-week suspension per offence up to 6 offences & revoke and disqualify for 12	

(EC, AETR and domestic drivers' hours & WTD)	evidence of intent to deceive)		months for more than 6 offences	
Falsification: domestic drivers' hours & WTD	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	
Falsification: tachographs	Use of any device to interfere with the recording equipment (e.g. use of a magnet or interrupter switch) including using a digital tachograph card belonging to another	Call to a hearing	Revoke and disqualify for 12 months for a single offence - longer for 2 or more offences	See Case Example 21, 22 and 23 at Annex D
Other drivers' hours, tachograph & WTD offences e.g. offences which result in a low level penalty	Lower risk offences committed on isolated or infrequent basis e.g. FPNs issued totalling £300 or less	Can be dealt with 'in office'	Staff to issue warning letter	See Case Example 24 & 25 at Annex D
Other drivers' hours, tachograph & WTD offences e.g. offences which result in a high level penalty	Higher risk offences committed on infrequent basis e.g. FPNs issued totalling over £300	Can be dealt with 'in office'	Propose 7-day suspension with offer to request a hearing	See Case Example 26 at Annex D
Other drivers' hours, tachograph & WTD offences e.g. offences which result in a high level penalty	Persistent and/or very serious and/or habitual offences e.g. FPNs issued totalling over £300	Call to a hearing	4-week suspension increasing with the number and severity of offences	See Case Example 27 at Annex D
DCPC – failure to carry card		Can be dealt with 'in office'	Staff to issue warning letter	
DCPC – not holding initial qualification and/or not undertaking required periodic training		Can be dealt with 'in office'	Propose 4-week suspension with offer to request a hearing	

DVSA Fixed Penalty Notifications [82]	Total of 12 FPN points reached	Can be dealt with 'in office'	Propose 4-week suspension with offer to request a hearing	
Any other notification of an offence, penalty or conviction relating to the use of vehicles, e.g. overloading or maintenance related fixed penalty notices	Lower risk offences committed on isolated or infrequent basis	Can be dealt with 'in office'	Staff to issue warning letter	
Any other notification of an offence, penalty or conviction relating to the use of vehicles, e.g. overloading or maintenance related fixed penalty notices	Serious offences committed on infrequent basis	Call to a hearing	14-day suspension	See Case Example 28 at Annex D
Any other notification of an offence, penalty or conviction relating to the use of vehicles, e.g. overloading or maintenance related fixed penalty notices	Persistent and/or very serious and/or habitual offences	Call to a hearing	28-day suspension	See Case Example 29 at Annex D
Notification of the use of a vehicle with a defect that should have been identified as part of the driver walk round check prior to use	Road safety critical defects that endanger other road users	Can be dealt with 'in office'	Propose 14-day suspension with offer to request a hearing	See Case Example 30 at Annex D
Notification of a vehicle collision with a bridge or other road infrastructure	Disregard by driver for route instructions, vehicle or road signage	Call to a hearing	Revoke and disqualify for 6 months	See Case Examples 31, 32, 33, 34 & 35 at Annex D

[82] 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

caused by carelessness or negligence				
Any convictions for sexual offences - regardless of sentence imposed relevant to holding a PCV driver licence		Call to a hearing	Revocation and disqualification	See Case Example 36 and 37 at Annex D
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		Call to a hearing	Suspension	
Civil Penalty imposed for breaching the Home Office Border Force (HOBF) prevention of clandestine entrants code of practice – first offence	Civil penalty imposed by HOBF and appeals/objections process exhausted.	Can be dealt with 'in office'	Staff to issue warning letter	
Civil Penalty imposed for breaching the Home Office Border Force prevention of clandestine entrants code of practice – repeat offence	Civil penalty imposed by HOBF and appeals/objections process exhausted. Previous history of offences.	Call to a hearing	Suspension	
Report from a public body of a driver adopting abusive or intimidating behaviour to a public official		Call to a hearing	Suspension	

Annex B: Starting Points - Military Drivers

Applicants for provisional vocational entitlement

Offence details	Circumstances	Referral	Required action
9 or more penalty points	Any penalty points received in last 6 months	Can be dealt with 'in office' (unless the applicant requests a hearing)	Ask for an explanation and letter from Commanding Officer
	Penalty points accumulated between 6 months and 4 year period	Can be dealt with 'in office'	Grant application with a warning letter
Record includes CU80 offence[83]	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
Record includes CU80 offences	Multiple CU80 offences in last 4 years	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Record includes 1 disqualification (up to and including 12 months) excluding any drink / drug driving related offences	Disqualification ended more than 6 months ago	Can be dealt with 'in office'	Grant application with a warning letter
Record includes 1 disqualification (up to and including 12 months) excluding any drink / drug driving related offence	Disqualification ended within the last 6 months	Can be dealt with 'in office' (unless the applicant requests a hearing)	Ask for an explanation and letter from Commanding Officer
Record includes 1 disqualification (over 12 months), or any drink/drug driving related offence (including	Disqualification ended more than 2 years ago	Can be dealt with 'in office'	Grant application with a warning letter

[83] The offence description for CU80 is for Breach of requirements as to control of the vehicle, such as using a mobile phone. In this document CU80 refers to all recorded offences prior to 1 March 2017 but for any received since 1 March 2017 the reference is only to those which relate to mobile phone usage (usually distinguished as the penalty in these cases is a mandatory six penalty points). Any CU80 offences received from 1 March 2017 not relating to mobile phone usage will be considered as for any other offence

those where the disqualification period is nine months)			
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)	Disqualification ended within the last 2 years	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Record includes 2 or more disqualifications		Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Any offence involving taking without owners consent / driving whilst disqualified		Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Offences / convictions - in any other respect relevant to holding a PCV driver licence	Any 'non-driving' offence where the outcome was a community penalty and/or custody including suspended sentence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Convictions for drug or sexual offences, violence and dishonesty (including theft) in any other respect relevant to holding a PCV driver licence		Consideration for hearing	Ask for an explanation and letter from Commanding Officer

Restoration of vocational entitlement following disqualification

Offence details	Circumstances	Referral	Required action
1st disqualification for 12 months or less excluding any drink / drug driving related offence		Can be dealt with 'in office' (unless negative features)	Grant with warning letter
1st disqualification for 12 months or less for any drink / drug driving related offence		Can be dealt with 'in office' (unless negative features –and/or the applicant requests a hearing)	Grant with warning letter

1st disqualification (over 12 months to less than 36 months)		Can be dealt with 'in office' (unless negative features and / or the applicant requests a hearing)	Offer extended vocational disqualification on the following basis: Over 12 months up to and including 15 months + 2 weeks Over 15 months up to and including 18 months + 4 weeks Over 18 months up to and including 21 months + 5 weeks Over 21 months up to and including 24 months + 7 weeks Over 24 months up to and including 27 months + 8 weeks Over 27 months up to and including 30 months + 9 weeks Over 30 months up to and including 33 months + 10 weeks Over 33 months to less than 36 months + 12 weeks
1st disqualification 36 months or more [84]		Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Any disqualification regardless of period of time	Specified offences: - causing death or very serious injury in any motor vehicle;	Call to a hearing	

[84] 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

	- taking any vehicle without the owner's consent; or - any resulting in a suspended or immediate prison sentence or community penalty		
1st disqualification over 12 months	Previous adverse conduct history[85] before any commissioner within last 5 years	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
2 or more disqualifications		Consideration for hearing	Ask for an explanation and letter from Commanding Officer

Current entitlement holders or renewals

Offence details	Circumstances	Referral	Required action
1st CU80[86] (type of vehicle not known)			DVLA staff to issue warning letter
2nd CU80 (type of vehicle not known)	No previous adverse conduct history for CU80 offence	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
2nd CU80 (type of vehicle not known)	Previous adverse conduct history for CU80 offence	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
3rd or more CU80 (type of vehicle not known)	No previous adverse conduct history for CU80 offence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
3rd or more CU80 (type of vehicle not known)	Previous adverse conduct history for CU80 offence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
1st CU80 in a commercial vehicle	No previous adverse conduct history for CU80 offence	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
1st CU80 in a commercial vehicle	Previous adverse conduct history for CU80 offence (including in non-commercial vehicle)	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer

[85] Any reference to 'previous conduct history' in this Annex includes driver conduct hearings and warning letters

[86] The offence description for CU80 is for Breach of requirements as to control of the vehicle, such as using a mobile phone. In this document CU80 refers to all recorded offences prior to 1 March 2017 but for any received since 1 March 2017 the reference is only to those which relate to mobile phone usage (usually distinguished as the penalty in these cases is a mandatory six penalty points). Any CU80 offences received from 1 March 2017 not relating to mobile phone usage will be considered as for any other offence

2nd CU80 in a commercial vehicle	No previous adverse conduct history for CU80 offence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
2nd CU80 in a commercial vehicle	Previous adverse conduct history for CU80 offence (including in a non-commercial vehicle)	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
3rd or more CU80 in a commercial vehicle	No previous adverse conduct history for CU80 offence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
3rd or more CU80 in a commercial vehicle	Previous adverse conduct history for CU80 offence	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Exceeding statutory speed limit	Speeding in a commercial vehicle (SP10 or SP40)	Can be dealt with 'in office'	DVLA staff to issue warning letter
Exceeding statutory speed limit – 2nd offence	Speeding in a commercial vehicle (SP10 or SP40)	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
One CU80 (type of vehicle not known) and one speeding offence in a commercial vehicle	No previous adverse conduct history for either offence	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Disablement of speed limiter		Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Speed limiter – interference	Including the use of any device to disable or produce false readings	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Falsification: by intent or deliberate failure to keep required records (EC and domestic drivers' hours & WTD)	Deliberate falsification (e.g. deliberately driving without using a tachograph, deliberately failing to keep records or pulling tachograph chart/s / digicard/s)	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Falsification: failure to keep required records without intent to deceive (EC and domestic drivers' hours & WTD)	Falsification (e.g. destroying a record or failing without reasonable excuse to make a relevant record without evidence of intent to deceive)	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Falsification: domestic drivers' hours & WTD	Deliberate falsification or forgery of records	Consideration for hearing	Ask for an explanation and letter from Commanding Officer

Falsification: tachographs	Use of any device or On-Board Diagnostic systems to interfere with the recording equipment (e.g. use of a magnet or interrupter switch) or using a digicard belonging to another	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Other drivers' hours, tachograph & WTD offences	Lower risk offences committed on isolated or infrequent basis	Consideration for hearing	Staff to issue warning letter
Other drivers' hours, tachograph & WTD offences	Serious offences committed on infrequent basis	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Other drivers' hours, tachograph & WTD offences	Persistent and/or very serious and/or habitual offences	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
DCPC – failure to carry card		Can be dealt with 'in office'	Staff to issue warning letter
DCPC – not undertaken required training		Consideration for hearing	Ask for an explanation and letter from Commanding Officer
DVSA Fixed Penalty Notifications[87]	Total of 12 FPN points reached	Consideration for hearing	Ask for an explanation and letter from Commanding Officer
Any other notification of an offence, penalty or conviction relating to the use of vehicles, e.g. overloading or maintenance related fixed penalty notices	Lower risk offences committed on isolated or infrequent basis	Can be dealt with 'in office'	Staff to issue warning letter
Any other notification of an offence, penalty or conviction relating to the use of vehicles, e.g. overloading or maintenance related fixed penalty notices	Higher risk committed on infrequent basis	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Any other notification of an offence, penalty or conviction relating to the use of vehicles,	Persistent and/or very serious and/or habitual offences	Can be dealt with 'in office'	Staff to issue warning letter

[87] 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

e.g. overloading or maintenance related fixed penalty notices			
Notification of the use of a vehicle with a defect that should have been identified as part of the driver walk round check prior to use	Road safety critical defects that endanger other road users	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Notification of a vehicle collision with a bridge or other road infrastructure caused by carelessness or negligence	Disregard by driver for route instructions, vehicle or road signage	Call to a hearing	
Any convictions for sexual offences - regardless of sentence imposed relevant to holding a PCV driver licence		Call to a hearing	Ask for an explanation and letter from Commanding Officer
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		Call to a hearing	Ask for an explanation and letter from Commanding Officer
Civil Penalty imposed for breaching the Home Office Border Force (HOBF) prevention of clandestine entrants code of practice – first offence	Civil penalty imposed by HOBF and appeals/objections process exhausted.	Can be dealt with 'in office'	Ask for an explanation and letter from Commanding Officer
Civil Penalty imposed for breaching the Home Office Border Force prevention of clandestine entrants code of practice – repeat offence	Civil penalty imposed by HOBF and appeals/objections process exhausted. Previous history of offences.	Consideration for hearing	Ask for an explanation and letter from Commanding Officer

Note: The final penalty imposed on military drivers depends upon what explanation is given to the offending, together with whether there is a letter from the Commanding Officer. Any failure to respond would lead to the same penalties as that faced by civilian drivers, e.g. refusal, revocation.

There is an option in the most serious cases for military drivers to be required to attend a hearing. In cases where the traffic commissioner concludes that it would assist, the traffic commissioner may request that the Commanding Officer be asked to carry out an interview with the driver to discuss the matters of concern and to report back to the commissioner.

In addition, it should be formally noted that a military driver being considered for cases in which if s/he were a civilian driver would be called to a hearing, will only have their case decided by a traffic commissioner following receipt of the explanation from the driver and Commanding Officer. There should be no delegation for any case of such seriousness to members of staff.

Annex C: Examples of Negative and Positive Features

The below is an non-exhaustive list of features which a traffic commissioner may take into account when deciding whether to move up or down from a starting point. A traffic commissioner is considering a driver's fitness to drive by way of relevant conduct. Some of the features below will help identify the level of risk a driver might present to other road users and therefore their ability or fitness to drive safely.

All offences - *Negative 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[88]
- 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
- Offending of a type that leads to a court imposing a requirement to disqualify the driver until a further test is passed
- Failing to undertake DCPC periodic training in a timely and structured manner
- Failing to provide reasonable assistance to a disabled person under the Conduct of Drivers Regulations
- Repeated collisions with infrastructure
- Use of forged documents

Positive features

- No previous conviction/s
- Lower risk 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

[88] 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)

- 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 or evidence provided that the offence is not commensurate to their normal driving behaviour
- 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)
- Proactive engagement with operator's systems, disciplinary and training to prevent driver from repeating conduct
- Monetary gain was not prioritised over road safety
- Attendance at a drink-drive rehabilitation or speed awareness course
- Voluntary attendance at remedial training relevant to the offence

Please note that the above list is not exhaustive. In addition to the listed features the following are also to be taken into account when considering the following specific matters

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

Negative 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

Positive 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 drivers' hours / working time legislation (EC, AETR & 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)

Negative 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
- Corroborating indicators of distraction (e.g., lane deviation, harsh braking, near misses), including telematics
- Any previous relevant incidents or warnings

Positive 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
- A lawful exemption applied (e.g., an emergency 999 call)

Note – the above list is not exhaustive

Annex D: 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 negative and/or positive features (see Annex C), 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, these examples are for illustrative purposes and the individual facts of the case will likely result in a different outcome. 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. Many of the examples can be interpreted as applying to both Large Goods Vehicles and Passenger Carrying Vehicles, regardless of which vehicle type is specifically mentioned.

Applications for Provisional Vocational Entitlement

Case Example 1

Mr Smith makes an application for provisional Large Goods Vehicle 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.

TC 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 has been disqualified (his first) from driving for 6 months under the totting up procedure. He applies for provisional Large Goods Vehicle 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 3 months from the end of the disqualification period. Mr Smith does not request a hearing following receipt of the letter. Mr Smith successfully reapplies for his provisional Large Goods Vehicle and PCV licences after the 6 months have elapsed.

Case Example 3
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 Large Goods Vehicle 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 4
Mr Smith has been disqualified (his first) for 24 months for dangerous driving. He applies for provisional Large Goods Vehicle 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 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 Large Goods Vehicle 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 Large Goods Vehicle / 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 6
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 Large Goods Vehicle licence without encountering such restrictions (for Large Goods Vehicle drivers the legislation only relates to conduct connected to driving).

Applications for Restoration of Vocational Entitlement Following Disqualification

When considering whether to restore a driver's vocational entitlement following disqualification a traffic commissioner will consider what steps the driver has taken to show that they are now fit to drive and any mitigations that will be put in place to reacquaint them to driving larger vehicles. A driver who is able to demonstrate that they will engage with an operator's programme of rehabilitation will be subject to reduced starting points. For example, there may be a commitment to a period of supervised driving or lighter duties.

Case Example 7
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 Large Goods Vehicle entitlement 1 month prior to the expiry of his disqualification.

TC Action: Mr Smith's PCV and Large Goods Vehicle 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 8
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 Large Goods Vehicle 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 negative 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 9
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 Large Goods Vehicle entitlement prior to the expiry of his disqualification.

TC Action: Mr Smith is called to a driver conduct hearing due to the possibility of negative / positive 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 Large Goods Vehicle entitlement.

Case Example 10
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 Large Goods Vehicle 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 8 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 an 8-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 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 Large Goods Vehicle 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 8 weeks. Mr Smith refuses the offer and requests a hearing. The traffic commissioner considers the details of the case further at the hearing. The traffic commissioner is concerned that Mr Smith may have an alcohol dependency problem that affects his medical fitness to drive vehicles. As the traffic commissioner has no

remit to consider medical fitness, he grants the restoration of the entitlements with a rehabilitation period of 8 weeks in line with the starting points. The traffic commissioner also requests his staff to contact DVLA Medical Branch to alert them to his concerns regarding the driver's medical fitness to hold vocational entitlement.

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 Large Goods Vehicle 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 negative features, namely the premeditated use of a stimulant which poses a particular risk to road safety, the traffic commissioner decides that the starting point of an 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 Large Goods Vehicle 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 Large Goods Vehicle entitlement. According to press reports (copied to the driver), the offence was committed whilst driving a Large Goods Vehicle 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 a number of years before any future application is approved and disqualifies him for ten years.

Note: The public must have confidence in the competence of vocational drivers and the regulatory regime. Drivers who cause death by driving dangerously should expect to receive a lengthy period of disqualification and may wish to consider a new career.

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 Large Goods Vehicle 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.

Case Example 16

Mr Smith has a poor driving history including a three-year disqualification by the TC five years ago for repeated non-compliance with drivers' hours rules, evasion and dishonesty, and also for aggressive behaviour towards officials. He was then later disqualified from driving for 18 months by a court for dangerous driving. This incident occurred whilst driving an HGV and overtaking on a blind bend on a blind summit on a road known to be dangerous. On the return of his ordinary driving entitlement for cars he was then convicted of driving through a red light.

TC Action: Mr Smith was called to attend a hearing before the traffic commissioner at which the commissioner was to consider whether or not to restore his HGV driving entitlement. The traffic commissioner took into account his driving record and the persistent nature and seriousness of offending and concluded that she could not trust Mr Smith to hold any vocational entitlement as he was a significant danger to other road users. The traffic commissioner refused the restoration of the HGV entitlement and extended the disqualification until Mr Smith's 80th birthday. On appeal the Sheriff agreed with the approach taken by the traffic commissioner.

Current entitlement holders or renewals

Case Example 17
Mr Smith holds a Large Goods Vehicle licence and received 6 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 Large Goods Vehicle licence for a period of 4 weeks.

Case Example 18
Mr Smith holds a Large Goods Vehicle licence. He was stopped by the Police for exceeding the Large Goods Vehicle specific speed limit on a single carriageway road and received 3 penalty points.

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

Case Example 19
Mr Smith holds a Large Goods Vehicle licence and an operator's licence. He changes the size of the wheel fitted to his fleet without recalibrating the vehicle speed limiter.

Action: Mr Smith is called to a driver conduct hearing. Mr Smith does not dispute DVSA's evidence that this was done deliberately in order to gain a commercial advantage. The traffic commissioner revokes and disqualifies Mr Smith's Large Goods Vehicle licence for a period of 12 months.

Case Example 20
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. Following an admission, 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 21
Mr Smith was caught using a magnet to manipulate the tachograph whilst driving a Large Goods Vehicle.

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 22
Mr Smith was caught using a magnet to manipulate the tachograph whilst driving a Large Goods Vehicle. 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 23
Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle 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 24
Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle and 3 drivers' hours offences were detected. The enforcement agency issued 3 £100 fixed penalty notices.

TC Action: Due to the level of penalty issued, Mr Smith was issued with a warning letter advising and further offences could lead to more serious regulatory action.

Case Example 25
Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle where damage to the vehicle spray suppression was detected. Mr Smith was issued with a £100 fixed penalty.

TC Action: Due to the level of penalty issued and the isolated nature of the incident, Mr Smith was issued with a warning letter advising and further offences could lead to more serious regulatory action.

Case Example 26

Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle 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 regard 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 27

Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle 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 weeks.

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

Case Example 28

Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle with a gross plated weight of 32 tonnes. A check of the weight of the vehicle showed that the weight of the vehicle and load was 40 tonnes, a gross overload of 25%. The enforcement agency referred the case to the traffic commissioner.

TC Action: Mr Smith is called to a driver conduct hearing. Despite Mr Smith having an otherwise clean driving record the traffic commissioner considers that the offence is so serious that it warrants action to be taken. The starting point would normally be to suspend entitlement for two weeks.

During the hearing, Mr Smith advises that he has not been concentrating at work following a breakup with his partner, from which he has been suffering severe depression and suicidal thoughts. Due to the conduct breach for failing to notify DVLA of a notifiable condition, the traffic commissioner suspends Mr Smith's vocational entitlement to allow DVLA to assess whether he is medically fit to drive under the Road Traffic Act 1988.

Case Example 29

Mr Smith was stopped at the roadside whilst driving a Large Goods Vehicle with a gross plated weight of 32 tonnes. A check of the weight of the vehicle showed that the weight of the vehicle and load was 36 tonnes, a gross overload of 12.5%. As this was

the third occasion where the enforcement agency had found Mr Smith to be overloaded in the last two years they referred the case to the traffic commissioner.

TC Action: Mr Smith is called to a driver conduct hearing. As this was the third occasion that Mr Smith was known to be driving an overloaded vehicle the traffic commissioner considers that the pattern of offending represents a persistent or habitual practice and is so serious that it warrants action to be taken against Mr Smith. The traffic commissioner suspends his Large Goods Vehicle driving entitlement for four weeks.

Case Example 30
Mr Smith was stopped at the roadside whilst driving a PCV. The DVSA examiner identified a long-standing maintenance related defect that would have been obvious to a driver who had conducted an effective walk round check at the commencement of duty. The vehicle is issued with a prohibition notice marked as 'significant' as a result of the obvious defect and the driver is issued with a fixed penalty notice. The DVSA then refer the driver to the traffic commissioner to consider the PCV entitlement.

TC Action: Mr Smith is called to a driver conduct hearing. The traffic commissioner considers the seriousness and obvious nature of the defect and is concerned with the driver's attitude to walk around checks. The traffic commissioner also heard how he had been given adequate training and instruction on how to carry out an effective check. As a result of this the traffic commissioner considers taking action against the driver's vocational entitlement. On this occasion the traffic commissioner considers a two-week suspension a firm but proportionate action to take. Note: The traffic commissioner will consider the nature of the defect especially the degree of severity, related risk to road safety and how obvious it will have been to the driver.

Case Example 31
Mr Smith was driving an Large Goods Vehicle 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 check site. 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 suspends Mr Smith's vocational entitlement for 6 months.

Case Example 32
Mr Smith, a Large Goods Vehicle driver, was reported to the traffic commissioner for striking a railway bridge that his vehicle was too large to travel under. There were no casualties, but the incident resulted in severe delays for rail users with subsequent

cost in compensation claims. The bridge and vehicle were correctly marked, and visibility was good.

TC Action: Mr Smith is called to a driver conduct hearing. The starting point for incidents of this nature is the revocation of the licence and a disqualification for six months. As the incident occurred through the careless or reckless behaviour of Mr Smith with no positive features, the traffic commissioner revokes the licence and disqualifies him from holding entitlement for six months. This action reflects the risk and disruption to other road / rail users and the economic cost associated.[89]

Case Example 33

Mr Smith, a Large Goods Vehicle driver, was reported to the traffic commissioner for striking a railway bridge that his vehicle was too large to travel under. There were no casualties, but the incident resulted in delays for rail users with subsequent cost in compensation claims. The bridge and vehicle were correctly marked, and visibility was good.

TC Action: Mr Smith is called to a driver conduct hearing. The starting point for incidents of this nature is the revocation of the licence and a disqualification for six months. The traffic commissioner established that Mr Smith was unfamiliar with the specific route and that the weather and road conditions had distracted his attention at the time of the collision. Following the incident, Mr. Smith fully engaged with the operator's retraining programme, attended bridge strike prevention training and has now committed to following the advice provided by Network Rail. The traffic commissioner takes account of the positive features and steps taken to prevent recurrence and reduces the action to a one-month suspension of the vocational licence. This action reflects the risk and disruption to other road/rail users and the economic cost associated, balanced against the actions the driver has taken to prevent recurrence.[90]

Case Example 34

Mr Smith, a Large Goods Vehicle driver, was reported to the traffic commissioner for striking a railway bridge that his vehicle was too large to travel under. There were no casualties, but the incident resulted in delays for rail users with subsequent cost in compensation claims. The bridge and vehicle were correctly marked, and visibility was good.

TC Action: Mr Smith is called to a driver conduct hearing. The starting point for incidents of this nature is the revocation of the license and a disqualification for six months. At the hearing, Mr Smith explained that the route had been provided by the operator and followed a standard sat-nav system not designed for commercial vehicles. Mr Smith had not checked the route for height restrictions or consulted a vehicle-specific navigation tool, despite being aware of the vehicle's height. Following the incident, Mr. Smith fully engaged with the operator's retraining programme, attended bridge strike prevention training and has now committed to following the advice provided by Network Rail. The traffic commissioner takes account of the

[89] In this case the operator and transport manager may also need to satisfy the traffic commissioner that there are proper arrangements in place to prevent this type of incident occurring

[90] In this case the operator and transport manager may also need to satisfy the traffic commissioner that there are proper arrangements in place to prevent this type of incident occurring

positive features and steps taken to prevent recurrence and reduces the action to a two-month suspension of the vocational licence. This action reflects the risk and disruption to other road/rail users and the economic cost associated, balanced against the actions the driver has taken to prevent recurrence.[91]

Case Example 35
Mr Smith, a PCV driver, was reported to the traffic commissioner for striking a railway bridge that his vehicle was too large to travel under. There were no casualties, but the incident resulted in severe delays for rail users with subsequent cost in compensation claims. The bridge and vehicle were correctly marked but visibility was poor.

TC Action: Mr Smith is called to a driver conduct hearing. The starting point for incidents of this nature is the revocation of the licence and a disqualification for six months. The traffic commissioner established that Mr Smith was unfamiliar with the specific route and that the weather and road conditions had distracted his attention at the time of the collision. The vehicle operator had not reviewed their control measures to avoid bridge strikes and did not provide any route instructions to Mr Smith. The incident occurred through carelessness and was avoidable. Taking the positive features into account and the risk of recurrence the traffic commissioner reduces the action to a two-month suspension of the vocational licence. This reflects the risk and disruption to other road / rail users and the economic cost associated.[92]

Case Example 36
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 Large Goods Vehicle driver as traffic commissioner action in relation to conduct is related to driving only.

[91] In this case the operator and transport manager may also need to satisfy the traffic commissioner that there are proper arrangements in place to prevent this type of incident occurring
[92] In this case the operator and transport manager may also need to satisfy the traffic commissioner that there are proper arrangements in place to prevent this type of incident occurring

Case Example 37
Mr Smith, a Large Goods Vehicle 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 E: Offence Codes and Driving Licence Categories

Accident offences

Code	Reason
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

Code	Reason
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

Code	Reason
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

Code	Reason
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

Code	Reason
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 can carry a period of disqualification under section 163 of the Sentencing Act 2020. 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).

Driving Licence Categories

Category C1	Entitlement to drive vehicles between 3,500 and 7,500kg Maximum Authorised Mass (with a trailer up to 750kg).
Category C1E	Entitlement to drive C1 category vehicles with a trailer over 750kg. The combined Maximum Authorised Mass of both cannot exceed 12,000kg.
Category C	Entitlement to drive vehicles over 3,500kg (with a trailer up to 750kg Maximum Authorised Mass).
Category CE	Entitlement to drive category C vehicles with a trailer over 750kg.
Category D1	Entitlement to drive vehicles with: • no more than 16 passenger seats • a maximum length of 8 metres • a trailer up to 750kg
Category D1E	Entitlement to drive D1 category vehicles with a trailer over 750kg Maximum Authorised Mass. The combined MAM of both cannot exceed 12,000kg.
Category D	Entitlement to drive any bus with more than 8 passenger seats (with a trailer up to 750kg Maximum Authorised Mass).
Category DE	Entitlement to drive D category vehicles with a trailer over 750kg.

Restrictions can also be placed on a particular licence entitlement. These are codes which indicate the conditions that must be met in order to drive that category of vehicle. For example, code 101 restricts use of that category of vehicle to not for hire or reward and is commonly attached to those who passed their car driving test before 1st January 1997 with D1 entitlement.[93]

A full list of codes and their meanings can be found at - https://www.gov.uk/driving-licence-codes

[93] The Community Bus Regulations 2009 and The Section 19 Regulations 2009

Annex F: Referrals from the Secretary of State

Department for Transport

Duncan Price
Department for Transport
3rd Floor
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Web Site: www.dft.gov.uk

7th March 2019

Richard Turfitt
Senior Traffic Commissioner
Traffic Commissioner Corporate Office,
Shaftesbury Road
Eastbrook
Cambridge, CB2 8DF

Dear Mr Turfitt

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
Divisional Manager,
Freight, Operator Licensing and Roadworthiness

Annex G: Mutual recognition of driving disqualifications between the United Kingdom and Republic of Ireland

Legal background

- The mutual recognition of driving disqualifications between the United Kingdom and the Republic of Ireland is provided for by way of Agreement on the Mutual Recognition of Driving Disqualifications between the United Kingdom of Great Britain and Northern Ireland and Ireland ("the Agreement")[94] signed on 30 October 2015 and which came into force on 1 August 2017.

- This replaced the 1998 European Convention on Driving Disqualifications which the UK opted out of as part of the block opt-out from the Treaty of Lisbon on 1 December 2014. The Convention in any case has ceased to apply in European law.

- The *Criminal Justice and Courts Act 2015* amends the *Crime (International Cooperation) Act 2003* ("CICA") to provide a mechanism by which the Agreement can be given legal effect. *The Specified Agreement on Driving Disqualifications Regulations 2017* identifies the Agreement as the one relevant to, and to be given effect in the UK by Chapter 1 of Part 3 of CICA.

Effect of the arrangements

- The Act provides a mechanism by which a driving disqualification imposed in Ireland on a UK resident, or a holder of a UK driving licence, for certain offences will be recognised and given effect in the UK.

- Likewise, it makes provision for a driving disqualification imposed by the UK on an Irish resident, or a holder of an Irish driving licence, for such offences to be notified to the appropriate Irish authority so that the disqualification may be recognised and given effect in Ireland.

General principles of Mutual Recognition of Driving Disqualifications under the Agreement.

- The Annex to the Agreement covers seven categories of driver behaviour or conduct:

  1) Reckless or dangerous driving (MR09)
  2) Hit and run driving (MR19)
  3) Driving whilst under the influence of alcohol/drugs (MR29)
  4) Refusal to submit to a drug/alcohol test (MR29)
  5) Speeding (MR39)
  6) Driving whilst disqualified (MR 49)
  7) Other road traffic offences resulting in a disqualification period of 6 months or more, (or a lesser duration where this has been agreed). (MR59)

[94] https://www.gov.uk/government/publications/ts-no242017-ukireland-agreement-on-the-mutual-recognition-of-driving-disqualifications

- Important Points

  A driving disqualification imposed for an offence arising from the conduct referred to above, is a disqualification which is recognisable under the Agreement, even if the actual offence committed is not an offence in the UK, i.e. the key point is that the offence arises out of one of the categories of conduct listed above.

  One example where this might apply is on drink driving: the UK has a limit of 0.8, Ireland has a limit of 0.5 and 0.2 for newly qualified drivers and professional drivers. Therefore someone with a blood/alcohol level of 0.6 would not necessarily be banned in the UK but would be banned in Ireland.

  Disqualifications as a result of accumulating penalty points ("totting up") are not included in the arrangements.

Notification of a driving disqualification to the RoI authorities

There is no change in practice in how UK courts consider motoring offences cases. If the individual is convicted of a qualifying UK road traffic offence, and a driving disqualification is imposed and that individual is normally resident in the Republic of Ireland or is not normally resident, but holds a Republic of Ireland licence, then mutual recognition arrangements apply, and the UK authorities must notify the Irish authorities.

The obligation to notify only arises after the time limit for appealing has expired and no appeal is brought, or if an appeal is brought, only after the proceedings are finally concluded. The UK court will inform the driver of its decision and the period of disqualification stands throughout the UK including GB and Northern Ireland. The court will notify DVLA/DVA of the disqualification and if any appeal was lodged. The court must send a certified copy of the extract from the court register or the certificate of conviction. In England & Wales, drivers have 21 days (14 days in Scotland and Northern Ireland) in which to lodge an appeal. If the driver does not appeal the same day as the conviction, the courts are responsible for letting DVLA/DVA know separately.

DVLA/DVA will write to the driver to say notification is being sent to the Road Safety Authority, Ireland and send notification to RSA Ireland.

Where the UK receives a notice from Ireland regarding a UK resident driver, or holder of a Great Britain or Northern Ireland licence, who has been convicted in an Irish court, DVLA/DVA will send a notice to the driver, as confirmation that the disqualification is being applied in the UK, after the expiry of the period of 21 days beginning with the day on which the notice is "given". The driver can appeal against the disqualification being imposed in the UK to the magistrates' court, if resident in England and Wales, to the Sheriffs if resident in Scotland, or the court of summary jurisdiction acting for petty sessions in Northern Ireland, within 21 days of service of the section 57 notice. The driver can only appeal against the disqualification being applied in the UK. The UK court cannot reopen the case, overturn, or change the decision of the Irish court to disqualify. Nor can it decide length of time which should be served. The UK court can only consider whether section 57 should apply, that is whether the conditions in section 56 are satisfied. The driver must inform DVLA/DVA if they have

lodged an appeal. If on appeal the disqualification is not applied by the UK, the UK is obliged to inform the state of offence, i.e. Ireland.

If a disqualified driver continues to drive in the UK and is caught, then he/she is committing the offence of *Driving other than in accordance with a licence* (s.87 Road Traffic Act 1988 ("RTA")). If the driver has not returned the licence to DVLA/DVA by the expiry of the 21-day period in the s.57 notice, there is also a further offence of failing to deliver the licence.

The endorsement will remain on the licence and record for 4 years from the date of conviction in Ireland.

For offences committed in Great Britain, at the end of a disqualification for a driver with a HGV or PSV entitlement, the DVLA will refer cases to the Traffic Commissioner who will decide whether HGV or PSV entitlements should be returned or other conditions, such as retest be met.

At the end of a disqualification recognised in Great Britain for an offence committed in Ireland by a HGV or PSV driver the DVLA will also refer cases to the Traffic Commissioner to decide whether HGV or PSV entitlements should be returned.

Where a UK resident or holder of a Great Britain licence or a Northern Ireland licence is convicted in an Irish court, The Irish courts notify the relevant licensing authority and must send a copy of the certificate of conviction. The licensing authorities forward details to the RSA and the RSA is responsible for notifying DVLA/DVA.

Where the UK informs Ireland that an Irish resident driver or holder of an Irish licence has been convicted in a UK court, DVLA/DVA will inform RSA which then sends details to the relevant licensing authority. The licensing authority arranges a date with the local court to hear the case. The Irish court cannot reopen the case, overturn or change the decision of the UK to disqualify. The Irish court can only consider whether or not the disqualification should be recognised in Ireland. The Court will make an Order as to the start and end date of the period of disqualification to be served in Ireland. The court will decides whether to apply the disqualification. If the Irish Court *does not decide to apply the disqualification* in Ireland the DVLA/DVA should be informed.