Department for Transport

Independent Complaints Assessors
Annual Report, 2020-21

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: https://forms.dft.gov.uk

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To the Permanent Secretary of the Department for Transport, Ms Bernadette Kelly.

We are pleased to submit our Annual Report covering the period April 2020 to March 2021.

Stephen Shaw

Jon Wigmore

Foreword

This report, like we suspect every annual report to be issued this year, reflects the impact on the services we oversee of the Covid-19 pandemic.

Our own caseload fell significantly, although the reductions were not evenly distributed. We had very few complaints about the DVLA's enforcement activity, much of which was put on ice as a consequence of the virus, but complaints about the Agency's medical decision-making were as numerous as in past years. Complaints about DVSA driving tests also reduced as driving instruction and examination came to a halt, while the significant fall in road traffic at the start of the first lockdown also reduced complaints about Highways England.

We should begin this report by paying credit to colleagues in the Department for Transport's delivery bodies for the support they have continued to offer us, often in very trying circumstances, over the past year. We should also say at the outset that our approach to complaints about those delivery bodies has been informed by our knowledge of the impact the pandemic has had. At one time in Spring 2020, the DVLA had just a few hundred staff in its Swansea offices compared with the normal thousands, and it took time for working practices to adapt. At the same time, the DVLA - and the other delivery bodies - properly prioritised tasks associated with NHS staff and other essential workers. This had an inevitable knock-on effect on other customers, but could not possibly be deemed as maladministrative. Indeed, quite the opposite.

However, we are very conscious of the effect of Covid-19 on many users of DfT services. The young drivers unable to take a practical driving test and fearing that their theory test would expire. The customers re-applying for a driving licence following a medical revocation but who found that appointments with DVLA Franchise Doctors or other specialists could not be made. Applicants for seafaring qualifications whose colleges were closed. We have been understanding of the challenges faced by the DfT delivery bodies, while never forgetting the very real consequences for our fellow citizens.

Readers of this annual report will find that we have structured it slightly differently from previous reports. We have deliberately concentrated our case histories on those complaints where we felt there was most learning to be gathered. One desirable outcome is that this report is in consequence somewhat shorter than its predecessors (although we will aim for still greater concision next year). But we must also acknowledge that we have reproduced accounts of a higher proportion of upheld cases than would otherwise have been the case. It is of course in these cases that we think most learning will be found, but this may give a distorted impression of our case outcomes overall.

In principle, we can review complaints against more than 20 DfT bodies (as well as the Department itself) once the internal complaints processes have been exhausted. As in all years since our appointment, the majority of our reviews concern complaints against the Driver and Vehicle Licensing Agency. We received 193 referrals from the DVLA in the year – a significant reduction on the 282 received in 2019-20 but still

representing almost 60 per cent of our total incoming work. The other DfT bodies in our jurisdiction from whom we received complaints during 2020-21 were:

- The Driver and Vehicle Standards Agency 72
- Highways England 42
- High Speed Two Ltd 4
- Maritime and Coastguard Agency (MCA) 3
- Civil Aviation Authority (CAA) 2
- Vehicle Certification Agency (VCA) 1

We also received 4 complaints regarding the Department for Transport's central functions (DfTc) and conducted two reviews referred to us by Network Rail. We are delighted that Network Rail has now agreed to come fully within the ICA ambit.

In total, we received 323 complaints. We completed reviews on 317.

Although this report is in our names, both the work that we conducted and the text of the report itself reflect the input of our 'substitutes' (an inelegant term to describe the two experienced complaint investigators, Claire Evans and Lindsey Wilby, who conduct reviews on our behalf, subject to our final approval). We are hugely indebted to them both.

As in past years, we have annexed to this report our latest terms of reference. It may be helpful, however, to list here both what we can look at and what is outside our jurisdiction. An ICA review can look at complaints about:

- bias or discrimination
- unfair treatment
- poor or misleading advice (for example, inaccurate information)
- failure to give information
- mistaken application of policy or procedure
- administrative mistakes
- unreasonable delay, and
- improper or unreasonable staff behaviour, e.g. rudeness.

We cannot look at complaints about:

- disputes where the principal focus is upon Government, DfT, or DfT body policy
- complaints arising from contractual and commercial disputes
- complaints about the law
- matters considered by Parliament
- matters where only a court, tribunal or other body can decide the outcome
- decisions taken by independent boards or panels, for example: applications under the HS2 'Need to Sell' scheme
- decisions taken by, or for, the Secretary of State
- legal cases that have already started and will decide the outcome

- an ongoing investigation or enquiry
- how the DfT or its bodies handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- how the DfT or its bodies handle subject access requests made under the Data Protection Act
- personnel and disciplinary decisions or actions
- any professional judgment by a specialist, including, for example, the clinical decisions of doctors.

Although some complainants are disappointed that we cannot overturn the outcome of licensing decisions or driving tests, we have found over the years that an ICA review can often assist both the complainant and the bodies in remit. But we offer 'light touch' reviews that are not to be compared to, or judged against, primary investigations. This is a distinction that, regrettably, is still not readily understood by some staff of the Parliamentary and Health Service Ombudsman (PHSO), whose cases may take many months or even years to conclude.

We must end this foreword by expressing our great thanks to the DfT, its agencies and other bodies, for the support they have offered us in this most difficult of years. It is particularly pleasing that, despite all the difficulties, the majority of ICA referrals have been made within the standard 15-day target and comments on our drafts have been received within ten working days.

1: Overview of our year's work

Input

1.1 The effect of Covid-19 can be seen in the reduction in our caseload. Some 323 new cases were referred to us, compared to 386 in 2019-20.

1.2 This amounts to a 16 per cent decrease comparing year-on-year, albeit the volume of incoming work has still more than doubled from our first year in post in 2013-14.

1.3 An overview of our caseload in the context of referrals in the last two years is provided in Table 1.

1.4 As Table 1.1 shows, the number of DVLA referrals reduced by almost one-third – a consequence in large part of a fall in enforcement activity, especially vehicle clamping, in response to the pandemic. DVLA referrals were at their lowest since 2017-18. In contrast, the DVSA experienced a marked increase in ICA-stage complaints, albeit from a much lower base, and complaints first lodged in 2020-21 continued to arrive while we finalised this report in July 2021 as the Agency cleared its backlog. Highways England referrals have fallen in 2020-21 and the year before.

Table 1.1: Cases received 2020-21 and changes in referrals since 2019

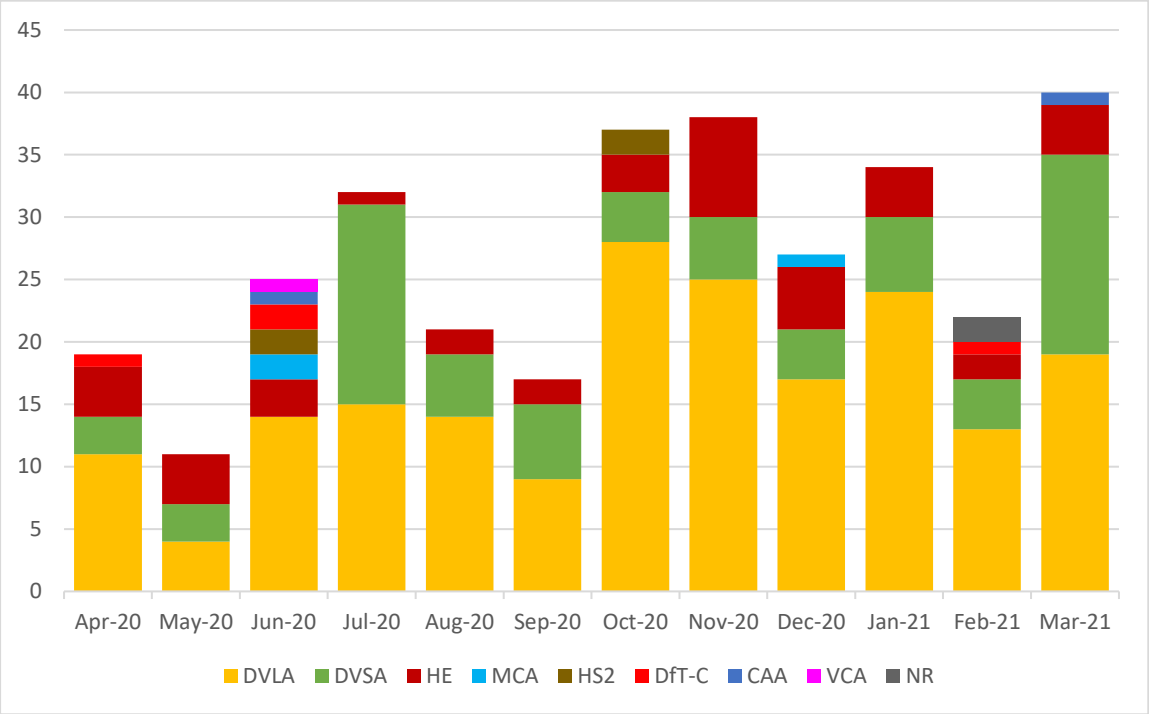
	2020-21	Change 2020-21	Change 2019-20
DVLA	193	-31.5%	+33.6%
DVSA	72	+53.2%	-20.3%
HE	42	-9.5%	-6.1%
DfTc	4	-1 case	+1 case
HS2	4	+3 cases	-12 cases
MCA	3	+1 case	-5 cases
CAA	2	+2 cases	-1 case
NR[1]	2	+ 1 case	N/A
VCA	1	+ 1 case	N/A
Total	**323**	**-16.3%**	**+11.5%**

1.5 Figure 1.1, overleaf, shows the year's incoming cases, by month and DfT delivery body.

1.6 It will be seen, comparing the second half of the year with the first, that there was a marked increase in referrals. In April-September 2020, we received just 125 new cases; in quarters three and four, the total was 198, an upward trend continued into the first quarter of 2021-22. The latter figure of course foreshadows an annualised rate of around 400 cases which, were it to continue in 2021-22, would represent another record level.

[1] Network Rail did not formally subscribe to the ICA scheme in 2020-21. We reviewed a single case in 2019-20 on an exceptional basis, and two in 2020-21.

Figure 1.1: Incoming cases 2020-21, by month and delivery body

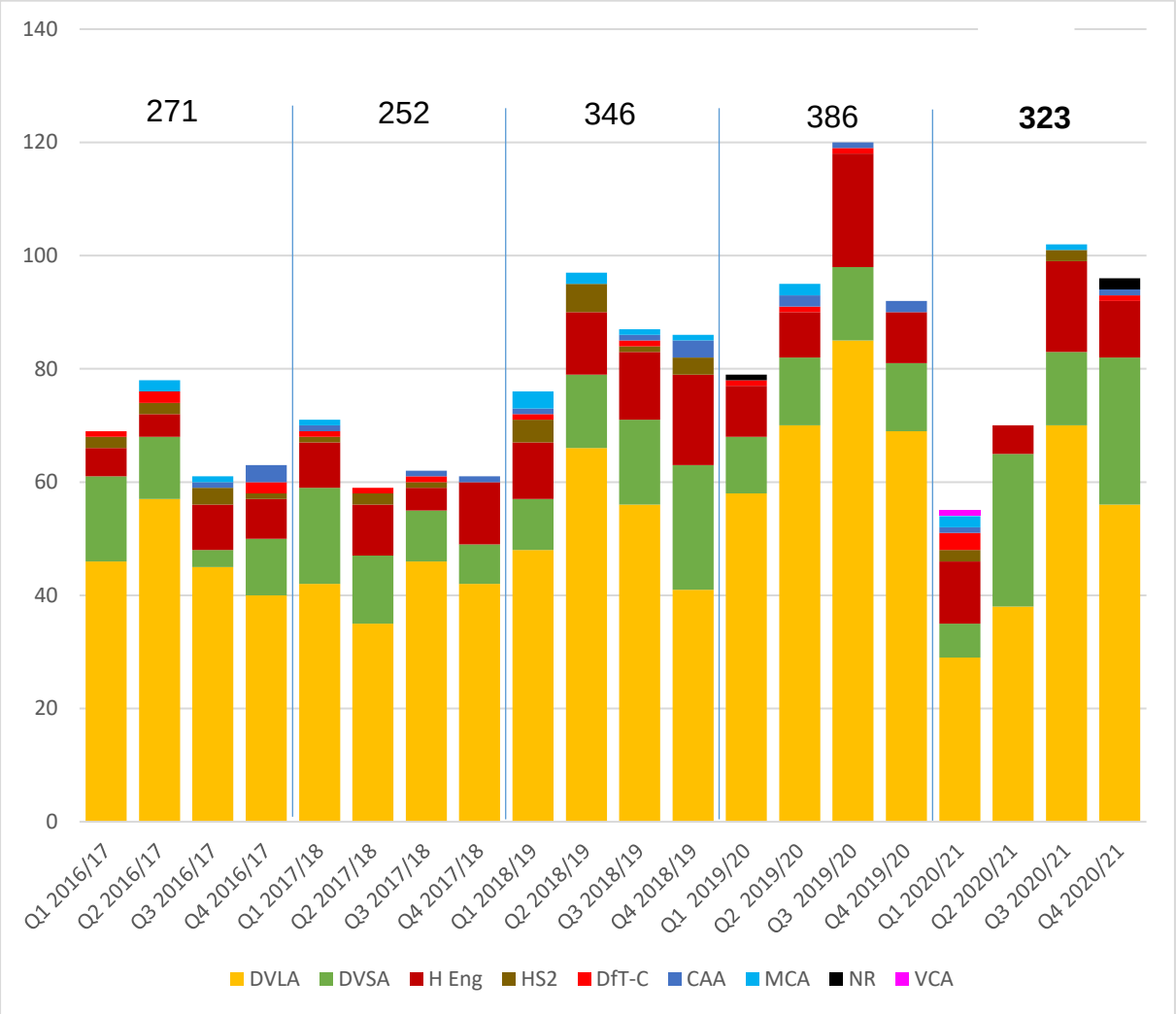


1.7 Looking back, however, the decrease in DVLA referrals by over 30 per cent has, to a significant extent, determined our workload during the last year despite the surge in DVSA cases.

1.8 As we detail in the chapters to follow, the content of many of the complaints we have received has reflected the impact on service provision of Covid-19 lockdown, and other consequences of the pandemic. However, we have continued to receive many complaints about aspects of service delivery that are familiar from past years: DVLA medical decision-making and delay, and criticisms of the decisions and conduct of DVSA driving examiners, foremost amongst them. We should also note the continuing dissatisfaction with the DVLA's approach to the recording of body type for vehicles that have been converted for use as campervans.

1.9 Figure 1.2 illustrates the overall number of ICA referrals over the last five years. Even with the impact of the Covid-19 pandemic (which also slightly affected numbers in the final quarter of 2019-20), we are still facing a substantially higher workload than was the case just three years ago. What was intended as a part-time role for two ICAs has become a full-time occupation, a change that has implications for recruitment of our successors when our contracts expire in 2023.

Figure 1.2: All ICA incoming cases over the last 5 years, by year and quarter



Output and outcomes

1.10 During the year we completed 317 reviews, a 21 per cent reduction from last year (401 cases). As usual, our output broadly matched the composition of the incoming caseload, although this is not the case on a week-to-week basis where we try to prioritise cases that do not require a detailed ICA review. We emphasise again our gratitude to our substitute ICAs who have assisted with some of the more complex cases we have received during the year.

1.11 We have long expressed reservations about summarising case outcomes using the conventional classification of upheld, partially upheld or not upheld. These often involve fine judgments but rarely capture the essence of a grievance or the way a public body has tried to resolve it. The concept of 'partial uphold' is particularly case-specific. How far should a minor case-handling error be weighed in the balance, for example, when the fundamental decision-making was correct? However, we do fully understand the importance of these categories to complainants, the Department, and the bodies we oversee.

Accordingly, we can summarise our 317 in-year completed case outcomes as follows (all percentages are rounded):

• **Fully upheld**:	10 cases	3%	(2019-20: 4%)
• **Partially upheld**:	101 cases	32%	(2019-20: 28%)
• **Not upheld**:	193 cases	61%	(2019-20: 66%)
• **Discontinued**	13 cases	4%	(2019-20: 2%)

1.12 Aggregating those cases that were fully and partially upheld gives a figure of 35 per cent of cases that were upheld to some extent. This compares with 31 per cent of cases upheld to some degree in 2019-20 and 44 per cent the year before. These figures are broadly in line with most other complaints examiner and Ombudsman roles with which we are familiar.

Productivity

1.13 We took, on average, six hours and 15 minutes to complete each case in the 2020-21 reporting year, compared with four hours and 46 minutes in 2019-20. This is a disappointing outcome, although the overall average is made up of completion times that ranged between ten minutes and 32 hours.

1.14 We believe that the increase in the time spent per case is a reflection of the absence of some of the more straightforward cases involving DVLA enforcement work, and complaints that amount in essence to an appeal against a driving test outcome (albeit presented as a criticism of examiner conduct).

1.15 More pleasingly, the average number of weekdays we took to complete a case reduced to 25.6 (from 32.4 in the previous year).

1.16 Table 1.2 sets out comparative statistics for cases completed in the last two reporting years.

1.17 As has always been the case, complaints involving subjects with which we are less familiar – like those from the CAA and the Department centrally – typically take substantially longer than those from the DVLA, DVSA and Highways England.

1.18 Our total time spent on cases concluded in 2020-21 (1,996 hours) is illustrated overleaf in Figure 1.3.

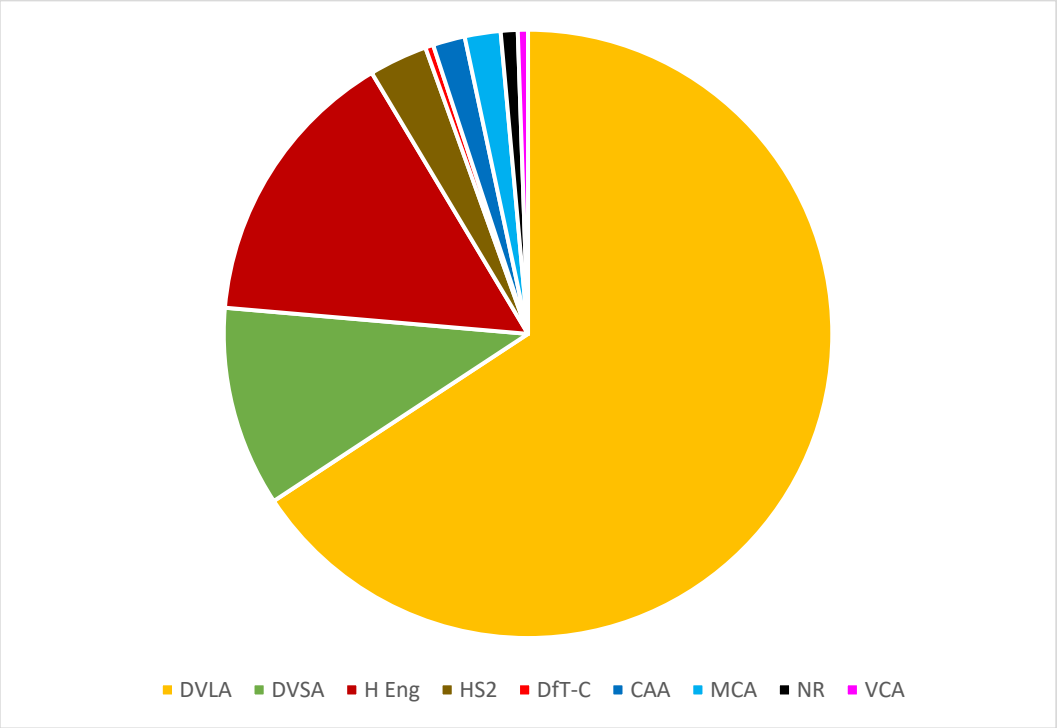
1.19 The diagram shows that 66 per cent of our case-working time was devoted to the DVLA, with 11 per cent for the DVSA and 15 per cent for Highways England. All other referrals represented just eight per cent of case-working time.

1.20 The 82 Drivers Medical cases we concluded took over 42 per cent of our total case-working time, and 65 per cent of all of our DVLA casework hours.

Table 1.2: Average completion time (working days and hours)

	2020-21		2019-20	
	Av. w/days	**Av. time, h:m**	**Av. w/days**	**Av. time, h:m**
DVLA	22.3	6:47	30.5	4:34
DVSA	8.3	3:28	28.1	4:07
HE	19.5	6:32	44.5	5:17
CAA	27.3	11:31	57.0	8:34
MCA	33.3	12:6	3.5	3:49
DfTc	12.5	2:5	25.0	7:03
HS2 Ltd	47.0	20:44	125.5	27:38
NR	31.0	8:37	52.0	7:45
AVERAGE	**25.6**	**6:15**	**32.4**	**4:46**

Figure 1.3: Total time spent on cases concluded (1,996 hours) by delivery body



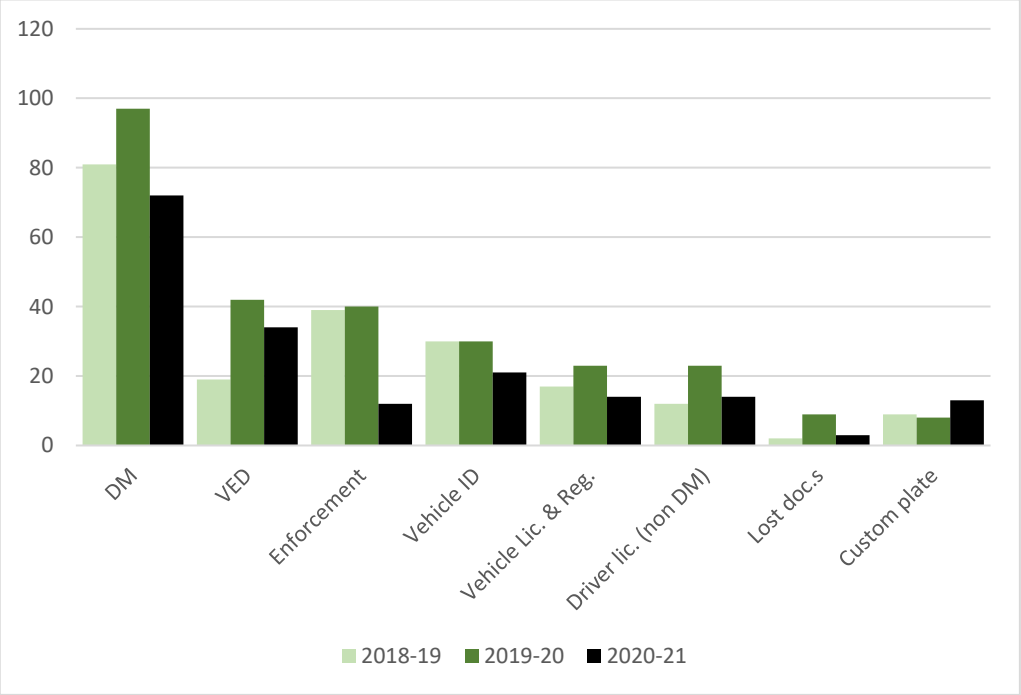
1.21 We consider next, by delivery body, the cases we received and completed in 2020-21, starting with those referred by the DVLA.

2: DVLA Casework

Incoming cases

2.1 As Table 1.1 in the previous section showed, the 193 DVLA referrals we received in-year represents a 31.5 per cent reduction in DVLA cases compared with 2019-20. Figure 2.1 presents comparative statistics for DVLA cases received in each of the last three years (excluding categories where fewer than ten complaints were received).

Figure 2.1: Incoming DVLA cases, 2018-2021



2.2 Figure 2.1 shows the significant (70 per cent) drop in enforcement-related complaints. This reflects changes the DVLA made to its approach to enforcement during the pandemic.

2.3 Last year we reported a 20.9 per cent rise in Drivers Medical (DM) complaints. Although the number has dropped by over 25 per cent from 2019-20, DM complaints rose slightly in the year to 37.3 per cent of the DVLA's referrals (from 34.7 per cent). We upheld (wholly or, much more often, in part) 43.2 per cent of the DM complaints we reviewed in the year, almost exactly the same percentage as last year (compared with, this year, 33.6 per cent of other DVLA cases).

2.4 Customers have continued to come to us with their complaints about the DVLA's activities in collecting vehicle excise duty (VED or 'road tax'). As we have reported in previous years, people have been aggrieved at what they regard as an unfair refusal by the Agency to reimburse complete VED months when they can prove they were not using the vehicle. For its part, the DVLA

has explained that its tax collection activities are determined ultimately by the Exchequer. There are also statutory restrictions that limit its ability to repay or credit vehicle keepers when it has over-collected VED from them. Given the overarching legal and policy frameworks, these are cases we are rarely able to resolve as customers would wish us to.

2.5 Similarly, we are often unable to resolve matters when a customer has lost the right to display a personalised plate. Many customers have strong emotional attachments to such registrations, but once the right to display the plate has been lost it is in effect 'retired' by the DVLA. We think there is no public benefit in this approach; it causes anguish to those who have lost the registration and a loss of income to the Exchequer. We are told that a different approach would require a change in the law.

2.6 In contrast, we commend the Agency for resolving locally queries and complaints about lost documents in a year when restrictions on staff attending its site have had a significant impact on its ability to process paper-based transactions. Despite critical media coverage focussing on customers with original certification, including passports, held up in Swansea, we have seen only a trickle of complaints about lost documents and relatively few referring to delayed processing times. We acknowledge, however, that complaints progressed to our stage are not an accurate index of overall customer satisfaction.

Drivers Medical – Alcohol-related casework

2.7 For the second year, we highlight complaints to us about the DVLA's application of the fitness standards related to alcohol use.[2] In brief, section 92 of the Road Traffic Act 1988 as amended (the Act) includes "persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency" as a prescribed disability (with epilepsy and other health conditions). This means that the DVLA, acting for the Secretary of State, may only license drivers diagnosed with persistent alcohol misuse, or alcohol dependency, when it has obtained the requisite evidence that they meet the standards.

[2] https://www.gov.uk/guidance/drug-or-alcohol-misuse-or-dependence-assessing-fitness-to-drive.

Table 2.1: Fitness standards for alcohol misuse and dependency

Category	Group 1[3]	Group 2
	Licence will be refused or revoked until -	
Persistent alcohol misuse	A minimum of 6 months of controlled drinking or abstinence, and normalisation of blood parameters	A minimum of 1 year of controlled drinking or abstinence, and normalisation of blood parameters
Alcohol dependency	A minimum of 1 year's abstinence from alcohol consumption has been attained. Continued licensing will thereafter require ongoing abstinence.	A minimum of 3 years' abstinence from alcohol consumption has been attained. Continued licensing will thereafter require ongoing abstinence.

2.8 The DVLA's application of this framework has featured regularly in our postbag this year. Legal challenges to the Agency's alcohol and drug-related licensing decisions also accounted for 60.1 per cent of the total appeal summonses received at the DVLA, whose specialist Panel (the Secretary of State for Transport's Honorary Medical Advisory Panel on alcohol, drugs and substance misuse and driving – the Substance Misuse Panel) reported in March 2021 that: "Between 2 July 2020 and 31 December 2020, 128 drivers appealed against the licensing decision made by DVLA and only two case appeals were upheld." [4, 5]

2.9 Complaints we have received about the Agency's alcohol-related decision-making have included that:

- the driver has never been convicted of drink-driving and yet is being treated as a criminal
- the DVLA's approach is tantamount to punishing drivers for making truthful declarations; and for seeking medical help
- the DVLA's classification of a driver as meeting its dependency criteria is incorrect and/or contrary to their own doctor's assessment

[3] The GB medical standards for driver licensing refer to Group 1 and Group 2 licence holders:
■ Group 1 includes cars and motorcycles
■ Group 2 includes large lorries (category C) and buses (category D)
In most cases, the medical standards for Group 2 drivers are substantially higher than for Group 1 drivers. This is because of the size and weight of the vehicle and the length of time an occupational driver typically spends at the wheel.

[4] Minutes of the Secretary of State for Transport's Honorary Medical Advisory Panel on Alcohol, Drugs and Substance Misuse and Driving held on Wednesday 24 March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/988690/24-March-2021-alcohol-drugs-and-substande-misuse-and-driving-minutes-new.pdf.

[5] Information about the six Honorary Medical Advisory Panels to the Secretary of State for Transport Panels, advising the DVLA on fitness standards, is here: https://www.gov.uk/government/news/honorary-medical-advisory-panels-to-the-secretary-of-state-for-transport.

- the driver has not consumed alcohol for some time, and is rebuilding their life, but has lost their entitlement for historic alcohol misuse (for example for being in rehabilitation many months previously)
- the DVLA has changed its requirements meaning that it is withholding or time-limiting an entitlement despite having allowed it previously
- the Agency's evidential requirements, in particular for an independent medical assessment and blood testing, have created foreseeable and avoidable delay (particularly while access to DVLA-approved doctors has been limited by the pandemic)
- the DVLA has not made its requirements clear in terms of the evidence needed to re-license.

2.10 Our casework has revealed difficulties for all involved (customers, GPs, DVLA caseworkers, and DVLA doctors) in differentiating between a medical diagnosis commensurate with the persistent alcohol misuse standard, and drinking in excess of Government low-risk guidelines. The latter may be inadvisable on health grounds, but does not require notification to, or investigation by, the DVLA. We have recommended that the DVLA considers making this clearer in correspondence to clinicians, and to their caseworkers, as unnecessary investigations have implications for customers and the Agency. Similar considerations apply to the important distinction between persistent misuse and alcohol dependency.

2.11 We have noted in our work that the Agency has clear internal guidelines, based on advice provided by the Substance Misuse Panel, about the length of time for which drivers with a history of alcohol problems are required to undergo medical review. However, this information is not shared with drivers, who are left in the dark as to when they may become be eligible for a 'til 70 licence. There is also a defined policy regarding the circumstances in which very occasional consumption may be deemed acceptable for licensing (following three years' abstinence), despite historic dependence. The DVLA has not always communicated this clearly to drivers whom it considers should, ideally, remain abstinent for life.

2.12 Advice offered by the Substance Misuse Panel in late 2018 led to the dependency standard being amended from "usually abstinent" to "abstinent". We received complaints from a number of drivers who, having been licensed in late 2018 on the basis of very occasional alcohol consumption, were then unpleasantly surprised to have their licences revoked after reporting the same consumption. The DVLA was unable to contact all drivers who might have been affected by this change in the standard, and the more consistent application of it. We accepted that to do so would not have been practical. We have worked with the DVLA to ensure that their communications with drivers about their requirement for absolute and ongoing abstinence are much clearer.

2.13 As the case summaries which follow demonstrate, we received a number of complaints from drivers who waited throughout most of 2020 for the

carbohydrate-deficient transferrin (CDT) test required to license them.[6] Pressures on the NHS, as a consequence of the pandemic, meant that the DVLA was asked not to make the necessary referrals to their franchise doctors for much of the year.

2.14 We received several complaints that drivers were not aware of the purpose of the blood test they were required to undergo. We therefore welcome the fact that the DVLA has followed Substance Misuse Panel advice in sending drivers an information sheet in advance of their appointment with the franchise doctor, which explains that CDT is a blood marker that will be raised if there has been excess alcohol intake over the previous month. We suggest that the Agency considers whether its document, *Assessing Fitness to Drive, A guide for medical professionals*, should be similarly amended to make it clear that the "*normalisation of blood parameters*" to which it refers usually means CDT. In the absence of this information, some drivers have submitted the results of other blood tests that are not accepted as evidence by the DVLA.

2.15 We also received complaints from drivers who were convicted of a DR30 offence, "*driving or attempting to drive then failing to provide a specimen for analysis"*. These drivers were surprised to be classified not just as drink-drivers, but as High Risk Offenders (HROs), even though they had not been found to have consumed alcohol before driving. Drivers classified as HROs are automatically sent for an independent medical examination and CDT test upon reapplication for their licence, for which they are required to pay.

Vehicle identity – motor caravan update

2.16 We have continued to receive complaints relating to the body type recorded on the registration certificates of vehicles that have been converted for use as motor caravans. Our consideration of such cases is detailed on pages 43-46 below. Here we should simply note that we upheld (usually in part) three-quarters of such cases due to what we regard as the DVLA's failure to meet the Parliamentary Ombudsman's principle of transparency by providing a full explanation of decision-making. We have successfully pressed the DVLA to improve the information offered on gov.uk.

Cases we completed, 2020-21

2.17 The outcomes of the 194 DVLA cases we completed in 2020-21 (33 per cent fewer than in 2019-20) are summarised in Figures 2.2 and 2.3, along with comparisons from the previous two reporting years. Figure 2.3 shows that the 73 cases we upheld to some extent (37.6 per cent) was broadly in line with the previous reporting year (where we upheld to some extent 34.5 per cent of DVLA cases referred to us).

[6] Carbohydrate-deficient transferrin (CDT) is a blood marker of persistent alcohol misuse. DVLA enquiries into driver fitness where there is a known history of alcohol misuse or dependency will usually involve an examination by an independent franchise GP that includes the taking of a blood sample for CDT testing.

Figure 2.2: Outcomes of cases closed (numbers)

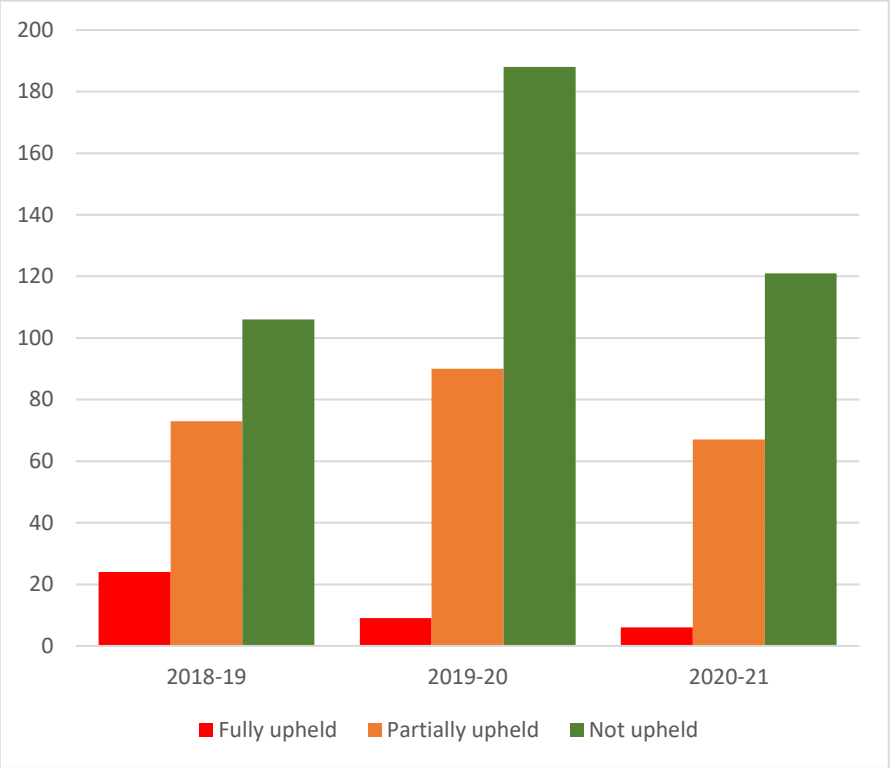
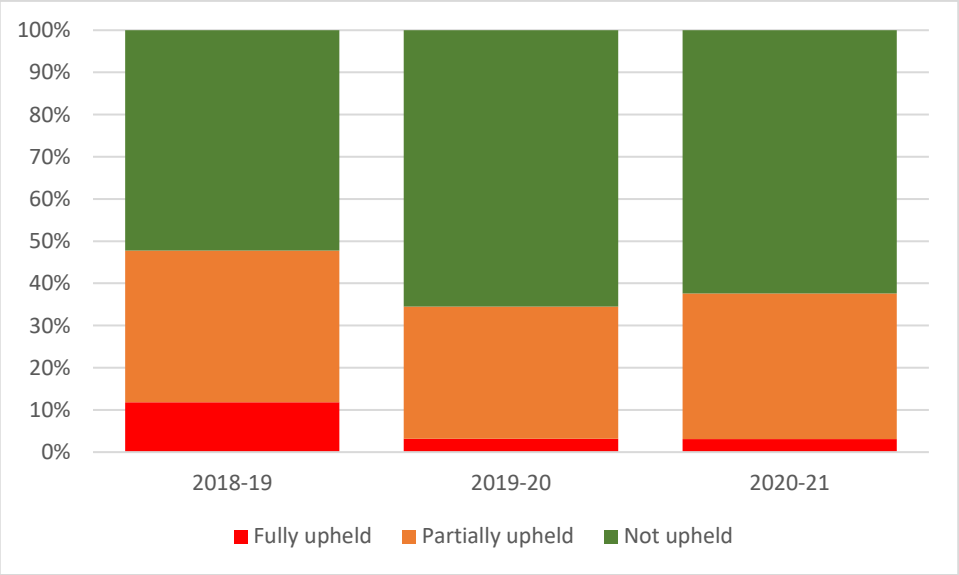
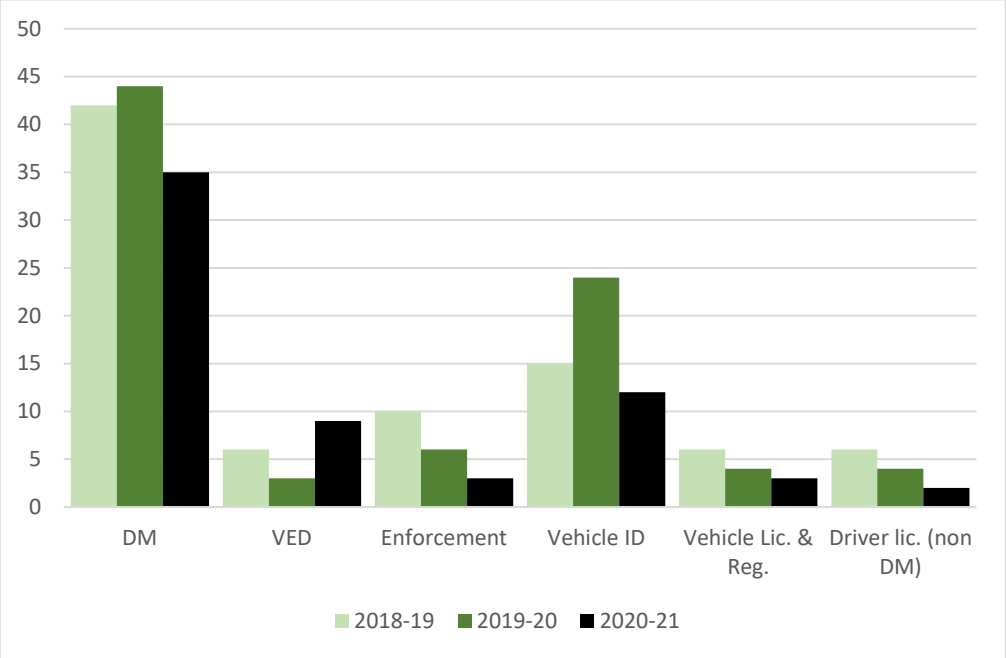


Figure 2.3: Outcomes of cases closed (percentages)



2.18 Figure 2.4 illustrates the number of DVLA cases upheld to some extent over the last three years by the six most complained-of subject areas.

Figure 2.4: Numbers of DVLA cases upheld to some extent, 2018-2021 (Six most complained-about subject areas)



2.19 Drivers Medical (DM) cases took us over ten hours to complete, on average, compared with just over four hours for other DVLA cases. We made recommendations in 50.6 per cent of DM referrals (compared with 30.0 per cent of other DVLA cases). In line with previous years, the main DM recommendation areas were financial remedy (25 cases), improvements in the information provided to customers (7 cases) and complaint handling (4 cases).

2.20 Below, we summarise a selection of the cases we completed in the year.

DVLA CASES

(i): DRIVERS MEDICAL GROUP

Cases involving the application of the standards related to alcohol misuse and dependency

An unfounded allegation that a driver had a drink problem

Complaint: Mr AB complained that the DVLA had not undertaken any screening of malicious allegations that he had been driving under the influence of alcohol. Similar allegations had been made to the police resulting in intrusive and inconvenient enquiries. Mr AB sought the identity of the informant.

Agency response: The DVLA subjected Mr AB's complaint to its standard investigation process. His GP confirmed that he was fit to drive and he was relicensed after two months. In line with its standard policies, it refused to provide details of the informant.

ICA outcome: The ICA considered that the protective measure against malicious complaints applied by the DVLA was investigation. Although necessarily intrusive, the investigation in this case had been conducted in a timely fashion and Mr AB's fitness to drive was affirmed without delay. The ICA noted that the DVLA did not regard a notification made in bad faith as necessarily inaccurate. Its licensing decision-making relied on medical information rather than an assessment of whether the informant was *bona fide*. As policy had been followed correctly, he did not uphold the complaint.

Medical discretion in a case of alcohol dependence

Complaint: Mr AB complained that his application to renew his short-term licence was refused based on inaccurate information from a consultant. The revocation decision followed application of the alcohol dependency standard to his case, a process that he contested. He also complained about the DVLA's requirements for the restoration of his entitlement, and the need for annual review of his licence. His short-term licence was ultimately restored before the case reached the ICA.

Agency response: The DVLA explained to Mr AB that they had been unable to renew his licence because the alcohol dependency fitness standards had been both updated and applied more stringently since his previous (uneventful) renewal in 2018. Ongoing abstinence was a requirement that he did not fulfil. The DVLA explained that it was Mr AB's responsibility to submit supportive clinical evidence if he wished his case to be re-opened.

ICA outcome: The ICA found that the DVLA had explained clearly the evidence required to re-open Mr AB's case. His difficulty was that he could not meet the criteria laid out in the current fitness to drive standards. The DVLA was acting in line with policy in not accepting the medical report and blood test results Mr AB had commissioned privately as part of its investigation, because any external evidence would only be used by the DVLA in order to re-open a case, not to investigate it. The Agency did not alert Mr AB to the existence of DVLA-appointed GPs earlier in the process because his case was not then under active investigation. The results from the DVLA's enquiries were significantly different from those Mr AB had commissioned independently, not least in that they included a CDT test. The ICA recommended that the DVLA consider specifying the need for "normalised blood parameters including CDT", when providing information to GPs. The ICA concluded that the revocation of Mr AB's licence, and the requirements for annual licencing reviews, were in line with EU legislation, Panel advice, and Agency policy. His case was re-opened on the strength of the medical opinion offered by the DVLA's senior doctor, who applied the discretion allowed by the Panel in cases of alcohol dependence where the driver has controlled their alcohol use for several years. As a direct result of this review, Mr AB was invited to reapply for his licence and ultimately regained his driving entitlement.

Defining the persistent misuse of alcohol

Complaint: Mr AB complained about the DVLA's medical decision-making in respect of both Group 1 and Group 2 entitlements, and the time taken to reach a licensing decision. He said that his GP had mistakenly indicated that he had persistently abused alcohol.

Agency response: The DVLA had said that its actions followed from the standards in *Assessing Fitness to Drive*. It acknowledged that there were delays in arranging CDT tests in consequence of Covid-19.

ICA outcome: The ICA found that there had been a failure to act in an agile fashion when Mr AB's GP indicated that she may have completed a medical questionnaire inaccurately. The ICA was also able to draw upon the analysis of the DVLA's senior doctor which indicated that some alcohol enquiries had been unnecessary. The case was notable for the senior doctor's view that there was a need to clarify the difference between a medical diagnosis of persistent alcohol abuse and drinking in excess of Government guidelines. As a result of the senior doctor's intervention, a licence had been issued by the time the ICA completed his review, and the proposed CDT test was cancelled.

Alcohol dependence is a life-long condition

Complaint: Mr AB complained about the DVLA's medical decision-making in respect of both Group 1 and Group 2 entitlements. He said he was no longer dependent on alcohol and wanted a chance to re-build his life as a lorry driver.

Agency response: The DVLA said that Mr AB did not meet the criteria to be re-licensed for Group 2 vehicles. A short-period Group 1 licence had been issued.

ICA outcome: The ICA said that he could not adjudicate upon licensing decisions or medical judgment. However, the Substance Misuse Panel had said that dependency was a life-long condition and it followed that the requirement for total abstinence was lifelong as well. Mr AB deserved great credit for turning his life around, but a much reduced use of alcohol was not the same as total abstinence. There had been no maladministration on the part of the DVLA in applying the appropriate medical standards of fitness to drive.

Covid-related delay in making Franchise Doctor appointment

Complaint: Mr AB complained in respect of medical decision-making, and the delay in arranging an examination with a DVLA Franchise Doctor (FD). He said his own doctor had confirmed that he no longer misused alcohol and questioned the need for another CDT examination.

Agency response: The DVLA said that it was unable to make FD appointments for a long period during the pandemic. However, Mr AB's licence application was on the highest priority when the results were received.

ICA outcome: The ICA said that there had been a failure (two years running) to arrange a CDT examination at the same time as other medical enquiries. He deemed this to be maladministration. The ICA could not comment on the medical decision-making itself, but the DVLA's senior doctor had questioned whether another CDT test was in fact required given the most up to date information Mr AB's doctor had provided (the DVLA doctor in the case disagreed). The ICA recommended a consolatory payment of £250.

A complaint about a change in the fitness standards, leading to different licensing decisions in similar circumstances.

Complaint: Mrs AB had a history of alcohol dependence and convictions for drink-driving. She complained after the DVLA revoked her short-term licence in 2019, despite a favourable blood test and independent medical examination. She said that the DVLA's 2019 refusal was inconsistent with the positive licensing decision made the year before, and she challenged it legally. Mrs AB highlighted what she regarded as contradictory advice and explanations from the DVLA. She was eventually relicensed for a year.

Agency response: In the responses to Mrs AB's complaint, the DVLA maintained that the decision to revoke her licence in 2019 was correct.

ICA outcome: The ICA found that the Agency had followed its policies correctly, and that no significant lapse in customer service had occurred. He did not uphold Mrs AB's complaint. However, he found that the CDT blood test she underwent was not necessary. He recommended that the DVLA apologise to for this. The ICA had sympathy with Mrs AB's position that two different licensing decisions were made on the basis of the same information, as she was drinking the same (very modest) amount at the time of both her 2018 and 2019 applications. However, he explained that this was the result of a tightening up of the alcohol standards applied by the DVLA in response to Panel advice about the implementation of EU legislation.

A complaint about the lengthy review period required in cases of alcohol misuse and dependence

Complaint: Mr AB underwent a medical examination in spring 2018 that led to his licence being revoked on the grounds of a CDT blood test result consistent with dependence upon alcohol (a condition which had already been highlighted by his GP). Mr AB appealed legally but his case was dismissed. He was later issued with a one-year short period medical licence. Mr AB applied to renew his driving licence but refused to undergo a required blood test. His licence was revoked in early 2021 on the grounds of non-compliance with the DVLA investigation. Mr AB complained that he had been unaware of the purpose of the blood test and that he had never been dependent upon alcohol. He also complained that the DVLA had not replied to all of his letters and had withheld information.

Agency response: The DVLA considered that it had followed its own policies correctly in making decisions in Mr AB's case.

ICA outcome: The ICA found that, although it was not clear that Mr AB fully understood the purpose of CDT testing at that time it was carried out, he had nevertheless signed a form providing his consent to the test. The ICA agreed with Mr AB that the purpose of the blood test should have been fully explained, and welcomed the fact that the DVLA now sends an information sheet to drivers in advance. The ICA found that the previous investigations remained of relevance in the later consideration of Mr AB's case because of the Substance Misuse Panel's requirement for annual review over a five-year period. The ICA could not support Mr AB's assertion that he was unaware that the DVLA considered his condition to be prospective, as he had himself made reference to the use of the term in correspondence. The ICA found that the Agency had responded to all of Mr AB's correspondence, although because he often sent multiple letters in the same week they sometimes covered several approaches with a single response. The ICA considered this to be reasonable. He also considered that the Agency's staff deserved great credit for continuing to engage with Mr AB in a polite and professional manner given his abusive language. The ICA did not uphold Mr AB's complaints.

Agile decision-making in alcohol dependency case

Complaint: Mr AB complained about delays and medical decision-making in relation to licence re-applications following a ban for drink-driving.

Agency response: The DVLA said that its licensing decisions had been correct. However, the Agency had acknowledged delay in responding to Mr AB's correspondence and rudeness on the part of staff in its contact centre.

ICA outcome: The ICA admired the way Mr AB had turned his life around. But the initial licensing decision had been correct in that Mr AB came within the guidance on alcohol dependency, and there had been no delays. The subsequent decision to issue a short-term licence was also correct. Indeed, the ICA said the decision-making had been agile with no delays amounting to maladministration. However, the ICA was not satisfied that sufficient redress had been offered for the rudeness and mishandled correspondence, and recommended a consolatory payment of £200.

A complaint about the accuracy and reliability of CDT testing

Complaint: Mr AB complained that his licence application had been refused on the basis of a faulty CDT blood test result. He asserted that, as he had been close to abstinent prior to the test, the result was either a false positive (cf. the test specificity of 95%) or caused by factors (either genetic or medical) other than the misuse of alcohol. He also complained that, as a measure, CDT was insufficiently accurate to be relied upon as a basis for decision-making within DM's fitness to drive regime.

Agency response: The DVLA's initial response was that Mr AB's licence had been revoked on the basis of a CDT result consistent with ongoing misuse of alcohol. Six months of controlled drinking, or abstinence, would be required before a further licence application could be considered. Mr AB complained further that this response had not engaged with the substance of his complaint. The Complaints Team requested that one of the DVLA doctors review the case; the ensuing response outlined that Mr AB's history of alcohol misuse was clear, all known causes of false positive results had been excluded, and the fact that he had previously achieved a lower CDT result was evidence that alternative factors were not at play.

ICA outcome: It was not within the ICA's jurisdiction to criticise the use of CDT testing, as this is a matter of DVLA policy, based on Panel advice. The ICA noted that Mr AB had undergone CDT testing on four separate occasions, and in one his result was below the threshold consistent with alcohol misuse. The ICA agreed with the DVLA that this result ruled out factors other than alcohol consumption, as the results would be consistently elevated in other conditions which can raise CDT, such as glycoprotein syndromes and severe liver disease. The presence of transferrin variants had also been considered but were deemed not to be relevant to Mr AB's case. Mr AB had noted that the DVLA may be able to accept the results of privately-commissioned hair tests in cases where complainants believe that CDT tests had resulted in false positives. The ICA established that this option had been considered by the Panel but had ultimately been ruled out as a suitable alternative to CDT testing.

Mistaken reference to section 88

Complaint: Mr AB complained about the refusal of his driving licence application on grounds of alcohol misuse. He said he was being treated like a criminal and had no alcohol-related driving offences in over 50 years. He said he was being discriminated against on grounds of age.

Agency response: The DVLA said that its actions had been in line with the guidance in *Assessing Fitness to Drive*. It had acknowledged some initial mishandling when Mr AB submitted a subject access request under the Data Protection Act.

ICA outcome: The ICA was content that the medical decision-making, while irksome for Mr AB, had been correct. However, there had been a number of administrative failings, including a suggestion that Mr AB might be able to drive under section 88 of the Road Traffic Act[7] (he was ineligible as his previous licence had been revoked on medical grounds). For this reason, the ICA recommended an apology as part of the DVLA's next correspondence.

[7] Section 88 allows those who have submitted a valid application to continue driving while waiting for their application to be processed, providing they can meet strict criteria. Individuals may only drive if they meet all the criteria specified within the section. The DVLA cannot give definitive advice on whether individuals may drive under section 88. The guidance leaflet INF188/6 provides a summary of the criteria within section 88: https://www.gov.uk/government/publications/inf1886-can-i-drive-while-my-application-is-with-dvla.

The interpretation of CDT test results

Complaint: Mr AB complained about the revocation of his ordinary and vocational licences following application of the alcohol standards. He said he had no convictions in over 50 years and described himself as a social drinker. He said he had subsequently given up alcohol entirely.

Agency response: The DVLA said that its decision-making had been correct given the medical information that had been presented.

ICA outcome: The ICA did not uphold the complaint as he was content that the Agency had properly followed its guidance. He commended the DVLA for arranging a Franchise Doctor appointment for Mr AB given the difficulties caused by Covid-19. He also recommended that his report be shared with a named member of staff and her manager following generous comments made about her by Mr AB. The key recommendation was that the DVLA review and amend the wording of some of its letters wrongly suggesting that a CDT level of over 1.6% was evidence of recent alcohol abuse.

High Risk Offender status is not in perpetuity

Complaint: Mr AB complained about the DVLA's licensing decisions following a disqualification for drink-driving. He said he had reduced his alcohol intake to well within the CDT limits, but acknowledged that he was not wholly abstinent.

Agency response: The DVLA said that Mr AB did not meet the standards for those with a diagnosis of alcohol dependence. It accepted that it should not have sent Mr AB for a CDT test because his self-declaration of drinking (albeit at modest levels) should have been sufficient to reject his application. The Agency had made a consolatory payment of £50. It also came to light that the previous year the opposite problem had occurred when Mr AB had been re-licensed for a year without a CDT. The Agency also accepted that incorrect information had been given to Mr AB saying that he was not eligible for section 88 cover when this was not the case as he was no longer being treated as a High Risk Offender.

ICA outcome: The ICA commended Mr AB for reducing his use of alcohol so significantly, but said that the standard was clear that total abstinence was required for three years. He increased the £50 consolatory payment to the PHSO minimum for level 2 injustice[8]. More significantly he recommended that the DVLA information leaflet on section 88 be revised to make clear that HRO status was not in perpetuity. This was agreed by the DVLA.

[8] The PHSO publication *Our Guidance on Financial Remedy* includes a severity of injustice scale. The figures included in the scale represent the Ombudsman's judgement about the sort of sums that are both appropriate and proportionate for recommendation in a variety of circumstances. https://www.ombudsman.org.uk/sites/default/files/Our-guidance-on-financial-remedy-1.pdf.

A sensible decision to waive repeat blood tests

Complaint: Mr AB had been required to undergo a second blood test as part of DM's enquiries, as the first had been haemolysed and was therefore not able to be used for analysis. Mr AB complained that the samples had either been haemolysed as a result of the franchise doctor's incompetence, or that they had been lost. He also complained that the result of the second test should have been sent to him without him having to request it.

Agency response: The DVLA doctor decided that, as a valid CDT result could not be obtained, the Agency would issue Mr AB with a licence without that item of information.

ICA outcome: The ICA found that the laboratory result of both blood tests had been sent to Mr AB on request, which was evidence that they had not been lost. He was satisfied that the Agency had checked the proportion of haemolysed samples taken by the franchise doctor and found that this was well below the average. This information had been shared with Mr AB. The ICA found that, where a valid CDT result is obtained, this is shared with drivers as it provides useful information about their alcohol consumption. However, it is not standard practice for the Agency to share invalid results. The ICA considered that, in the absence of a valid test result, the licensing decision had been made on the grounds that it would cause Mr AB undue inconvenience and distress to undergo the testing process for a third time. He found that this was a customer-centred decision and he commended the flexibility shown by the Agency in this regard.

Other Drivers Medical cases

Tick boxes on vocational questionnaires affect ordinary driving licences too

Complaint: Mr AB suffered from a complex psychological disorder related to PTSD that gave rise to involuntary jerking movements. He complained that his Group 1 and Group 2 entitlements had been revoked by the DVLA on the basis of information provided by his GP in response to vocational enquiries. He reapplied for his ordinary entitlement some time later and his GP confirmed that he had no concerns about Mr AB's ability to drive on that entitlement.

Agency response: The DVLA defended the licensing decision, pointing to the completion of the vocational medical questionnaire in which the GP had ticked no to the question, "*Is your patient sufficiently well and stable to drive*?" Mr AB remained of the view that his GP had been referring only to his vocational entitlement.

ICA outcome: The ICA had reservations about the decision-making. First, the vocational paperwork, including the cover letter, referred only to Group 2 driving. There was nothing on it to inform the completing GP that responses framed for vocational driving could be conflated with an opinion on ordinary licensing. Second, there was no evidence of a change in Mr AB's behaviour or condition (for example drug/alcohol abuse, hallucinations, medication side-effects or instability) that would support a recommendation that he should not drive. Third, the GP had stated on the

form that he had not seen Mr AB for over eight months. The mental health standard applied required six months of stability before relicensing could be permitted. The ICA could not see how this standard could be applied when there was no medical evidence relating to the previous eight months. Fourth, the ICA noted that the DVLA had commissioned a driving assessment the year before in which Mr AB had been adjudged safe behind the wheel. It seemed to the ICA that this was evidence of a better standard than a tick in a box. The DVLA countered these points by referring to its standard policy in which a medical statement that the patient was unfit to drive would trigger revocation on both entitlements. It transpired that the GP had also indicated in another entry that Mr AB lacked insight/judgement to the extent that would make driving dangerous. Given the significant safety considerations in relation to bus driving, the ICA had no reservations about the revocation of that entitlement. He also accepted the medical view, confirmed by repeated reviews by the DVLA's chief doctor, that the Group 1 revocation was justifiable. However, he was critical of the lack of advice in the correspondence from the DVLA as to when Mr AB could reapply for his entitlements. He recommended that the DVLA should improve the information it gives to GPs when sending series 2 questionnaires, so that they understand fully the implications of commenting on vocational fitness.

Massive delays in obtaining an expert opinion

Complaint: Mr AB had suffered a severe head injury some years before. When he notified the DVLA, his ordinary and vocational entitlements were withdrawn. He later complained that he had been led to believe he would be able to return to driving within six months of the incident, but in the event was required to stay off the road for over a year. Meeting the 2% annual seizure liability standard for vocational driving then proved to be a significant obstacle. Mr AB's consultant provided a supportive opinion but, as this was contrary to the expert Panel's position, the DVLA's doctors considered this insufficient for licensing. In early 2019, one of the Panel members was asked to provide their opinion. Enquiries became convoluted, and were ultimately impacted by the pandemic. In late 2020, the Panel member decided that discussion at a full Panel meeting would be required before a decision could be made. This took place in March 2021, and the DVLA advised Mr AB of the decision to refuse his vocational application in April 2021.

Agency response: The DVLA regretted the length of time taken to come to a decision about Mr AB's fitness to drive Group 2, but considered that it had been unavoidable.

ICA outcome: The ICA found that the DVLA had taken a thorough and consistent approach to Mr AB's vocational licensing, involving the same DVLA doctor throughout. It had unfortunately failed to keep Mr AB adequately informed and involved as the Agency sought clinical opinions over several years. The ICA considered that the DVLA could have tried to expedite the provision of advice by commissioning an opinion from a second suitably qualified clinician, before involving a Panel member. He found that the Agency was responsible for unacceptable delays in providing advice (from one DVLA doctor to another), in informing Mr AB of the outcome of the spring 2021 Panel meeting, and in the overall time taken to come to a decision about his vocational entitlement, by a factor of 18 months. The ICA

considered this delay disappointing given the recommendations made by both himself and the Ombudsman in a similar case several years ago. With regard to Mr AB's ordinary entitlement, the ICA found that the DVLA had not advised him at the outset that his time off driving might later be increased from six months to 12. The DVLA had also kept Mr AB off the road for four months longer than was necessary. The ICA recommended an apology, a consolatory payment of £500, and a review of the process for commissioning specialist input on the 2% seizure standard.

Poor decision-making leads to months of delay

Complaint: Mr AB was subject to a notification that he was unsafe behind the wheel and DVLA enquiries began. His GP informed the DVLA that he was not fit to drive and his entitlement was revoked. In subsequent communications the GP recommended that Mr AB should undergo a driving assessment, and Mr AB was offered a provisional disability assessment licence allowing one month of tuition prior to a driving appraisal. However, before Mr AB had applied for that licence, he notified the DVLA of routine surgery that would necessitate a six-week rehabilitation period during which he would not drive. A member of the DVLA's medical department asked a DVLA doctor whether he would be content for Mr AB's case to be paused and the licence to be re-offered six weeks after the surgery. The DVLA doctor instead revoked Mr AB's entitlement and stipulated that further medical evidence would be required to support any future reapplication. For five months after the surgery Mr AB tried to persuade the DVLA to reissue the licence, but the DVLA doctor's requirement was repeated to him. Eventually, the complaints team fully reviewed the case and saw that an error had been made; sincere apologies followed. In the meantime, DVLA policy had changed meaning that the threshold to issue a licence for tuition had been raised. Mr AB was offered a licence for a driving appraisal only but refused it on safety grounds. Eventually, the policy changed again and Mr AB was offered a licence that allowed for a month of tuition. This offer had occurred ten months after he had first requested it post-surgery. He complained of inefficiency, arrogance, discrimination and a generally high-handed approach from the DVLA.

Agency response: For five months, the DVLA simply referred Mr AB and his MP back to the DVLA doctor's stipulation that medical evidence would be required to support an application for any licence. Eventually the intervention of the complaints team brought about a rethink and full apology, and when the ICA report was being concluded, Mr AB's case was on priority pending tuition and a driving appraisal.

ICA outcome: The ICA was very critical of the DVLA doctor's handling of the request from his colleague for advice about postponing the issue of the licence until Mr AB had been rehabilitated after his operation. Rather than answering his colleague's questions, the DVLA doctor had activated the refusal/revocation mechanism and thereby put in place an obstacle to relicensing that would create a frustrating five-month delay for Mr AB the following year. The ICA judged that this was clearly maladministration, particularly given the time it took for the DVLA to respond fully to Mr AB's challenges. He recommended that a consolatory payment of £300 should be made to reflect the significant delay and frustration that Mr AB had experienced when he reapplied. In the event that Mr AB was able to demonstrate

his fitness to drive, the ICA stated that he should address a compensation claim to the Agency detailing losses arising from being kept off the road.

Advice on seizure risks

Complaint: Mr AB complained that his licence had been revoked in error with reference to the isolated seizure standard, when all of the evidence and clinical opinion pointed to his single seizure being provoked by hyponatraemia caused by excessive water drinking. His challenge to the revocation occurred while the specialist Panel advising the DVLA was changing its advice on provoked seizures in line with new evidence that suggested that even a provoked seizure could import a greater likelihood of unprovoked seizures in future. This meant that Mr AB could not drive on his vocational entitlement until five years had elapsed post-seizure unless he was able to provide compelling evidence of a less than 2% annual seizure risk. Mr AB contrasted this position with the firm advice from his clinicians that a repetition was highly unlikely. However, his clinicians would not commit to offering an opinion on the 2% criterion. Mr AB was critical of the DVLA for not providing more detailed guidance as to what would support such an opinion. He said the impact on him was catastrophic as he was unable to work as a driver.

Agency response: The DVLA medical team subjected Mr AB's case to high level review given the Panel's new position. DVLA doctors wrote to Mr AB holding the line that it fell to Mr AB's clinicians to determine what evidence could be relied upon in relation to the 2% seizure risk. The DVLA could not advise, but its senior doctor provided a detailed review of medical decision-making in the context of Panel guidance that the ICA referred to in his own review.

ICA outcome: The ICA reviewed the Panel minutes over the period in question and explained to Mr AB why he had had to wait many months for confirmation of the five-year period off driving. The ICA praised the DVLA medical team's involvement in the case, but recommended that the DVLA should ask its Panel for advice for clinicians undertaking seizure risk assessments.

Hybrid complaint about VDL and medical enquiries

Complaint: Mr AB complained (i) that he had been unable to work because the View Driving Licence (VDL) system showed he was disqualified when this had been suspended following an appeal; (ii) that unnecessary medical enquiries had subsequently meant he was without his licence for a further three months. He sought compensation for both issues.

Agency response: The DVLA had acknowledged that the VDL system does not currently reflect the correct position regarding suspended disqualifications. But it said it had provided Mr AB with a document setting out the correct position. It had added that its medical decision-making and enquiries were correct and rejected the claims for compensation. A £50 consolatory payment had been offered for the VDL glitch.

ICA outcome: The ICA said that he could not tell the DVLA how to invest in its IT, but the continuing glitch over VDL was a 'known issue' that disadvantaged customers, and a longstanding failure to correct it could amount to maladministration. He recommended that his report be used to encourage the DVLA to engage with the vehicle rental industry so that they were familiar with the glitch and the certificates that the DVLA issued to customers. He said that the £50 consolatory payment was not generous, but not so low that he could recommend an increase. The ICA did not think that compensation was due. In relation to the medical issues, the decision-making had been endorsed by the senior doctor, and seemed to follow from the standards in *Assessing Fitness to Drive*. The ICA therefore did not feel that compensation was appropriate. However, the ICA did find some flaws in the correspondence handling, and along with his concerns about the VDL issue, he part upheld the complaint.

A professional driver loses his livelihood after a seizure

Complaint: Mr AB, a lorry driver of some 28 years standing, experienced an event in his sleep that resembled a seizure and his wife called an ambulance. In hospital he was diagnosed with epilepsy, a diagnosis supported by aspects of his wife's description and by the discovery of an old brain lesion caused by a minor infarct. This was the first seizure incident in his life. Mr AB reported the event to the DVLA and both of his entitlements were revoked. He complained that the DVLA refused to restore his Heavy Goods Vehicle (HGV) licence despite the fact that his doctors supported his reapplication. He also complained that he had not been told that his ordinary licence would be revoked for six months. Other aspects of the DVLA's customer service and administration informed his grievances.

Agency response: The DVLA explained that the CT imaging and other clinical evidence pointed to an underlying causative factor for the event meaning that Mr AB could not be relicensed on his Group 1 entitlement for 12 months. The requirement for five seizure-free years off antiseizure medication applied to his Group 2 entitlement. The Agency investigated the reports of inappropriate material in an email and found no evidence to link what Mr AB saw with anything sent to him by the DVLA. Its senior doctor reviewed and endorsed the medical decision-making, at the request of the complaints team. It was noted that Mr AB's doctors' representations did not amount to a reversal of the diagnosis of epilepsy.

ICA outcome: The ICA spoke to Mr AB on two occasions and expressed considerable empathy for the position he was in. His career, financial arrangements and retirement plans were based on driving HGVs but he was prohibited from doing so. However, the ICA noted that the medical standards were written into law and had been applied with reference to all of the available information. The discovery of an underlying causative factor on imaging represented evidence that the event had been a seizure. The ICA understood Mr AB's frustration at the repeated submission of application forms and questionnaires, but he considered that the underlying difficulty was that Mr AB's presentation precluded relicensing on his Group 2 entitlement. The ICA found that the various permutations of revocation, including the possibility of 12 months off ordinary driving and the non-return of C1/D1 entitlements, had been set out from the outset. He saw no prospect, therefore, for upholding the

complaint. The ICA explained that Mr AB would need to provide either an evidenced report from an appropriate expert that the original episode was not a seizure or, after five years free of seizure and anti-seizure medication, an opinion from a neurologist to indicate no annual seizure risk greater than 2%. The ICA acknowledged that these were tough requirements but they flowed directly from the legislation.

Confusion over specialist appointments following loss of consciousness

Complaint: Mrs AB experienced a period of significant work stress during which, over a short space of time, she fainted on three occasions. She reported the matter to her GP who referred her for a cardiology opinion. On the advice of her cardiologist, she informed the DVLA and, shortly afterwards, the Agency revoked her driving entitlement on the ground that she had suffered losses of consciousness without a reliable prodrome. Mrs AB would not complain about this initial licensing decision as it flowed logically from the report provided by the cardiologist. However, she needed her driving licence to work as a self-employed contractor. She therefore obtained a second opinion from a different cardiologist who accepted her view that the episodes had many markers of panic-related aetiology. While the DVLA considered his report, Mrs AB initiated a legal challenge. Over the following month, the case was reviewed by the DVLA doctor who decided to commission a neurology examination. Unfortunately, this request (that was not directed to a named neurologist but rather to a neurology department) was assumed by the clerical officers in Drivers Medical to be a referral for another cardiology appointment. Mrs AB therefore made the cardiology appointment. Eventually it came to light that she was supposed to see a neurologist, but the DVLA's contact centre advised her to go ahead and see the cardiologist. This added three weeks of delay to the neurology appointment that would, in the end, be supportive of relicensing. Mrs AB remained deeply dissatisfied as she had had to pull out of a work contract due to her inability to drive.

Agency response: The DVLA provided an expedited response to Mrs AB's challenges with referrals to its doctor occurring in a matter of days. However, confusion had followed the neurology referral and it took a while for this to be corrected. Eventually, the DVLA accepted that Mrs AB had been unnecessarily kept off the road for two to three weeks but it did not regard the evidence she provided of loss of earnings as compelling. After a year of negotiations, it offered her a £500 consolatory payment. Mrs AB refused this, insisting that she had proved that the revocation had cost her work.

ICA outcome: The ICA judged that the DVLA doctor and his colleagues had become extremely confused after the neurology referral. Not only had Mrs AB been repeatedly told to see the cardiologist but, after the neurology referral was finally back on track, the DVLA doctor had requested more information of the cardiologist (even though the cardiologist had discharged Mrs AB with a clean bill of health). At one point, Mrs AB had been told to make an appointment with a "Dr In Charge". The ICA computed a three-week delay in relicensing. He agreed with the DVLA that Mrs AB had not provided sufficient evidence to support fully a claim for loss of earnings. However, he regarded many of the DVLA's assumptions about her ability to mitigate her losses as informed by hindsight and lacking full consideration of the realities of

contract work. The ICA felt that the DVLA and Mrs AB had been at cross purposes at times during the dialogue on compensation. He obtained further evidence from Mrs AB that showed that over 95% of her contracted work on one job had been re-allocated. He also noted that Mrs AB had accepted a contract after the three fainting episodes and therefore might have anticipated that her ability to drive would be restricted, given the available published guidance. He also noted that the DVLA had legitimately curtailed Mrs AB's right to drive for approximately two months based on the report of the first cardiologist. Given this, he recommended that half of the money Mrs AB had been unable to earn on that contract be refunded to her amounting to £660.50. He also recommended that the £500 consolatory payment should be re-offered. Finally, he recommended that the DVLA should put in place a much better system for referring patients to new specialities. As a minimum, agreement for the referral should be obtained from the receiving clinician whose name should be made available to the driver. He partially upheld the complaint. These recommendations were welcomed both by the DVLA's senior doctor and Mrs AB.

Complaint pre-dating change in policy on PDALs

Complaint: Mrs AB complained about being granted a Provisional Driving Assessment Licence (PDAL) for the day of the assessment only. She said it was unfair to expect her to perform well having not driven for over six years. She sought a further PDAL

Agency response: The DVLA said that the results of the assessment meant that Mrs AB's licence application had been refused. The outcome of the assessment showed that Mrs AB was not medically fit to drive.

ICA outcome: The ICA noted that the one-day PDAL had been permitted under the rules at the time, but following ICA and PHSO reports and a judicial review the DVLA now always issued PDALs that allowed for a period of tuition. (Although in some cases, they might decide not to issue a PDAL at all, if there were sufficient concerns for road safety). The ICA recommended therefore that the DVLA's senior doctor consider if Mrs AB should be offered a further PDAL. However, the outcome of the review was that this would not be consonant with road safety, and the ICA could not look beyond that decision.

Confusion over Group 2 fitness standards in newly insulin-treated diabetes

Complaint: Mr AB complained about the DVLA's response to his notification that he had begun taking insulin in late 2019. He relied on his Group 2 licence in his work as a bus driver, and surrendered it while the Agency pursued its medical enquiries. He contrasted the published requirements for Group 2 licensing along (with the relevant timings within the three-stage process) with his own experience. He asked how an application could be rejected in the absence of three months of blood glucose readings while on insulin, when the published requirement for application was insulin treatment for at least one month. He characterised this requirement as nonsensical, perverse and impossible. He had found trying to engage with the DVLA

very difficult indeed. He described the Agency as contradictory, evasive and obstructive.

Agency response: In its response to Mr AB's complaint, the DVLA confirmed that drivers on insulin must be able to provide three months of continuous blood glucose readings, while using insulin, in order to be issued with a Group 2 driving licence. The DVLA said this had been highlighted to Mr AB throughout the application process.

ICA outcome: The ICA did not uphold Mr AB's complaint. He found that Mr AB could reasonably have been expected to be aware of the Agency's requirement for three months of continuous blood glucose readings to be taken whilst on insulin, based on the information provided to him (several times) by the DVLA, as well as that in the public domain (e.g. in leaflet INS186). However, the need for meter readings to be taken *whilst on insulin* was not clearly spelled out in *Assessing Fitness to Drive*, and the ICA therefore recommended that the DVLA consider updating the relevant section during its ongoing diabetes review. The ICA found that it was not unreasonable of the DVLA to assume that the one (since updated to two) months of stability on insulin required prior to application would be commensurate with three months of readings whilst on insulin, given that it can take some time to achieve reliable glycaemic control. The ICA found it reasonable that Mr AB's Group 2 licence had been issued just 13 working days later than the earliest possible date.

DVLA revisits earlier decision-making under the epilepsy regulations

Complaint: Mr AB complained about the delay in restoring his driving licence following a revocation after he declared a seizure. In particular, he said that the DVLA's enquiries into his alcohol consumption had been triggered by an error by one of his clinicians in completing a DVLA form. He sought compensation for lost earnings.

Agency response: The DVLA initially said that its decision-making had been mistaken in that the revocation should have been for six months. However, it said that the enquiries into alcohol were properly initiated, and that the subsequent clarification by the clinician had not been sufficient to allow a licence to be granted without further enquiries. The DVLA's senior doctor later said that his judgment had been incorrect and that 12 months revocation was required.

ICA outcome: The ICA said that he could not question the senior doctor's clinical judgment, and the consequence was that Mr AB's claim for compensation must fail as the total period he was without his licence was in fact less than 12 months. However, he criticised various aspects of the DVLA's handling, and recommended increasing its existing consolatory payment from £200 to £500. The ICA also commended the DVLA for the re-thinking that had led to Mr AB being granted a full licence as opposed to a one-year one that had initially be issued.

Justifiable medical enquiries into depression

Complaint: Mr AB did not think he should have to re-apply for his C1 bus driving entitlement and telephoned the DVLA to complain. He was told that, given his age, he had to undergo a medical examination and re-apply. He did this reluctantly and submitted the re-application pack about a month before his entitlement expired. Because the examining doctor ticked the box confirming *History or evidence of psychiatric illness within the last three years*, a questionnaire was dispatched to the GP. The GP took some time (and several reminders) to reply during which time Mr AB did not think he could drive (however, he had been informed that section 88 of the Act might apply). Eventually the GP questionnaire arrived confirming mild-to-moderate anxiety/depression and Mr AB was relicensed the following day. He complained that the decision to investigate his fitness had been vindictive and unjustifiable given his good health. He also made Freedom of Information requests of the DVLA.

Agency response: The DVLA set out the legislative requirement for the D4 medical examination and explained its procedures in some detail at the complaints team stage.

ICA outcome: The ICA commended the complaints team member who had responded to Mr AB - he regarded the replies as clear, sympathetic and thorough. The medical examination process had been conducted in line with standard DVLA policy over which he had no room to comment. The ICA was sympathetic to Mr AB's main complaint. Mild-to-moderate depression/anxiety would not, under the fitness standards framework overseen by the DVLA, ordinarily necessitate time off vocational driving. However, the information received on the D4 was insufficient to give the DVLA sufficient assurance in this regard and therefore the medical enquiries were inevitable. The ICA did not uphold the complaint.

Need to amend revocation letter

Complaint: Mr AB complained about the revocation of his licence following a head injury. He said no regard had been paid to the views of his clinicians. He also said he had been given three different reasons for the loss of his licence.

Agency response: The DVLA said that it had applied the standards in *Assessing Fitness to Drive*. Six months off driving was required because of the prospective risk of seizures. Its initial decision to revoke had followed Mr AB's own notification of dizziness while driving in consequence of medication.

ICA outcome: The ICA said that the medical decision-making appeared sound. However, the DVLA's senior doctor had discovered that the revocation letter did not make clear the grounds on which an earlier licensing application could be considered (where the prospective risk of seizure was less than 20 per cent). The ICA recommended that the letter be amended, and that the DVLA consider putting his report before the relevant specialist advisory Panel for their consideration.

Delay in conducting medical enquiries

Complaint: Mr AB complained about the time taken by the DVLA to conduct its medical enquiries.

Agency response: The DVLA had acknowledged that Mr AB's application had been in a doctor's queue for five months during which no action was taken. It had offered a consolatory payment of £250.

ICA outcome: The ICA found that the delays had been even worse than the DVLA had said, as there had been a problem with the bar codes scanned onto documents with the result that they were not added to Mr AB's case. However, the ICA was content that the offer of £250 was in line with what he would have recommended. The ICA repeated a recommendation that the wording of a DVLA information leaflet should be amended to reflect the actual advice in *Assessing Fitness to Drive*.

Failure to liaise with hospital in Covid-related delay

Complaint: Mr AB, a vocational driver, complained about the delay in issuing him a new licence. He reported that his own clinicians said he was fit to drive, and he contrasted the delay in arranging an exercise electrocardiogram (ECG) with the decision to suspend the requirements for D4 medical examinations. He said this amounted to discrimination.

Agency response: The DVLA acknowledged that it had been unable to arrange the exercise ECG because of Covid. But it said the requirement for an exercise test flowed from the legal standards of fitness to drive.

ICA outcome: The ICA said he had much sympathy for Mr AB and other vocational drivers whose cases were held up because clinical appointments could not be made during the pandemic. But he said this did not amount to maladministration. He also explained the different legal bases for D4 tests and the fitness to drive framework, and again said he could not criticise the DVLA for applying the law as it stood – albeit he understood why Mr AB felt treated unfairly. The ICA criticised the DVLA for failing to liaise regularly with the hospital where Mr AB's examination would take place. While this might have been redundant during the height of the lockdown, it illustrated the wider point often made in ICA reviews about the absence of effective case management allowing matters to drift for months on end. The ICA said he hoped his review would assist in ensuring that the exercise ECG could be organised as soon as possible.

Unauthorised disclosure of personal information

Complaint: Mr AB's original complaints centred around what he considered to be the unauthorised disclosure of personal information by the DVLA to his GP. He later raised additional issues including the Agency's decision to carry out medical enquiries into depression and drug use, and delays and potential maladministration in their dealings with his GP.

Agency response: In the initial response to Mr AB's complaint, the DVLA acknowledged and apologised for writing to Mr AB's GP and releasing medical information to her. In subsequent responses, this apology was retracted, with the Agency stating that no unauthorised disclosure had occurred.

ICA outcome: Mr AB had ticked "no" to a statement on the *Applicant's declaration* (in effect, a consent form) which read: "*I authorise the Secretary of State to: Release my medical information, and any other information, to doctor(s).*" The Agency had released information about Mr AB's depression and drug use to his GP. The ICA therefore upheld Mr AB's core complaint that the DVLA fell short of relevant Ombudsman principles in acting contrary to what Mr AB believed to be a refusal to allow medical information to be disclosed to his GP. The ICA recommended that a consolatory payment of £200 be made to Mr AB by the DVLA in recognition of the impact that the unexpected disclosure had on him. Late in the review process, the Agency explained the true intent behind the disputed wording of the *Applicant's declaration*. The DVLA said that if new information, with implications for ongoing clinical care, was gathered during DVLA enquiries, then the driver would have an opportunity to confirm, or refuse, consent for the DVLA to release that information to their doctor. It did not relate to the disclosure of information as required to pursue the investigation – consent to that was covered by a different statement on the form. The Agency accepted the ICA's recommendation that improvements to the clarity of the wording were required.

Delay, lack of communication, and other failings in investigating a complex medical condition

Complaint: Ms AB informed the DVLA of the outcome of residual effects following an injury in 2016 that occasionally affected her vision. She experienced mild dizziness when driving to work in stop/start rush hour traffic and later updated the DVLA that she had changed her working hours so that she avoided the rush hour. Over six months later, with no warning, Ms AB's licence was revoked. By then the Covid-19 restrictions were in place meaning that the decision had additional impacts on her. After 11 weeks, following the receipt of information from her neurology consultant, she was relicensed.

Agency response: In the initial response to Ms AB's complaint, the DVLA apologised for the delay, citing the need to seek medical advice and the heavy workloads of the DVLA doctors. The Agency gave Ms AB standard advice to discuss the medical requirements for driving with her doctor, with reference to *Assessing Fitness to Drive*.

ICA outcome: Six months was too long to make the decision to revoke Ms AB's licence. The target of six weeks, not 90 working days, was the right measure for this. The delay, and absence of updates, were not excusable due to workloads. The ICA found that these failings should have been recognised fully during the complaints process. If a longer delay was unavoidable, the Agency should have advised Ms AB of this at the time. The delay amplified the hardship of the revocation as well as undermining the road safety rationale for the licensing decision. The ICA

found that it was not reasonable to communicate a revocation after six months without a more detailed explanation of the reasons. A DVLA doctor should have written to Ms AB directly. The decision was presented in an insensitive and incongruous way, particularly given the passage of time. Ms AB did not receive a satisfactory answer to her questions about which of her symptoms led to the revocation, and which standards in *Assessing Fitness to Drive* had been applied. She was repeatedly directed towards the standards, but the publication did not mention her condition. This lack of specificity made it very difficult for her and her doctors to provide evidence that would be sufficient for the DVLA to re-open her case. Ms AB's GP tried to contact Drivers Medical but they did not respond. Ms AB raised this with the Agency at least seven times but no action was taken. The ICA recommended that the Agency apologise to Ms AB for the failings he had identified. He also recommended that the Agency make her a consolatory payment of £350 in recognition of the hardship and distress that flowed from those failings. He further recommended that the Agency should apologise to Ms AB's GP for failing to respond to both his request for advice, and her repeated prompting. Finally, the ICA recommended that the DVLA look into the circumstances of the delay in Ms AB's case, and implement measures to improve communications and prevent any repetition.

Revocation due to codeine misuse; problems with urine drug screening

Complaint: After difficulties with urine testing, Mrs AB's licence was refused, six months after her application, on the ground of recent abuse of over-the-counter codeine painkillers. During the reapplication process, Mrs AB insisted that she had been free from opioid misuse for longer than her GP said. Problems ensued with the urine sampling process. Six months after her licence had been refused, the DVLA decided to license Mrs AB for one year – she disputed the necessity for this restriction. Mrs AB remained deeply dissatisfied with Agency decision-making, customer service and administration, and felt that her human rights had been violated.

Agency response: Before re-licensing her, the DVLA stated that it would be able to consider an application from Mrs AB when she could provide medical evidence that she had been free from the misuse of drugs for 12 months.

ICA outcome: The ICA found an avoidable delay of four months when Mrs AB initially reapplied for her licence, caused by misdirected enquiries. The decision to refuse her licence reapplication was made in line with DVLA policy and the AFTD standards. However, the ICA considered that the Agency could have provided a more helpful explanation, when it was requested, about the kind of medical evidence that was required to reopen Mrs AB's case. The ICA considered that, during the reapplication process, the DVLA's insistence upon a medical assessment including a urine sample was part of its standard enquiries into drug misuse, not an infringement of Mrs AB's rights. He commended the complaints team member who had taken action to ensure that the urine drug screening met her needs. Unfortunately, critical information was not passed on to the doctor who was assigned the urine test and medical assessment. The ICA made a number of recommendations to address the failings identified, including an apology and a consolatory payment of £300.

An acrimonious complaint about a delay in an investigation spoiling a holiday

Complaint: Mr AB suffered an episode of disorientation followed, some weeks later, by a collapse resulting in a fracture. No clear cause would ever be established. He surrendered his licence before reapplying after he had the all-clear from his neurologist and cardiologist. Mr AB complained that the DVLA's failure to investigate his neurology status at the same time that it looked into another health condition led to a sequential investigation process that delayed relicensing for two months. This two months was significant because it meant that he could not finalise arrangements for a holiday that involved overseas bookings. In the event, his licence arrived almost on the eve of his departure meaning that he was disadvantaged in making bookings and had to pay more. He claimed several thousand pounds compensation based on those additional costs and his own time and other overheads.

Agency response: The DVLA admitted that it had failed to investigate a declared health condition initially, but insisted throughout a long and increasingly acrimonious complaints process that Mr AB had not provided sufficient evidence to support his claim. Mr AB retorted by pointing the DVLA to the Ombudsman guidance, arguing that his losses were, of their nature, impossible to quantify fully and that his own guesstimate should be regarded as sufficient. He made many other complaints in the process, including that DVLA staff had lied to him about a senior manager's response to one of his letters.

ICA outcome: The ICA agreed that the DVLA had not properly spelled out the fact that it did not regard itself as responsible for losses Mr AB had incurred in booking a holiday without any certainty as to when he would be relicensed. Instead, it had majored on the lack of evidence even though definitive evidence about price differentials could never be obtained. The ICA noted that the DVLA had flagged the option of escalation when it had nothing more to say to Mr AB, but he had insisted on continuing in the local resolution of his complaint in the absence of any indication that the DVLA would change its position. The ICA felt that Mr AB should bear some responsibility for the deadlock that followed. However, he felt that the DVLA's consolatory offer (£300) was insufficient, recommending that a further £150 should be paid to reflect the poor handling. However, he balanced his comments with a recognition that the Agency had been under exceptional operational pressure caused by the pandemic. He was not persuaded by Mr AB's central argument that the assumptions he had made in his holiday planning were reasonable and should be underwritten by the taxpayer. He noted that Mr AB had not flagged the urgency attached to his relicensing until very late in the day, even though he knew that the section 88 assurances he had been given over the preceding months would not assist him in overseas car hire. On balance, the ICA did not find that compensation was payable.

Vocational driver given false hope of a return to driving

Complaint: Mr AB complained that the DVLA had told him that he could reapply for his vocational licence after two years, but when he did so a minimum period of ten years off driving was required. He said he had been given false hope. Mr AB had suffered two blackouts that he said were the result of over-exercising on a bicycle.

Agency response: The DVLA had apologised for its letter saying that Mr AB could reapply after two years. It said that the Agency's senior doctor had confirmed that ten years was the correct outcome. The cause of Mr AB's blackouts was not clear.

ICA outcome: The ICA could not consider the clinical decision-making and the application of the standards of fitness to drive. But he found that the relevant standard was opaque, and this was not in line with the PHSO principle of transparency. The ICA was pleased to learn that work was underway to revise the relevant standard, and that Mr AB's doctors were to be approached again to see if his risk of a further loss of consciousness was less than 2% per annum. However, the ICA agreed with Mr AB that he had been given false hope that he could return to his profession and - coupled with the opacity of the standards themselves - recommended a consolatory payment of £500 at the cusp of levels 2 and 3 on the PHSO severity of injustice scale (*Our guidance on financial remedy*).

Allegation of collusion between DVLA and the police

Complaint: Mr AB described a long and acrimonious relationship with his local police force who had repeatedly wrongfully accused him of drink-driving and failing to provide a specimen. Previous convictions had been overturned in light of medical evidence but the police continued to pursue him. He complained that the DVLA had acted in collusion with police harassment in revoking his driving entitlement after a police notification that he was unfit to drive. He highlighted his own GP's support for his fitness. He stated that the revocation, which had resulted from his declining to complete DVLA investigation paperwork, had resulted from a simple error and could not be construed as a refusal to cooperate.

Agency response: The DVLA explained that it had acted in line with the police notification that Mr AB might be unfit to drive, and had revoked his licence when he did not complete the requisite paperwork. He could reapply 90 days before the expiry of the disqualification and would need to do so as a High Risk Offender, paying the requisite fees.

ICA outcome: The ICA considered that the greatest part of Mr AB's complaint was directed to DVLA policy whereby notifications that a driver may be unsafe are nearly always acted upon. The ICA was not persuaded by Mr AB's complaint that the police account had been unreasonably preferred to his GP's. The police account had merely reached a threshold to trigger investigation, not revocation. The GP's view would have been given full weight had the investigation been able to proceed. However, Mr AB had used the consent form for the investigation to signal his intention to complain rather than to give consent for medical enquiries. The DVLA was clearly empowered in such a circumstance to revoke an entitlement as it had gone on to do. The ICA did not regard Mr AB's complaint that the DVLA's communications had been threatening as tenable. The Agency had simply, in standard terms, flagged the fact that it would revoke unless it received the necessary documentation, which it had gone on to do. Reapplication had been solicited as soon as Mr AB appealed against the revocation, but before this could progress he was disqualified by the court. While the ICA judged that some of the complaint

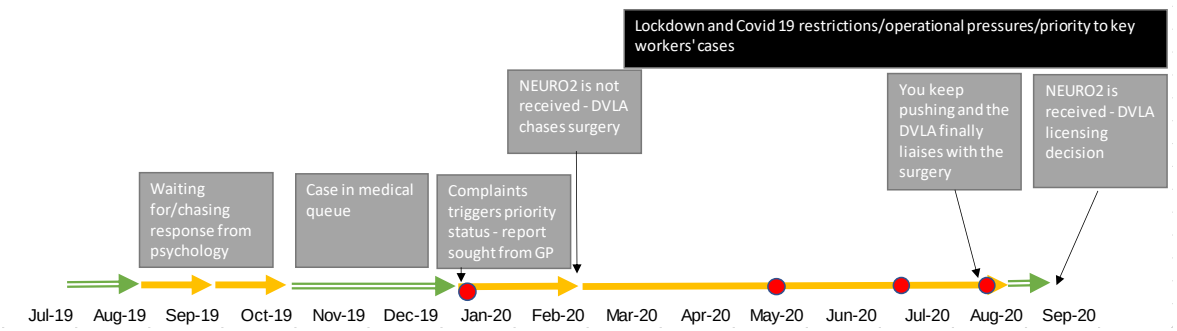
responses could have been more timely, he felt that the DVLA had responded sympathetically and helpfully to Mr AB's complaints. He did not uphold the complaint.

Delays in issuing a provisional licence

Complaint: Mr AB, who had a rare neurological disorder, complained that it took the DVLA 14 months to issue him with a provisional driving licence. The Agency had lost key documentation along the way and had sought to blame his GP surgery for the many difficulties. Mr AB and his family had had to push things along at every stage. Mr AB also complained that his complaints had not been responded to in a timely or appropriate fashion.

Agency response: The DVLA implemented medical enquiries aimed at the doctor who had been seeing Mr AB but had to keep chasing to get a response. When the response arrived it raised further questions about Mr AB's safety while driving, and his case was queued for DVLA medical review. Unfortunately, a three month delay then followed during which Mr AB launched the first of his complaints. This prompted the DVLA to expedite medical review and its doctor decided that Mr AB should be examined by his GP. This went ahead soon enough but then, for reasons that the ICA could not discern from the documents, the DVLA did not receive the completed NEUR02 medical questionnaire. It made some efforts to chase this up before lockdown, without success. The situation remained unresolved despite further complaints from Mr AB until a year had passed since the initial application when more determined efforts were made by the DVLA to obtain the completed questionnaire. Eventually it was received and Mr AB was promptly licensed. In its responses the DVLA belatedly apologised for delays and explained that there was no requirement for a complainant to furnish a driver number (Mr AB's initial complaint had been that he had been unable to complain through the online portal because of this).

ICA outcome: The ICA mapped Mr AB's application (below), concluding that the greatest part of the delay had arisen in chasing reports from Mr AB's doctors. The ICA was unable to say with sufficient certainty whether or not the fact that responses had not been processed was down to DVLA error or an error or omission by the GP practice. Nonetheless, he concluded that the pandemic had not been a significant factor in the delays and that a clear opportunity to chase matters up several months sooner had been missed by the Agency. He therefore recommended that a consolatory payment of £100 should be made to Mr AB along with an apology.



Decision-making not based on the most recent information

Complaint: Mr AB, a vocational driver, complained about licensing decisions and delay. He said he had the support of his own doctor and his MP.

Agency response: The DVLA said it was necessary to enquire into a variety of conditions reported by Mr AB and explained that the medical standards are higher for vocational drivers.

ICA outcome: The ICA said that, while he could not comment directly on medical decision-making, the decision to refuse Mr AB's vocational application had not been based on the most up to date information the DVLA had to hand. Although the entitlement was speedily restored, the ICA said that Mr AB should be invited to submit a compensation claim for that period he was without his licence. The ICA also found a four month period when Mr AB's request for escalation was not actioned. In light of these failures, he also recommended a consolatory payment of £250.

Medical standard not reviewed for two decades

Complaint: Mr AB, a vocational driver, complained about licensing decisions following his self-notification of severe depression. He said he had been discriminated against.

Agency response: The DVLA had apologised for suggesting wrongly in one of its letters that Mr AB had suffered from sleep apnoea. It had offered a consolatory payment of £50. The Agency said its other decisions followed from the appropriate standards.

ICA outcome: The ICA said that the licensing decisions appeared to flow from the standards and had been endorsed by a DVLA doctor. However, it had come to light that the non-clinician making one of the decisions had deviated from the Agency's Operating Standards. The ICA also noted that the standard for Group 1 was not specific, that Mr AB had been offered advice by the call centre not strictly in line with the published standards, and there had been delay (Covid-related) in responding to Mr AB's complaint. The DVLA's senior doctor had decided to take the Group 1 standard back to the relevant Advisory Panel as it had not been reviewed for 20 years, and the ICA increased the consolatory payment to £150.

Unnecessary medical enquiries when ICD was debarring

Complaint: Mr AB complained about the loss of his D1 entitlement after the age of 70. He said this meant he had lost his employment. He pointed out that the vehicles he drove had no passengers and that his doctor said he was safe to drive.

Agency response: The DVLA said that Mr AB had to meet the Group 2 standards after the age of 70 as his implied C1/D1 entitlements had expired by law. Mr AB

could not do so as he had an implantable cardioverter defibrillator (ICD) implanted which was an absolute bar to Group 2 driving.

ICA outcome: The ICA could identify no maladministration on the part of the DVLA in applying the legal standards of fitness to drive. Aspects of the Agency's handling were less adept, however, with medical enquiries being conducted for no apparent medical reason (as the DVLA accepted in commenting on his draft review). However, the ICA felt that the findings of his report represented sufficient redress in this regard given the Covid-19 pressures.

Internal review saves costs of ICA investigation

Complaint: Mr AB complained about delays and decision-making in a Drivers Medical case.

Agency response: Following ICA intervention, the DVLA agreed to conduct an internal review. The outcome of the review was to assign a dedicated caseworker to Mr AB, to increase a consolatory payment to £800 and for the senior doctor to personally review the outcome of a Covid-delayed driving assessment.

ICA outcome: In light of the DVLA's actions, the ICA concluded there was no more he could achieve, and closed the case.

Restoring licence to key worker

Complaint: Mr AB complained about the time taken to restore her driving licence following a revocation after a fall. She said she was a key worker.

Agency response: The DVLA accepted that medical enquiries had taken longer than 90 days, but said this was principally because a GP would not complete a medical questionnaire unless paid a higher fee than normally agreed. The Agency said that once it had become clear that Ms AB was a key worker, her application had been appropriately prioritised. The DVLA had offered £50 for poor service.

ICA outcome: The ICA could not resolve some aspects of the complaint - in particular, at what point Ms AB had clarified that she was an essential worker. However, he was content that the medical decision-making was correct. He was, though, concerned that the GP had been able to negotiate a higher fee than agreed by the DVLA with the GMC, and recommended that a copy of his report be shared with the Chief Executive for her consideration. It was also clear that Ms AB could have been informed by phone that her licence had been agreed thereby saving her several days' taxi fares. For that reason, he recommended increasing the consolatory payment to £150.

The risks of third party reporting

Complaint: Mr AB complained about the DVLA's medical enquiries following a third party notification indication concerns about his fitness to drive. In the event, the DVLA issued a three-year medically restricted licence.

Agency response: The DVLA said that it had a responsibility to investigate fitness to drive. This included responding to third party notifications. It was the inquiries that were determinative, not the notification itself.

ICA outcome: The ICA said he understood why Mr AB was concerned about third party notifications, and the potential for abuse. It had been agreed by the parties that the DVLA would consider strengthening the wording warning informants of the penalties for false reporting, so there was no need for him to make a recommendation.

Conflicting approach to eye test by DVLA and DVSA

Complaint: Mr AB complained about the DVLA's medical enquiries following a police notification suggesting concerns about his fitness to drive. He was required to take eye tests and a driving assessment, but the latter could not go ahead because of Covid restrictions. Mr AB said there had been discrimination against him and that the DVLA's medical decision-making was incorrect.

Agency response: The DVLA said that it had a responsibility to investigate fitness to drive. It said that the DVSA had wrongly recorded Mr AB as meeting the eyesight standards when he had misread one of the letters on the number plate.

ICA outcome: The ICA said he was concerned that the DVLA and DVSA seemed to have different views on what constituted a pass in respect of visual acuity. Not for the first time, he noted a lack of effective liaison between the two DfT bodies. He was also concerned that Mr AB had been asked to take renewed eye tests when results had been successful, but could not criticise the decision to require a driving assessment.

(ii): VEHICLE REGISTRATION AND IDENTITY

Focus on complaints about the DVLA's refusal to record the body type "motor caravan" on the V5C registration certificate of home converted leisure vehicles

We reported last year on the large number of complaints we had received from customers who had converted their vehicles to act as motorhomes but where the DVLA would not amend the body type on the registration certificate to "motor caravan" (in most cases re-classifying body type as "van with side windows"). Many such cases have continued to arrive during 2020-21. The following is representative:

Complaint: Mr AB complained that the DVLA would not change the body type of his vehicle from van with side windows to motor caravan. He said he had followed all the guidance on gov.uk but the DVLA was adamant that his vehicle did not look like a motor caravan in traffic.

Agency response: The DVLA had reiterated that body type was not the same as the use to which a vehicle could be put. The Agency said it was committed to improving the wording on gov.uk but this had been held up because of the pressures of Brexit and Covid.

ICA outcome: The ICA said he could not address the DVLA's policy - including its policy on body type. But as in so many like cases, he part-upheld the complaint on the grounds that the information on gov.uk was unsatisfactory.

What each of these cases has in common is that the customer has followed all of the guidance on gov.uk, but this is not deemed sufficient by the DVLA to demonstrate how the converted vehicle appears in traffic. We have not, given our jurisdiction, been able to challenge the DVLA's body type decision-making. However, we have in every case been critical of its failure, amounting to refusal, to provide an explanation to the necessary standard of why a vehicle does not resemble a motorcaravan in traffic.

In discussions with the ICAs, the DVLA has emphasised that its policy on body type is being applied in a consistent manner, but it was accepted that information available on gov.uk needs to be strengthened and better guidance offered. It has insisted that the guidance explains the policy and there is no need for keepers to incur additional expense. The DVLA emphasises that "the guidance does not say that the vehicle must have A, B and C but does say that we would look for A, B and C when considering the application". At our request, the DVLA has also provided (on 26 January 2021) updated statistics on the outcome of applications for a change in body type following vehicle conversions. For example, In April and May 2019, a total of 3,330 changes of body type to motor caravan were recorded. In April and May 2020, the grand total was one.

The latter figure is of course likely to have been affected by the Covid-19 pandemic, and the DVLA's decision to prioritise work involving NHS staff and other key workers and its own staff shortages. A fairer comparison, therefore, may be between the first two months of 2020 (before the pandemic) compared with the same months in the three previous years. The figures are as follows:

2017 1,769
2018 1,948
2019 2,447
2020 133

While it is welcome that contentious cases are now decided by a panel of DVLA staff, the ICAs have discovered that the panel members have no additional advice beyond what is available on gov.uk to aid their decision-making. We remain strongly of the view that customers are put to additional expense and inconvenience with no

clear guidance on whether their applications for a change of body type will be agreed.

In a statement on 5 March 2021, the DVLA told us about the following improvements it plans to further clarify its policy to customers: “The objective remains to break the link that may have historically been made between body type descriptor and the usage of the vehicle.” The statement set out the following measures:

- *Gov.uk – We are working on updates to gov.uk that will support our objective to break the link between appearance and usage when assigning a body type descriptor to a vehicle. We will also be clearer that the external features mentioned on the page are for guidance only and are not compulsory. This work is in train but we do not yet know when it will be prioritised or completed.*

- *Reject letters – We are still in the process of reviewing the rejection letters. Our approach is to look at acknowledging that changes have been made to these vehicles by keepers, but explaining clearly that a body type change in not needed/has been changed and that their record is correct. As above, there is no fixed date on when this will be completed, but we’ll keep you updated.*

- *Consistency meetings – these meetings are held with various staff from across the Agency who work on the ‘vehicle’ side of the business. The aim is to ensure consistency in decision-making. These meetings are not only to discuss consistency for applications for change of body type. They are very useful in this time where we have to work independently to share views and opinions and reach agreement on a way forward.*

- *Corporate engagement – We will be drawing up an engagement plan with our service management colleagues, thinking about how to tailor messages to the key stakeholder groups. We will take advice from our Corporate Services Team on how best to send out these messages and which forums could be utilised.*

The DVLA continued: “I would ask that the link between body type and usage of the vehicle is not reinforced. There is no customer benefit in doing this as it is not in line with the policy that is applied. The Agency acknowledges that we still have work to do to make this clear to customers and the plans outline above are aimed to assist with this. While we work through this, we are open to criticism that progress may be slow, but we can assure both yourselves and our customers that we are progressing improvements alongside the various other demands in the pipeline of work at this time.”

We acknowledge the efforts that the DVLA is making, and we cannot act as an appeal mechanism against decisions of the DVLA panels or criticise the Agency’s policy which is designed to assist the police and other services should a vehicle be stolen or involved in a crime or an accident. It is manifest that the objective of assisting the police and others in the identification of vehicles cannot be deemed improper or maladministrative.

It is apparent, however, that the DVLA's policy on the recording of body type is now applied in a much more rigorous manner than was the case until the first half of 2019. Moreover, neither ICA comprehends the actual, evidenced mischief that the much stricter enforcement of the Agency's policy is designed to prevent, or why this justifies the impact on customers like Mr AB and many others.

The law prevents the reunion of a classic car with its plate

Complaint: Mr AB acquired a high value classic car, one of a limited end-of-run series. Through liaison with the family of the previous owner, he established that it had been separated from its original registration mark and re-issued with an age-related plate (the previous owner had temporarily exported the car and retained rights to the original registration). Rights to the original plate, however, had not been renewed some 14 years previously. Mr AB complained that the DVLA failed to answer his questions about how he might restore the original plate to his car. He said he had initially been told that grantee rights to the registration might be restorable. This had caused him to enter into futile correspondence with the family of the previous keeper. DVLA advice was contrary to his own reading of the rules that suggested (correctly, it would transpire) a legal bar on renewal of rights if not applied for within 28 days of expiry. He made further complaints about the responses he received from the DVLA. He suggested that the DVLA had misadvised the previous keeper in telling him that he needed to be UK domiciled in order to retain the plate. He argued that his vehicle was of historic significance, pointing to other examples of the marque that had been reimported and reunited with original registrations.

Agency response: The DVLA did not have access to documentation related to its pre-complaint dealings with Mr AB. After he complained formally, it outlined the provisions of previous transitional schemes for plate retention and explained that these did not apply to Mr AB's request given the date at which rights to the plate had expired. The Agency highlighted the legal position that if an application is not received to extend the right before it expires, the right to display the personalised registration number is lost.

ICA outcome: The ICA considered that he had no jurisdiction to recommend that the Agency act contrary to the law, however sympathetic he felt to Mr AB's case. He upheld Mr AB's complaint to the extent that the DVLA had not addressed his specific points during its handling of the complaint. These included questions about whether a UK address was necessary to retain grantee rights to a personalised registration, and whether it was policy or law that all entitlement to a specific plate was lost after it had not been renewed (these latter points are subject to long established DVLA policy as distinct from law). The ICA acknowledged that Mr AB's dealings with the Agency had been unnecessarily frustrating and he recommended that a consolatory payment of £100 should be made. He also recommended that the DVLA should take steps to ensure that staff involved in registration casework were fully aware of the policy position and did not, unintentionally, give customers false hope.

Delays in the DVLA publishing its policy on imported salvage

Complaint: Mr AB complained that the DVLA had failed to publicise its policy on the registration of vehicles imported into the UK that had been given a salvage designation in their previous overseas jurisdiction. Mr AB had purchased a high value car at a substantial discount on an auction website. He had been given no indication of the history of the car other than that it had been in an accident prior to import - its overseas registration documents marked it as a statutory write-off. His view, as a professional mechanic, was that the damage was superficial and he repaired it himself and obtained individual vehicle approval (IVA) from the DVSA. The DVLA refused to register the car under its original identity, in other words with an age-related plate, because it was designated a statutory write-off, and insisted that a new vehicle identity number (VIN) be stamped into the frame and a Q plate allocated. Mr AB continued to complain, highlighting an earlier ICA review where the Agency had accepted a recommendation to publish its policy on imported salvage.[9]

Agency response: The DVLA held the policy line that the car could only be registered with an age-related plate if the foreign jurisdiction that had classified it as a statutory write-off would confirm that it could be restored to the road in that jurisdiction under its original identity. Mr AB felt that this was an impossible requirement, arguing that the foreign jurisdiction concerned had a different salvage categorisation system and that in the UK the car would be classified 'N'. The DVLA insisted that the write-off status precluded the issue of a UK registration certificate under the original VIN. It had a legal obligation to ensure the accuracy and integrity of the register.

ICA outcome: The ICA looked into the legislation that was applied in the original jurisdiction of the car and established that there were two write-off categories, "statutory write-off" and "repairable". Mr AB's car had not been registered as repairable. Even if it had been, the ICA noted the incredibly limited circumstances in which it would have been allowed back on the road. The ICA did not regard this information as supportive of Mr AB's case that his car should be classified as 'N' under the UK salvage regime. He regarded the vendor of the vehicle as responsible, in the main, for Mr AB's difficulties in that they would have known that the car was not registerable under its original identity. However, he was critical of the DVLA for the two-and-a-half-year delay in implementing his recommendation that it should publish its policy. This delay was not in line with the Agency's established commitment to protecting road safety and consumers. Customers like Mr AB were not put on notice that a Q plate could be the only way to register and use a vehicle on the public highway even when its identity and age were beyond doubt. The ICA also recommended that the DVLA review its position on imported salvage, as an anomaly existed whereby a vehicle written off abroad for road use (in other words, equivalent to category A or B salvage) could be registered in the UK if it was imported (whereas it would be scrapped if it had sustained the same damage in the UK). He upheld the complaint and recommended that the revised policy on imported salvage should be published on gov.uk without delay. The DVLA subsequently

[9] Reported in our 2018-19 Annual Report, pp 46-7: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933860/dft-independent-complaints-assessor-report-for-2018-to-2019.pdf.

informed the ICAs that information about Q plates for damaged/rebuilt imports had been updated on GOV.UK.[10]

The DVLA tries to force a Q-plate on a classic imported car, contrary to ICA findings

Complaint: Mr AB imported a 45-year-old historic car from South Africa. He complained that, despite extensive information supporting his contention that it was original, the DVLA refused to register it with an age-related plate because it had the words *built up* on its South African registration document. Instead, the DVLA required Mr AB to either obtain documentary evidence from the South African authorities confirming the meaning of *built up* or to accept a DVLA-issued vehicle identity number (VIN) and Q plate. In support of his case, Mr AB obtained an inspection by the DVLA-nominated expert from the relevant owners' club. This confirmed the provenance of his vehicle and the very low probability that it had been built up from parts. He also obtained evidence supporting his view that *built up* had been added to his vehicle record by the South African traffic authorities after its restoration to taxation and road use after a period of having been declared unroadworthy (as there is no SORN facility in South African law, keepers will declare vehicles unroadworthy while off the road in order to avoid paying tax).

Agency response: The DVLA maintained that, in the absence of clarification from the South African authorities, the vehicle should be issued with a DVLA VIN and Q plated.

ICA outcome: The ICA judged that decisions on vehicle provenance should draw from the best available evidence of which inspection was a gold standard. He argued that the DVLA should avoid the conflation of markers placed on the record by overseas jurisdictions with an apparent equivalent in the UK context. He referred to other cases where the DVLA's registration decisions had been made on a face value basis rather than a proper consideration of equivalence. In this case, he regarded the inspection report as evidence of a high standard in support of Mr AB's case for age-related registration. He did not regard the *built up* marker as representing good evidence at all, and pointed the DVLA to its own statement that this could mean a variety of things. The Agency insisted, despite the ICA's pressure to rethink, that it had a duty to consumers to reflect doubt about the provenance of a vehicle through the way it registered the vehicle. It did not feel it could ignore evidence. The ICA, however, judged that it was the DVLA that was ignoring evidence about the history and provenance of the car, in fact going a stage further by negating it. He upheld the complaint that the DVLA had failed to provide a plausible account of its registration decision. In response to the ICA's request at draft issue stage (that the DVLA should reconsider its position and provide a nuanced response to Mr AB's challenges) the Agency reiterated the requirement. This reinforced the ICA's conclusion that the DVLA had failed to reach the transparency standard set out in the Ombudsman's

[10] The guidance cautioning drivers importing damaged or modified vehicles that a Q-plate may be allocated was available at this link from 22 June 2021: https://www.gov.uk/importing-vehicles-into-the-uk.

Principles. At the time of finalising this report, the Ombudsman was considering Mr AB's outstanding complaint.

ICA and DVLA at odds once again over Q plating

Complaint: Mr AB complained about the Q plating of a vehicle he had converted. He had added roll hoops to the chassis to make the vehicle more stable but the DVLA said this meant the chassis was radically altered and could no longer display an age-related plate. Mr AB said that the welds could be removed if necessary, but the DVLA said that this would represent a further change to the chassis.

Agency response: The DVLA said that the issue had been considered by a specialist team and the decision that the vehicle could not display an age-related plate stood. It said that one of the DVLA's core objectives was to ensure a vehicle is correctly registered and, in this case, the correct process was to allocate a DVLA VIN and a Q series vehicle registration mark (VRM). This would highlight to future potential purchasers that the chassis/vehicle was no longer original to the manufacturer's specification. The DVLA argued that the modifications that had already been made could not be ignored. Indeed, that the DVLA would be at risk of acting outside its lawful remit to maintain accurate vehicle records and protect the historic integrity of the vehicle mark: "If the vehicle was to retain the original VRM then it could be seen as endorsing the vehicle's modification to be acceptable without any detriment to its history."

ICA outcome: The ICA said that the DVLA's position was neither reasonable nor customer-friendly. Indeed, it appeared that the DVLA's position was that drilling holes to accept bolts was not considered to be radically altering the chassis whereas the use of removable welds was. The ICA recommended that Mr AB be invited to remove the welds and the decision to Q plate his vehicle be reversed. He further recommended that his report be shared with the DVSA (who appeared to have the policy responsibility) and to amend the information publicly available. The DVLA agreed to the latter proposal, but following a senior review declined to accept the ICA's key recommendation despite his report being endorsed by his fellow ICA in a peer review. Mr AB has now approached the PHSO.

The DVLA orders that a roadworthy car be crushed because of an error by an Authorised Treatment Facility

Complaint: Mr AB bought a car from a recovery company adjacent to an authorised treatment facility (ATF - a private business approved by the relevant agencies for the dismantlement and disposal of vehicular scrap). Several months later he tried to register the car only to be told that it had been reported by the ATF as scrap. Mr AB complained that, despite evidence from the ATF that the certificate of destruction (CoD) had been notified in error, the DVLA refused to reverse it meaning that his historic vehicle would have to be destroyed.

Agency response: The DVLA investigated the history of the vehicle from the point that it had arrived at the ATF from auction two months before Mr AB had bought it.

Mr AB assisted, providing evidence from the auction company showing that the vehicle had been roadworthy and sold to the recovery company without a CoD in place. The ATF made conflicting noises about how the CoD had been issued, having said nothing to the DVLA at the time. The DVLA remained of the view that the evidence that the CoD had been issued in error was not sufficiently robust.

ICA outcome: The ICA highlighted that: the car had been sold with a valid MOT and had been re-MOTed by Mr AB shortly afterwards; no salvage marker had been notified for the car by any insurance company; pictures of the car on the auction site and provided by Mr AB showed no damage; the car (an early 90s mass production saloon) was not high value and happened to be low mileage for the year. The ICA therefore challenged the DVLA to explain how a car that was clearly roadworthy should remain marked as destroyed on its register. In response, the DVLA referred the ICA to the law (prohibiting the removal of a validly issued CoD and the re-registration of a vehicle) and its policy. The policy position – recently promoted to the sector via an article for trade publications – was that appeals would only be considered when errors were brought to the DVLA's attention within a short space of time and were supported by clear evidence that an ATF had informed the DVLA of the issue of a CoD to wrong vehicle. Given the fact that the decision not to remove the CoD from the register was made in line with policy, the ICA had no scope to uphold the complaint. However, he expressed his own view that the car was clearly roadworthy and that disparities in the evidence of the ATF, however concerning, did not justify scrapping a roadworthy vehicle belonging to a third party.

Glitches affecting personalised plate transaction, #1

Complaint: Mr AB bought a car at auction with a personalised plate still attached. He entered into an agreement with the previous keeper that he would not register the car to himself for a month, giving her time to retain the plate. A month passed during which the previous keeper's retention application was rejected on procedural grounds. Meanwhile Mr AB applied for a logbook. Due to a system glitch, this application was overridden by Mrs AB's second, successful, plate retention application. When the logbook did not arrive, Mr AB checked the online portal and saw that the plate had been attached to a different vehicle. Over the next few months he chased matters up with the DVLA, concerned that the plate had been removed from the car that should have been registered to him. He was also unable to use the car until the DVLA re-registered it (that took just over three weeks).

Agency response: Eventually, the matter was properly investigated. Over three months after the complaint had first been made, the DVLA found that all trace of Mr AB's V62 logbook application had been erased by the plate transfer by the previous keeper. It was decided that the plate should be restored to Mr AB. However, Mr AB remained dissatisfied because he did not feel that the £50 consolatory payment offered by the DVLA addressed the fact that he had been unable to use the vehicle for several weeks.

ICA outcome: The ICA agreed with Mr AB that the inconvenience he had suffered merited a higher consolatory payment. He recommended that the offer should be increased to £300. However, he did not think that Mr AB's claim for garage fees for

the time when he could not use the car was tenable. This was because he himself had departed from the default advice not to buy a vehicle without a valid logbook. Having done that, he also delayed registering himself to the vehicle. Had he taken one of these steps, the previous owner's retention application would have failed and the difficulties would never have arisen. The ICA also noted that title to the personalised plate, that Mr AB had estimated was worth a five-figure sum, had been restored to him whether he wanted it or not. He partially upheld the complaint.

Glitches affecting personalised plate transaction, #2

Complaint: Mr AB bought a new car (car 2). He then retained his private plate from his old car (car 1). Instead of destroying the V5C/logbook for car 1 in line with the instructions on the DVLA website, he left it with the dealership. Later that day the dealership used the car 1 logbook to transact a disposal notification. This had the effect of removing Mr AB as keeper from car 2 to which his personal plate was now registered. He received a refund of tax for cars 1 and 2 over the following weeks, assuming that both payments related to one vehicle. Eventually the dealership raised the alarm when it established that car 2 was shown as untaxed on the gov.uk portal. Meanwhile Mr AB had cashed the refund for car 2 and, over the following weeks, despite frequent contact with the DVLA, would be eventually pursued by debt collectors.

Agency response: When it realised what had happened, the DVLA re-credited car 2 with tax so that Mr AB was not subject to enforcement action. This had the effect of making him liable to pay the tax which he refused to do, arguing that he had done nothing wrong and the Agency should make him a goodwill payment. The DVLA refused to do so but thanked Mr AB for highlighting the glitch on its system whereby the transaction was allowed to occur against an invalid V5C/logbook. This glitch would be remedied.

ICA outcome: The ICA noted the clear advice on the online portal to destroy the V5C registration certificate after retaining a private registration number. Had this been done then it would not have been possible for the dealer to, in error, notify disposal of a vehicle that Mr AB had just driven out of the showroom. It was not the result of maladministration by the DVLA but rather a departure from the published advice by the dealer. This departure had been facilitated by the fact that the DVLA systems did not update in real time sufficiently quickly to block it. The ICA acknowledged that Mr AB's dealings with the Agency could have been smoother but he did not consider that maladministration had occurred such that he could uphold the complaint. The ICA noted that the sum of money that the DVLA was trying to collect represented VED that the Agency was bound to collect on behalf of the Exchequer. The ICA could not ask the DVLA to waive this sum given its duty to collect tax. Mr AB settled the outstanding tax at the suggestion of the ICA.

A customer complains after losing title to his personalised plate to fraudsters

Complaint: Mr AB sold his car, with his personalised plate still registered to it, to people purporting to be legitimate motor traders. He agreed with the purchasers that

they would then complete the paperwork to transfer title to his personalised plate back to him. They did not and it transpired that the address they provided was fake. Mr AB established that they were using the car on his personalised plate that he no longer had any title to. He complained that the DVLA took no action to solve the "crime" and was, in effect, complicit with criminals.

Agency response: The DVLA regarded Mr AB's dispute with the purchasers as a civil matter. As the plate was still assigned to the vehicle and Mr AB was no longer the keeper, he could not have title to the plate in law. The DVLA stood ready to assist the police in their enquiries. Mr AB remained highly frustrated because, without any information about the purchasers of the car, he could not initiate civil action.

ICA outcome: The ICA regretted the position that Mr AB was in but confirmed that the DVLA had acted correctly and in line with policy and the underlying legislation. This provided that only a keeper of a vehicle had the right to transact retention or transfer of a plate. The ICA doubted that the new keepers had registered themselves truthfully against the vehicle anyway and pointed out that future keepers would not necessarily have been involved in the dubious transaction that had resulted in Mr AB losing title to the plate. He outlined the DVLA's policy on providing keeper information from its vehicles register and noted the fact that Mr AB's circumstances were not covered. He could not uphold the complaint.

Good handling of complaint from motor dealer

Complaint: Mr AB was a motor dealer. He complained that the DVLA would not allow him to de-register a vehicle after the intended purchaser had dropped out for personal reasons.

Agency response: The DVLA said that Mr AB's application was not in line with the rules governing de-regulation. In particular, that vehicles registered to associated leasing companies could not be de-registered.

ICA outcome: The ICA asked a number of questions of the DVLA about the rationale for its policies on deregulation. In response, the DVLA said that exceptionally it would agree to Mr AB's application as the responses he had received had been inaccurate and unhelpful. Mr AB's experience would also inform a forthcoming review of de-regulation that the Agency planned. In these circumstances, the ICA was content he could achieve nothing more.

DVLA policy position not unreasonable to protect stock of classic plates

Complaint: Mr AB was the owner and keeper of a classic motorbike. Its plate had been the subject of a cherished transfer many years previously, and it currently bears a non-transferable plate with an A suffix in line with the policy at the time. Mr AB complained that the DVLA would not allocate an age-appropriate plate.

Agency response: The DVLA said that the current plate was non-transferable. Although the policy had now changed, this was not applicable retrospectively, in part to protect the limited stock of pre-1963 plates at the Agency's disposal. Mr AB could purchase an age-related plate privately if he so chose.

ICA outcome: The ICA sympathised with Mr AB but he could not challenge the DVLA's policy. Nor was it unreasonable to protect the limited stock of pre-1963 plates. Although he could not uphold the complaint, the ICA was able to include details in his report that he hoped would be helpful to Mr AB - including that some information provided by a specialist club appeared to be incorrect.

Sad loss of unique personalised plate

Complaint: Mr AB complained about the decision of the DVLA that he had lost the right to a unique plate that he had bought for his young grandchild and which spelled out her name. He said the decision had caused great sadness and had affected his health.

Agency response: The DVLA said that a two-year extension of the rules had now passed and that it could not exercise any discretion as in law it had no power to re-issue the plate (which would now be 'retired'). The DVLA confirmed to the ICA that, had Mr AB applied six weeks earlier, he could have retained the plate exceptionally.

ICA outcome: The ICA said he had no authority to ask the DVLA to do something it had no legal power to do (notwithstanding that is exactly what it had done for years in allowing people to apply to retain plates beyond the retention period). But he regarded the law as misplaced: causing hurt to the customer and a loss of revenue to the taxpayer. The ICA said that he felt the DVLA had done enough to alert customers to the new 'rules', although Mr AB was like most customers not an avid reader of gov.uk and the PHSO might take the view that the Ombudsman Principle of transparency had been breached.

Problems linking a historic tractor to its plate

Complaint: Mr AB had owned an old tractor for 40 years. His complaint to the DVLA followed his attempt to obtain a new logbook for it under the registration that he believed was original, having been displayed throughout his ownership. Instead, the Agency allocated an age-related plate. Mr AB also complained that the allocation was contrary to his wishes and that his application had been mis-processed.

Agency response: The DVLA was content with the evidence Mr AB produced showing the date of manufacture and of first registration of the vehicle bearing the plate. However, there was no evidence linking his actual vehicle with the plate. The DVLA therefore refused to allocate the plate. DVLA staff met Mr AB in reception and, they said, explained this to him. Instead, his application was processed as an application for an age-related plate. When Mr AB was told of this, he refused to accept it. He also refused to accept a poor service payment for the lack of clarity in the way his application had been processed.

ICA outcome: The ICA could not get to the bottom of how Mr AB had thought that his application was being processed against the original registration he felt his tractor was entitled to. However, remedy had been offered for any lack of clarity on the part of the DVLA. The ICA looked carefully at the evidence that Mr AB had provided and agreed with the DVLA that there was nothing to link the vehicle identification number of the tractor with the registration. The DVLA had provided sufficient pointers as to the kind of evidence that was required. The ICA did not therefore uphold the complaint. In the weeks that followed, the ICA was contacted repeatedly by Mr AB. He remained adamant that he would not accept the DVLA-allocated plate - even though such a refusal would make it impossible for him to either license or SORN the vehicle and might render him liable to enforcement action.

Dating of unique classic motorcycle

Complaint: Mr AB complained that the DVLA would not alter the date of manufacture of a classic motor bike from 1931 to 1929. He said the vehicle was unique, having been constructed by an engineer, and factory/manufacture records were not available. However, secondary sources (contemporaneous magazines) showed that the bike had been used for two seasons by the end of 1931.

Agency response: The DVLA had said that Mr AB's evidence was insufficient. It had emphasised the need for factory/manufacture records.

ICA outcome: The ICA said he could not adjudicate upon the age of the vehicle. It seemed certain that 1931 was incorrect, but it was uncertain whether the bike had been completed in 1929 or 1930. The ICA was critical of the approach taken by the DVLA, as this demonstrated little sensitivity to the fact that the bike had not been constructed in a factory, but in comments on his draft report the DVLA had said that it would consider a 'suite of evidence'. The ICA welcomed this commitment to greater flexibility.

(iii): VEHICLE TAX AND ENFORCEMENT

An omission in investigations into a complaint about a tax refund

Complaint: Mrs AB changed the specification on her panel van necessitating new plating cards from the DVSA that took three months to arrive. She complained that the DVLA had not refunded her tax based on the date that the van had been converted but rather calculated the refund from the time of the arrival of the V70 re-registration pack. She also complained that she had been given a clear undertaking on the phone that paying a year’s tax would trigger a refund of the higher rate tax she had paid over the preceding three months.

Agency response: The DVLA explained that the triggering event for the refund of tax was receipt of notification of a rebate condition, in this case the V70 re-registration pack. It did not address the complaint that Mrs AB had been misadvised.

ICA outcome: The ICA noted that the relevant legislation (section 19 of the Vehicle Excise and Registration Act 1994 as amended) provided that the refund should be of complete months following the satisfaction of a rebate condition. However, he accepted that it was DVLA policy to conflate receipt of notification with satisfaction of the condition. The refund was therefore not a matter he could comment on. The ICA was disappointed that the DVLA had not listened to the calls leading to Mrs AB's understanding that a full refund would be paid to her. Had they done this then any training needs and customer service shortfalls could have been properly identified and remedied. The ICA partially upheld the complaint and recommended that a consolatory payment of £25 should be paid to Mrs AB in recognition of the fact that an opportunity to investigate her complaint fully had been missed.

Mistaken notification of scrappage

Complaint: Mr AB complained that when he taxed his vehicle it showed as untaxed on the gov.uk record. He also complained about the time taken to correct the information, and asked for compensation.

Agency response: The DVLA had explained that it had received a notification of scrappage from the Motor Industry Anti-Fraud Register (MIAFTR) database and had acted in good faith. It said any responsibility rested with the insurance company responsible.

ICA outcome: The ICA said Mr AB was the innocent victim of a mistake by an insurer and he did not think there had been maladministration by the DVLA. However, it was clear that in a phone call to the Agency Mr AB was not told about the scrappage marker. This was in line with Security policy but also based on the false premise that the DVLA could arrange for the insurer to remove the scrappage marker without the customer's intervention. The DVLA had already arranged for a review of its policy in this area, so the ICA simply recommended that his report be considered as part of that review. He judged that the level of injustice was not greater than level 1 on the PHSO scale of injustice (everything had been put right within three weeks despite the pressures of Covid-19), and therefore compensation was not due.

Poor response to complaint about Out of Court Settlements

Complaint: Mrs AB complained about two Out of Court Settlements (OCSs) she had received for failing to tax her vehicle. She said she had not received a V11 reminder, and that the DVLA had not contacted her at her new address in time to avoid the second payment. She asked variously for one or both of the OCSs to be refunded.

Agency response: The DVLA said that offences had been committed and the fines would not be refunded. It also said that these were entirely automatic processes and the Agency would not send fresh OCSs to a new address.

ICA outcome: The ICA said that the OCSs had been enforced in line with legislation and he could not intervene. However, the DVLA had now acknowledged that it could (and indeed did) send fresh OCSs to the new address, but this issue was not covered in either of the formal complaint responses. It was likely this was the result of fresh staff being reallocated because of Covid, but nonetheless it represented maladministration. In consequence, the ICA part upheld the complaint and recommended a consolatory payment of £100 that he hoped Mrs AB would regard as a fair outcome all round.

Lockdown leading to reduced tax refund

Complaint: Mr AB part-exchanged his car for a brand-new model on the day that lockdown was announced by the Prime Minister. He understood that the personalised plate and disposal transactions would be handled by the dealership meaning that he should receive a refund of nine months of tax. He complained that, despite the fact that the dealership informed the DVLA of the transaction on the first permitted trading day, the DVLA made no allowances for lockdown restrictions on its calculation of the refund. This meant that Mr AB received £40 less than he had expected. He also complained of difficulties communicating with the DVLA.

Agency response: The DVLA set out its policy on refunds of vehicle excise duty and reminded Mr AB that, as the disposing keeper, the onus had been on him to ensure that a timely notification of disposal was made. The DVLA also pointed Mr AB to the options for online notification of disposal.

ICA outcome: The ICA was sympathetic to Mr AB's position but had no scope to criticise the DVLA's pursuit of its standard policy in relation to refunds of vehicle excise duty. He did not uphold the complaint.

Poor complaint handling of VED refund in consequence of Covid

Complaint: Mr AB complained about the refund of vehicle excise duty he had received. He said he had disposed of the vehicle some four months earlier, and had informed the DVLA.

Agency response: The DVLA said that it had no record of receiving the disposal notification at the time Mr AB said. In consequence, the refund (rebate) was dated from the time that notification had been received. The DVLA said it had no discretion in the matter.

ICA outcome: The ICA could not fully uphold the complaint as the DVLA had simply followed the legislation. However, he was concerned by very poor complaint handling (apparently the result of inexperienced staff being re-located because of the Covid-19 pandemic).

An enforcement with major repercussions for a homeless man

Complaint: Mr AB, who was homeless at the time, bought a van with dangerous and severe defects (noted in a recently-failed MOT) at a police auction and transported it to a different city with the intention of getting it taxed and roadworthy. In the meantime, he lived in it. The van was then impounded by a private company working for a local council. Mr AB complained that the vehicle had been destroyed despite his efforts at taxing it. He felt that the DVLA should have known that he was taking every step to make the vehicle legal and that its destruction should have been delayed. He claimed over £6,000 compensation including over £5,000 worth of personal possessions left in the vehicle.

Agency response: The DVLA explained that the V5C/2 slip that Mr AB had found in the vehicle was out of date, hence the fact that he could not use it to tax. He should have SORNed the vehicle until he was registered to it (however, he had no access to an off-road location). The DVLA refunded Mr AB his £25 V62 fee. After considering his claim carefully and at some length, it declined to make a payment given the fact that the destruction of the vehicle had been in line with the law and standard enforcement practice, and the service complaint aspects should be directed to the enforcement company and/or the local council. It made a consolatory payment of £30 to reflect its initial incorrect advice that Mr AB should contact the vendor.

ICA outcome: The ICA noted the regrettable context of the enforcement given Mr AB's circumstances and the disproportionate impact on him. However, through the MOT records on gov.uk, the ICA established the massive extent of the repairs necessary to make the vehicle legal for road use and taxable. None of Mr AB's expenditure on the vehicle had related to its mechanical condition. The ICA agreed that the enforcement had been conducted in line with the law and established framework. He judged that the DVLA had properly investigated Mr AB's complaint that his personal possessions had been lost by contacting the enforcement company who made it clear that he had been told from the outset how to get the vehicle back, while he was in the process of recovering his possessions. The ICA was unable to uphold the complaint.

Being imprisoned is insufficient mitigation for failing to tax

Complaint: Mr AB was fined and his vehicle impounded while he was in prison after the direct debit failed. His solicitors argued that the DVLA's requirements for release of the vehicle (full payment of the £654 release fee) were disproportionate and unreasonable.

Agency response: The DVLA repeatedly extended the deadline for collection of the vehicle but Mr AB lacked the funds to collect it. It also waived the late licensing penalty and OCSs. However, it required full payment of the release fee as well as proof of a pre-booked MOT and documentation confirming Mr AB's address, keepership of the vehicle and driving entitlement.

ICA outcome: The ICA considered that the DVLA's enforcement had been conducted in line with standard policy. In fact, the Agency had relaxed its

requirements in a number of areas, extending the deadline for disposal repeatedly and quashing the fines. As the Agency had conducted the enforcement in line with policy, the ICA could not uphold the complaint.

Lost documents when handling application for reduced rate of VED

Complaint: Mr AB complained that the DVLA had lost his documents when applying by post to tax his vehicle subject to the 50 per cent Personal Independence payment (PIP) discount. He said that in consequence he had had to tax the vehicle for six months at the full rate and then await a refund. However, he contended he was still out of pocket, and did not understand why he had been told that his original application was being processed.

Agency response: The DVLA had made a £30 consolatory payment for poor service in addition to refunding half of the six months tax that Mr AB had paid alongside his postage costs.

ICA outcome: The ICA said that his role was limited as the DVLA had made good most of the detriment Mr AB had suffered. However, it was clear that Mr AB had been caused inconvenience and anxiety (as well as some financial loss), and in that light the ICA concluded that the consolatory sum of £30 was too low. He recommended that it be increased to £150.

Banking standards on the format of cheques

Complaint: Mr AB, a motor trader, complained that the DVLA had returned cheques for a replacement registration document and to pay VED. He said that this had caused inconvenience for his customer and he could have lost the trade. Mr AB said he had never encountered this problem before.

Agency response: The DVLA had acknowledged that one of the transactions could have gone ahead, and had apologised and made a £30 consolatory payment. The Agency had explained its process of delaying issuing a new registration document when notice of disposal had not been received. It had also said that 'banking guidelines' did not allow cheques where the sum was in words and figures.

ICA outcome: The ICA concentrated upon the issue of the cheques. It appeared that since the introduction of cheque imaging, banks had said they would no longer recognise cheques with a mixture of words and numbers. However, in practice such cheques were being accepted (it was unclear to the ICA if this was a temporary Covid-related concession). The DVLA's Operating Instructions said one thing (reflecting the 'banking guidelines'); the Agency's internal comms said another (reflecting the fact that banks were not applying the 'guidelines'). The ICA thought this was thoroughly unsatisfactory and a recipe for confusion. He recommended that the DVLA approach the bank concerned to see if the Operating Instructions could be amended to reflect the reality. He also recommended increasing the consolatory payment to £100 - the PHSO minimum for level 2 injustice.

Mistaken notice of destruction leads to great inconvenience for customer

Complaint: Ms AB complained to the DVLA when she discovered that the direct debits for her road tax were no longer being taken. She said the DVLA had not told her what had happened until after a protracted investigation had taken place. During that time, she had been told to keep her vehicle off the road.

Agency response: The DVLA said that it had received a CoD from an ATF and had acted in good faith. It had now restored Ms AB's vehicle record, the tax had been paid, and the vehicle was back on the road. The Agency had offered to meet the costs of a private vehicle search that Ms AB had conducted and offered a small payment for delay.

ICA outcome: The ICA said that he could not speculate what had occurred in this case, although the DVLA explanation that there had been an administrative error by the ATF did not seem very plausible given that the notification had both Ms AB's vehicle's registration and VIN. The ICA was also aware that in these cases the DVLA staff will not provide information about scrappage over the phone – a necessary safeguard notwithstanding the impact in Ms AB's circumstances. She was the entirely innocent victim, but the DVLA had acted on the CoD in good faith. The ICA recommended increasing the consolatory sum to reflect the serious inconvenience Ms AB had suffered.

Improved advice on SORN notification as a result of a complaint

Complaint: Mr AB had complained previously that the DVLA had unreasonably withheld a refund of VED for a complete month covered by his SORN notification. In the end, he had obtained a Court Order requiring the Agency to make the payment. On this occasion, Mr AB initially complained that the wording of the SORN notification form (V890) did not provide for advance notification. This, along with the statement that the declaration should be dispatched "as soon as the vehicle is taken off the road", meant that customers notifying at the beginning of month 1 that a vehicle would be off the road for that month, would not receive a refund for month 1. Mr AB, supported by his MP, also complained that a notification he had made on day 1 of month 1 had resulted in a refund that did not include that month.

Agency response: The DVLA reiterated its approach to calculating refunds of VED – the guidance notes were clear that a refund would not be issued for the month of application. It amended the wording of the V890 to clarify the option of advance notification as well as explaining that it had historically accepted notifications in advance.

ICA outcome: The ICA agreed with Mr AB that the legislation was not prescriptive about how the date from which the rebate condition (in other words the starting point for the refund) should be calculated (the law states that the rebate condition is satisfied when the necessary information was "furnished and made" as distinct from "received"). The ICA therefore regarded the DVLA's approach as amounting to policy rather than law. Either way, he had no jurisdiction to criticise the Agency for

following it. He did not, therefore, uphold the complaint. He noted that Mr AB had known when he notified SORN on the first day of the month that he could have done so in advance. The ICA's only recommendation was that the refund cheque excluding month 1 should be reissued to Mr AB (who had refused to cash it on principle). He did not uphold the complaint.

(iv): OTHER CASES – DRIVERS

The DVLA goes the extra yard to assist a professional involved in the Covid-19 response

Complaint: Mr AB, who travelled extensively through work, complained that he could not use the DVLA's online VDL facility because the DVLA's systems could not reconcile with those of another Government department. He relied on the ability to demonstrate his entitlement regularly when hiring cars and found the DVLA's telephone system deeply frustrating to use.

Agency response: The DVLA initially stated that the problem was that Mr AB's National Insurance number did not marry with data held by the other Government department. Mr AB was told at a later stage that the DVLA had managed to make VDL work using his details. However, he could not replicate this and remained dissatisfied.

ICA outcome: With Mr AB's permission, the ICA attempted to replicate the VDL transaction that the DVLA stated was working, but without success. He therefore asked the DVLA to look again at what the problem was. At this stage the Covid-19 pandemic was underway and Mr AB's job involved combating the virus. The matter was referred to a Vehicle Enquiry Service Designer in the DVLA who, after extensive enquiries, established that Mr AB's date of birth was incorrectly recorded by the other Government department. This meant that the VDL transaction could not complete. In liaison with that department and Mr AB, he eventually resolved matters satisfactorily and the ICA was pleased to discontinue the case.

Licence application received in good time but poorly processed

Complaint: Mrs AB applied for a provisional driving licence while at the same time informing the DVLA of a change of address. She requested and obtained a six-week extension for the submission of the necessary documentation that included her original passport and biometric residence permit (BRP). She supplied a first-class self-addressed envelope for the return of her identity documents. Mrs AB was particularly concerned that the application should be processed in good time in advance of an expensive foreign holiday, and submitted the pack well over a week before the deadline. She was therefore dismayed to receive back a rejection letter from the DVLA without her identity documents. Eventually, the Royal Mail recovered and returned her passport. The BRP remained missing and Mrs AB spent over £1,000 in obtaining a fast-track document in order to go on the holiday. She complained that the DVLA had stuffed too many documents into her SAE causing

the envelope to break; that the application had been wrongly rejected given her provision of documents within the deadline period; and that the refund had been issued to the wrong address. She was also deeply dissatisfied with the DVLA's responses to her complaint.

Agency response: Mrs AB was told that, in effect, she should have factored in the published five-day processing time and subtract it from the deadline she had been given. She had met the agreed deadline but her documentation had not been processed for over a week. Because the expiry date for the application was set on the DVLA's mainframe, the application had been deleted before the paperwork had been processed. This automatically generated a refund letter to the address then held on the system which was the previous address. The DVLA stated that the integrity of the envelope would have been checked by staff. If it had been over-filled, there would be evidence of an excess charge applied by the Royal Mail. No apology was offered. In later communications with the complaints team, this basic explanation was reiterated with further explanations about the processing overheads that had meant that an application received within an agreed deadline had been rejected. The DVLA declined to offer any compensation as it disputed the attribution of responsibility for the failure of envelope to its clerk.

ICA outcome: The ICA noted that the clerk handling Mrs AB's application had applied adhesive tape to the envelope to ensure that the seal did not open. However, the envelope had failed on one side. The ICA was not in a position to reach a firm conclusion about why the envelope had failed. However, he partially upheld the complaint, finding that that the application should not have been rejected when it was received well before the agreed deadline. The ICA was very critical of the DVLA's dogged insistence that it was reasonable not to provide a service when a customer had met all the agreed requirements. He upheld the complaint on that basis and recommended that the DVLA should pay a consolatory payment of £150. Because he did not find the DVLA responsible for the loss of the BRP, this consolation related solely to the delay in the issue of the provisional licence and the frustration engendered by the DVLA's inflexible and unreasonable attitude to the deadline.

Loss of implied entitlements

Complaint: Mr AB complained about the loss of his implied C1/D1 entitlements and related matters. He said that the DVLA had lost information and sought personal replies from the chief executive.

Agency response: The DVLA had acknowledged poor service - in part, that it could have alerted Mr AB to his entitlement to drive under section 88 of the Act earlier than was the case - and had made a consolatory payment of £50. Mr AB had been issued with a one-year licence including the implied entitlements as the ICA review was under way.

ICA outcome: The ICA found that no information had been lost, and he did not think it maladministrative that the chief executive delegated responsibility for responding to complaints. Moreover, the DVLA had been entitled to assume at the outset that Mr

AB had not wanted to retain his entitlements as he had not supplied the relevant information (forms D2 and D4). However, during the ICA's enquiries it came to light that the licensing decision could have been made a month earlier. For that reason, the ICA part upheld the complaint and recommended a doubling of the consolatory payment.

Use of photo-licence as ID document does not mean medical standards are not applied

Complaint: Ms AB complained about the time taken by the DVLA to issue her with a new provisional licence. She said she had no present intention to learn to drive but needed the licence as an identity document. She acknowledged use of cannabis but said this was no threat to road safety.

Agency response: The DVLA said that it issued licences to permit people to drive and not as identity cards. The medical standards of fitness to drive therefore applied and Ms AB needed to show that her cannabis use was not uncontrolled.

ICA outcome: The ICA found that the DVLA's senior doctor had been very constructively involved in the case, and had offered to speak personally with Ms AB's GP to determine if a drug screen was required. He could not criticise the licensing decisions and accepted the DVLA's argument that the use of photocards as de facto identity cards was not a relevant consideration.

Remedy for a series of errors leading to the wrongful denial of a driving entitlement for eight years

Complaint: Mr AB, an ex-soldier, was trying to establish himself in a trade. He complained that, as a result of the DVLA's failure to act on the reduction of his penalty points (meaning that his licence should not remain quashed under the Road Traffic (New Drivers) Act 1995), he was wrongly denied his driving entitlement for ten years. In that time the DVLA had a number of opportunities to put matters right, but instead insisted to Mr AB that a driving offence had invalidated his licence and he needed to re-sit theory and practical driving tests. Mr AB complained that the DVLA's mistakes meant he had to change his chosen profession and he had lost out financially as a result. He had spent money on taxi-ing his children to and from school and suffered severe inconvenience and distress.

Agency response: The DVLA accepted that it had handled Mr AB's licensing and related queries poorly. It did not agree with his claim for financial loss but did accept that its actions had caused inconvenience and distress. As a result, the DVLA awarded him £450 by way of a consolatory payment, and £50 to cover the costs of two theory tests that he could evidence having to take to try to regain his entitlement.

ICA outcome: Like the DVLA, the ICA did not regard Mr AB's claim for financial loss as viable, apart from the cost of the two theory tests. However, the ICA considered that the impact on Mr AB of being wrongly denied his entitlement to drive for eight (not ten) years was significant in terms of the inconvenience, distress and frustration he had suffered.

The ICA felt that the Agency should take a holistic view of the hardship Mr AB had suffered and show flexibility given the inherent difficulties involved in furnishing evidence. The ICA recommended that the DVLA should seek authority, exceptionally, to issue an increased consolatory payment to Mr AB of £2,550 and this was agreed.

A car driver discovers that she is entitled only to drive tractors

Complaint: Mrs AB had passed her car driving test 30 years earlier and her tractor test the year before that. She was surprised while insuring a car online to discover that the DVLA had no record of her car driving entitlement. She challenged the DVLA about what she felt was obviously a clerical error but, in the absence of evidence of a test pass having been redeemed within the two-year period, the DVLA declined to reinstate the entitlement.

Agency response: The DVLA investigated Mrs AB's account of having passed her test and interrogated all of its electronic and manual records, to no avail. The only record it could find was the tractor driving entitlement.

ICA outcome: The ICA signalled from the outset that he was rarely able to assist in cases of lost entitlements as he had no ability to undertake or oversee an independent search of the DVLA's records. He was satisfied from the file that reasonable steps had been taken to discover whether Mrs AB's entitlement had been misallocated or lost through clerical error. Mrs AB reluctantly followed DVLA advice and undertook and passed the driving theory test and was awaiting a practical driving test appointment at the time that the ICA completed his review.

Sufficient remedy for losing an application pack

Complaint: Mr AB applied for the reinstatement of his Group 2 entitlement by handing over the application pack to the reception in the DVLA's Swansea offices. He complained that this pack was lost necessitating a new application and creating delay that cost him a job as a tyre fitter. He had asked that his ordinary entitlement be restored at the same time as his Group 2 but did not apply for it until after the job offer had been made.

Agency response: The DVLA admitted that it had lost the original application. It apologised and offered a £100 consolatory payment. Its compensation team declined Mr AB's claim based on the delay in the Group 2 entitlement preventing him from taking up work.

ICA outcome: The events of the case were not disputed. The ICA found that the root cause of Mr AB not having the necessary entitlement (Group 1) to drive a mobile tyre replacement van was his own delay in applying for that entitlement in the prescribed way, with the D1 form. While the ICA accepted that DVLA error had created a month's delay in Group 2 relicensing, he could not link this to the hardship claimed by Mr AB. He therefore regarded the DVLA's offer of £100 consolatory payment as sufficient.

An invalid test pass cannot be used to license

Complaint: Mrs AB's provisional entitlement had been rescinded by the DVLA after the Home Office informed the Agency that she had no lawful right to live in the UK. Whether she was aware of this or not, she was able to book a driving test with the DVSA a month later that she passed. When Mrs AB applied for her full licence the DVLA told her that her provisional entitlement had been quashed and therefore her test pass could not be converted into a full licence. The DVLA liaised with the DVSA and had the test pass quashed. Several years later Mrs AB, now lawfully resident, applied for a driving licence on the basis of the test pass and complained that the DVLA was not showing leniency and compassion in refusing her application.

Agency response: The DVLA set out the relevant legislation and explained that it had had no choice but to quash the licence and inform the DVSA when it learned that Mrs AB had no lawful right to remain. The DVLA explained that the DVSA oversaw the administration of driving tests.

ICA outcome: The ICA could see no grounds for the DVLA to change its position. The only evidence he thought that might be admissible in a challenge by Mrs AB would be a clear statement from the Home Office that it had misadvised the DVLA about Mrs AB's right to reside in the UK. No such evidence had been provided and therefore he could not see that the Agency could change its requirement that Mrs AB re-sit and pass the theory and practical tests.

Lost motorcycle entitlement

Complaint: Mr AB complained that the DVLA had failed to process correctly his certificate of motorcycle practical test pass that he had sent 20 years previously. When trying to renew his motorcycle licence, Mr AB was told that he had provisional entitlement only. He complained of a catalogue of errors on the part of the DVLA. Not only had it lost his original test pass and failed to licence him fully, but he had been advised that he could drive a bike up to 500cc on his provisional licence. Delays and other instances of poor service were also raised by Mr AB.

Agency response: The DVLA looked into the matter and reaffirmed the advice it had given Mr AB two years previously that it had only a record of a provisional entitlement. It accepted that he had passed the test 20 years previously but that pass had been voided and he would need to re-sit both theory and practical tests in order to have a category A/motorcycle entitlement. The Agency apologised for its incorrect advice and for other shortfalls.

ICA outcome: The ICA disagreed with Mr AB that customer service failings in his recent interactions with the DVLA represented a case that his motorcycle licence should be restored to him. He explained that the purpose of remedy was to restore a customer to the position they would have been in without the error occurring. There was no evidence of any processing error in relation to the original test pass. The ICA could not get to the bottom of why this had not arrived or been processed in Swansea. He asked for confirmation from the DVLA that contact centre staff had been reminded about the limits that apply to provisional motorcycle entitlement (he

received this). He also asked that a consolatory payment of £40 should be made to Mr AB to reflect other shortfalls in customer service. He did not uphold the complaint overall.

An absence of sensitive casework #1

Complaint: Mr AB complained about the service he had received from the DVLA's Sensitive Casework Team following the death of his wife. He said that letters went unanswered and explanations were not given. He also complained that when he transferred keepership of his late wife's vehicle he received no refund for the tax she had already paid.

Agency response: The DVLA had apologised for poor service. It had also said that no VED rebate was due.

ICA outcome: The ICA said he had great sympathy for Mr AB, and fully upheld the complaint. The one thing he had not received was sensitive casework. He therefore recommended a personal letter from the CEO in recognition of the findings of his report. However, the ICA said he also had to pay heed to the impact of Covid-19, and could offer Mr AB no redress in terms of the VED he had paid. The law makes no distinction between a change of keepership after bereavement vis-a-vis any other reason. In comments the DVLA said they would conduct a 'deep dive' to identify that all appropriate lessons were learned.

An absence of sensitive casework #2

Complaint: Mrs AB sold her late husband's car and provided the requisite documentation to the DVLA. In addition, over and above the DVLA's requirements, she also provided his death certificate. Two weeks later, the purchaser of the car contacted her to say that he had received the death certificate. Mrs AB informed the DVLA that the death certificate contained her data and its dispatch to the purchaser should be reported to the Information Commissioner as a data breach. The DVLA initially declined to do so, telling Mrs AB that no breach of the Data Protection Act had occurred because the information related to somebody who had died. When Mrs AB challenged that, pointing out that her own data was on the document, the Agency told her that the breach was not considered high-risk given the fact that the purchaser of the car had identified himself and harm to her had been assessed as unlikely. Mrs AB therefore complained to the Information Commissioner's Office (ICO) who upheld her complaint and made a series of recommendations. Mrs AB judged that the distress and frustration she had experienced, compounded by the DVLA's failure to speak to her and its assumptions about the impact on her, justified a payment in the order of £10,000.

Agency response: After the ICO had upheld Mrs AB's complaint, a 'lessons learned' exercise occurred in which the Agency action-planned the ICO recommendations. The DVLA wrote to Mrs AB apologising sincerely and explaining why its own assessments had not pointed to ICO disclosure. It offered a consolatory

payment of £450 to encompass both the breach and the hassle Mrs AB had experienced in orientating it to its duties.

ICA outcome: Mrs AB felt that it had been a struggle to get the DVLA to accept that the content and implications of the breach had compounded her bereavement. The purchaser of the car had refused to return the certificate. The ICA noted poor DVLA handling that had included a lack of apology and a rather impersonal approach despite the Sensitive Casework Team's involvement. The ICA judged the eventual apology as sincere and unqualified and, having inspected the documentation arising from the 'lessons learned' exercise, found the Agency's response to be genuine and meaningful. The ICA found that the DVLA should increase its consolatory offer to £500 and also pay £50 compensation in recognition of Mrs AB's costs. Further, he recommended that managers in the team responsible for the initial responses should consider carefully his comments about the tone and content of those letters. He asked the DVLA to apologise and the Agency decided that its chief executive would do so.

Customer's entitlement to change his name

Complaint: Mr AB had changed his name by statutory declaration. He complained that the DVLA would not accept his new name on his driving licence.

Agency response: The DVLA said that Mr AB's name could cause offence. It said it applied a Home Office policy on change of names that permitted it to refuse to register names that could cause outrage or offence.

ICA outcome: The ICA said that popular standards of 'offence' had changed, with swear words common on television and films and in books and music. In addition, Mr AB had explained the derivation of his new first name – and the ICA discovered that it was not pronounced in a way to echo a swear word. In addition, the DVLA had accepted a V5C in Mr AB's new name. The ICA said the state should tread carefully when dealing with citizens' requests to change their names, and not act as a moral arbiter. It was also unconvincing that the DVLA had changed its rationale for rejecting Mr AB's name. He recommended that a licence be issued, and pleasingly this was agreed by the Agency.

(v): OTHER CASES – VEHICLES

Unjustified claim for lost photographs and receipts

Complaint: Mr and Mrs AB had converted their panel van into a motorhome. They were told by the DVLA that they needed to provide original receipts as well as photographs of the van with their application for registration with body type "motor caravan". The new registration certificate duly arrived but they did not receive their original receipts and pictures.

Agency response: The DVLA searched the relevant business areas and could find no trace of the documentation. It declined Mr and Mrs AB's £4,000 claim, repeatedly stating that there was no evidence of losses for which compensation could be attributed. It noted that Mr and Mrs AB had referred to the documentation being needed for accountancy purposes but there was no evidence to support this. It would not pay for their time in pursuing the complaint. The DVLA offered a £50 consolatory payment that Mr and Mrs AB characterised as insulting.

ICA outcome: The ICA looked carefully at the relevant guidance and agreed with the DVLA that compensation could not be payable in the absence of clearly evidenced losses. On the matter of consolatory sum, he referenced the events of their case and the impact of DVLA error to the relevant guidance. He felt that the corroboration of expenditure that the receipts represented could have been obtained from the suppliers with reference to bank records and that this need not have been a protracted process. The ICA did not therefore agree with Mr and Mrs AB that their claim fell within one of the higher categories of hardship set out by the Ombudsman. He felt that the correct position would be somewhere between level 1 and 2. Referring to precedent ICA and PHSO cases, he recommended that the consolatory offer be raised to £100.

Keeper mistakenly removed from vehicle record

Complaint: Ms AB complained that she had lost her vehicle because the DVLA had processed an old registration certificate (form V5C) removing her from the vehicle record. The police, having seized the vehicle as having been reported stolen, then returned the vehicle to someone believed to be the lawful owner.

Agency response: The DVLA had said that it had processed the V5C under its standard processes and could not become involved in a civil dispute over the ownership of the vehicle in question.

ICA outcome: The ICA said that this was a very complex matter, not all the details of which were clear at the conclusion of his review. Keepership was not the same thing as ownership, but this seemed to have been poorly appreciated by a number of the parties, including the police. However, it was evident that DVLA systems did not prevent the processing of an old V5C wrongly removing the current keeper from the record, and he deemed this was maladministrative. He also disagreed with the DVLA that this had made no difference to the outcome of the case since it seemed unlikely that the police would have released the vehicle to a previous keeper if she was not shown as the current keeper on DVLA records. There had also been some poor handling of Ms AB's correspondence and complaint. The ICA could not say that Ms AB was the lawful owner of the vehicle (although she had paid over £3,000 for it), and he suspected that a previous keeper had been mistaken in thinking he was the lawful owner too. However, he recommended a £500 consolatory payment for the maladministration and that a copy of his review be shared with the chief executive for her consideration.

(vi): OTHER CASES – ACCESS TO DATA

A poorly handled request for keeper information after a minor crash

Complaint: Mr AB said he had been involved in a minor road traffic collision in which his car was damaged by an approaching vehicle. He dispatched a V888 application form and document pack to the DVLA to obtain the other keeper's details under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. With it he included a dashcam picture of the approaching vehicle showing it clearly positioned correctly in the centre of its own lane, and pointing to the likelihood that it had been Mr AB himself who was straddling the centre line.

Agency response: Over the following months, Mr AB's repeated requests for details of the other keeper were rejected by the DVLA for different reasons. A theme in the correspondence was the DVLA's apparent need for details of the make and model of the other car (however, Mr AB had provided a dashcam photograph of the car clearly displaying the plate meaning that this information would have been readily available to any member of the public as well as the DVLA). Mr AB refused to provide the information and redirected the DVLA to his original request in which he had outlined details of the collision and provided the picture. The DVLA repeatedly requested details of the collision and deadlock was reached. In this time Mr AB also complained that his complaints had not been correctly escalated.

ICA outcome: The ICA fully upheld the complaint about the DVLA's deployment of its complaints procedure. Mr AB's initial informal complaint had not been logged as such when it should have been. He had therefore expected the complaints procedure to engage at stage 1 when he complained in writing. Instead, this had been routed back into the informal stage, and so on. Further attempts by Mr AB to escalate had been unsuccessful and complaints responses had not properly explained nor apologised for this mishandling. The ICA reminded the DVLA of the fact that the wording of its complaints procedure indicated that the informal stage was completed after the customer had "*spoken"* to the department concerned. Having done this, Mr AB found himself back in the informal stage. The ICA recommended that the wording of the procedure be improved or, preferably, the informal stage should be abolished in cases where people were clearly trying to lodge a formal complaint (as Mr AB had obviously been trying to do). The ICA was also critical of the DVLA for not spelling out that Mr AB had not made a *prima facie* case of keeper liability with the evidence he had provided. The ICA felt that the DVLA's stated grounds for refusing the data did not meet the Ombudsman requirement for clarity about decision-making. Mr AB had also been repeatedly pointed to the ICO. The ICA made his own enquiries of the ICO and established that in such circumstances the ICO only looked into contested disclosures under the Data Protection Act 2018. The keeper of the other vehicle could have had recourse to the ICO had his data had been released to Mr AB. As no personal data had been released to anybody, the ICO was not engaged. The ICA therefore recommended that the DVLA stop referring customers who had not been given personal data under Regulation 27 to the ICO. In considering remedy for the failings identified, the ICA noted that Mr AB had had numerous opportunities to provide further information in

support of his claim of keeper liability. He had not taken advantage of those opportunities but had instead dug in, insisting that his original application was sufficient. The ICA did not judge that it was sufficient at all and he supported the DVLA's decision not to disclose. He recommended that the Agency should apologise to Mr AB for the failings he had identified. He also recommended that the DVLA should ensure that its responses to data requests under Regulation 27 contained clear information about the basis of refusals.

Refusal to provide keeper data

Complaint: Mr AB complained that the DVLA refused to give him details of the keeper of a trades vehicle after the tradesman involved had failed to complete a job that Mr AB had paid him for in advance. Mr AB was very disappointed that the DVLA continued to refuse his request even after he had, he thought, demonstrated that the tradesman was indeed the vehicle keeper.

Agency response: The DVLA justified its refusal on the ground that the vehicle keeper need not necessarily be the actual tradesman and that its 'reasonable cause' provision for data release was not met.

ICA outcome: The ICA noted that the relevant policy clearly defined reasonable cause in terms of incidents of keeper liability arising from vehicle use. This was not such an incident and therefore the ICA judged that the refusal to disclose had been made in line with policy, a matter over which he could not adjudicate.

Private parking grief

Complaint: Mr AB was ticketed by a private parking company despite having purchased a ticket and displaying it on his dashboard. He appealed against the ticket, but the company did not respond on the basis that he had not identified himself as the driver. Mr AB was then subjected to enforcement action and debt recovery. He contacted the DVLA and established that the disclosure of his data had occurred to a company unrelated to the one that had ticketed him. He went on to complain that the company had acted contrary to the relevant Approved Trade Association (ATA) code of practice in not responding to his appeal. Exasperated by the lack of response from the DVLA, he went on to enumerate a series of questions and challenges, in the main related to the DVLA's approach to reports that that parking companies were breaching their code. He also complained that the Agency's responses to his complaints were delayed and incomplete.

Agency response: The DVLA provided stock wording related to its data disclosure business over several iterations of its informal and formal complaints procedures. Mr AB had needed to push the Agency along at every stage. Eventually his questions and challenges were answered after he involved his MP.

ICA outcome: The ICA did not regard Mr AB's criticisms of the DVLA's data disclosure as tenable. The disclosure had been made fully in line with the 'reasonable cause' framework outlined to him in the correspondence. The high

thresholds for DVLA direct involvement in disputes between vehicle keepers and private parking companies (likely fraud or misuse of the data provided for other purposes) were not met. There was no evidence of the fraud that Mr AB alleged. The ICA was very critical, however, of the DVLA's complaint handling. He characterised the web chats provided to him by Mr AB as attempts by the Agency to fob him off. He noted that this had continued up to and including complaints team involvement, and that it had required the MP's involvement before Mr AB's questions were answered. The ICA noted that the DVLA had not spelt out that post hoc challenges to the code compliance of private parking companies were for the prescribed appeals route and not for the Agency. However, the ICA was appreciative of the effort that had been made to address Mr AB's questions after his MP had written in his support. He upheld the complaint and recommended a consolatory payment of £100. He also asked that the DVLA, exceptionally, make contact with the ATA concerned to chase up Mr AB's account that the fine he had paid (£160) had not, contrary to the ATA's request, been repaid by the private parking company.

(vii): OTHER CASES – EQUALITY ISSUES

Continuing difficulties for those in receipt of PIP

Complaint: Mrs AB complained that she could not transact with the DVLA regarding her 50 per cent vehicle excise duty as a recipient of PIP other than on paper.

Agency response: The DVLA had explained that it had no electronic link to the Department for Work and Pensions and could not therefore offer the same service as to those not in receipt of PIP. The Agency had acknowledged some failures in its handling of Mrs AB's correspondence and made a £30 consolatory payment.

ICA outcome: The ICA said he could not decide the DVLA's IT and other investment priorities for it, but he and his fellow ICA were very sympathetic to the position of Mrs AB and customers like her. He drew attention to supportive comments in the ICA annual report. The ICA part upheld the complaint on the basis of handling errors he had identified.

Failure to make reasonable adjustments

Complaint: Mr AB complained that the DVLA had repeatedly failed to make reasonable adjustments for his special needs.

Agency response: The DVLA had acknowledged that at times it had not recognised Mr AB's needs and had apologised. It said a special marker was now on Mr AB's record to try to prevent any recurrence. The DVLA had also made a consolatory payment of £100.

ICA outcome: The ICA said he could not be certain of some details (there was a conflict of evidence regarding some of the questionnaires Mr AB had been sent), but

it was not in doubt that on occasions the DVLA had failed to meet Mr AB's needs. The ICA concluded that the marker could in fact have been placed on the record earlier. However, he was content that the Agency had now taken appropriate action, and that the consolatory payment was in line with PHSO level 2.

DWP computer says no

Complaint: Mrs AB complained that she was unable to pay her VED online as she was in receipt of PIP. She was also concerned that a sensitive marker should be added to her DVLA driver record.

Agency response: As in other cases, the DVLA had said that its system did not currently have an electronic link to the DWP computer.

ICA outcome: The ICA asked the DVLA to see if any bespoke arrangement could be achieved with the DWP. Unfortunately this proved impossible, and once it became clear that the problem was at the DWP end of the process, the ICA felt he had no alternative but to discontinue the case as he had no jurisdiction over the DWP. However, the ICA was pleased that he was able to help Mrs AB have a sensitive marker added to her DVLA record, although the existence of two sensitive markers still did not mean that one system could talk to the other.

ICA highly critical of DVLA failure to implement court order

Complaint: After a notification from the Home Office, the DVLA revoked Mr AB's entitlement under s.99(3ZA) of the Act because he was not lawfully resident in the UK. Two years later, Mr AB engaged the appeal mechanism of the revocation under s.100 of the Act. He was successful in court and a court order was issued requiring relicensing by the DVLA. He complained that, despite informing the Agency, repeatedly providing copies of the order, and repeatedly complaining, it took ten months for his licence to be restored. He characterised the DVLA as discriminatory against black people and Muslims.

Agency response: In the run up to the court hearing, Mr AB made contact with the DVLA and was provided with copies of the revocation correspondence of two years previously. This correspondence requested that the driver notify the Agency of any court proceedings. Mr AB attempted to do this, but his notification was not processed by the DVLA. This meant that the Agency was not present in court. After obtaining the order, Mr AB repeatedly pressed the DVLA to restore his entitlement. Unfortunately, the DVLA did not seek clarification of the meaning of the order from the court (interpreting it as potentially granting a right to appeal as opposed to being the outcome of successful appeal). It made contact with the Home Office but the outcome of this was unclear. Over the following three months, Mr AB tried to get relicensed, without success, as a Home Office revocation marker remained on his DVLA record. Eventually, he managed to activate the complaints procedure and, five months after he had won in court, the Agency accepted that it had mishandled the court order. A consolatory payment of £300 was made. Unfortunately, it then

took another five months to relicense Mr AB, partly due to errors in Swansea, partly because Mr AB had not fully completed a form, and then latterly due to the impact of the pandemic. The DVLA declined Mr AB's compensation claim on the basis that he had not sufficiently evidenced his losses.

ICA outcome: The ICA noted the DVLA's view that the appeal notification email address provided to Mr AB in the run up to the court date (on an old letter that had been superseded some time earlier) would still have functioned at the time. It was therefore unclear why the DVLA had not processed the notifications of the appeal that Mr AB had dispatched (he provided screenshots to the ICA in support of his case that he had followed the instructions). The ICA found, on the balance of probabilities, that there had been some kind of error in Swansea meaning that the two notifications were not processed. This was later compounded by the Agency's failure to clarify what the court order meant. The ICA was particularly disappointed by the difficulties Mr AB faced in activating the complaints procedure, and he contrasted his experience with that of UK nationals claiming that they were being wrongfully denied an entitlement. The ICA judged that Mr AB's experience reflected the intention of the "hostile environment" policy, to make it difficult for people without residency rights to function in the UK. While the ICA commended the DVLA for its initial apology, he was very disappointed that the undertaking to relicense Mr AB without further delay was not achieved. Further, when Mr AB launched a claim, the Agency dug in behind the position that it was insufficiently evidenced rather than addressing the core allegation that he had been denied his entitlement for three years. The ICA did not find that the DVLA had acted in error in the original revocation, so he did not agree that three years was correct length of time. However, the ICA found that the failure to interpret correctly and act on the court order, and later administrative failings, created a ten month delay in relicensing that was clearly maladministrative. He therefore upheld the complaint. He recommended that the DVLA make a further consolatory payment of £500 as well as a payment of £50 to reflect Mr AB's overheads in repeatedly having to contact the Agency. The ICA also recommended that the DVLA should consider carefully Mr AB's comments about the impact on him of being unable to obtain his lawful driving entitlement, including his allegations of racist treatment. The ICA said the DVLA should consider sympathetically any compensation claim that Mr AB should make and that its chief executive should apologise to him for the failings identified. The Agency confirmed its commitment to learn from this case to ensure that similar issues did not recur.

Unreasonable customer expectations of a reasonable adjustment

Complaint: Mr AB qualified for a backdated award of PIP that entitled him to exemption from paying VED. He complained that, when he telephoned the DVLA to chase up a refund of VED, it failed to make a reasonable adjustment by changing its requirement for a written document to be submitted by post. Mr AB stated that he had a disability that meant he could not use a keyboard or write, and lived a long way away from a Post Office or Citizens Advice Bureau. He characterised the DVLA's repeated statements of its requirements (sight of original paperwork demonstrating the PIP entitlement) as tantamount to harassment.

Agency response: Over two days of phone calls, DVLA advisers repeated the requirement for the original entitlement to be produced. Suggestions were made including the involvement of Citizens Advice or a friend who could assist Mr AB in completing the paperwork. Mr AB repeated that none of these options could apply. Neither he nor his friend could write. He repeatedly accused the DVLA of breaching its equality duties and of harassing him. Eventually, after two days of difficult telephone calls, the DVLA changed its evidence requirements and Mr AB was able to meet them remotely. The DVLA established that some aspects of its service (manager call-backs and telephone handling) had not been of a sufficient standard and it made a consolatory payment of £50. It then realised that it had miscalculated the repayment of VED by over £250. In the circumstances, given the repeated failings, the DVLA told Mr AB that it would not recover this money and that it should be regarded as a further consolatory payment.

ICA outcome: The ICA had reservations about Mr AB's claim that the DVLA had failed to make a reasonable adjustment. First, such a claim could only be determined in court. Second, Mr AB was arguing that DVLA staff should visit his remote rural home. The ICA noted that over two million people were in receipt of PIP and that the DVLA was a centralised government agency. Third, the ICA found that Mr AB had set up a business over the period of his dispute with the DVLA and that the website advertising its services included an email portal. It seemed to the ICA that Mr AB may have had more options than he was prepared to tell the Agency about for meeting a standard requirement of proof of entitlement. The ICA acknowledged that the delay in the softening of the requirement had placed Mr AB under considerable strain. He regarded the total consolatory payment (in excess of £300) as above what an ICA would ordinarily recommend in this circumstance and therefore made no recommendation for further remedy. He found that a problem had been that contact centre staff had lacked the authority to vary the requirements in Mr AB's very specific circumstance. He recommended that the contact centre review its arrangements for making adjustments to standard procedures. He did not uphold the complaint that Mr AB's case revealed unremedied injustice.

3. DVSA casework

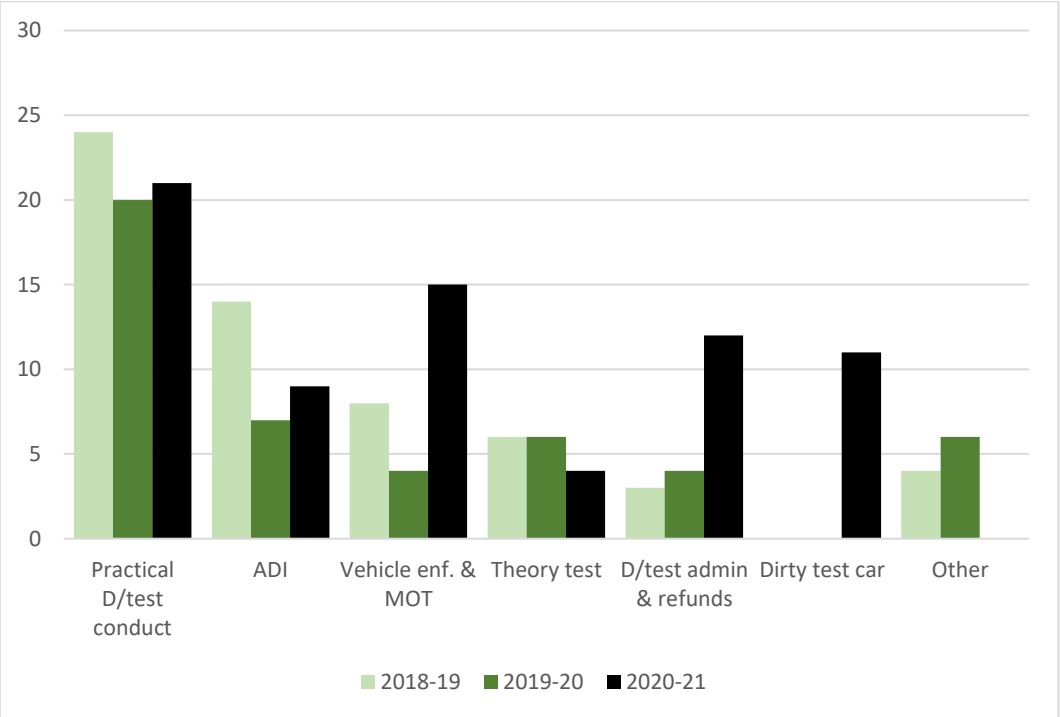
Incoming cases

3.1 We received 72 cases from the DVSA in 2020-21, an increase of 53.2 per cent from the year before. More cases first lodged with the Agency that year have continued to be sent to us in the current year as the DVSA has cleared its backlog. Numbers reflected the significant impact on customers, driving test candidates in particular, of the reduction in DVSA activity caused by the pandemic.

3.2 Despite the increase in the number of referrals, the Agency's decision to prioritise non-complaint work during the Covid-19 lockdown has resulted in most of our cases waiting in a queue for many months. But notwithstanding the impact upon many of its customers, we cannot possibly criticise the DVSA for directing resources where they were most needed to meet an unprecedented national emergency. We are grateful to complainants for their understanding of the long delays caused by these unique circumstances.

3.3 In Figure 3.1 we compare the year's incoming DVSA complaints, by topic, with those received in the previous two years.

Figure 3.1: DVSA complaints, 2018 to 2021, by main topic



3.4 The category "D/test admin & refunds" includes complaints about the availability of tests and cancellations. Unsurprisingly, we have seen a surge of complaints given the cancellations and postponements that occurred during 2020. Many test candidates were also concerned that their theory test passes would expire before they were able to take a practical driving test. This did

affect many candidates, but we were unable to intervene as the decision not to extend the validity of theory test was one taken by Government and endorsed by Ministers.

3.5 These complaints have continued into 2021-22 and will be reflected in the coming year's statistics.

3.6 As Figure 3.1 also shows, we received a significant number of complaints when examiners refused to take tests in cars they judged to be insufficiently clean and therefore a potential Covid risk. Perceptions of a car's cleanliness are inevitably somewhat subjective, but we were content that the DVSA could rely upon the professional judgments of its examiners. If the decisions were sometimes risk-averse, that was understandable and did not amount to maladministration. However, here as in other aspects of the DVSA's responsibilities, we did note a lack of clarity in the Agency's approach to photographic or video evidence. We remain of the view that the DVSA's refusal to accept any video or audio evidence in relation to complaints is not good practice. Such evidence may well be partial, but that does not mean it has no value whatsoever. Modern policing would be impossible without the use of video evidence, and the DVSA has itself extended the use of body-worn cameras to its enforcement staff.

3.7 Perhaps because any practical driving test appointment has been a much sought-after commodity this year, complaints about examiner conduct and decision-making (always the single greatest category of complaint to us) have increased slightly despite the reduction in testing.

3.8 The ADI category in Figure 3.1 refers to those complaints from Approved Driving Instructors directed to the DVSA in its oversight and registration roles in relation to the profession and industry. The reservations we expressed last year in our annual report about the applicability of the ICA scheme to registrant/registrar disputes still stand. A year on, it remains open to ADIs to complain to us about matters that include the conduct of standards checks and the Agency's decision-making in, for example, removing approval from a training school. We approach such complaints cautiously while being mindful that, in the latter example, the only other redress route for a small business forced to cease trading is judicial review.

3.9 The year saw a near trebling in complaints about the DVSA's vehicle standards business. Many of these related to Government decision-making about extending the currency of MOTs over phases of the pandemic. Some of those complaining about the decision not to extend the coverage of driving theory tests have contrasted their treatment with Ministers' decisions in respect of vehicles, arguing that both had implications for road safety.

Cases we completed, 2020-21

3.10 We completed 62 DVSA cases in the year. In Figure 3.2 (overleaf) we set out case outcomes alongside those for 2018-19 and 2019-20 with green denoting not upheld and red, upheld to some extent.

Figure 3.2: Completed DVSA cases outcomes, 2018-20

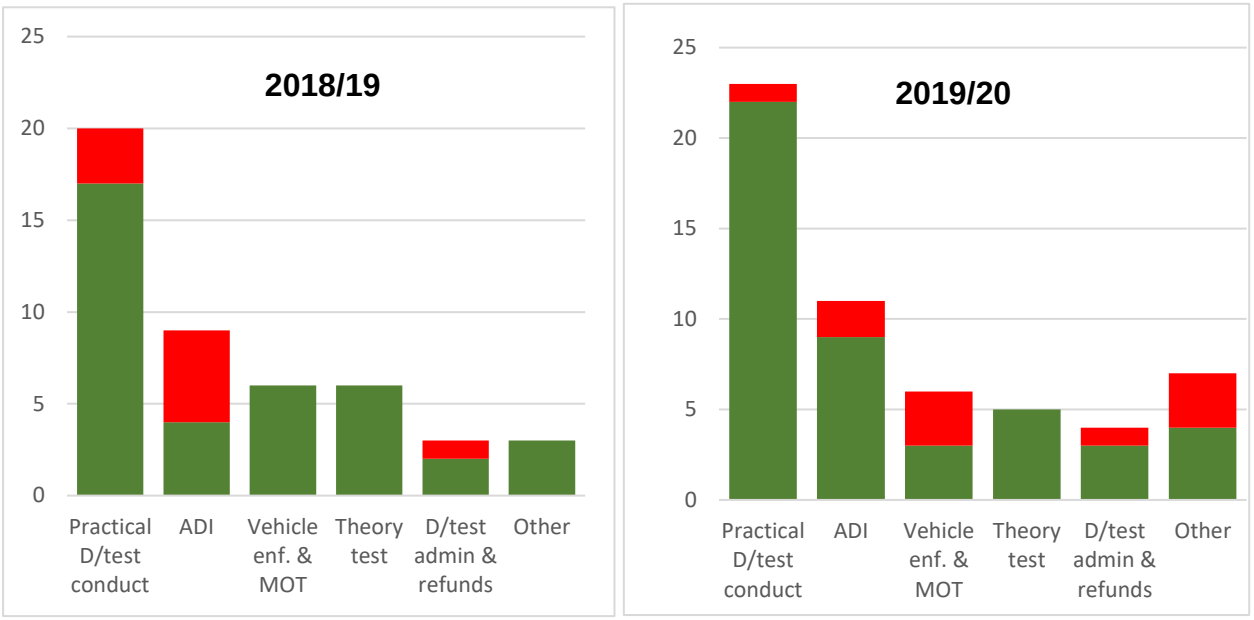
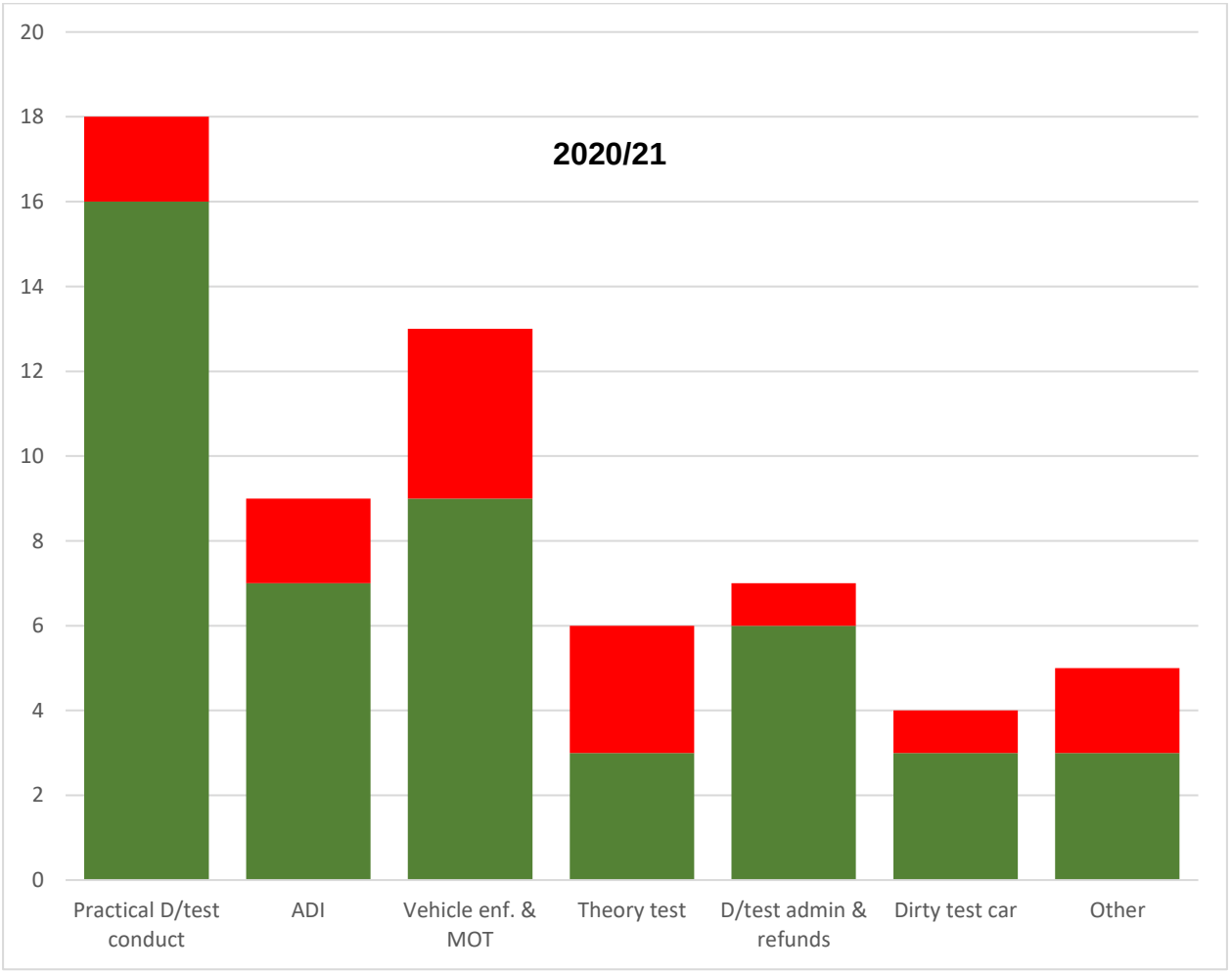


Figure 3.2 [cont'd]: Completed DVSA cases outcomes, 2020-21



CASES

(i): THEORY AND PRACTICAL DRIVING TESTS

Thoughtless comments on candidate's attire

Complaint: Mr AB complained that an inappropriate comment had been made by a female member of staff about his daughter Miss AB's clothing when she attended a theory test centre. This had distressed her considerably on the day and affected her performance.

Agency response: The DVSA's contractor, Pearson Vue, and the DVSA itself at the first formal stage, stated that the member of staff had legitimate concerns about Miss AB's attire and had not seen any signs of distress on the day. At its final stage, the DVSA apologised for the earlier responses and acknowledged that Miss AB may have been distressed without showing visible signs of it. Staff in the theory test centre had been told that it was best not to make comments about people's clothing and appearance. Prior to ICA referral, the DVSA offered further apologies and increased its consolatory payment. However, Mr AB remained dissatisfied.

ICA outcome: The ICA was not persuaded by Mr AB's depiction of the incident as sexual harassment and/or discrimination under the Equality Act. He thought the receptionist's comments were thoughtless but probably well-intentioned. He did not doubt the impact on Miss AB and characterised her experience as commensurate with Ombudsman level 2 hardship. On that basis he recommended that the consolatory offer should be increased to £150.

Misleading instructions from satnav

Complaint: Mr AB complained that the driving examiner on his granddaughter's test had been rude and unfriendly, discomfiting her on the day. In addition, the satnav device used for the independent drive gave misleading instructions that put her off. Mr AB contested the examiner's recording of a serious fault in relation to observations on parking manoeuvre and blamed the examiner for the second serious fault that he attributed to poor instructions. Mr AB characterised the test centre as unfriendly and geared up to failing young people on spurious grounds in order to raise money for the DVSA.

Agency response: The DVSA submitted the complaint to repeated investigation, taking evidence from a manager and the examiner. It considered that the faults had been defensible given the errors in Ms AB's driving. Although in later correspondence the DVSA was at pains to say that it could not be sure of exactly what had happened, it did not uphold the complaint.

ICA outcome: The ICA considered that the matter had been investigated sufficiently. But he noted the DVSA's references to satnav not providing an accurate representation of a specific roundabout (the examiner had forewarned Ms AB about this), and also that its indication of when to make a turn was not particularly well

timed. Ms AB had not accrued any faults as a result of these issues, but the ICA recommended that the DVSA review the use of the device on routes where it was known to provide misleading instructions. (The examiner guidance requires "no doubt" about directional instructions in the independent driving section.) Although the ICA considered that at times the DVSA was overly confident of its examiner's conduct in the absence of clear evidence, on balance he did not consider that the complaint should be upheld.

A resident objecting to learner drivers on his road

Complaint: Mr AB lived on a busy road that was also on the test route of the nearby driving test centre. He complained that the road was full of learner drivers practising hill starts and that being on a test route increased this level of traffic in an already congested area. Mr AB pressed the DVSA to remove his road from the test route and to take action against the ADIs using it for practice.

Agency response: The DVSA explained that it had no powers to require ADIs to tutor their pupils in, or away from, any specific area. It confirmed that the road was on three of its 12 test routes but, given the various factors involved in test route selection, the Agency felt that there was not a viable alternative. It displayed a notice in the driving test centre asking ADIs to avoid the road where possible. The manager also briefed ADIs face-to-face that there had been complaints from residents on the road, and requested that they take their pupils elsewhere. The bottom line remained that the DVSA did not judge that it should remove the road from its test routes but would keep the matter under review.

ICA outcome: The ICA did not agree with Mr AB that privatising the DVSA would improve the situation. He noted that all of the ADIs using the road were private contractors and DVSA had no powers to prevent them from enjoying free use of the public highway. The ICA judged that the DVSA had taken all reasonable steps in response to Mr AB's correspondence. He did not uphold the complaint.

A customer who did not receive a driving test cancellation email

Complaint: Mrs AB hired a car and presented for her driving test only to discover that it had been cancelled. She had difficult interactions with the car hire company and was considerably inconvenienced given her carer duties towards family members. She complained that she had not been informed of the cancellation by the DVSA. In her correspondence with the Agency over the following months, she argued that it did not provide sufficient evidence that she had been notified by email. She declined to exercise the option of claiming expenses that was offered to her by the DVSA.

Agency response: The DVSA interrogated its systems and established that the email had been dispatched over a fortnight before the test date, addressed correctly, with information about a new appointment. Because the email was system generated, the DVSA could not provide Mrs AB with a date stamped document

showing the date and time of dispatch. The DVSA repeatedly suggested that Mrs AB claim expenses but she declined, insisting that she wished to impress upon the Agency the massive impact of such cancellations on customers to prevent others having the same experience.

ICA outcome: The ICA found the DVSA's responses to have been reasonable. He noted the very high-volume nature of the Agency's bookings business (in pre-Covid times, 30-35,000 bookings were made per week with over 20,000 changes, mainly initiated by customers). The advantages of an automated system were obvious. Mrs AB's experience illustrated the pitfall which was that a customer would not be forewarned of a DVSA-initiated change and therefore would not be on the lookout for the email. The ICA noted that Mrs AB's email provider would automatically delete emails filtered as junk in 10 days – meaning that she would not have had sight of the rebooking notification in the run up to the test date or afterwards. He felt that the DVSA had investigated sufficiently and he noted that there had been no other reports pointing to a system failure in the dispatch of cancellations at the time. He did not uphold the complaint.

Information provided by the DVSA about the driving test

Complaint: Mr AB complained that the DVSA did not make it clear that he was required to provide his own car for his driving test (in his country of origin, cars are provided). As a result, he arrived for his driving test without a vehicle to take the test and was unable to take it. Mr AB also complained that the DVSA had refused to rebook his test for free.

Agency response: The DVSA considered that the information it had provided to Mr AB was clear, as was the information on the gov.uk website. It concluded that it had no basis on which to waive the fee for Mr AB's next driving test.

ICA outcome: The ICA reviewed the information Mr AB had received from the DVSA and was satisfied that it was sufficiently clear about the requirement to bring a car for the driving test. Moreover, the ICA was satisfied that at no point had the DVSA suggested that a vehicle would be provided for the driving test. The ICA was satisfied with the explanations the DVSA had provided in the complaints process.

Key worker's driving test #1

Complaint: Ms AB complained about the delay in allowing her to take a practical driving test as a key worker. She also criticised what she had been told by DVSA staff using online channels. She said that a commitment to grant her a test had not been met.

Agency response: The DVSA said that it had prioritised NHS workers and explained the limited number of tests that could be arranged given the shortage of examiners because of Covid.

ICA outcome: The ICA said that the decision to prioritise NHS workers was not maladministrative. Nor did he think there had been undue delays in the circumstances. The ICA was unable to adjudicate on what Ms AB had been told on social media as records were not kept, but he saw no reason to suppose that DVSA had deliberately 'lied' as Ms AB had alleged. The DVSA had in fact met its commitment to let Ms AB take a test, albeit not in the timeframe she considered acceptable.

Key worker's driving test #2

Complaint: Ms AB complained that she had not been given an emergency driving test as an essential worker. She also drew attention to her health problems.

Agency response: The DVSA had explained that it had a much-reduced capacity for driving tests as a consequence of Covid-19. It said that Ms AB's application remained open, but priority had been given to NHS workers.

ICA outcome: The ICA said he sympathised with Ms AB but the DVSA had been entitled to prioritise NHS staff. The ICA noted with pleasure that since escalating her complaint Ms AB had successfully taken a driving test. He did not uphold the complaint, citing the impact of Covid-19 upon the DVSA with (at one time) fewer than 200 volunteer examiners able to take just four tests a week, and some 40,000 applications for emergency tests.

Key worker's driving test #3

Complaint: Mrs AB, who supported health and supermarket workers through her job, complained that her practical driving test application had been unsuccessful because she did not meet the definition of critical worker. She pointed out that critical workers in the NHS and elsewhere with children relied on her profession in order to undertake their duties during the pandemic. She suggested that not including her profession as critical workers might be discriminatory.

Agency response: The DVSA explained that tests were being prioritised for those critical workers who were linked directly to relief efforts directly combating Covid-19. It denied that its decision-making was discriminatory.

ICA outcome: The ICA noted the scarcity of practical driving test appointments that could be made at the time. While the policy position was tough, he did not find the DVSA's decision-making maladministrative.

Theory test expires after Covid cancellation of practical test

Complaint: Mr AB complained about the cancellation of his MOD2 motorcycle test at the start of Covid lockdown. He said that in consequence his theory test had expired and he would need to take the MOD1 test as well. He asked why the

Government had not extended the theory test passes as had been done for MOTs. He also said that the renewed theory and MOD1 tests should be offered free of charge.

Agency response: The DVSA had explained that the two-year duration of theory tests was fixed in legislation. The Agency also said it had no plans to offer free theory tests for those whose entitlement had expired.

ICA outcome: The ICA had a lot of sympathy for Mr AB and others like him whose practical tests had been cancelled. However, the decision of the DVSA not to proceed with such tests could not be considered maladministrative in the face of the pandemic. The ICA felt the DVSA could have explained the legislative position more clearly (its letters seemed to him to suggest that there was no possibility of the two-year limit being changed), and was sympathetic to Mr AB's proposal that the theory tests should be offered free of charge in circumstances like those of Mr AB. However, both these issues were questions of DVSA/Government policy, and therefore outside his jurisdiction.

Difficulty in resolving complaints about examiner conduct

Complaint: Mrs AB complained about the conduct of her driving examiner and the examiner's manager during and after a practical driving test. She said the examiner had unnerved her and shouted at her, and that the Local Driving Test Manager (LDTM) had behaved similarly when her husband had rung on her behalf.

Agency response: The DVSA had carried out its standard procedures and said it was confident the test had been conducted properly. It said that the LDTM had sought to end the telephone call as Mrs AB's husband had used abusive language about the examiner, but in practice it was he who had put the phone down.

ICA outcome: The ICA said he could not adjudicate on what had happened in the car or during the phone call, but the DVSA had conducted appropriate enquiries. The language allegedly used by Mrs AB's husband was unpleasant, but not the worst he had heard. Nevertheless, if he had used the word alleged the LDTM would have been within her rights to have terminated the call. However, the ICA identified a delay at stage 2 (almost certainly caused by Covid-19 but not the result of any deliberate decision). For that reason, the DVSA agreed to his proposal that the Agency refund the test fee as the Operations Delivery Manager (ODM) had himself recommended. Noting that the DVSA was introducing body cameras for its enforcement staff, the ICA said he looked forward to a time when driving examiners were similarly equipped and complaints of this kind could be more easily resolved.

Inconvenience to a key worker needing to undertake an HGV test

Complaint: Mr AB worked for a utility company supplying a range of critical services, including to the NHS. He complained that his HGV driving test appointment, scheduled a few days after lockdown was announced, was cancelled contrary to the

Prime Minister's undertaking. In addition, the DVSA was uncontactable in the days and weeks that followed meaning that he was unable to book a test.

Agency response: The DVSA explained that the critical worker emergency tests had been implemented very quickly following the suspension of all driving tests on 21 March 2020. The Agency had not known at that stage which candidates were NHS workers (in the initial stages the DVSA had prioritised NHS workers). All tests had therefore been cancelled and it had taken a while to set up an automated booking system so that the very limited capacity of the Agency to deliver critical worker tests was used maximally. The DVSA explained that relocating its workforce in the main to home-based working had involved logistical challenges. Mr AB's suggestion that phone helplines and so on could have been maintained was not practical. The Agency had taken all possible steps to arrange emergency tests in line with government advice and requirements.

ICA outcome: The ICA acknowledged the considerable inconvenience experienced by Mr AB and emphasised that his status as a key worker was not in question. Allowance had to be made for the significant operational impact of Covid-19 on the DVSA, however. The ICA noted that Mr AB's test appointment could hardly have been at a less opportune time given the events of that week that included the implementation of lockdown. Given that, he did not consider that the inconvenience experienced by Mr AB was a product of DVSA maladministration.

ADI complains of examiner conduct

Complaint: Mr AB, an approved driving instructor, complained about examiner conduct in two of his pupils' driving tests that he had sat in on. On the first occasion his candidate had committed a serious fault early on in the test but had continued for the full 50 minutes in a distressed, and Mr AB stated, unsafe fashion. He said that her confidence had been shattered by the experience and that it had been cruel on the part of the examiner to allow the test to continue. On the second occasion – at a different driving test centre – Mr AB complained that his candidate had been incorrectly failed because she had selected the right-hand lane for a left turn on the roundabout. His argument was that the left lane was clearly dedicated to a different left turn meaning that his candidate was correctly placed for the requested exit. Mr AB complained about the conduct of both LDTMs whom he met separately in relation to each part of the complaint. As time went on, Mr AB broadened his concerns to include harassment, bullying, nepotism and corruption in the two driving test centres.

Agency response: The DVSA took evidence from all the relevant staff who, in the main, refuted Mr AB's account of events and explained the rationale for the conduct of the tests. On the first occasion it had been open to the candidate all along to request that the test be terminated. On the second, the interpretation of the correct lane on the approach to the roundabout as taught to the candidate by Mr AB was confirmed as incorrect given the signage and positioning of the two primary exit points from the roundabout. However, the examiner's explanation of this was not set out in the DVSA's correspondence.

ICA outcome: The ICA judged that the DVSA's responses were of a reasonable standard in all but one area. The Agency's account of why its examiner's judgement had been correct on the roundabout had not been referred to him. The ICA therefore supplied this information. The ICA did not find fault with the DVSA for preferring the account of events put forward by its staff. This was because Mr AB's very serious and wide-ranging complaints were not in any way evidenced. The ICA did not uphold the complaint. However, he recommended that the DVSA refer comments obtained by Mr AB from the police about lane selection approaching the roundabout to the LDTM for their consideration.

Practical driving test for customer with special needs

Complaint: Mrs AB complained that the examiner for her son's practical driving test had shouted at him when using the handbrake at a roundabout. He said this had shown discrimination against someone with special needs. She wanted the DVSA to ensure that her son had a different examiner for any future test, and also criticised the delays in accessing an ICA review during the pandemic.

Agency response: The DVSA had said that the examiner had spoken loudly but not in the "shrill" manner alleged. The Agency said that the examiner had been aware that the candidate was upset and had tried to offer comfort. The DVSA accepted that a customer service representative had wrongly told Mrs AB that her son could have a different examiner, but had reiterated its policy that this would undermine the integrity of the testing process.

ICA outcome: The ICA said he could not resolve some factual aspects of the complaint. In consequence, he had taken a broader view of the service the DVSA offers to customers with special needs. The ICA said he could not mandate the DVSA's policy for it, but recommended that an anonymised version of his report be considered by the "Enabled" staff group for their consideration and advice.

Possible delay in arranging tests for disabled candidates

Complaint: Ms AB complained in relation to two practical driving tests. She challenged the outcome of the tests, the language used to her by one of the examiners, and suggested that arrangements for disabled test candidates were discriminatory.

Agency response: The DVSA said it was content that the tests had been conducted properly. It said that the remarks made by the second examiner were intended empathetically but had apologised for any hurt that Ms AB had suffered.

ICA outcome: The ICA could not overturn the results of the tests, and was content that the DVSA had sufficient grounds not to offer a refund or free re-test. He could not adjudicate on what exactly passed between the examiner and Ms AB during the second test, but was satisfied that the DVSA had conducted sufficient enquiries. However, the ICA was concerned that there might be evidence that disabled test candidates had to wait longer for the two-hour time slots required (because of the

need to ensure reasonable adjustments and to complete the additional paperwork) and recommended that the DVSA consider corporately whether there was evidence that this was the case.

Much shorter time limit to appeal against conduct of driving test in Scotland

Complaint: Mr AB complained in relation to a practical driving test, the outcome of which he challenged. He said that the recording of a serious fault was incorrect.

Agency response: Having conducted its standard inquiries, the DVSA said it was content that the test had been conducted properly. The DVSA also gave advice about Mr AB's legal rights to appeal against the conduct of the test.

ICA outcome: The ICA was content with the DVSA's handling of this matter, save that the references to Mr AB's legal rights were incorrect. Mr AB had been told that he could appeal to the magistrates' court within six months, but in fact he lived in Scotland where access is to the Sheriff Court within 21 days. Although it was unlikely that Mr AB had suffered any detriment – the electronic notification of test failure links to a page on gov.uk with the correct information, Mr AB had not indicated any wish to appeal through the court, and by the time he was wrongly informed the deadline for an appeal in Scotland had already passed. Nevertheless, the ICA said this might not apply to other candidates. He recommended that relevant staff were reminded of the different legal arrangements in Scotland, and that Mr AB receive a small consolatory sum in recognition of the poor service.

One of many complaints about practical tests that did not proceed because of Covid-related safeguards

Complaint: Mr AB complained that the DVSA driving examiner would not proceed with a practical driving test on the grounds that the car intended for use had not been cleaned. He disputed the examiner's account of events.

Agency response: The DVSA said that the examiner was entitled to take the view that the car had not been cleaned. It stood by the examiner's account of events.

ICA outcome: The ICA said he was content that the DVSA could rely upon the examiner's professional judgment as to the cleanliness of the car. He also felt that the need to ensure cars were clean spoke for itself in the context of the need to protect examiners and candidates during the pandemic. However, the ICA was concerned that the examiner and his manager had both acknowledged that the candidate could have been given more time to clean the vehicle and offered a later slot, but none of this appeared in the stage 1 or 2 replies. In fact, the examiner had been concerned by the candidate's behaviour. In light of the failure at stages 1 and 2, the ICA recommended an apology but did not believe that a refund or free re-test was justified.

(ii): ADI COMPLAINTS

An ADI complaint about examiner performance in a check test

Complaint: Mr AB, an ADI, complained that the examiner's attitude towards him in a part three instructional ability check had been negative thereby reducing his performance on the day. He specifically complained that he had been wrongly assessed as not knowing where the blind spot was, and he contested his scoring in the risk assessment part of the drive in particular.

Agency response: The DVSA referred the matter to management who interviewed the examiner and reviewed the documentation. The DVSA's conclusion was that the test had been conducted in line with the guidelines and that the examiner had behaved reasonably.

ICA outcome: The ICA flagged the limitations on his ability to resolve a dispute that boiled down to one person's version of events versus another's. He felt that a reasonable investigation had occurred and he did not criticise the DVSA's decision that a threshold of evidence to find against its examiner had not been reached. He did not uphold the complaint.

ADI unable to re-register

Complaint: Ms AB, a former ADI, complained that the DVSA would not allow her to re-register as more than 12 months had passed since her registration had elapsed. She said that the Agency had told her that allowances would be made because of the Covid-19 pandemic, and that there were delays with Disclosure and Barring Service (DBS) checks. She said it was absurd that she was prevented from re-entering her profession because she had applied two weeks outside the deadline.

Agency response: The DVSA had said that it had no discretion in the matter and cited the relevant section of the Act. A further piece of legislation (the Driving Instructors (Registration) Act 2016) that would extend the 'grace' period to four years had not been brought into effect. The DVSA said that it did not recognise Ms AB's account of her conversation with its contact centre staff as the reported advice ran counter to the scripts that the Agency had prepared for staff working at home.

ICA outcome: The ICA sympathised strongly with Ms AB but he could not ask the DVSA to act outside the law as currently in force. Nor could he offer any views on the conversation Ms AB had reported. The ICA obtained copies of the 'scripts' when they were issued, and although not exactly covering Ms AB's situation, it was clear that there was no reference to a grace period beyond 12 months, nor to delay with DBS checks. The ICA could not uphold the complaint. Nor could he tell the DfT to prioritise the coming into force of the 2016 Act. However, he recommended that the information on gov.uk be strengthened to make explicit that re-applications beyond 12 months would not be accepted.

Poor handling of a fracas between an ADI and a Driving Test Manager outside a centre

Complaint: Mr AB, an approved driving instructor, complained about the conduct of an LDTM in the aftermath of a pupil's driving test. After debriefing his pupil, according to Mr AB, the manager made an allegation about the legality of Mr AB's car. Mr AB said that he had challenged the manager's right to do so lightheartedly, only to find himself on the receiving end of a torrent of verbal abuse that was aggressive and threatening. Mr AB alleged that he was humiliated publicly and threatened, and that the LDTM had then gone into the building and reappeared in order to take pictures of his vehicle. A further verbal exchange had occurred and both parties had called the police. The manager said that the aggression and threats had come from Mr AB and made an incident report accordingly. To compound Mr AB's grievance, when he reported the matter to a DVSA senior manager they took no action. He characterised the DVSA's handling of events as representing complicity in the driving test manager's established and long-standing misconduct. Mr AB suggested this had a racist component and represented bullying and discrimination.

Agency response: The DVSA's local area manager initially informed Mr AB that he would take no further action as it was one account versus another's. After Mr AB complained formally, a manager from a different area investigated and found that both parties had probably had a role in the escalation of the incident. The investigation found fault in aspects of the manager's approach and he himself reflected that he could have handled things differently. The examiner guidance did not prescribe the comments he had made about the legality of Mr AB's vehicle (a vehicle that he had just taken out on test). Further, he should not have contacted colleagues in the area after the incident telling them that Mr AB's vehicle should not be taken out on test. The outcome – that the manager's conduct had fallen below the necessary standards – was communicated to Mr AB in very broad terms given the duty of confidence to the employee. He complained that the investigation and DVSA responses represented a cover-up and that it should not have taken his complaint to trigger an investigation.

ICA outcome: The ICA agreed with Mr AB that reports of an altercation on publicly accessible DVSA property, sufficient for both parties to call the police (on top of Mr AB's initial account to the line manager and the manager's own incident report), should obviously have triggered an investigation. The ICA was critical of the local area manager for failing to instigate one. The ICA felt that the investigation that had occurred had addressed each element of Mr AB's complaint sufficiently. He was critical, however, of the fact that the investigator had based his witness selection on people put forward by the parties to the complaint. This gave the impression that the manager had cherry picked colleagues whom he thought would support him. In other regards, the ICA commended the investigation, regarding it on balance as sufficiently addressed to the presenting points. He did not find that there was evidence of discrimination at any stage and he noted that the DVSA had offered to reinvestigate if such evidence was forthcoming. He recommended that DVSA staff charged with investigating incidents should be reminded what the threshold for an investigation should be. He also recommended that they be given advice about witness selection. The ICA emphasised the importance of witness selection not only

to investigative independence but also to the way that an investigative mechanism is perceived by parties to complaints. Given that Mr AB should not have been challenged over the legality of his vehicle and should not have had to complain to get the matter investigated, the ICA recommended that the chief executive apologise to him personally.

(iii): VEHICLE STANDARDS

A complaint about the MOT extension

Complaint: Mr AB complained that the DVSA would not extend his MOT which expired after lockdown and before 30 March. He also said that the information from the DVSA was inconsistent with that offered by the Government and NHS on gov.uk.

Agency response: The DVSA said that the legislation only included MOTs expiring on 30 March 2020 or thereafter. Mr AB's MOT could not by law be extended.

ICA outcome: The ICA said that the legislation (a Statutory Instrument) was clear and Mr AB'S vehicle was not covered. It was also clear that the legislation was in line with Ministerial requirements. These were not matters the ICA could address. However, the ICA found that information provided to Mr AB that he should not MOT his vehicle as he was not a key worker was inconsistent with what the DVSA had posted on gov.uk and was incorrect. He part upheld the complaint and, while understanding that errors could occur during the unprecedented Covid-19 pandemic, recommended that the DVSA ensure that advice offered by its staff was in line with the guidance on gov.uk.

The driver of a charity van with a bald tyre complains about the conduct of vehicle examiners

Complaint: Mr AB was stopped by vehicle examiners working for the DVSA while driving a van for a charity. Alerted by a defective indicator light, the inspection revealed a bald tyre and led to a prohibition notice being issued as well as – for Mr AB himself – a fixed penalty notice of £100 and three penalty points. Mr AB did not contest the prohibition but raised many complaints about the conduct of the officers centring on the lack of information they provided him at the roadside.

Agency response: The Vehicle Examiner management team responded initially to the complaints telling Mr AB that, having consulted the pocket books and spoken to the staff, the inspection had been conducted appropriately. The matter was escalated to the Corporate Reputation team who obtained views on the enforcement given the fact that the vehicle was being used for charitable purposes. The DVSA noted that, ordinarily, the driver of a vehicle used for non-commercial purposes would not be subject to penalty points and a fixed penalty notice. The points and the fine were quashed and Mr AB was refunded. However, the DVSA said the prohibition (that had been lifted after the tyre was replaced) had been validly issued.

ICA outcome: The ICA felt that Mr AB had 'thrown the book' at the DVSA. While there was some substance to some of his complaints (for example, that there had been mixed messages about the manner in which Mr AB's licence should be surrendered), none of these matters had led to hardship for Mr AB. Mr AB had been fully apprised of his rights and responsibilities at the time through the statutory paperwork handed to him. There was no dispute that he was driving a vehicle with an illegal tyre and that the purpose of the DVSA's inspection regime was to improve road safety by acting in such circumstances. The ICA considered that Mr AB himself should accept some measure of responsibility for the events he complained of. He also concluded that the DVSA might have discerned the charitable purpose of Mr AB's trip sooner, thus obviating the penalties directed at Mr AB himself. However, he felt that Mr AB could himself have made this clear to the officers at the time. On balance, he did not uphold the complaint. He recommended that the DVSA should remove the advice that roadside licence surrender is an option when in practice it was not.

Exclusion from Covid-related MOT extension

Complaint: Mr AB complained that his MOT had run out just before March 30 but he was not given a six month extension as had other vehicle keepers. He said he had had to hire another car at considerable expense, and that having an MOT carried out other than at a dealership would invalidate his warranty. He also asked why HGVs and Public Service Vehicles (PSVs) had been given an MOT extension.

Agency response: The DVSA had explained that the legislation could not be backdated, and there was no way they could assist Mr AB as there was no leeway in law. The Agency appreciated the inconvenience but said that Mr AB would have to take up his warranty issue with the supplier.

ICA outcome: The ICA said he could not adjudicate on the exclusion of Mr AB's vehicle from the six month extension as this was a matter of law and Government policy. However, in terms of the service provided to Mr AB, the ICA agreed that the DVSA had not replied fully to his question about the different treatment of HGVs and PSVs. The ICA therefore obtained a full statement from the DVSA and was able to include this in his report, thus obviating the need for further correspondence during the pandemic.

A spiralling complaint about an MOT

Complaint: Mr AB complained that an MOT test centre had failed to carry out pre-checks with the consequence that the emissions test could not go ahead because the tester judged the oil level to be too low. He said he had been told by a member of DVSA staff that the test fail could be removed from the record, but subsequently the DVSA had said this could not happen.

Agency response: The DVSA had acknowledged that mistaken information had been given to Mr AB but said the test itself had been conducted properly and in line

with the MOT manual. The DVSA also said that pre-checks were not part of the MOT process, and while they were good practice they were not mandatory.

ICA outcome: The ICA said this was a matter that could probably have been sorted informally but had mushroomed. Had the oil been topped up, the test could have gone ahead successfully. Thereafter it was very unfortunate that Mr AB was wrongly told the test could be negated. The ICA felt that the references to pre-tests in the MOT manual were not clear and recommended that the DVSA consider amending them. He also recommended that the DVSA consider publishing information on the very limited circumstances in which MOT results could be removed from the record. He further recommended a consolatory payment of £250 to Mr AB. This was in light of the mistaken advice, the unnecessary (and false) suggestion that Mr AB's photographs of the dipstick might have been taken at another time, and the lack of contact with Mr AB when his complaint was in a queue during Covid-19 lockdown.

An unjustified complaint about staff attitude at a stop check

Complaint: Mr AB complained that DVSA staff had been aggressive and obstructive during a stop check in which his van was looked over. He also complained that his driving licence had been retained for several weeks. Mr AB had recorded events. He refused to give DVSA vehicle examiners access to the cab of his van on the basis that they were unlawfully attempting to exercise stop and search powers in the absence of reasonable grounds. He also complained that a vehicle examiner had exceeded the speed limit while stopping his vehicle and that a different member of staff had sworn when describing the condition of his rear brake pads. This, he alleged, was part of a pattern of harassing behaviour that had led him to change the plate of his van as well as to unnecessarily upgrade his brakes at some cost.

Agency response: The DVSA set out the basis of its check that drew from different legislation (section 68 of the Act) than police stop and search powers. It decided that the vehicle examiners had behaved professionally. They had only wanted access to the van to check the controls. They had warrant powers under section 66 of the Act. There were no markers against the vehicle record and therefore any previous checks had been purely coincidental. The Agency was unable to resolve different accounts of the events of the stop. It would later refuse to comment on the audio/video evidence provided by the complainant.

ICA outcome: The ICA watched and listened to the recorded evidence as well as reading the documentation. He did not feel that the DVSA had addressed adequately the point about its staff exceeding the speed limit. Nor had it apologised for the fact that one of the staff members had sworn (the ICA did receive satisfactory assurance that the matter had been raised and addressed appropriately). He concluded that the staff had behaved professionally during the stop check. While seeking entry to the van, the vehicle examiner had repeatedly stated that he wished to check the controls rather than the load. He had contemplated a prosecution in line with the offence in section 68 (5) of the Act (where a driver of a vehicle refuses to cooperate with a stop check) but this was not pursued. The ICA recommended that the DVSA should apologise to Mr AB for the fact that its officers swore and for failing to answer the complaint about adherence to the speed limit. He did not

regard Mr AB's frustration with the process as arising from failures by staff but rather by their legitimate exercise of their powers under the legislation. He did not therefore recommend compensation for the expenditure on new brakes and the different registration plate. He partially upheld the complaint.

(iv): EQUALITY ISSUES

The need to identify early when consolatory payments are required

Complaint: Ms AB complained that when her mother attended for a driving appraisal the examiner was not there. She said this had had a real impact on her mother who was elderly, disabled, and had a life-limiting illness.

Agency response: The DVSA had apologised and said the appointment date had been sent in error. Although no consolatory payment was offered at the formal stage 1 and 2 responses, an offer of £100 was made before the ICA referral, an offer Ms AB had accepted and said she would donate to charity.

ICA outcome: The ICA felt that the actions taken by the DVSA meant there was little remaining detriment for him to remedy. However, the ICA felt that the opportunity for making a consolatory payment had been missed at stages 1 and 2. In addition, the explanation Ms AB had been given that the appraisal date had been sent by mistake was not entirely candid. In fact, the examiner had agreed the date and then either changed it without ensuring Ms AB's mother was informed, or intended to do so but did not in fact do so until after the complaint was received. There was no formal recommendation, but the DVSA pleasingly agreed to circulate the ICA's report to senior management so that lessons were learned and Ms AB could be assured that her mother's experience was known at the highest levels of the organisation.

(v): OTHER MATTERS

Contacting the DVSA from abroad

Complaint: Mr AB complained that he was unable to contact the DVSA from abroad using the 0300 number. He said the DVSA should provide alternative numbers beginning 01 or 02 as other organisations did.

Agency response: The DVSA said that its use of 0300 numbers was in line with Government policy. It said an alternative number could not be provided, and contact with the Agency would be by post or email. It also said that if there was a problem using 0300 numbers Mr AB should take it up with his phone supplier.

ICA outcome: The ICA said the use of 0300 numbers was a matter of Government and DVSA policy that he could not criticise. He also believed there should be no problem contacting 0300 numbers from abroad. However, he was concerned that no member of staff had given Mr AB their office or mobile number to talk through his complaint, given that he had said it was not suited to email. Had they done so, the

matter might never have escalated for ICA review, and he part upheld the complaint on grounds of poor customer service. Given the pressures of Covid-19 however, the ICA said he was content that sufficient redress was provided by the findings of his independent review and further correspondence was not required.

The provision of information post-lockdown

Complaint: Mr AB, the managing director of a driving school, complained that the DVSA had failed to provide adequate guidance to the driving instructor sector after the Prime Minister had announced an easing of lockdown. Mr AB emphasised the hardship that many approved driving instructors had experienced during lockdown. Many had not benefited from government support.

Agency response: The DVSA explained that it was monitoring the changing situation closely, and would provide advice in line with Government guidelines as soon as possible. In the meantime, it was working closely with the National Association Strategic Partnership (NASP), a representative body covering the ADI sector and had made information on good practice guidelines available through the NASP portal.

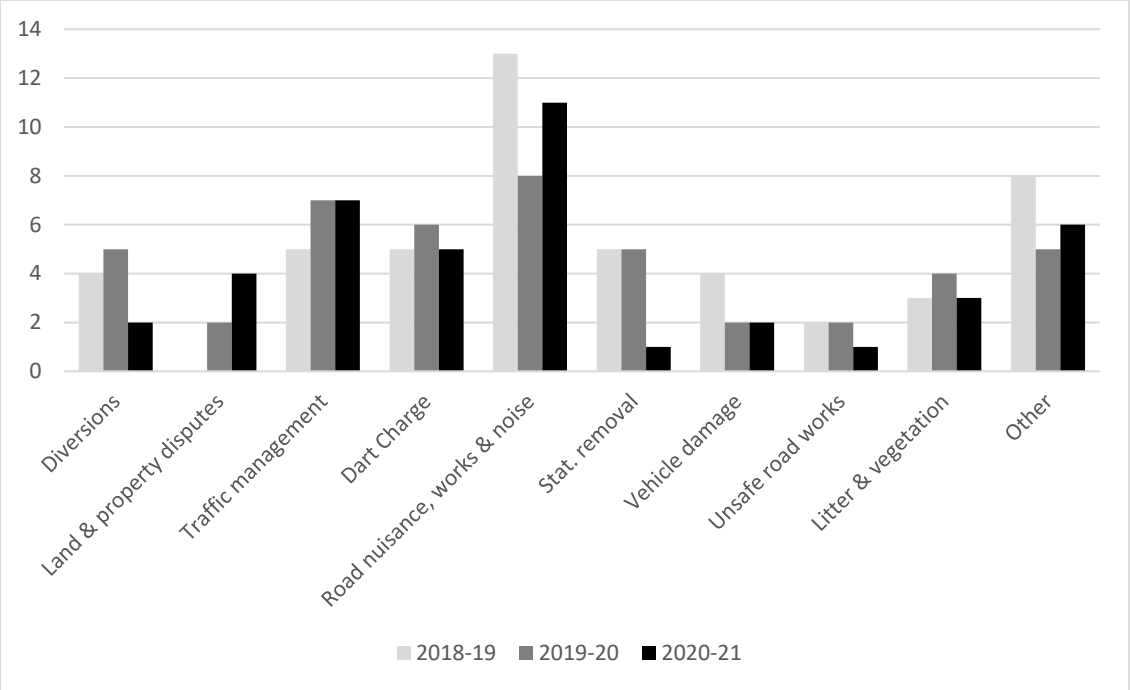
ICA outcome: The ICA had some reservations about Mr AB's characterisation of the DVSA as an industry regulator. Certainly it was responsible for the fitness to practice of ADIs and obviously for the administration of the examination regime. However, it was an executive agency of Government and was not there to set policy but to implement those of the Government. In this case the parent department, the DfT, had overall responsibility for decision-making. The ICA judged that the information available through NASP was sufficient. He noted that the DVSA had released standard operating procedures for critical worker tests during the pandemic shortly after Mr AB's correspondence. The ICA highlighted the operational pressures on the Agency. Clearly all parties would have preferred the standard operating procedures to be issued sooner but the DVSA had been working with a substantially reduced examiner capacity, facing very high levels of critical worker demand.

4. Highways England casework

Incoming cases

4.1 The 42 complaints we received from Highways England represented a slight decrease from 2019-20 (46). In Figure 4.1 we compare the last three years' incoming Highways England cases.

Figure 4.1: Incoming Highways England cases, 2018-21



4.2 We have in previous years been critical of Highways England's premature referral of complaints to us where there have been unanswered questions and challenges, often of a technical nature. Our view was and remains that every opportunity to resolve locally should be taken. Complaints that we receive with unaddressed points will be referred back for a Highways response anyway, but sometime later, representing poor customer service and a missed opportunity to resolve locally.

4.3 In the past year, however, we have seen clear evidence that Highways England has taken our feedback to heart. This is reflected in many of the case summaries that follow. In particular, we highlight the case on pp. 94-5, the handling of which by Highways England's Principal Property Adviser attracted the unprecedented ICA descriptor "masterclass". We report the company's handling in some detail while acknowledging the disappointing outcome for the complainants.

4.4 It is a feature of many Highways England complaints that they involve technical engineering or road management issues that, as lay people concerned with the

administrative aspects of complaints, we have neither the authority nor expertise to address. We are conscious that this means many of our reviews have a narrower ambit than complainants have anticipated or intended.

4.5 An issue that has arisen in a handful of cases this year is the Company's handling of planned motorway closures. That is, its policy of setting the motorway signs to notify drivers about the planned closure (and diversion) of the motorway only once the closure has started. We have been particularly concerned about the impact this has had on hauliers. They have explained that they have been caught up in unnecessary traffic jams and diversions that they could have avoided if they had been notified about the planned diversion earlier along the route. For at least one, this has meant exceeding their driving time and being forced to take a break.

4.6 Overall, we have been satisfied with the Company's handling of the complaints put to them about this matter and have accepted, thus far, its explanation about not having the resources to update the signs if the planned works were delayed or cancelled for some other reason. However, we would encourage the Company to review this matter in more detail to see if changes could be made. This is clearly a cause of frustration for hauliers and impacts on their driving time. It is also no doubt a matter of frustration for the general public as a whole.

Cases we completed, 2020-21

4.7 We completed 42 Highways England cases in 2020-21, reflecting the reduced referrals, compared with 46 in 2019-20.

4.8 We upheld 18 (43 per cent) of Highways England's cases to some extent, compared with one-third in 2019-20. The numbers upheld against complaint areas are as follows:

- Traffic management: 4
- Road nuisance, noise and works: 4
- Litter and vegetation: 1
- Dart charge: 2
- London property disputes: 2
- Unsafe roadworks: 1
- Vehicle damage: 1
- Statutory removal: 1
- Other (complaint handling): 1

CASES

Slow response to complaint about noise nuisance

Complaint: Ms AB complained about noise and vibration during successive nights of roadworks on the busy dual carriageway close to her home. As time went on, she complained about Highways England's failure to respond to her approaches. She

had not been forewarned that work was scheduled in her area, and no mitigation measures were evident to her and her neighbours. She asked if she could be accommodated in a hotel during the work and for compensation. After six weeks of dealings with Highways England, she indicated that she was at the end of her tether and staff were sufficiently worried about her safety to activate safeguarding procedures.

Highways England response: Highways England did not respond to Ms AB's initial complaint, but picked up her case when she appealed to the chief executive a week later. It handled this second approach in line with its complaints procedure, but in the meantime no contact from the public engagement team with responsibility for the stretch of road occurred. Ms AB became increasingly exasperated, and worries about her safety triggered high level involvement and eventually the work was re-phased over a series of weekends and an exclusion zone put in place in the stretch closest to Ms AB's home.

ICA outcome: The ICA was critical of the length of time it had taken for Ms AB to obtain a response after her initial expressions of exasperation. He felt that Highways England had attached too much significance to the fact that it had met its target for responding to the second complaint – overlooking the fact that it had completely failed to respond to her first. The ICA was appreciative of Highways England's approach to safeguarding, and he regarded the re-phasing of the work as a Gold Standard response to customer concerns. He accepted that Ms AB had been, at times, challenging to deal with, but he also felt that the invocation of the Unreasonable Customer Policy had been disproportionate and unfair. The ICA upheld some aspects of the complaint and recommended that a £150 consolatory payment should be made. He also recommended that Highways England ensure that its warning systems for its neighbours was improved so that people living close to the carriageway like Ms AB would be notified in advance of work. He further recommended that requests for information about the purpose and timing of roadworks should be responded to far quicker than the 15 day target set out in the complaints policy.

A masterclass in complaint handling by the company's Principal Property Policy Adviser in a compensation claim

Complaint: Mr and Mrs AB complained that the handling of their claims for compensation under Part 1 of the Land Compensation Act 1973 ('the Act') related to Smart Motorway work, was unreasonably delayed by the valuation office agency (DVS – the district valuer), Highways England's claims assessment/valuation partner. They had claimed in relation to two properties they owned close to the network. They went on to complain that Highways England and DVS had not substantiated the decision not to award them compensation under the Act. They argued that the data referred to by DVS and Highways England was flawed so that the true impact of the work was minimised. They also complained of delays and a lack of independence.

Highways England response: Highways England apologised for the delay in its partner agency's consideration of the claim. This had in part been because the claim

had been reallocated necessitating a root and branch re-evaluation of the two properties by the new valuer. Highways England also accepted some responsibility for the delay and took steps to push things along. Following the unfavourable outcome of the claims, Highways England addressed each iteration of Mr and Mrs AB's complaint within an extended second stage. It provided explanations of noise and pollution monitoring and measurement and valuation. The company also commissioned a second opinion from a separate valuer (that affirmed the original assessment that the claims should not be met) and explained the implications of the law and Highways England procedures to Mr and Mrs AB who were not represented. Highways England acknowledged that aspects of the responses received by Mr and Mrs AB had not been satisfactory and apologised. However, the position remained that their Part 1 claims were not sufficiently substantiated.

ICA outcome: The ICA emphasised, as Highways England had done earlier, that the appellate body with jurisdiction over Part 1 claims was the Lands Tribunal. His role would therefore be restricted to the handling and administration of their complaints rather than substantive matters (including the merits of the technical arguments about whether the test for compensation was met by the available evidence). The ICA agreed with the complainants and Highways England that it had taken too long (23 months against an indicative timetable of 18 months) for an outcome to be issued in which time Mr and Mrs AB had had to chase repeatedly. The ICA commended Highways England for its own efforts at expediting matters and for its apology. In this and other regards, the ICA praised the company's Principal Property Policy Adviser (PPPA) for his involvement in addressing the complaint.

Areas of good practice that the ICA referred to included:

- Mr and Mrs AB had been given clear explanations of the process and the legal test enshrined within the Act as well as related Regulations, reflecting Highways England's understanding that they were not represented and could not be expected to have the same operational understanding of the Part 1 framework as a professional agent.
- The tone of the responses was professional, sympathetic and patient and acknowledged the complainants' frustration and disappointment.
- Wherever possible, Highways England provided copies of supporting documents and/or links.
- The PPPA made himself available repeatedly for telephone contact, and engaged with Mr and Mrs AB repeatedly at stage 2 of a very protracted complaints procedure. This resulted in a more nuanced and comprehensive overall response to both fixed and evolving concerns.
- Highways England provided other information, for example about the handling of similar claims, where possible within the flow of business-as-usual communications rather than the arm's-length FOIA route.
- Highways England acknowledged when appropriate that some complaints were justified and put things right.
- HE answered as best it could the questions put to it about the operation of the scheme (in particular speed limits) and provided data and documentation as well as monitoring information.

- Highways England also pointed to the post-opening project evaluation report that also would find a negligible increase in noise and air quality, confirming earlier projections.

The ICA asked Highways England to set out the steps it would take to track such cases in future to minimise delay which it did. These included:

- *"Claims served by unrepresented members of the public will not only be registered on our claims handling system ('HAL') but will also be recorded on a central manual register. In the longer term, HAL will be modified in order that such claims can be 'flagged' and thus more easily monitored (currently an unrepresented claimant can only be identified by the absence of an agent).*

- *Having identified unrepresented claimants, we will monitor claims progress closely and question any 'unreasonable' delays with our valuer.*

- *The register of unrepresented claimants will be used as part of an invigorated progress meeting regime. We will meet our valuers monthly rather than quarterly at present to increase our oversight of the handling of all claims.*

- *We have already agreed with DVS that it will contact unrepresented claimants in a set number of days (tbc) following instruction. The valuer will seek to confirm the claimant's understanding of the process to be followed (by referring to our explanatory booklet provided on acknowledgement of service) and seek to manage expectations by providing an indicative timetable.*

- *[The Part 1 team] will give thought to a questionnaire to be sent by us to unrepresented claimants to seek their feedback to enable our intervention (as necessary) without them having to flag concerns.*

- *[The Part 1 team] will review (again) our explanatory booklet to ensure that it provides the best information and pay particular attention to the indicative timescale for settlement and ensure it reflects current realities; We will review the claims tracker that Mr & Mrs AB found wanting and seek to make improvements but the scope for action here is limited given that there are few steps in the settlement of a claim (receipt, instruction of valuer, negotiation, report, settlement).*

- *We have already agreed with DVS that will give agents no more than three opportunities (spread over a reasonable stated period to reflect individual scheme extent and complexity) to present evidence before the valuer makes his/her recommendation of compensation payable based solely on his/her research. This approach should speed the settlement of all claims."*

Given these remedial steps, the ICA concluded that there was no unremedied injustice such that he should uphold the complaint.

A complaint about statutory vehicle removal

Complaint: Mr AB complained following the statutory removal of his broken-down car from a live motorway lane at a cost of £150. First, he argued that Highways England's traffic officers could easily have towed him. Second, the recovery company would not let him in the office unless he wore a face mask – he characterised this as a breach of equality legislation. Third, he had needed to push his car out of the pound for his recovery company to recover it.

Highways England response: Highways England and the National Vehicle Recovery Manager (NVRM) explained that the recovery had needed to take place immediately because the vehicle was in a live lane. It had not been safe to tow it and the two-hour grace period normally allowed (for vehicles not in a live lane) did not apply. The recovery company explained that Mr AB had been offered a mask and had attended the office. Company policy was that people without a mask should not enter the premises for the safety of staff and other customers. The car had been pushed out of the pound at Mr AB's request as his recovery firm would not arrive until after it had closed for the evening. Mr AB had been offered the opportunity of collecting his vehicle the following morning at no extra charge but declined. At its final complaint stage, Highways England undertook to review the way that its vehicle recovery operators interacted with customers unable to wear masks and to ensure that all staff were fully aware of how to assist customers with disabilities.

ICA outcome: The ICA did not agree with Mr AB that placing a note on his dashboard putting people on notice of a £1,000 charge for removing his vehicle represented an enforceable contract with Highways England. The ICA found that the removal had been conducted in line with the legislation and that the complaint had been fully answered. He had no jurisdiction to comment on Mr AB's allegation that the equality legislation had been breached but he commended Highways England for taking forward learning from his experience to improve the services provided by vehicle recovery operators.

Highways England's handling of a reduced speed limit and subsequent complaint correspondence.

Complaint: Mrs AB complained that Highways England had failed in its duty to monitor conditions on a motorway, and as a result delayed restoring the speed limit to 70mph. She also complained that it had misunderstood and mishandled her correspondence and complaint.

Highways England response: Highways England clarified the reasons why a 50mph limit had been set on the motorway at the relevant time and was satisfied that it had acted appropriately.

ICA outcome: The ICA was content that Highways England had appropriately monitored the road conditions, and could find no basis on which to suggest that it had delayed restoring a 70mph limit. However, the ICA was not satisfied that Highways England had always handled Mrs AB's correspondence appropriately. It had delayed responding to her correspondence; missed parts of her complaint; and

provided inaccurate information about the timing of the reduced speed limit being in place. The ICA recommended that Highways England apologise to Mrs AB for the frustration she experienced as a result the service issues that had occurred in her case.

Poor explanation for absence of signage

Complaint: Mrs AB complained that on two occasions an exit slip road from a motorway near her home had been closed with no warning signs. This had necessitated a 40-minute diversion that could have easily been avoided had the closure been publicised. On both occasions Mrs AB had been driving at night and had genuine anxieties about being stuck on the motorway, running out of fuel and arriving home much later than she had planned.

Highways England response: Highways England provided vague explanations why signage was not in place on either occasion, and did not address Mrs AB's specific points and criticisms. At the second stage of the complaints procedure, the company accepted that electronic messaging could have been deployed albeit some distance away from the relevant slip road. Highways England explained that it was exploring improvements including the use of temporary signage. It refused Mrs AB's compensation claim.

ICA outcome: The ICA did not feel that Highways England had responded efficiently to Mrs AB's queries. Its explanations for the fact that signage could not be placed within 5km of the exit slip were vague and unconvincing. Delays had also occurred. The ICA therefore recommended that Highways England should make a consolatory payment of £25 to reflect the deficiencies in its complaint response, as well as answering Mrs AB's questions about precisely why signage had not been placed on the network.

Good handling once the full facts were known

Complaint: Mr AB complained in relation to charges incurred at the Dartford Crossing. He said that he had not been told that one payment was still outstanding, resulting in the impounding of his vehicle by debt collectors.

Highways England response: Highways England had acknowledged a flaw in its systems and arranged the return of the vehicle and the cessation of all enforcement action. It had offered £50 'compensation', increased to £100 at stage 2.

ICA outcome: The ICA said it was quite clear that Mr AB had had no intention of failing to pay the Dart Charge. He found that there had been two system failures and one oversight on the part of Highways England. None of the four crossings made by Mr AB appeared online when Mr AB first attempted to pay. A further system failure occurred when Mr AB was only required to pay three of the four Penalty Charge Notices. There had also been a failure of oversight at the beginning when no action was taken in regard to a known incorrect email address. However, once the full facts were known, Highways England took fast and effective action, so the only remaining

issue was the consolatory payment. Given the extent of the maladministration, and its impact on Mr AB, the ICA recommended that it be increased to £250.

The ICA is dubious about a harassment claim

Complaint: Mr AB complained that he had been harassed and victimised by Dart Charge's enforcement agents despite appealing against a misdirected enforcement. Some months after he had appealed, his former home was visited by enforcement agents and he said the occupants were harassed. Mr AB rejected Highways England's apology and offer of a £150 consolatory payment. In a separate complaint process involving the debt collection agency (DCA), Mr AB complained that there had been deficiencies in the conduct of the home visit and in the subsequent investigation. The DCA offered him £150 consolation that he refused.

Highways England response: Highways England's initial response to Mr AB's email denying that he had completed the crossing, and explaining that he had reported the matter to Action Fraud, was an apology but there was no investigation. This meant that the automated enforcement ground through the prescribed escalation stages over the following months. In this time Mr AB did not respond although he began dealing with the enforcement agents after the warrant was sent to him. All the while, his car remained registered to his former address. After the home visit, at which Mr AB was not present, he renewed his communications with Dart Charge and the enforcement was swiftly cancelled. At this point the £150 consolatory payment was offered along with apologies. This would not be increased despite Mr AB's repeated protestations and claims of having been harassed.

ICA outcome: The ICA agreed with Highways England's decision that its failure to investigate properly from the outset made the enforcement invalid. He considered that the outcome of that failure had been unwelcome contact from the DCA over a five-month period (largely consisting of text messages but also the home visit), embarrassment and inconvenience and the necessity of repeated communications with the DCA and Dart Charge. This would ordinarily represent Ombudsman level 3 injustice. However, the ICA balanced his findings with the fact that Mr AB could have provided his correct address (and/or registered his car to his correct address) thereby closing down the enforcement at a much earlier stage. Given these considerations, the ICA judged that a £300 consolatory sum was adequate and he asked Highways England to ensure that its enforcement company re-offered it (Mr AB had banked the first £150 cheque). He did not uphold the complaint of unremedied injustice.

Generous handling of Dart Charge complaint

Complaint: Mr AB complained in relation to two crossings of the Dartford-Thurrock Crossing in 2017 that he had paid for a few days outside the statutory payment limit. As the matter had escalated, the total sum he had eventually paid to enforcement agents approached £400. He asked for compensation for the distress and inconvenience caused.

Highways England response: The company had explained that the charges were rightly imposed, but had agreed to accept the late payment and asked the enforcement agents to repay all the money they had received.

ICA outcome: The ICA said that he could not identify any maladministration on the part of Highways England, or any remaining injustice for him to remedy. Indeed, although there was no reason to suppose that Mr AB had tried to avoid paying the Dart Charge (and he had done so just a day or so beyond the time limit), he thought that Highways England's actions had been generous. There was no case for further compensation from the public purse.

Highways England's handling of the removal and disposal of a vehicle

Complaint: Mrs AB complained that Highways England had disposed of her vehicle despite the fact that her husband had made contact and the company had been provided with her contact details. She also complained that Highways England told her insurance company that the vehicle had been scrapped, when it had actually been sold at auction, and that Highways England also mishandled returning the appropriate funds to her.

Highways England response: Highways England clarified that the vehicle had been held for longer than normal and then disposed of in line with its usual procedures. It had not been able to contact Mrs AB as the registered keeper of the vehicle because the vehicle was not registered to her at the time. The company apologised that her insurance company had been told incorrectly that the vehicle had been scrapped, and said that it required proof of ownership in order to release the funds to her.

ICA outcome: The ICA was satisfied that Highways England had appropriately managed the disposal of the vehicle, although he suggested that the company check the DVLA's system again once a vehicle had been disposed of to see if the registered keeper details had been updated. The ICA was pleased to note that Highways England had apologised for providing incorrect information to the insurance company about what had happened to the vehicle. However, the ICA found that Highways England had caused frustration and confusion in the way it had managed the process of returning the auction funds to Mrs AB. As a result, the ICA recommended that Highways England apologise to Mrs AB for that and issue a consolatory payment to her of £100.

Incorrect speed limit leads to hundreds of prosecutions

Complaint: Mrs AB was one of several hundred motorists prosecuted following the incorrect setting of a 20 mph variable mandatory speed limit (VMSL) on the M5 northbound following a multi-vehicle crash resulting in the loss of five lives. Mrs AB challenged the basis of the limit – she and over 400 other motorists had received notices of intended prosecution after being photographed by the speed camera installed there. Highways England answered her questions, and a year and a half

later she renewed her correspondence having read media reports of the company admitting its error.

Highways England response: Highways England addressed Mrs AB's questions by providing a partial explanation of events and a redacted copy of an ICA report into a similar complaint. Highways England admitted that its staff had misunderstood the operating instructions and had mistakenly left the VMSL in situ after the hard traffic management had been installed. Mrs AB remained dissatisfied as she felt she had identified inconsistencies in the explanations provided as to when precisely Highways England had become aware the error.

ICA outcome: The ICA was critical of Highways England for its hedged and partial replies to Mrs AB's challenges about precisely when it had become aware that there was an error. He obtained further information from the company that he reproduced in his report. It had been the police that had flagged that the 20 mph limit was causing drivers to brake suddenly, thus and creating safety problems. However, although the restriction had been lifted, this had not initially caused an alarm to be raised within Highways England about the basis of the speed limit. Mrs AB's correspondence had also contributed to further investigation of the way that VMSL had been applied. Highways England emphasised that it had been a very complex operation, and VMSL on the northbound stretch of the motorway had been a very small part of the operational pressures its staff had been dealing with. The ICA did not consider that Mrs AB's accusations about the integrity of Highways England staff were pleasant or justified, but he upheld the complaint that the responses had not met Ombudsman standards of transparency and openness.

A neighbour of a Smart Motorway not entitled to noise mitigation

Complaint: Mr AB complained that Highways England's environmental study report assessing how noise nuisance should be mitigated following Smart Motorway conversion was based on data that were collected too far away from his property to be reliable. He pressed Highways England's contractor repeatedly for site visits and was advised that it was unlikely that an environmental barrier would be made available. Eventually, the contractor persuaded Highways England itself to visit and acoustic monitoring was undertaken. Mr AB complained that other residents had enjoyed environmental barrier installations near their homes and that Highways England's policy was inconsistent. He also said that the staff he had dealt with had been dishonest and had not fulfilled their promises.

Highways England response: Highways England undertook the site visit and organised the acoustic monitoring. The readings were some way below the threshold for the mitigation measures that Mr AB sought. In a detailed stage 2 letter, Highways England addressed each of Mr AB's challenges and apologised for some misinformation in earlier communications.

ICA outcome: The ICA considered that Highways England's refusal of the environmental barrier was clearly based on its duties under the relevant legislation. The underlying difficulty was that the noise nuisance at Mr AB's property fell some way short of the threshold for Highways England to install a barrier. The company

had made the other redress options clear to Mr AB. The ICA could not uphold the complaint.

A good investigation and a poor one into MIDAS complaints

Complaint: Mr AB, a frequent user of the M25, complained that on two occasions Highways England's Motorway Incident Detection and Automatic Signalling (MIDAS) system had generated misleading and unnecessary traffic management messaging and speed limits. Mr AB said he had had complained on over 30 occasions over the previous few years about shortfalls in MIDAS, a system that he characterised as contributing to the risks of motorway driving rather than reducing them.

Highways England response: In both the instances where Mr AB reported faults with MIDAS, Highways England began with a generic explanation of how the system worked. On neither occasion did this satisfy Mr AB who characterised Highways England's defence of the system as "bunk". On the first occasion, the matter was referred to the relevant Head of Service Delivery who undertook a thorough investigation. This established that the system had recycled old data for an extended period before being reset by a member of staff in the Regional Control Centre. Up until this point the stretch of concern to Mr AB had, in error, 50 and 60mph limits in place. This was an occasional glitch associated with the system that should have been rectified sooner. Highways England apologised to Mr AB and reminded its staff to monitor the application of speed restrictions. On the second occasion, Highways England did not investigate the road conditions at the time that Mr AB had complained (in fact it did not ask him when and where the 40mph signage had occurred that was of concern to him). He requested ICA escalation on that basis.

ICA outcome: The ICA praised Highways England for the thoroughness of its response to the first complaint. By the same token, he was critical of the company for failing to meet the Ombudsman Principle of being open and honest when accounting for decisions and actions and giving clear evidence-based explanations. He asked Highways England to look again at the complaint and respond properly, and he included its account of the circumstances of the second set of speed restrictions in his review (the restrictions had been correctly applied given works on a slip road). The ICA upheld the complaint.

Inconvenience caused by drainage works

Complaint: Mrs AB complained that Highways England was unjustifiably closing a section of trunk road near her home at night in order to undertake drainage work to prevent flooding. She complained about arrangements for escorting residents through the closure in the evenings and early mornings, and about the attitude of staff on site. She insisted that the evidence produced by Highways England in support of the work was irrelevant.

Highways England response: Highways England's local team responded quickly by telephone to Mrs AB's initial call, explaining that the work was necessary and that

all steps would be taken to ensure that inconvenience for neighbours was minimised. An engineer from Highways England rang Mrs AB and explained why the scheme was necessary. He provided pictures of flooded roads in the vicinity in support of the company's position that the work was essential. At the final stage of the complaints procedure, Highways England explained the duration and rationale for the works and arrangements for access to affected properties.

ICA outcome: The ICA regarded Highways England's responses to the complaint as reasonable and sympathetic. As he could not substitute an opinion for that of the engineers engaged in safeguarding Highways England's network, he was unable to comment on the essence of Mrs AB's complaint which was that the works were not necessary.

Concern over response to customer complaint about road closures

Complaint: Ms AB complained about roadworks that she said started early and caused her a substantial detour. She sought compensation.

Highways England response: Highways England said that its scheduled roadworks started on time. It had refused to pay any compensation saying that this was company policy.

ICA outcome: The ICA said that aspects of Highways England's handling caused concern. There was strong circumstantial evidence from when Ms AB had rung Highways England that the road closure was indeed ahead of time on one occasion – albeit by only a minute or so. The closures were also introduced incrementally, meaning some access roads were closed before the main carriageway. The ICA was also critical of the stage 2 response that, in a short reply, reproduced three sentences from the stage 1 response word for word. The ICA said this did not indicate that the matter had been approached with a fresh pair of eyes. However, the ICA did not endorse Ms AB's claim for compensation. While it was not the case that Highways England never made consolatory payments arising from roadworks (for example if the signage was poor or non-existent), a generalised policy of compensation for disruption caused by roadworks was neither the company's policy nor in the public interest.

A complaint about compensation for compulsory purchase

Complaint: Mr AB had been in dispute with Highways England and its predecessor, the Highways Agency, for many years in relation to the compulsory purchase of part of his commercial property. He complained that Highways England had refused to make good an earlier undertaking to replace fencing on the property. He also complained of other irregularities in the valuations used by Highways England's property team in the process of settling his claim.

Highways England response: Highways England initially offered to replace the fencing, pending receipt of suitable quotations from Mr AB. He changed his mind and Highways England decided to include the fencing element within the sum being

considered by the valuer through the compulsory purchase process. The property team extended the deadline for negotiation over the settlement of the claim for a further three months.

ICA outcome: The ICA had no authority to involve himself in a matter where there was an established legal remedy, namely the Upper Tribunal (Lands Chamber). He noted that the whole matter was subsumed within a live claim that was still under negotiation. The ICA regarded Highways England's customer service as of a good standard but could not comment further on a complaint that was, to a very significant extent, out of his jurisdiction.

Delayed responses to complaint about damage from roadworks

Complaint: Mr AB complained that Highways England had responded to his complaint about possible damage to his property caused by vibration from road works in a dismissive fashion. He also questioned why an acoustic barrier had not been installed near his home when one was in place in a similar location elsewhere on the motorway. He said the replies had been generic and based on projections of noise and vibration not on what actually occurred. He also criticised delays in Highways England's responses.

Highways England response: Highways England said it had no evidence that damage to Mr AB's property was caused by its works. The company said that the other barrier had been installed years earlier when road surfaces were noisier. Highways England had apologised for the delays in replying to Mr AB's correspondence.

ICA outcome: The ICA said he could not adjudicate on the fundamental issues relating to noise and damage. He agreed that Highways England had relied upon the findings of the Environmental Assessment Report that pre-dated the works in question, but he felt that – in the absence of any evidence presented by Mr AB to suggest that Highways England was responsible for the damage – it was not maladministrative to decline to carry out further enquiries. However, Mr AB had asked for additional information about the works that the ICA felt should be provided. In light of the delays that the ICA felt amounted to maladministration, Mr AB was also entitled to a small consolatory payment.

Nuisance caused by unexpected complications to road maintenance

Complaint: Mr AB lived near a busy trunk road. He complained about vibration and noise from scheduled repairs that had repeatedly over-run during the summer period. He was dissatisfied with the calibration of vibration monitoring equipment (that did not cover the full hours of work on the stretch near his house) as well as by Highways England's account that his home had not been damaged by vibration. Mr AB had also needed to chase missing vibration reports from Highways England.

Highways England response: Shortly after Mr AB raised his initial complaint, Highways England visited his home with a vibration engineer and undertook a

structural assessment. Vibration monitoring equipment was placed nearby. If vibration reached a certain threshold then an alert would go to Highways England who would stop work on the ground. Although there were some days when the threshold was approached, on no occasion was it reached over the four month span of the scheme. Highways England emphasised that it had at every stage updated residents on the overruns. There had been complex infrastructure difficulties that Highways England could not have been aware of at the outset that had necessitated liaison with other organisations including utility companies.

ICA outcome: The ICA explained that a holistic consideration of Mr AB's complaint would take on board the structural and operational justifications for the scheme that he did not have the expertise or scope to consider. His view was that Highways England's communications with Mr AB were reasonable and responsive to his complaints and challenges. The ICA judged that the greatest part of the inconvenience experienced by Mr AB and his family stemmed from the fact that necessary work was undertaken practically on their doorstep and was repeatedly extended. As a key worker undertaking shift work with children preparing for exams, Mr AB and his family had been disproportionately affected. However, reasonable efforts had been made to monitor the impact and Highways England's position that its scheme did not have an adverse effect on Mr AB's property was to a large extent corroborated. The ICA did not uphold the complaint.

Good handling of complaint about motorway signage

Complaint: Mr AB complained about the motorway signage in relation to a broken-down vehicle. He said that lane closure signs were only displayed after the incident meaning that traffic officers and others were placed in a dangerous situation.

Highways England response: Highways England said that the signage had been correct. The company had provided Mr AB with a detailed account of what signs were in place along with a print-out showing the signs in question and when they were first shown.

ICA outcome: The ICA said he could not carry out an investigation *de novo*. However, he was content that Highways England had conducted appropriate enquiries. The conclusion both contemporaneously and subsequently was that the signs had been correct. The company had also listened to the recording of Mr AB's initial phone call to the contact centre and obtained reports from the two traffic officers. The ICA could not fault Highways England's approach which also included an invitation to Mr AB to discuss his overall concerns with an Operations Manager.

A truck driver continually mystified and annoyed by traffic management

Complaint: Mr AB, a truck driver, had a long-standing view that Highways England was ineffective in managing its network, particularly in the way that lane closures are managed. He complained that closures on the M1 combined with works on a nearby a road had created chaos including a three-mile tailback, exacerbated by the lack of active traffic management by Highways England traffic officers. In the course of his

correspondence, he also raised concerns about driver compliance with closed lanes, signage, diversion routes and coordination with other traffic authorities.

Highways England response: A manager made contact with Mr AB the day after he initially complained but was unable to resolve matters with him. The complaint was therefore progressed through the two stages of Highways England's procedure. In the meantime, Mr AB raised new concerns about traffic management on a different part of the network. Highways England reflected that better coordination with the local authority could have occurred in relation to the first complaint. This had been taken forward in liaison meetings to ensure that closures were better coordinated in future. A network availability manager made contact with Mr AB at the second stage listing his outstanding concerns but he raised further complaints after receiving the stage 2 response.

ICA outcome: The ICA reflected the limitations of his deskbound role. He was unable to address systemic concerns about Highways England's traffic management policies and practices given the incident and customer service-based focus of his jurisdiction. His overview was that Highways England had been responsive and reflective in response to Mr AB's concerns. The ICA also sympathised with Mr AB's sense that his representations were not bringing about lasting change on the part of Highways England.

Highways England's engagement strategy

Complaint: Mr AB complained about Highways England's alleged failure to engage with the local community in respect of a major road scheme. He said that Highways England had misleadingly suggested that the works were over when the road was open to traffic. He also criticised aspects of the traffic management.

Highways England response: Highways England apologised for delays in completing the works that it attributed to supply chain issues as a result of Covid-19. It had detailed its engagement strategy.

ICA outcome: The ICA said that he could not adjudicate upon traffic management schemes although many drivers would recognise Mr AB's characterisation of a 'forest of cones'. He said he did not believe there had been maladministration but criticised one Highways England letter as having been embarrassingly careless in recording that the writer 'apologised for any incontinence caused'. He also suggested that there were some learning points for Highways England, including the possibility of conducting post-works surveys to ascertain how successful or otherwise the company's engagement and communications had been.

Delay in handling a Red Claim against Highways England

Complaint: Mr AB had hit a pothole causing damage to his vehicle, and claimed against Highways England (known in Highways England parlance as a Red Claim).

Highways England response: The company had denied liability, but acknowledged that its handling of the claim and of subsequent correspondence had been poor and made a goodwill payment of £100. Highways England had told Mr AB that any continuing claim would have to be via the courts.

ICA outcome: The ICA said that Red Claims against Highways England were not part of the complaints policy. However, he could consider the administrative aspects of the matter. But given the company's apologies, explanations, commitment to service improvement, and goodwill gesture, there was no remaining maladministration to remedy. The payment was in line with the PHSO scale for level 2 injustice (albeit at the very bottom) but given the impact of Covid-19 on the Red Claims team – one result of which was the delay in dealing with the claim – the ICA did not think he had grounds to recommend a higher sum.

A village bisected by a trunk road

Complaint: A Parish Council made a multi-faceted complaint about Highways England's decisions and actions in relation to the trunk road that goes through their village. The Council said they appreciated that Highways England had a difficult task that they generally carried out well. However, they wanted action to reduce the impact of traffic and to have regular face-to-face meetings with Highways England staff. Amongst other things, the Parish Council argued that adverse camber that prevented wheelchair users from using the pavement was a breach of the Equality Act. The Council also referred to evidence presented on a television programme indicating dangerous levels of fine particulates in the vicinity of the village.

Highways England response: Highways England had explained the company's actions in relation to drainage, a temporary speed limit, adverse camber on the pavements, and other matters. The company said that there was an alternative forum to meet with the Parish Council and could not undertake face-to-face meetings given the number of stakeholders with which they must engage. Highways England said that feasible changes to the pavement camber would go beyond the 'reasonable adjustments' required under the Equality Act. The company also said it had no plans to monitor for particulates.

ICA outcome: The ICA said he was not persuaded that an ICA review was the best way of resolving technical traffic management and road design issues, or to reach an understanding between two statutory bodies. He also could not make an authoritative judgment on whether the Equality Act had been breached, and if the Parish Council remained of this view they would need to take legal advice or consult the Equality and Human Rights Commission. The ICA was also content that Highways England had actively engaged with the Parish Council on many occasions and had explained why it had taken the actions it had. However, the ICA sympathised with the Parish Council and the residents they represent, as for anyone affected adversely by noise and pollution from traffic. He was particularly concerned by evidence of harmful particulate levels in the area. The ICA said he could not instruct Highways England, much less the County Council, to undertake particulate monitoring. But he recommended that Highways England reconsider their approach to this issue in cooperation with the County Council.

Development adjacent to Strategic Road Network

Complaint: Mr AB was developing property adjacent to a trunk road. He said that he was financially out of pocket as works he had carried out at the junction with the trunk road had been rejected by Highways England and he had to complete them again.

Highways England response: The company had accepted that it had wrongly advised Mr AB to proceed with the works. It was working with Mr AB to bring his project to fruition, but had yet to decide whether to meet his claim in whole or in part as the matter was in the hands of Highways England's lawyers.

ICA outcome: The ICA said that he could not adjudicate on what amounted to a commercial/contractual/legal matter. In terms of the handling of Mr AB's correspondence, the ICA noted that he was still waiting after three months to discover if Highways England would accept any liability, and it was not clear what Highways England considered its stage 2 response to Mr AB's complaint to be. However, the ICA also said that, while Mr AB was of course free to use the complaints process, it was not best designed for disputes between fellow professionals when all sides were working to ensure a successful development that presented no risk to a busy trunk road.

Noise and vibration from motorway

Complaint: Mrs AB complained that Highways England had cut down trees masking her home from a motorway. She said noise and vibration was at a level not known in the previous 30 years, and that she could see the vehicles on the motorway from her bedroom. She wanted the trees replaced along with other noise mitigation measures.

Highways England response: Highways England said that it had felled the trees under the terms of a legal undertaking made years earlier that required them to be cut down and vegetation cleared. It said Mrs AB did not qualify for triple glazing, the existing noise fence could not be extended, and the road surface was not due for renewal for several years.

ICA outcome: The ICA said no one could do other than sympathise with Mrs AB. However, he did not feel that Highways England could act except in accord with the legal undertaking. If Mrs AB wanted the undertaking amended, which might involve other people too, she would need to take her own independent legal advice. The ICA was also content with Highways England's explanations why other mitigation measures could not be implemented, and he could not mandate how the company spent the resources at its disposal.

Nuisance from roadworks

Complaint: Mr AB complained about roadworks adjacent to his house. He said that notice of the works had not been given, and that Highways England had ignored his

correspondence. He asked for compensation for loss of business carried out at his home. Mr AB alleged that there had been trespass at his home, and that workmen had been operating in an unsafe fashion. He also alleged discrimination against disabled people, and other breaches of his rights.

Highways England response: Highways England had said that the works were part of a major trunk road improvement scheme. It had apologised for any inconvenience and if advance notices of works had not been received.

ICA outcome: This was a complicated review involving correspondence from Mr AB and his father. The ICA found that, while he sympathised with Highways England staff, there had been a failure to answer all correspondence. There was also documented rudeness on the part of one member of the Contact Centre. The ICA said that in law no compensation was due, and he found no evidence for the allegations of discrimination or other wrongdoing. As for all residents of properties neighbouring motorways and trunk roads, Highways England's work could be noisy and disruptive. But it was designed to deliver the Government's overarching objective of improving the strategic road network, a policy objective that was not something the ICA could adjudicate upon.

A good response to a complaint about vegetation and litter

Complaint: Mr AB, a frequent reporter of overgrown vegetation on litter on specific stretches of the motorway network, complained that repeated undertakings to clear vegetation at a motorway junction were not met. He said he had had to push and had been given incorrect assurances that the work would be undertaken. This, he felt, was typical of Highways England's failure to monitor its network itself.

Highways England response: Highways England inspected very shortly after the initial report and agreed with Mr AB that vegetation clearance would be implemented. However, significant traffic management would need to be put in place and it would take months before this would happen. In the event, the work was rescheduled and put forward another month before being deferred again. In the meantime, Mr AB complained that promises had been broken. In response, after he had requested ICA referral, the divisional director wrote in some detail outlining Highways England's cyclical maintenance programme and the logistical difficulties that had delayed the clearance.

ICA outcome: The ICA judged that Highways England's initial handling had been good and that the delays in the clearance reflected legitimate logistical considerations rather than a lack of commitment to do the work. However, Mr AB had not been kept updated proactively. As a result, Highways England gave the impression that it had been Mr AB's persistence rather than the company's commitment to the work that had resulted in action being taken. The ICA pointed to some deficiencies in Highways England's handling but concluded that these had been remedied by the exemplary intervention of the divisional director including an undertaking to ensure that customers were updated in future. The ICA commended Highways England's efforts to resolve matters outside of the usual two stage span of its complaints procedure.

5. DfT and other delivery body casework

(i): HS2 Ltd

5.1 We received just four HS2 Ltd complaints in the year compared with one in 2019-20 and 13 the year before. Two of the complainants had brought cases to us in previous years. This very low referral rate is testament to the excellent work undertaken by the company's Public Response team in resolving matters in earlier stages.

5.2 The first two case histories below relate to HS2 Ltd's engagement strategy with those individuals and communities affected by the route of the new railway. The third concerns the time taken to acquire a family's home through the 'Need to Sell' scheme. One of the three cases we received in the year was partially upheld. Another was deferred as the complainant wished to add more complaints. The other two complaints were not upheld.

CASES

Quality of community engagement

Complaint: Mr AB had made three complaints against HS2 Ltd. First, he complained about the handling of his correspondence and an alleged failure to answer questions he had posed. Second, he complained about the level of community engagement in the assessment of possible mitigation measures. Finally, he complained that information given to two Parish Councils about the company's approach to engagement in relation to mitigation measures had been inconsistent.

HS2 Ltd response: HS2 Ltd had conducted two stage 2 reviews covering the three complaints. The company had acknowledged that it could not provide full information about proposed mitigation when decisions about the line itself had not been finalised. It said it had attempted to engage with local people and their elected representatives.

ICA outcome: The ICA made a number of criticisms of HS2 Ltd, in particular a failure to keep Mr AB informed when there was a delay in the stage 2 process. He made two recommendations. First, that HS2 Ltd should not communicate with Mr AB immediately before a weekend in line with his views. Second, he repeated a recommendation made in an unrelated HS2 review that the company should adopt a formal time target for stage 2 responses.

HS2 Ltd's commitment to its engagement strategy

Complaint: A Parish Council on the route of HS2 complained about the company's lack of engagement. They said this was in breach of the company's published commitments and verbal assurances offered by the chief executive. They argued that HS2 Ltd had refused to share information and that one of its representatives had misled them.

HS2 Ltd response: The company denied breaching its commitments. It said that the design of the new railway was an iterative process and that not all questions could be answered before detailed design work had progressed. HS2 Ltd said it was committed to working constructively with all stakeholders and neighbours of the new line.

ICA outcome: The ICA said that he could identify no maladministration on the part of HS2 Ltd. He endorsed the findings of the company's own stage 2 review. The ICA said he could not say for certain what the Parish Council had been told by a member of HS2 Ltd staff, and deprecated the personal tone of the Council's criticisms, but he said it was most likely there had been a difference in tone in what the Council had been told vis-a-vis what had been said at another meeting. The ICA repeated his view that HS2 Ltd's stage 2 process should have a time target.

A delay in instructing agents in a Need to Sell acquisition

Complaint: Mr and Mrs AB had been trying to sell their property for 18 months, without success. They believed that it was blighted by HS2. Most of their retirement money was tied up in it. They applied to the Need to Sell (NTS) scheme with the intention of selling most of their property through HS2 Ltd to the Secretary of State while retaining some land on which they would build a new home. Over the years, they had run up massive debts. Their “compelling reason to sell”, as set out in detail on their NTS application, related to long-standing health problems exacerbated by difficulties downsizing. They complained that HS2 Ltd failed to apply due urgency to the conveyancing process given the known pressures on them and resulting health problems. In particular, they highlighted a 75-day delay in an instruction being received by HS2 Ltd’s acquisition agents that they believed translated into a comparable delay in contract exchange. This in turn had weakened their position when dealing with their lenders who they feared would take possession of their home. In the end it took 23 weeks to exchange contracts and 29 weeks to complete when the standard forecast provided by HS2 Ltd at the point the couple accepted the Secretary of State’s offer was 13 to 18 weeks for completion. Mr and Mrs AB were particularly aggrieved at what they regarded as negligent administration by HS2 Ltd given their regular efforts at hastening the process and the known pressures on them related to the timescale for the sale of the home.

HS2 Ltd response: HS2 Ltd explained that all actions had been expedited once the instruction had arrived with the agent and that other factors accounted for the timescales for exchange and progression. The key factors were unrelated to the single episode of delay highlighted by Mr and Mrs AB. HS2 Ltd’s position was underlined in Ministerial correspondence with their MP and confirmed at the second formal stage of the company’s complaints procedure. The company emphasised that the 13 to 18 week timescale for completion had clearly been put forward based on a straightforward conveyance. It said that Mr and Mrs AB’s sale was not straightforward in a number of regards. The company accepted that it should have chased the instruction more assertively. It put in place measures to track and expedite referrals to its property agents to prevent recurrence. It did not accept that any compensation was due.

ICA outcome: The ICA flagged from the outset that he had no powers or competence to determine technical surveying and conveyancing questions. In particular, he could not provide a definitive calculation of the impact on the overall timescale, if any, of the delay in the agent's instructions being received. In this regard he noted that Mr and Mrs AB had referred to a six-figure compensation sum. The ICA emphasised that such a claim was properly for the courts and not the lay complaints process. HS2 Ltd had put robust remedial measures in place as a result of the complaint. The instruction had, though, been chased on two occasions by the NTS team, who in turn had been chased by Mr and Mrs AB, latterly resulting in the miscommunication being identified. The ICA obtained evidence from all of the agents commissioned by HS2 Ltd on the conveyancing. This illustrated that the process had been multifactorial and that matters including the requirements for rent back, and the retention of a parcel of land by Mr and Mrs AB, had affected the timescale for exchange and completion. The ICA did not find the evidence sufficient to support Mr and Mrs AB's conflation of delay in one part of the process with the overall timescale for exchange and completion. However, he was cautious in this area given his lack of technical expertise. The ICA considered that the company's complaint responses, although timely, could have dealt more specifically with certain aspects of the complaint. In particular, the company had not explained in sufficient detail why it had concluded that the known delays had not impacted on the overall timescale. For this, and for the fact that the delay itself had arrived at a particularly stressful time for the family, he recommended that HS2 Ltd should make a consolatory payment of £300.

(ii): Maritime and Coastguard Agency

5.3 We received just three complaints about the MCA in 2020-21 compared with two last year. One was discontinued; the other two were not upheld.

CASES

Granting of Certificate of Competency

Complaint: Mr AB complained about the decision of the MCA not to grant a Ships' Cook Certificate of Competency (CoC) to his son. He said that his son's qualifications more than met the Agency's requirements. He also said that the MCA had not explained to him why his interpretation of the regulations was incorrect.

Agency response: The MCA said that it had applied the regulations flexibly in light of the impact of Covid-19 but had to treat all applicants for Chef's Cook CoC in a consistent way. It said that Mr AB's son would have to pass the Assessment in Marine Cookery before being granted his CoC.

ICA outcome: The ICA said that his lay view of the legislation was that it gave the Secretary of State discretion in terms of the training requirements necessary to achieve the Ships' Cook CoC. However, he agreed with Mr AB that it would be

helpful to combine all the requirements in one document and to clarify the objectives of the Assessment in Marine Cookery and recommended accordingly.

Decision not to support a prosecution

Complaint: Mr AB complained about the decision of the MCA not to support a prosecution under Merchant Shipping Act.

Agency response: The MCA had explained why it had reached its decision.

ICA outcome: The ICA judged that this was not a matter that came within his jurisdiction. It could never have been anticipated that an ICA would be an appellate body for decisions not to prosecute, and in any event the six-month time limit for summary offences had now passed. The ICA did offer some critical comments on the MCA's handling of Mr AB's correspondence (although he told Mr AB that it was difficult for all public bodies when they were simply part of a long copy list). He recorded the complaint as discontinued on the grounds that it was out of remit.

A seafarer complaining that the MCA was siding with his employer in a dispute

Complaint: Mr AB was in dispute with his employer, a shipping company, following the implementation of lockdown. While engaging the company's dispute procedures, he made enquiries of the MCA as he felt that his employer was in breach of the Maritime Labour Convention 2006 (the MLC) and possibly other provisions.[11] He claimed that he had sustained injuries in service, and during his repatriation process, that the company was refusing to fund treatment, contrary to the MLC. He also challenged the company's withholding of wages while he was in quarantine after repatriation. When the MCA did not take coercive action against his employer, he accused the Agency of failing to understand, police and enforce MLC provisions (in particular the requirement for the shipowner to bear the costs for seafarers in respect of sickness and injury occurring between the date of commencing duty and the date upon which they are deemed duly repatriated). He argued that the MCA did not understand the framework it was supposed to be regulating and was in effect siding with the shipowner.

Agency response: The MCA made enquiries of the shipowner at every stage that Mr AB raised concerns about MLC compliance. The MCA judged that the evidence did not support Mr AB's complaint and it therefore did not take action in a regulatory capacity. The MCA's surveyors met with staff of the company to discuss the matters raised by Mr AB.

ICA outcome: The ICA agreed with Mr AB that the MCA had said too much in its responses about whether the alleged injuries occurred on board a boat (the MLC provision for the shipowner bearing medical costs was not limited to sea service).

[11] The MLC provides the minimum living and working rights for seafarers. Under the MLC, the MCA can withdraw a ship's maritime labour certificate if conditions are breached: https://www.gov.uk/seafarer-working-and-living-rights/maritime-labour-convention.

However, although his reading of the requirements was different, he agreed with the MCA's conclusion. This was because the health condition that Mr AB sought investigation and treatment for had manifested after repatriation and therefore was not covered by the MLC requirement. Mr AB had argued that the "repatriation process" had included internal transfer within his home country but the ICA judged that the MCA was entitled to adopt the plain English meaning of the word repatriation in its regulatory role. The ICA judged that in this regard and others Mr AB had looked inappropriately to the regulator to help him substantiate a claim against his employer. The MCA was there to act on evidence of breaches of the MLC not to advocate for Mr AB or to assist him in making a claim. The ICA noted that the unpaid project allowances had been established by the MCA to be extracontractual. The ICA agreed with the MCA's conclusion that the evidence showed that the company had met its contractual requirements and did not uphold the complaint.

(iii): Civil Aviation Authority

5.4 We received two CAA complaints (compared with four last year), one of which was completed when we finalised this report. That completed case is summarised below.

CASES

CAA role in passenger's dispute with airline

Complaint: Ms AB complained about poor advice offered by the CAA in relation to her dispute with an airline over a delayed repayment for a cancelled flight. She asked for financial redress.

CAA response: The CAA said it would not pay compensation as its Passenger Advice and Complaints Team (PACT) was a free service. It further argued that its complaints process did not deal with commercial or contractual disputes.

ICA outcome: The ICA accepted that Ms AB's dispute with the airline was not a matter for the CAA. He was also content that the decision not to pay 'compensation' was in line with the level 1 injustice she had suffered (i.e. wrong advice and inconvenience). However, short of a recommendation, he felt the CAA should reconsider its decision not to make a small ex gratia payment to help bring the matter to a close. The ICA was also critical of the CAA's rationale for not making a payment. Lots of services across the DfT family are free to use, but that does not mean that any errors on their part do not give rise to a consolatory payment (the DVLA's contact centre being an example). The ICA recommended that the CAA revise its website references to PACT to make them clearer, and said the CAA should write to Ms AB accepting that its rationale for not making a consolatory payment was flawed. He also recommended that those completing stage 2 reviews be reminded of the various guidance available on the making of consolatory payments - including the PHSO scale in *Our guidance on financial remedy* and the DfT's own *Charter – Principles for Remedying Complaints*.

(iv): Vehicle Certification Agency

5.5 We were deeply saddened to learn of the death of the VCA's Quality & Accreditation Manager, after a short illness, on 2 April 2021. He was a wry and thoughtful contributor to the DfT complaints community before and during our tenure as ICAs and is sorely missed.

5.6 For the first time since our appointment, we received a referral from the VCA. Although we did not uphold the substance of the complaint, our review has assisted in strengthening the VCA's complaints procedures.

CASE

Type approval

Complaint: Mr AB complained that the VCA had wrongly given type approval to a vehicle he intended to import. He said that in consequence of the 'fraudulent' type approval, he had suffered business losses and sought compensation.

Agency response: The VCA acknowledged that a mistake had been made but said it had then followed its standard procedures with the manufacturer. It denied compensation on the grounds that its relationship with Mr AB was too remote and that the brand ('make') of vehicle Mr AB intended to distribute did not appear on any type approval.

ICA outcome: The ICA was critical of some aspects of VCA handling: the time taken, the failure to keep Mr AB regularly updated, and the use of euphemism to describe the error that had taken place. He also commented marginally on some aspects of the VCA complaints procedure. However, the ICA did not believe there was any evidence of fraud – it was simply that a mistake had been made. He also felt that the VCA's reasons for denying compensation were entirely reasonable.

(v) Network Rail

5.7 Network Rail was not formally a member of the ICA arrangements during 2020-21 but we are pleased to report that it has subsequently added ICA review to its revised complaints procedure. We conducted two reviews at the company's request before our stage had been formally adopted. The details were similar so a summary of only one is reproduced below.

CASE

Noise nuisance from emergency repair works

Complaint: Mr AB complained about emergency rail repair works and the noise and disruption caused over many nights. He said that Network Rail had failed to engage with neighbours of the railway and sought compensation.

Network Rail response: Network Rail had acknowledged significant failures in its communications. It said that lessons were being learned.

ICA outcome: The ICA said he sympathised hugely with Mr AB. It was clear that the initial engagement strategy had been very poor, although there had subsequently been strong improvements. He did not think that individual compensation was feasible or administratively possible, but he commended the company's commitment to make redress to the community as a whole. The principal focus of his six recommendations was on Network Rail's complaints policy, including the absence of any independent element.

(vi) DfTc

5.8 Four complaints involving the Department centrally were referred to us in the year. Two were discontinued and the other two were not upheld.

CASES

A complaint that the Department would not support an alternative proposal for a transport scheme

Complaint: Mr AB wished to gain DfT funding for an alternative transport scheme to the heavy rail option being progressed by a consortium involving two local authorities and Network Rail in his area. To this end he wrote repeatedly to the Department asking that Ministers consider his own proposals for funding through the Rail Network Enhancements Pipeline (RNEP).

Department response: The DfT initially explained that the scheme belonged to the local authorities and Mr AB should therefore direct his approaches to them. He challenged this repeatedly and assertively, characterising the Department's civil servants as obstructive and in breach of their Code given the massive savings and environmental benefits that he attributed to his own scheme. Eventually, the Programme Director wrote to Mr AB explaining that funding for rail enhancements could not be deployed on his non-rail scheme, and that the scheme was the property of the local authorities involved.

ICA outcome: The ICA agreed with the Programme Director that opportunities to be clear early on about the fact that Mr AB's scheme would never get off the ground were not taken. However, this was put right by the Programme Director in her response. The ICA was critical of the personalised tone of some of Mr AB's

communications where he accused DfT staff of impropriety in the absence of any evidence. He did not uphold the complaint.

An unfounded complaint about the Department's involvement in DVLA data handling

Complaint: The background to Mr AB's complaint was a false third party submission to the DVLA about his fitness to drive that led to the revocation of his driving entitlement in 2017. Mr AB complained to both the notifying body and the DVLA, and ultimately contacted the DfT's Data Protection Officer (DPO) in late 2020, complaining that the DVLA had not rectified or erased the false information. In early 2021, the DPO confirmed the removal of the notification from Mr AB's DVLA record and emphasised that it would not have been considered or relied upon in any subsequent assessment of Mr AB's fitness to drive. Mr AB then submitted a complaint about the actions of the DPO, specifically that he had failed to monitor the DVLA's compliance with data protection regulations adequately, assisted in concealing that the DVLA was a victim of fraud, and failed to deal appropriately with Data Protection Act breaches

Department response: The Department opted, with Mr AB's consent, to escalate the complaint to the ICA without completing its own complaints process. This was to ensure that a completely independent response could be provided.

ICA outcome: The ICA was mindful that his jurisdiction did not include complaints about the Department's compliance with its statutory data handling duties. The ICA did not uphold Mr AB's complaints. He found evidence that the DPO had gone to significant lengths to ensure that Mr AB's complaint was resolved. There was no evidence that the DPO had concealed an alleged fraud, and no evidence that a breach of the DPA had been found to have occurred.

Appendix

TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS (as at August 2021)

Introduction

The overall aims of the independent complaints assessor (ICA) process are to:

- put right any injustice or unfairness suffered by customers
- improve services delivered through the DfT
- provide assurance that delivery bodies have followed proper procedures and that maladministration has not occurred

1. The Department for Transport (DfT) independent complaints assessors (ICA) provide independent reviews of complaints about the information and services delivered by:
    - the central Department for Transport (DfT(c))
    - all other bodies reporting to DfT (DfT bodies)

2. This guidance sets out expectations of the ICAs and will, subject to annual review, apply throughout the current ICAs' terms of appointment.

3. Any changes in the interim will be subject to agreement between the Department ICA sponsor, DfT(c), DfT bodies and the ICAs.

Referral and review process

4. The scope of the ICA scheme is defined by an agreed protocol that is annexed to this guidance (the 'protocol' – Annex A).

5. DfT(c) and/or DfT body will tell complainants they can ask for an ICA review through the information provided about its complaints procedure and in its final response to each complaint.

6. DfT(c) and/or DfT body will ensure the complainant knows what the ICAs can do and that they must ask for referral following the Department and/or DfT body's final response. A standard referral form for DfT(c) and DfT body use is at Annex B (the 'referral form').

7. DfT(c) and/or DfT bodies must always refer a complaint to the ICAs when asked to do so by a complainant. Where a complaint is felt to be outside the ICA remit as set out in these Terms of Reference, DfT(c) and/or DfT body will consult an ICA before the final decision is made.

8. DfT(c) and/or DfT body will usually tell a complainant they can ask for ICA referral after it has provided a final response. However, in some circumstances DfT(c) and/or DfT body may decide to refer a complaint to an ICA before it has

completed its complaints procedure, with the agreement of the complainant and the ICA.

9. DfT(c) and/or DfT body may also ask an ICA for advice on a case before its final response. If this happens, the ICAs will ensure a fresh review will take place should the complainant ask for an ICA review.

10. DfT(c) and/or DfT body will aim to pass a completed referral form, chronology and all data exchanged between parties to the ICA as soon as possible, and no later than 15 working days of the complainant asking DfT(c) and/or DfT body to refer a case to the ICA. At that stage, DfT(c) and/or DfT body will ensure the ICA knows if the complainant has any protected characteristic the ICA will need to consider and/or communication preference or requirement.

11. The ICA will acknowledge receipt of a referral to DfT(c) and/or DfT body and complainant within five working days unless the ICA judges that there is no need to do so in the circumstances. The ICA will give the complainant a contact telephone number, email and postal addresses.

12. The ICA will decide whether and how much of a complaint is in scope. They will do this after considering the information and documents DfT(c) and/or DfT body gives them and any other information they judge relevant. The ICA needs to keep in mind the public interest while doing this. Factors relevant here include:

For a detailed review

- the complainant has, or might have, suffered significant injustice, loss or hardship
- DfT(c) and/or DfT body's handling of the complaint has been poor. For example, it has failed to conduct a proportionate and reasonable investigation, and/or has failed to apply an appropriate remedy
- DfT(c) and/or DfT body has asked the ICA to review the case
- an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness

Against a detailed review

- DfT(c) and/or DfT body has investigated the complaint properly and has found no administrative failure or mistake
- the complainant objects to DfT(c) and/or DfT body's policy or legislation
- a full review would be disproportionate

13. Having considered the factors set out in paragraph 12, the ICA may decide that subjecting the complaint to a detailed review would not meet the overall aims of the ICA review process set out in the introduction.

14. During the review the ICA may raise queries about the complaint history, or the policy or legal background and DfT(c) and/or DfT body will try to answer these.

DfT(c) and/or DfT body will ensure the ICA has complete access to all the relevant data, documents and information used in responding to the complaint. This includes third party material.

15. The ICA will review the complaint and set out their conclusion about whether DfT(c) and/or DfT body has been fair and unbiased and has followed its complaints procedures correctly. The ICA is free to decide how to do this but might want to consider documents and answers to written questions. An ICA may interview interested parties by exception and should tell DfT(c) and/or DfT body (and the DfT ICA sponsor if appropriate) beforehand.

16. An ICA may discuss a case with another ICA or ICA substitute if they feel it would be helpful. An ICA may also, with prior agreement from DfT ICA sponsor, co-opt a substitute ICA to support case handling.

17. The ICA will send a draft report to the delivery body for it to check for factual accuracy. If DfT(c) and/or DfT body thinks it might be difficult to accept and/or implement the ICA's draft recommendations, it may comment at this stage.

18. The review will include the ICA's findings and conclusions (with reasons) as to:

- main facts in dispute
- how much the complaint was justified
- where any part of the complaint is upheld, and any recommendation to put it right
- any recommendation or suggestion for improving the handling of complaints or the matter in question

19. Exceptionally, the ICA may decide to issue a full (or partial) draft report to the complainant, as well as to DfT(c) and/or DfT body. This will allow all parties to provide their input before the ICA finishes the report.

20. The ICA will aim to complete their review of the case within three months. They should tell the complainant and DfT(c) and/or DfT body if they think it will take longer and explain the reason(s) why.

Remedies

21. The ICA may recommend DfT(c) and/or DfT body put right any complaint they uphold by:

- saying sorry
- giving more information and/or explanation
- taking other remedial action
- paying out-of-pocket expenses (with evidence)
- paying other financial losses (with evidence)
- making a consolatory payment, if this is proportionate and necessary, to reflect the inconvenience, injustice, hardship or delay experienced by the

complainant because of the Department and/or DfT body's mistake or failure

22. When making a recommendation for any financial payment, the ICA will consider DtT(c) and/or DfT body's policy, relevant HM Treasury guidance (currently *Managing Public Money*) and the Parliamentary and Health Service Ombudsman's (PHSO) *Principles for Remedy* and *Our Guidance on Financial Remedy*.

23. In suggesting any remedy, the ICA will consider the impact and seriousness of any poor service or maladministration on the complainant. The ICA will also consider the appropriate steps, if available, to restore the complainant to the position they would have been in had the poor service or maladministration not occurred. The ICA will also consider whether anything the complainant did made their situation worse.

24. At the ICA draft report stage, this must be sent to DfT(c) and/or DfT body for fact checking. They should try to reach an agreement with the ICA about their findings and recommendations.

    - When DfT(c) and/or DfT body does not agree to implement a recommendation, it should tell the ICA at this draft report stage.

    - If DfT(c) and/or DfT body and the ICA cannot resolve any difference of opinion DfT(c) and/or DfT body should tell the complainant and the ICA, in writing, after the ICA issues the final report

25. When the ICA has made recommendation(s) about redress, DfT(c) and/or DfT body must respond to the complainant in writing. A copy of what is sent to the complainant must be sent to the ICA who handled the review.

26. DfT(c) and/or DfT body must tell the relevant ICA as soon as they are aware of the PHSO accepting for investigation a case the ICAs have already reviewed.

27. DfT(c) and/or DfT body must send a copy of any adjudication commenting on the ICA's handling of a complainant to the ICA that handled the case and copy in the DfT ICA sponsor.

28. DfT(c) and/or DfT Body should, following receipt of the PHSO's final report after investigation into a complaint, advise the relevant ICA and the DfT ICA sponsor of the PHSO's recommendations about the outcome of the have reviewed.

29. DfT(c) and/or DfT body must write out to the complainant and copy in the ICA and DfT ICA sponsor, as to whether they accept the PHSO's recommendations or not.

Confidentiality/personal information handling

30. When a complainant makes a complaint to DfT(c) and/or DfT body, they will use the complainant's personal information. Where appropriate, they will share

that information with DfT and its appointed ICA so they can handle the complaint properly

31. DfT(c) and/or DfT body may publish data relating to a complaint, in anonymised form, and in the ICA's annual report to show the public how DfT and DfT bodies deal with complaints and what DfT ICAs do.

32. DfT(c) and/or DfT body will also use complainant personal data for producing anonymised statistical information.

33. DfT(c) and DfT bodies process personal data relating to a complaint so they can deal with it. Some DfT bodies are separate data controllers under data protection law.

34. Where a complaint has been sent to the wrong DfT delivery body, they will forward it to the right one and let the complainant know they have done so.

35. DfT and DfT bodies will destroy securely all data about a complaint that was referred to the ICA, including the report, generally after two years.

36. DfT's privacy policy has more information about a person's rights in relation to their personal data, how to complain and how to contact the Data Protection Officer. This is available at; https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter**.**

37. This privacy policy covers the central Department (DfT(c)), its executive agencies and investigation branches only. Other DfT bodies have their own privacy policy on their websites. [***Other data controllers should amend this paragraph as appropriate so that it refers to their own privacy policies***.]

38. To conduct a review an ICA might require access to material that is personally sensitive. For example, because it is confidential, legally privileged or commercially sensitive:

- where DfT(c) and/or DfT body has told the ICA some material they have asked for is sensitive, the ICA must not disclose any part of it outside DfT(c) and/or DfT body or DfT(c) without first getting consent of the appropriate Data Controller(s)

- in rare cases, an ICA might not be able to confirm or deny the existence of data. DfT(c) and/or DfT body must explain this to the ICA in those circumstances

39. The ICAs must handle all documents and information given to them in line with Department and/or DfT body's requirements for the lawful protection of information, especially personal information.

40. The ICAs will pass any requests made directly to them for information under the Freedom of Information or Data Protection Acts directly to the relevant DfT

body or to DfT(c). They must include any relevant documents or information about the request.

41. The ICA should copy their report to the complainant and to DfT(c) and/or DfT body (and any representative the complainant has specifically nominated to receive a copy of a report, such as an MP). The ICAs' reports are not confidential; they should be written with the expectation they could be shared widely particularly by a complainant.

42. The ICAs will refer only to the 'preferred first name and title' of the member(s) of staff in the DfT / DfT body referred to in a complaint, not the full name unless they are members of the senior civil service.

43. Two years after a review or the issue of the ICAs' Annual Report including the case (whichever is the later), the ICA should destroy securely all relevant case documents they hold. DfT(c) and/or DfT body will be responsible for the destruction of any documents stored centrally in line with their own retention policy.

Reporting by ICAs

44. The ICAs will report every year to the Permanent Secretary of the Department for Transport on complaints they have handled in the previous year ending 31 March. The report will include:

    - how many complaints were referred to them
    - how many complaints they upheld, partially or fully
    - what recommendations and suggestions, if any, they made to DfT(c) and/or DfT body
    - what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of DfT(c) and/or DfT body complaints procedures and their role
    - a selection of anonymised complaints the ICAs have concluded during the year, to
        - highlight issues found in service delivery,
        - encourage others similarly affected to come forward, and to
        - demonstrate the independence of the ICAs' work
    - any other matter the ICAs consider DfT(c) and/or DfT body should know about

45. The ICAs will invite DfT(c) and/or DfT body to check a draft of the report for the accuracy of sections dealing with its cases.

46. The Department will publish the ICAs' Annual Report and its response to it on its website following receipt.

47. The ICAs will also produce quarterly summary reports to an agreed format.

These will also be provided to DfT(c) and/or DfT bodies in draft form before submission to the DfT ICA sponsor.

Target timescales

48. Target timescales for the DfT ICA scheme are set out below.

Department and/or DfT body to provide ICA with completed referral and all supporting documents	15 working days of receipt of request for an ICA review
ICA to acknowledge referral to complainant and Department and/or DfT body and to inform complainant and delivery body of proposed timescale for review	5 working days from receipt of completed referral
Department and/or DfT body to answer queries raised by ICA	15 working days of receipt of query
ICA to issue draft report to Department and/or DfT body	3 months from receipt of completed referral.
Department and/or DfT body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to the complainant and Department and/or DfT body	5 working days from response to draft report and within three calendar months of initial referral.

49. If an ICA thinks they might miss any of these targets, they will tell the DfT and DfT(c) and/or DfT body as early as possible and explain their reason(s).

Equality

50. The scheme should be as widely accessible as possible to all sectors of the community, in the same way DfT's services are. If, while making a referral, DfT(c) and/or the DfT body considers the complainant has any protected characteristic as outlined in the Equality Act that might require the ICA to adjust their approach to handling the case, it will tell the ICA as soon as possible.

Annex A

ICA Protocol

1. Information delivery bodies should give to complainants at or before the final delivery body complaint response.

ICA referral

2. You can ask us to pass your complaint to one of the independent complaints assessors (ICA) if you've been through the final stage of our complaints process and are not happy with the response. The ICAs cannot accept referrals direct from complainants[12] – the complaint must have been through the DfT or DfT body's own complaints process, unless exceptionally you, we and the ICA agree it can be referred earlier.

3. The ICA is:
   - independent of DfT and [insert name of DfT body]
   - a public appointment, not a civil servant

4. The ICA looks at whether we've:
   - handled your complaint properly
   - given you a reasonable decision

5. It does not cost you anything for the ICA to assess your complaint.

6. The ICA will need to see all the letters and emails between us. We'll aim to send these to the ICA within 15 working days of you asking us to pass your complaint to them.

7. The ICA will decide how best to deal with your case and will then contact you.

8. If you and we both believe referral to the ICA will not resolve your complaint, then with the agreement of the ICA, the ICA does not have to consider it. Instead you can ask an MP to refer your case to the Parliamentary and Health Service Ombudsman (PHSO).

9. The ICA will aim to review your case within three months of receipt. They'll tell you if they expect it to take longer.

10. When the ICA has reviewed your case, they'll tell you the outcome and if they've made any recommendations. That ends their involvement with your case.

11. The ICA can look at complaints about:
    - bias or discrimination
    - unfair treatment
    - poor or misleading advice

[12] With the sole exception of complaints about the HS2 Residents Commissioner.

- failure to give information
- mistakes
- unreasonable delays
- inappropriate staff behaviour.

12. The ICA cannot look at:
    - regulatory decisions and outcomes
    - disputes where the principal focus is upon Government, DfT, or DfT body policy
    - complaints arising from contractual and commercial disputes
    - complaints about the law
    - matters considered by Parliament
    - matters where only a court, tribunal or other body can decide the outcome
    - decisions taken by independent boards or panels, for example: applications under the HS2 ‘Need to Sell’ scheme
    - decisions taken by, or for, the Secretary of State
    - legal cases that have already started and will decide the outcome
    - an ongoing investigation or enquiry
    - how we handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
    - how we handle subject access requests made under the Data Protection Act
    - personnel and disciplinary decisions or actions
    - any professional judgment by a specialist, including, for example, the clinical decisions of doctors.

13. Also, the ICA cannot usually look at any complaint that:
    - has not completed all stages of our complaints process
    - is more than three months old from the date of the final response from us.

14. If your complaint falls within either of the two categories that the ICA cannot usually look at, please tell us why you believe the ICA should review it. We’ll send your explanation with your complaint to the ICA.

15. The ICA cannot look at any complaint the PHSO has investigated or is investigating.

Annex B

ICA Referral form for Department (DfTCc) or DfT body completion

A timeline of all correspondence/actions should be attached to this form.

1. Department or DfT body and contact details of officer preparing the file	
2. Name of complainant	
3. Address	
4. Email address and telephone if known	
5. Has the complainant indicated a requirement or preference for communications? (e.g. are they unable to write?) If so, what?	yes/no
6. Has the complainant identified as having a protected characteristic under EA 2010? If yes, please state what	yes/no
7. Date complaint made and by what means?	
8. Summary of complaint (attach letter/email if appropriate)	
9. Date of initial response to the complaint?	
10. Summary of initial response (attach letter/email if appropriate)	
11. Date of final response to complaint?	

12. Summary of final response to complaint (attach letter/email if appropriate)	
13. What redress, if any, has been offered to the complainant (e.g. apology, reimbursement of expenses, ex gratia payment)?	
4. If no redress/failure identified, which rules/policies have been followed correctly?	
15. Date of request for ICA review (attach letter/email if appropriate)	
16. Does the delivery body know if a complaint has been made to the PHSO?	yes/no
17. Is the complainant's request for ICA review late? If so, does the delivery body think the ICA should waive the time bar?	yes/no if late: waive/don't waive
18. Does the complaint concern systems or processes which have since changed or will change in the near future?	yes/no
19. Confirm the complainants preferred method of communication and that these details have been agreed, are current, and valid	
Date:	Person making referral (if different from email)

I confirm that the above information has been verified.

Any other comments: