Department for Transport

Independent Complaints Assessors
Annual Report, 2021-22

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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, Dame Bernadette Kelly DCB.

We are pleased to submit our Annual Report covering the period April 2021 to March 2022.

Stephen Shaw

Jon Wigmore

Foreword

Despite the easing and then ending of formal Covid-19 restrictions, our work during 2021-22 continued to be heavily influenced by the impact of the pandemic upon those Department for Transport services that come within our jurisdiction.

Many of the grievances we considered arose directly or indirectly from the effects of the pandemic and the efforts made to safeguard staff and prioritise key workers. In the case of the DVLA, the backlog of work was a matter of public controversy, with paper transactions left waiting in long queues.

So far as the DVSA was concerned, all work on ICA referrals was suspended for a long period during 2020 and 2021 meaning that the cases that eventually reached the ICAs were often many months after the events giving rise to them. Many complainants expected us to comment upon factual issues (like the cleanliness or otherwise of cars presented for practical driving tests) that we could not possibly adjudicate upon.

A key question facing us was how far the delays and inconvenience affecting so many customers was the result of avoidable maladministration or the inevitable consequence of a unique public health emergency. We have tried not to conflate pandemic-related lapses in service by DfT bodies with maladministration. However, it is not surprising if many complainants have taken a different view. And as time has gone on, fewer people have been willing to accept what is perceived as a 'Covid excuse' for poor service.[1]

We must also note the increased prevalence of discourteous and, on occasion, offensive and threatening, communications from a small minority of complainants towards staff working in DfT delivery bodies.[2] Public authorities should not lightly invoke procedures designed to limit contact from complainants deemed vexatious or abusive, but they also have a duty to protect their staff. For our part, we do not shy away from criticising complainants who behave in an unacceptable manner. Equally, we are critical when delivery bodies invoke unreasonable customer policies unfairly.

We received 359 cases in the year and completed 369 reviews. (The numbers for received and completed reviews will rarely be the same as the number of completions includes work carried forward from last year minus that carried into the next.)

In total, our caseload rose by over 11 per cent compared with 2020-21. However, the volumes began to fall during the second half of 2021-22 for reasons we do not fully understand. It is particularly surprising that those matters that have featured so heavily in media criticism of the DVLA – especially delays in processing paper licence applications – have not featured in our own postbag. It is clear that many more aggrieved citizens are

[1] We note the story on the BBC website for 7 July 2021 entitled 'Customers fed up with Covid excuse for poor service'. Reporting the views of a body called the Institute of Customer Service, the BBC reported: "Consumers were initially tolerant of delays and other issues as businesses fought to cope with the effects of the crisis … [but] a blanket excuse was no longer sufficient. The number of complaints about poor service in the last six months was at its highest level since 2009." We suspect that many DfT bodies have encountered the same shift in public attitudes.

[2] This may be part of a more general trend. Media reports suggest that shopworkers, GP surgeries and call centres have all reported a rise in abusive behaviour directed toward them in the aftermath of the pandemic. Of the DfT bodies with whom we work, we have been particularly impressed by the thoughtful and balanced policy and practice developed by HS2 Ltd to encourage respectful two-way communications with those affected by the new railway.

asking their Members of Parliament to become involved in their cases, and it may be that many more complaints are resolved at this stage as a consequence. However, we have raised with the DVLA and the Department our concerns that, where matters are not resolved, there may be cases where further escalation routes are not being flagged appropriately. Work is now ongoing at the DVLA to ensure that its responses to MP correspondence distinguish between general requests for an update or additional information, and those that are complaints made on behalf of a constituent.

As we foreshadowed a year ago, we have structured this annual report so that it focusses more clearly upon a number of key issues. But we must caution that the case histories that form the bulk of the report should not be taken as representative of our casework as a whole, much less the day-to-day work of the organisations within our remit – the majority of whose transactions and activities are entirely successful. Most of those matters that do result in formal complaints are also resolved long before the independent tier needs to be engaged. Other factors are also at play. These include capacity in the complaints functions of the 'big three' delivery bodies, as well as complainants' own persistence (medical complainants, for example, are often very keen to see their cases continue to the Parliamentary and Health Service Ombudsman). In short, while each of the case histories is true and contains important lessons for the Department and its delivery bodies, the overall picture we present should be viewed cautiously by those looking for an index of public concern about their performance.

In principle, we can receive and review complaints against a dozen different DfT bodies (as well as against the Department itself) once the internal complaints processes have been exhausted. But reflecting its size, the number of transactions it processes each year, and its engagement annually with much of the adult population, the majority of our reviews concern complaints against the DVLA. We received 162 referrals from the DVLA in the year, compared with 136 from the DVSA, 34 from National Highways, and just 27 from all other DfT delivery bodies and from the Department itself.

Appendix 2 to this report sets out the overall complaint volumes received by the Department and its constituent bodies. We have included this data for the first time – both to provide context to our own work and for reasons of openness and accountability.

We have also annexed to this report our latest terms of reference. These set out the overall aims of the ICA process: to put right any injustice or unfairness suffered by customers, to improve services delivered through the DfT, and/or to provide assurance that proper procedures have been followed and that maladministration has not occurred. Although we offer a 'light touch' service based on the paperwork we receive (rightly termed an ICA review rather than an investigation), we are proud of the contribution we make in respect of each of these objectives. Where we make recommendations, these can provide both redress for the complainant and an opportunity for the DfT body to consider changes to its approach and procedures. Where a complaint is not upheld, it provides objective, independent, support for the delivery body itself and for the Department.

We should emphasise, however, that we do not carry out primary investigations, and that the average time taken on an ICA review, including all administrative tasks, is little more than five hours. We also see our role expressly as adjudicators, not as advocates, however much we may sympathise with individual complainants for their misfortunes. We have to accept as a given Government or DfT policy (some of which, especially in respect of vehicle taxation and medical licensing, can appear to be rigid and unforgiving).

As in past years, however, it may be helpful to readers if we list here both what we can and cannot look at. 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
- mistakes (including decisions, actions and failures to act)
- administrative mistakes
- unreasonable delay, and
- improper or unreasonable staff behaviour, e.g. rudeness.

We cannot look at complaints about:

- 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 (i.e. the DfT or DfT body) handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- how we (i.e. the DfT or DfT body) 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 or the judgments of driving and vehicle examiners.

We end this foreword by expressing our great thanks to the DfT, its agencies and other bodies, for the support they offer us as we carry out our work; and to the people who have entrusted us with their experiences of dealing with services in the DfT family. The relationship between any organisation and its oversight bodies is a delicate one. The respect shown for us and our reviews reflects well upon the Department and the adherence of its staff to the Civil Service Code and wider public service values.

And in particular, we value the respect shown towards our role and outcomes by citizens using DfT services, even where they take a different view on the events of their case.

1: Overview of our year's work

Input

1.1 Some 359 new cases were referred to us, compared to 323 in 2020-21 and 386 in 2019-20 (which remains the high-water mark).

1.2 This amounted to an 11 per cent increase, comparing year-on-year.

1.3 At one point we had projected a total input in excess of 400 new cases, but in practice there was a significant decline in the second half of the year for reasons we can only speculate upon.

1.4 An overview of our caseload in the context of referrals in the last two years is provided in Table 1.1.

Table 1.1: Cases received 2021-22 and changes since 2020-21

	2021-22	Change from last year
DVLA	162	-16%
DVSA	136	+89%
NH	34	-19%
NR[3]	13	+11 cases
CAA	6	+4 cases
HS2	3	-1 case
MCA	3	same
DfTc	2	-2 cases
VCA	0	-1 case
Total	**359**	**+11%**

1.5 Table 1.1 illustrates the contrary impact of the pandemic on 'stage 3' referrals to us from our two largest sources of cases, the DVLA and DVSA. Both Agencies have faced significant operational challenges as a result of (amongst many factors, in different degrees) staff traditionally working in close physical proximity to others. Both have been on the receiving end of highly critical comments on published and social media.

1.6 Having said that, the great majority of our complainants have been very understanding of the challenges faced by DfT bodies – as by so many other organisations and individuals – during the Covid-19 pandemic.

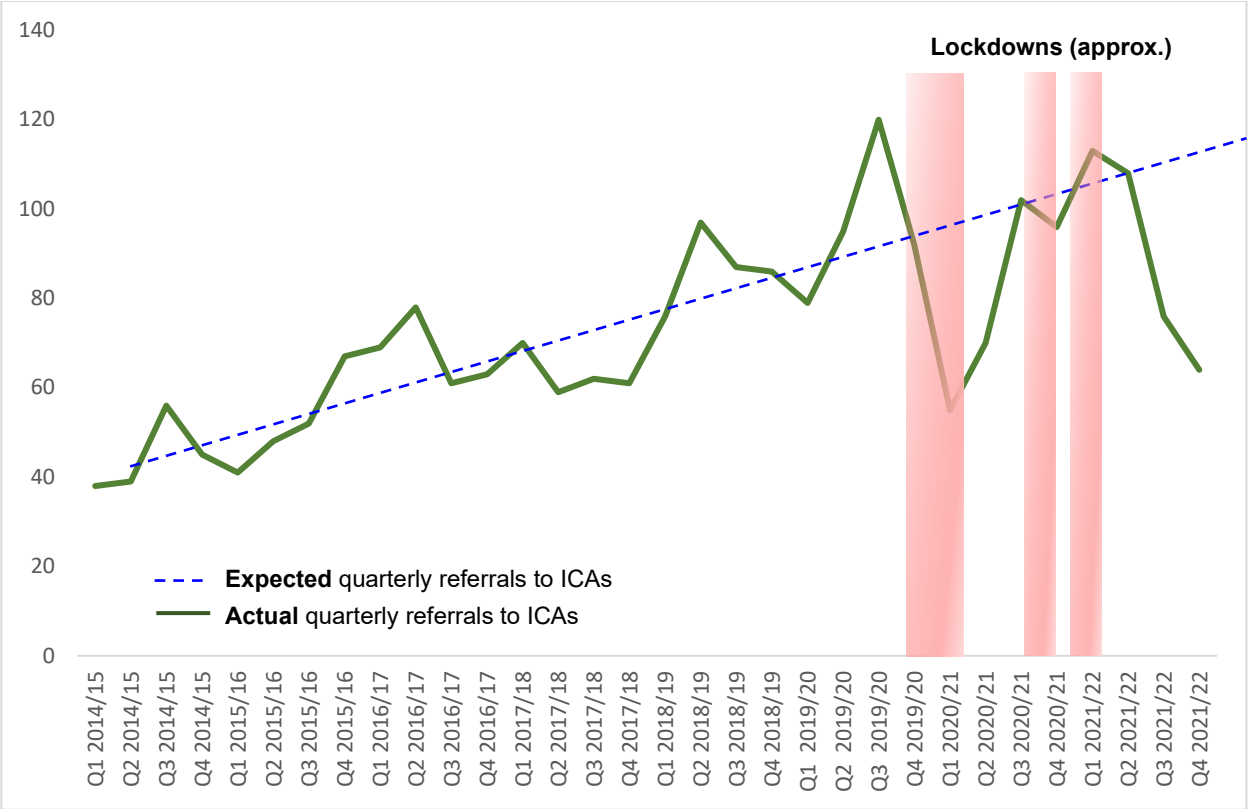
1.7 In our reviews of the many cases where delivery body handling has been affected by the pandemic, we have tried to draw a line between avoidable lapses in service, and those (delays, in particular) that stemmed from inescapable pressures arising from unique circumstances. However, it is not our role to undertake the root and branch analysis of delivery body operational responses to the pandemic that some

[3] 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.

customers would wish us to do. We note that the DVLA's chief executive appeared on two occasions before the Transport Select Committee during this reporting year to answer questions from Members of Parliament on these matters.

1.8 Figure 1.1 illustrates the significant impact of the pandemic on our workload with only the first quarter of the 2021-22 year's tally of cases exceeding 100 in line with our pre-pandemic forecast.

Figure 1.1: Actual versus expected ICA referrals by quarter, pre and post-pandemic[4]



1.9 Figure 1.1 reflects the two variables determining our workload; stage 3 complaint volumes and the ability of the delivery bodies to refer those cases to us.

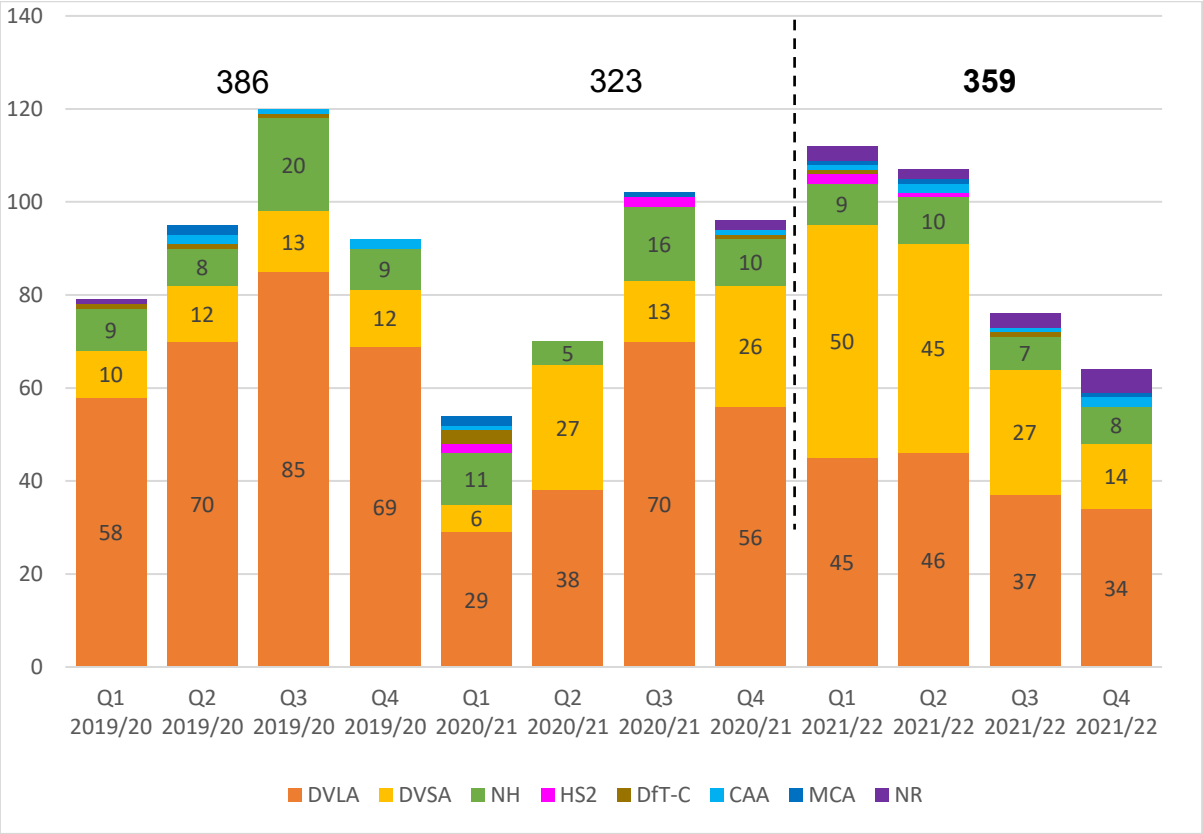
1.10 Given the significantly reduced driving test capacity, and the difficulties in getting through to customer services, we regard the upswing in DVSA complaints to us as wholly predictable. Reduced travel explains some drops in volumes (in particular, from National Highways).

1.11 Figure 1.2 shows the year's decline in incoming cases, by quarter and DfT delivery body, compared to the last two years. To a large extent the 2021-22 reduction is a product of the 16 per cent drop in DVLA referrals shown in Table 1.1 and illustrated in Figure 1.2. DVLA volumes had grown more or less consistently during our time in office but have been on a sharply downward trend since the second half of 2020-21. At the time of writing (August 2022), this trend had begun to change with referrals

[4] The inter and intra-lockdown arrangements and restrictions applied varied at times between the four nations within the UK – our graphical representation is a simplification.

from the DVLA steadily increasing month-on-month in the 2022 calendar year. We return to consider this trend in the next section.

Figure 1.2: All ICA incoming cases over the last 3 years, by year and quarter



Output and outcomes

1.12 During the year we completed 369 reviews, a 16 per cent increase over last year (317). As in previous years, we have been greatly supported by the input of our associates, Lindsey Wilby and Claire Evans.

1.13 We summarise our 369 2021-22 case outcomes as follows (all percentages are rounded), compared to the previous year:

• Not upheld:	245 cases	66%	(2020-21: 61%)
• Partially upheld:	87 cases	24%	(2020-21: 32%)
• Fully upheld:	24 cases	6%	(2020-21: 3%)
• Discontinued/quick resolution	13 cases	4%	(2020-21: 4%)

1.14 In Table 1.2, we summarise the outcomes all of the 369 cases we completed in the year by DfT delivery body.

1.15 Aggregating those 111 cases that were fully and partially upheld gives a figure of 30 per cent of cases that were upheld to some extent. This outcome is consistent with previous years and compares with 32 per cent of cases upheld to some degree in 2020-21 and 31 per cent the year before.

Table 1.2: Outcomes of cases closed by ICAs 2021-22, by delivery body

Delivery body	Closed cases	Upheld?				% upheld full/part	Further action rec'd?
		Full	Part	Not	Disc.*		
DVLA	171	10	43	107	11	31%	57
DVSA	143	5	28	110	0	23%	40
NH	32	4	13	15	0	53%	19
NR	9	4	1	3	1	55%	5
CAA	5	0	0	5	0	0%	2
HS2 Ltd	4	0	2	2	0	50%	1
DfTc	3	1	0	2	0	33%	1
MCA	2	0	0	1	1	0%	1
TOTAL	**369**	**24**	**87**	**245**	**13**	**30%**	**126**

* Discontinued, or resolved quickly, with the agreement of the complainant, without a formal ICA report.

1.16 The single main recommendation areas per case are shown below:

- 48: consolatory payments (for non-financial loss)
- 19: changes to the way information is provided
- 13: further/better explanation
- 8: combined consolatory and compensation payments
- 7: review the decision
- 6: changes to working systems
- 5: apologies
- 3: improvements to complaint handling
- 1: compensation payment
- 1: training
- 15: other.

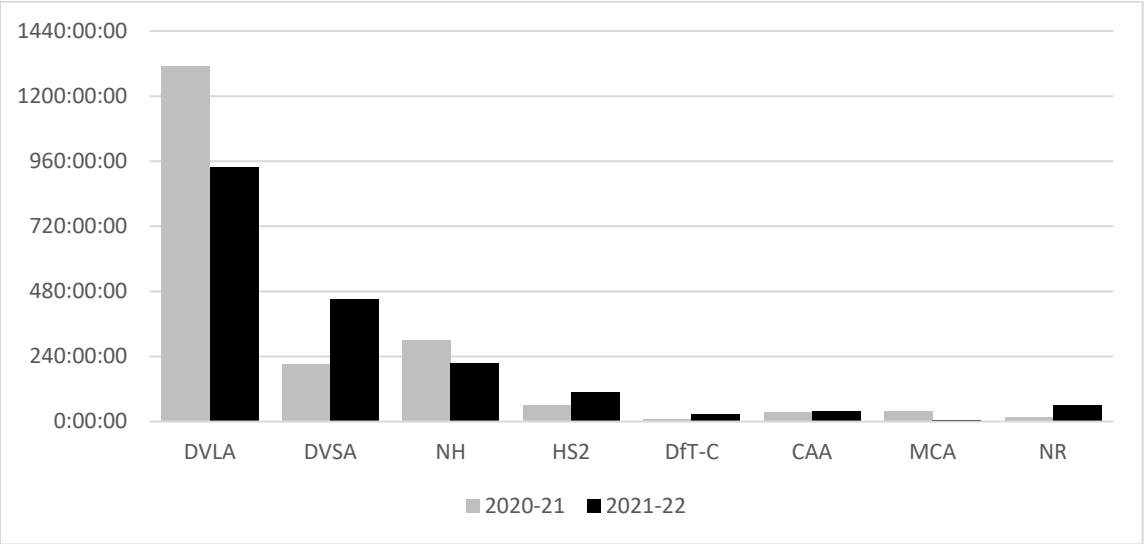
1.17 We emphasise that the figures above underestimate the breadth of recommendations we have made. For example, a consolatory payment recommendation will in most cases be accompanied by recommendations for an apology and improved working practices.

Productivity

1.18 We took on average 5 hours and 19 minutes to complete each case in the 2021-22 reporting year (this compares with 6 hours and 15 minutes in 2020-21). Although it would be flattering to report otherwise, this reduction owes more to the changing make-up of our caseload (in particular, an increase in DVSA cases and a reduction in DVLA Drivers Medical work) rather than an improvement in our personal productivity.

1.19 Our total time spent on cases that were concluded in 2021-22 (1,842 hours – a year on year reduction of 7.7 per cent) is illustrated in Figure 1.3. This year, 50.8 per cent of our caseworking time was devoted to DVLA referrals compared to 65.7 per cent in 2020-21.

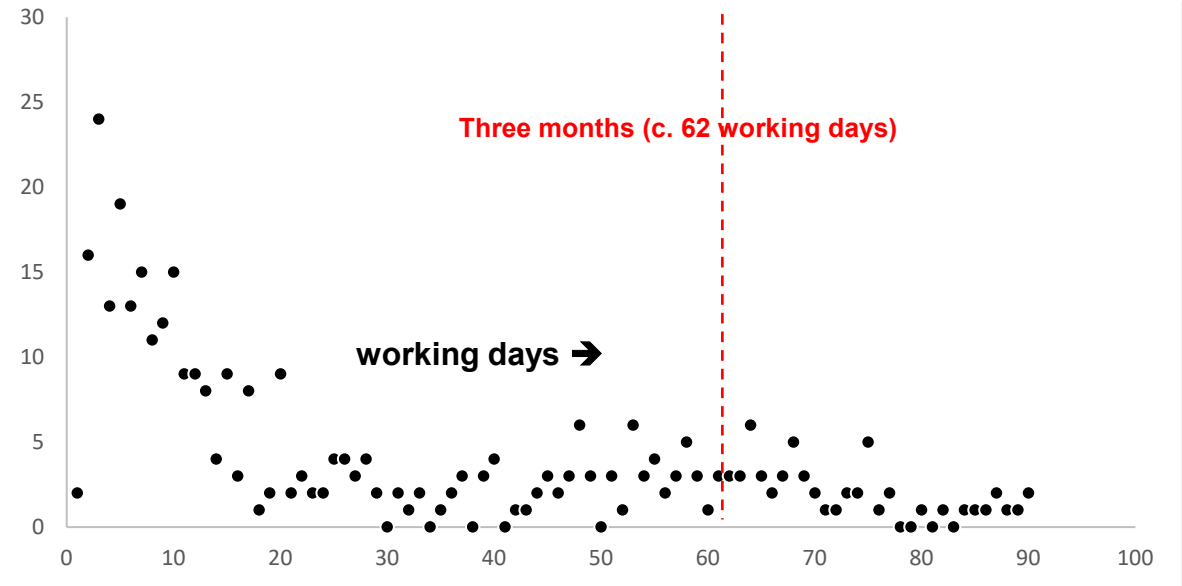
Figure 1.3: Total time spent by ICAs on cases concluded, by Delivery Body, 2020-21 and 2021-22



1.20 We took on average 31.7 working days to conclude cases (against our target of three calendar months). This total includes the time taken by DfT delivery bodies at the 'fact checking' stage, and is also influenced by any requirements on the part of complainants (for example, subject access requests for the referral paperwork).

1.21 Figure 1.4 plots our closures (vertical axis) by working days taken (horizontal axis). The 23 outlying cases not plotted (taking over 90 working days), in common with most of those showing as beyond target, were deferrals (where we have agreed to pause our review after a request from a complainant). Unfortunately, our case management system does not allow us to separate out deferral time from time spent.

Figure 1.4: ICA cases concluded within three months of arrival



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

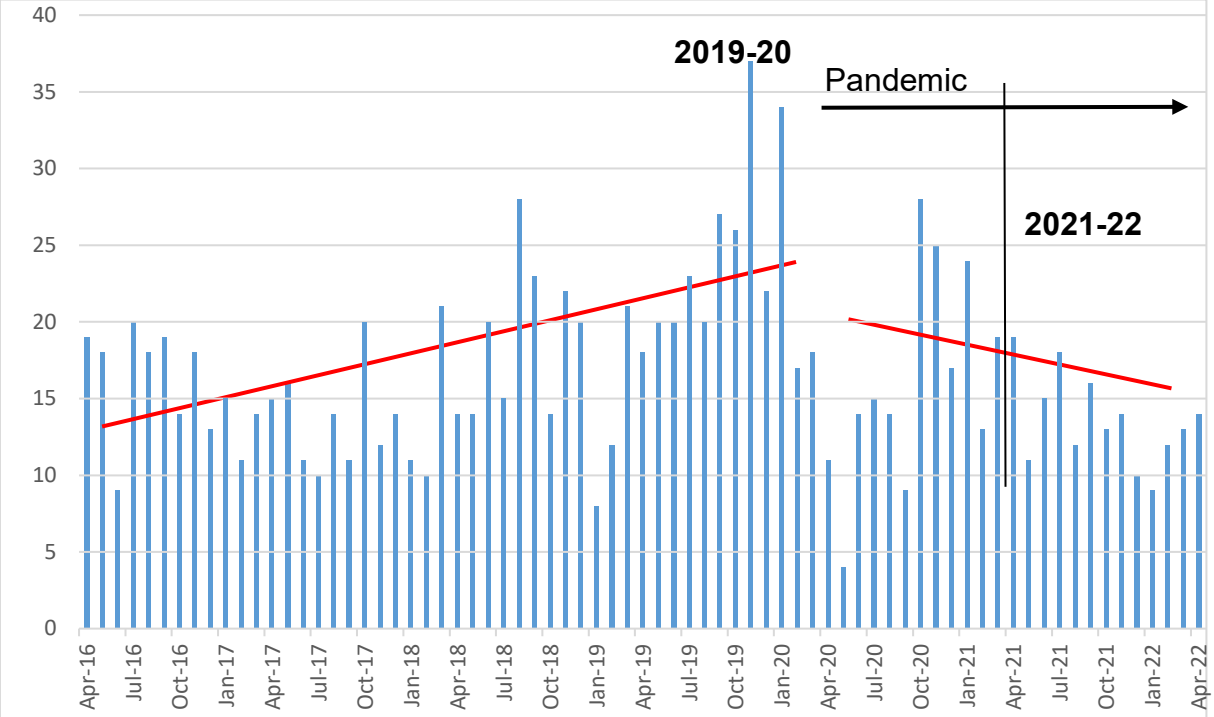
2: DVLA Casework

Incoming cases

2.1 As we noted in the previous chapter, the 162 cases we received from the DVLA represented a 16 per cent drop from last year. This represents a return to 2017-18 levels at (our) stage 3 of the DVLA procedure. In Figure 1.2 we illustrated the dropping off of ICA referrals from both the DVLA and the DVSA during 2021-22, contrary to the upward direction of travel in the first calendar year of the Covid-19 pandemic.

2.2 To our surprise, we have not received very many complaints relating to the well-attested problems the DVLA has faced during the pandemic in handling paper transactions and customer contacts. Indeed, it is curious that, as illustrated in Figure 2.1, the direction of travel for DVLA complaints was downwards during 2021.

Figure 2.1: Incoming DVLA cases, 2016-2022



2.3 Figure 2.1. also shows that:

- The pre-pandemic picture was generally of year-on-year increase in DVLA referrals with a particularly steep 33.6 per cent hike in 2019-20
- Even applying a modest growth rate of 10 per cent to 2019-20's tally would have seen us expecting 310 DVLA cases in 2020-21 (we actually received 193 - 31.5 per cent fewer)
- The trend of post-pandemic decline is continued until December 2021 in this year's tally – 57.4 per cent down overall from 2019-20
- DVLA referrals had stabilised by the end of 2021 at an average of 12 per month, that is at 2017-18 levels, half the average pre-pandemic referral rate
- In the calendar year 2022, referrals have risen month-on-month.

2.4 The DVLA has told us that increasing numbers of its customers now pursue their complaints via their Member of Parliament, and the Agency's approach has been not to flag up further routes of appeal once it has answered the MP correspondence. This may be understandable given the added resource that the DVLA devotes to handling MP casework, and its desire not to create unnecessary expectations for complainants or unnecessary work and expense for itself. But a failure to provide information about further escalation is not obviously consistent with the Parliamentary and Health Service Ombudsman's *Principles of Good Complaint Handling*, part of which reads:

> "*Public bodies should make it clear to complainants when they have provided their final response to a complaint. At that stage, public bodies should provide clear and accurate information about the next stage of the complaint process so the complainant is clear about what to do next if they remain dissatisfied*."[5]

2.5 The DVLA also explained to us that in 2021-22 some 4,333 step 1 complaints were logged (457 going onto step 2) compared with no fewer than 27,505 ministerial contacts.[6] It is likely that the DVLA's approach to MP and ministerial correspondence has reduced step 3 escalation, but we do not think that it can do more than explain in part the fall in ICA referrals we have experienced.

2.6 We understand from the DVLA that approximately 80-90 per cent of ministerial contacts consist of 'progress chasing' rather than being substantive complaints (albeit progress chasing can often be regarded as a synonym for a complaint about delay). Even so, this would still suggest that several thousand substantive complaints were made, but not logged as such, through the ministerial enquiry route during 2021-22. We are unclear why we have seen only a trickle of these at step 3, particularly as MP caseworkers and office staff dealing with dissatisfied constituents should know how to escalate to us and beyond.

2.7 As noted in the Foreword, in recognition of our concerns, work has been under way at the DVLA to ensure that its responses to MP correspondence properly differentiate 'progress chasing' from matters that should be treated under the Agency's complaints procedure.

2.8 More generally, we continue to benefit from a kind and constructive dialogue with the DVLA. A regular monthly meeting is now in place. And we have seen improvements and innovations in DVLA case handling, particularly in Drivers Medical. But we do not think it likely that the reduction in stage 3 complaints that we report for the second year running reflects increased customer satisfaction. We base this in part on the fact that the overall rate at which we have upheld DVLA complaints has not varied significantly. For example, 42 per cent of Drivers Medical referrals (at approximately

[5] https://www.ombudsman.org.uk/about-us/our-principles/principles-good-complaint-handling/getting-it-right.

[6] Incidentally, this is a very different pattern from that in the DVSA where most complainants have continued to pursue matters directly. While comparisons should be approached with great caution, both Agencies have weathered heavy public, media and political criticism for their response to the challenges of the pandemic.

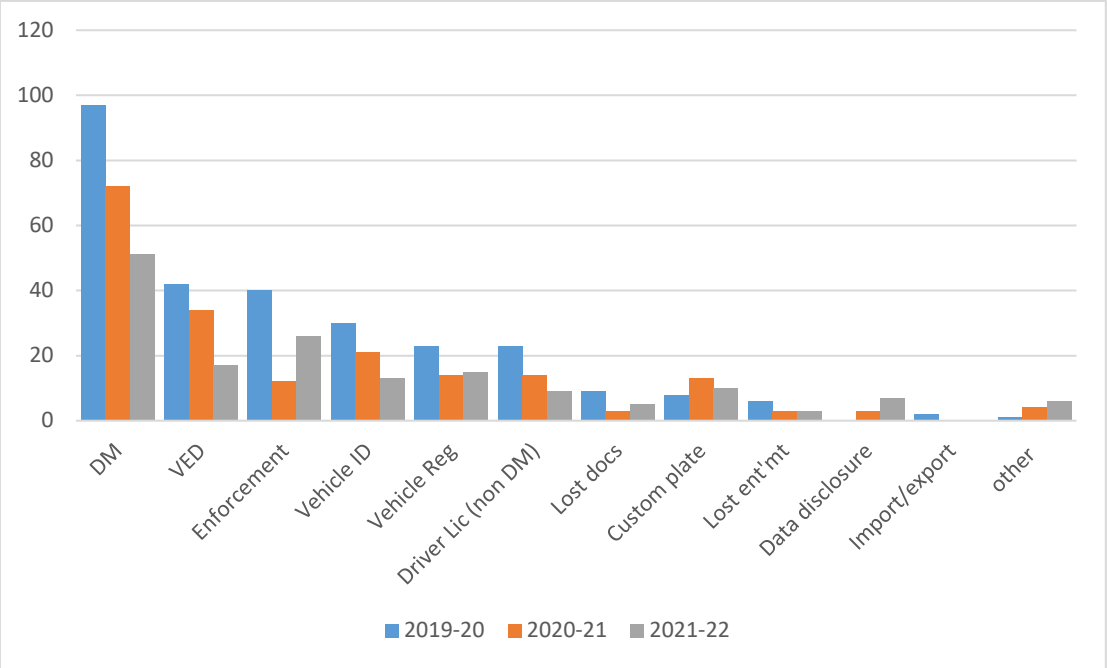
half 2019-20 levels) were upheld to some extent in the reporting year (compared to 43.2 per cent in 2019-20 and 42 per cent in 2018-19).

2.9 Figure 2.2 presents comparative statistics for DVLA cases received in each of the last three years. It maps, by complaint area, the overall trend we have described above. Again, no clear explanation for these disaggregated figures is evident to us. Although the reduction in enforcement and vehicle use during the various lockdowns reduced complaint volumes in some areas, we reiterate that the Agency's major difficulties in running its paper-based and customer support services since March 2020 would be expected to manifest themself in increased complaints (for example about delays in the issue and return of documents including licences and passports). That is not, however, a pattern that we have seen in our referrals.

2.10 The only significant growth area has been in vehicle enforcement-related complaints (26 referrals). While this is more than double last year's tally, reflecting the resumption of enforcement after the pandemic-related curtailments of 2020-21, it remains only two-thirds of pre-pandemic levels.

2.11 With the reservations above in mind, we nevertheless cautiously commend the DVLA for reductions in complaints about vehicle identity (including motorhome classification) that are less than half pre-pandemic levels. We have noted that the Parliamentary Ombudsman has recently echoed criticisms we had made since 2019 about the sudden change in the DVLA's application of its policy on body type in respect of motorhomes.

Figure 2.2: Incoming DVLA cases, 2019-2022, by main subject areas[7]



[7] **DM** – Drivers Medical; **VED** – vehicle excise duty/'road tax' (usually refunds); **Enforcement** – fines and other enforcement for VED and insurance offences; **Vehicle ID** – registration of vehicles where identity is disputed (includes motor caravan-related disputes); **Vehicle Reg**. – other disputes about registration; **Driver Lic**. – non-medical driver licensing; **Lost docs** – lost documents; **Lost ent'mt** – a claimed driving entitlement cannot be found on DVLA systems; **Data disclosure** – release of driver data e.g. to parking companies; **Import/export** – related disputes; **Other** – various (3 of the 2021-22 cases concerned the DVLA's response to alleged fraud).

2.12 Of interest given the extensive media coverage of cases where people have not received essential documentation from the DVLA, we received fewer complaints about lost documentation in the two years since April 2020 (8) than in 2019-20 alone (9).

2.13 Returning to Drivers Medical, our workload has included, as in previous years, complex complaints spanning years of interactions between (typically unwilling) customers and the Agency. The main points of contention have remained consistent: customers' experience that debarring evidence is given more weight than evidence of fitness (and that the DVLA is over-regulating in other regards); customers contesting the ethical, legal and procedural bases of the DVLA's role in policing driver fitness (matters that we have no scope to review); delays; and customer service, typically a lack of accurate and specific information on case progression, and one-size-fits-all templated communications.

2.14 However, we have continued to see the positive impact of the energetic and reflective leadership of Drivers Medical during the year, supported by significant investments in systems and people. DVLA doctors have involved themselves to a larger extent than ever in complaints, a development that we welcome. It is the exception now, rather than the norm (as was the case when we started in post), for an ICA review to reveal a significant failure that Drivers Medical has not identified already through its own governance systems. Consequently, we have fully upheld only one Drivers Medical complaint during 2021-22.

Cases we completed

2.15 We completed 171 DVLA cases in the year. Overall, we did not uphold 107 complaints (62.5 per cent); we upheld 43 complaints partially (just over a quarter); 10 complaints were upheld fully (6 per cent); and the remaining 11 cases were either discontinued or resolved without full review. This means an overall uphold rate (combining full and partials) of 31 per cent. This is an outcome in line with recent reporting years and with the combined 2021-22 figure of 29 per cent for all of the other bodies in jurisdiction.

2.16 In Table 2.1, we present case outcomes in the six main complaint areas. This illustrates the steady uphold rate in Drivers Medical cases in recent years we mentioned in paragraph 2.9. Our impression is that these figures do not do justice to the DVLA's efforts at resolving medical cases locally. We have seen fewer simple medical complaints (for example, of straightforward delay) and more complex multi-layered cases where the likelihood of lapses in service is inevitably greater.

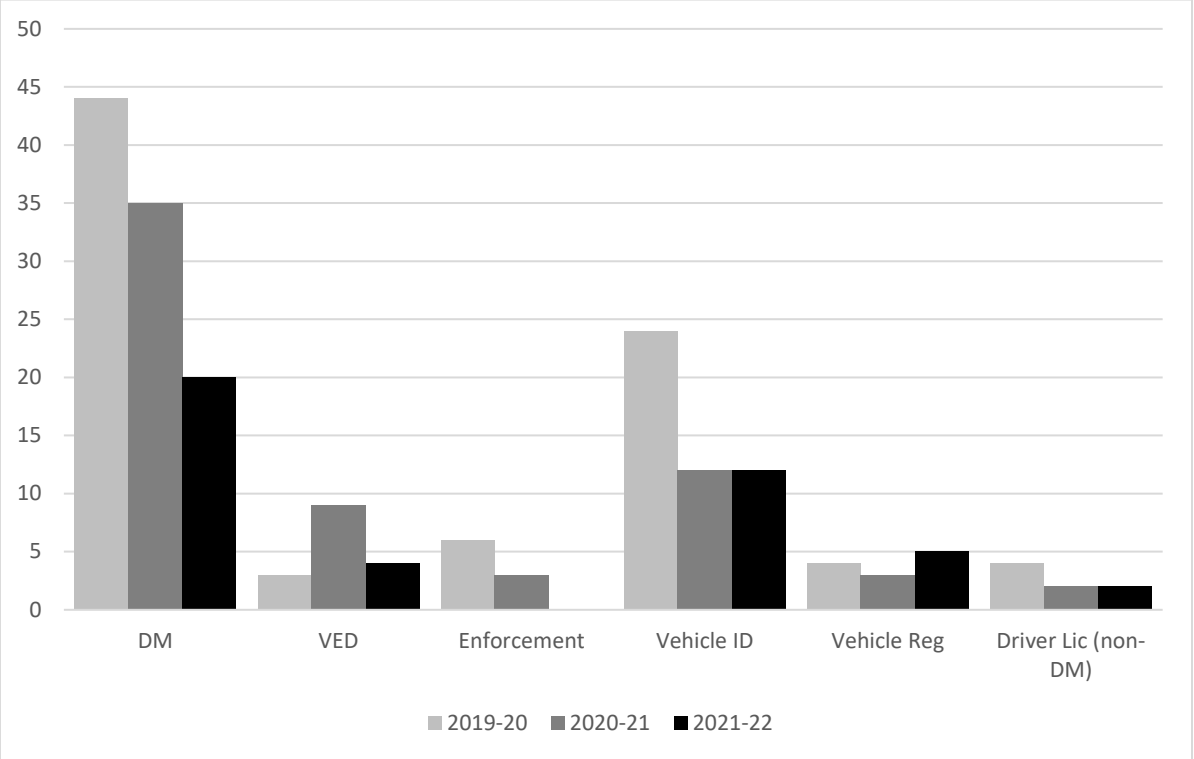
Table 2.1: Case completions and outcomes in the six main areas

Completions 2021-22		**Upheld to some extent**
DM	50	21
VED	20	4
Enforcement	23	0
Vehicle ID	19	12
Vehicle Reg	15	5
Driver Lic (non DM)	10	2

2.17 The complaint area where we were most likely to uphold was vehicle identity; we upheld approaching two-thirds of those referrals, double the overall average rate for the Agency. The largest subcategory was motor caravan body type disputes. While our jurisdiction does not allow us to substitute our own opinion as to what customers' vehicles look like in traffic, themes we have reported in previous years have recurred (in particular, the DVLA's fixed position that it will not tell customers why it thinks that their vehicles do not look like motor caravans in traffic).

2.18 In Figure 2.3, we illustrate the numbers of complaints we upheld to some extent in the six main complaint areas over the last three years. While in some cases we have expressed reservations about the DVLA's pursuit of enforcement cases during the pandemic, the statutory and policy basis of its vehicle enforcement regime is not for us to call into question. In the absence of significant lapses in service, therefore, we have not upheld any enforcement complaints this year.

Figure 2.3: Numbers of DVLA cases upheld to some extent, 2019-2022 (six most complained-about subject areas)[8]



[8] **DM** – Drivers Medical; **VED** – vehicle excise duty/'road tax' (usually refunds); **Enforcement** – fines & other enforcement for VED and insurance offences; **Vehicle ID** – registration of vehicles where identity is disputed (includes motor caravan-related disputes); **Vehicle Reg**. – other disputes about registration; **Driver Lic**. – non-medical driver licensing.

Comments on the case studies that follow

2.19 *Drivers Medical cases*. We have focussed particularly on complaints that relate to the licensing or re-licensing of people with a history of heavy alcohol use or illicit drug taking. Customers who have served a ban for drink-driving are often surprised that their licence is not immediately reinstated and that they have to undergo further medical enquiries. This is especially so for those who have reduced the length of their ban by undergoing a designated alcohol awareness course.

2.20 Arranging for medical examinations and blood or urine tests was especially difficult during the pandemic (indeed, at times no such appointments could be made). The DVLA, whose complex medical casework is highly dependent on NHS clinicians, told us:

> "*At the end of May 2022, 28 per cent of live Drivers Medical cases were out with external bodies for assessment/information needed to inform the decision on whether to award a licence. These typically can be cases that have been with DVLA for the longest. As the queue of work reduces through the summer, we will see a greater percentage with external bodies*."

2.21 In line with the standards in *Assessing Fitness to Drive*, the DVLA's approach to those with alcohol/drug histories is invariably more complex than for most other medical conditions. This is despite the fact that there is no inevitable link between alcohol or drug abuse and unsafe driving (heavy drinkers can decide not to drive when they have consumed alcohol) which is not the case for someone with, say, a visual field defect or a history of blackouts. Nonetheless, alcohol misuse and dependency are specified relevant disabilities in the legislation, along with epilepsy and disabling giddiness or fainting, as we noted in our annual report last year.[9]

2.22 In addition to those cases relating to the alcohol and drugs standards, we have reproduced other case histories demonstrating the range of grievances we see about medical licensing decisions. The initiation of medical enquiries as a result of anonymised third-party notifications is often resented, although it follows from the statutory responsibility of the DVLA on behalf of the Secretary of State to ensure that standards for safe driving are met.

2.23 *Vehicle registration and identity.* We make no apology for reproducing again this year several cases relating to the retiring of cherished number plates. We remain strongly of the view that the legislative position is counterproductive – causing a great deal of anguish to customers while the taxpayer loses the back-payment of the necessary fees. The DVLA is not acting maladministratively in applying the law, but the public good is not being well-served either.

2.24 *Vehicle tax and enforcement.* As we noted earlier, the reduction in enforcement activity during the pandemic meant fewer complaints about clamping and penalty notices feeding through to the ICAs. Indeed, we did not receive a single complaint relating to number plate lay-out (which is defined in secondary legislation) indicating

[9] Namely Section 92 of the Road Traffic Act 1988, as amended https://www.legislation.gov.uk/ukpga/1988/52/section/92 and regulation 71 of *The Motor Vehicles (Driving Licences) Regulations 1999* https://www.legislation.gov.uk/uksi/1999/2864/regulation/71/made.

that this aspect of enforcement came to a virtual halt. Casual observation on the road network suggests that a sizeable number of vehicle owners simply ignore the Regulations.

2.25 A number of the cases we have summarised demonstrate the difficulties that the pandemic caused for vehicle keepers who were out of the country and unable to return. We felt that on occasions the DVLA had failed to show an understanding of the impact of Covid-19 on its customers that it expected to be shown to itself.

2.26 *Other cases – drivers.* As noted earlier, given the build-up of mail at the DVLA during the pandemic, we have been surprised not to have received more complaints about lost or mislaid documents. However, we have reported on a number of cases where customers have been put to great distress and inconvenience when precious documentation supplied to the Agency has gone astray.

2.27 Complaints about allegedly long-lost driving or riding entitlements are amongst the most difficult for the ICAs to resolve. In many cases they date back to before the establishment of the DVLA and to a time when some local authorities would issue separate 'red book' licences for car and motorbike. This was also a time when it was legal to ride motorbikes on successive provisional licences without ever having to take a test. Many of the complainants are now elderly, but unless something emerges from the DVLA's intensive searches of its records (the quality of these searches is something we much admire), it is impossible to know what actually occurred 40 or more years ago.

2.28 Other cases demonstrate the difficulties some customers have faced when transferring driving entitlements from jurisdictions abroad.

2.29 *Other cases – vehicles.* As we have said, we have continued to receive complaints relating to the DVLA's approach to recording the body type of vehicles converted for use as motor caravans. This is another area of DVLA practice where we can discern no public benefit.

2.30 We also report on a case that may well become a much more common problem in the future. It concerns the refusal of the DVLA to amend the emissions data on the registration certificate for a motorcycle converted from petrol to electric propulsion. We shared the complainant's bewilderment that his V5C showed details that were plainly irrelevant and incorrect. However, we are told that the details cannot be changed given the existing Regulations – something we trust can be remedied in the near future.

2.31 *Other cases – access to data.* The DVLA's release of vehicle data to parking companies under what is known as the 'reasonable cause' criterion has been controversial for all the time we have been in this role. However, we have also received complaints when the DVLA has declined to share keepership details.

CASES

(i): DRIVERS MEDICAL GROUP

Alcohol and drugs cases

A delay in facilitating a Group 2 application, leading to a break in entitlement

Complaint: Mr AB held a short period (1-year) driving licence for both his Group 1 and Group 2 entitlements. Conscious of the February 2021 expiry date of his licence, he called the DVLA to ask when he could commence the reapplication process. He was advised that the DVLA would contact him shortly. When he did not hear any more, Mr AB called three months later and was advised to reapply. He did so, and medical enquires ensued: the DVLA contacted his GP the following month, and another month later asked Mr AB to attend a medical appointment with an independent doctor. He was issued with a further short period licence (valid for 1 year for both Groups) six months after applying. In the meantime, his entitlements had expired. Mr AB complained that section 88 cover was unacceptable to prospective employers, and that he was losing earnings as a result of the time taken to process his application. He contended that the DVLA should have asked him to undergo blood tests throughout the year, rather than waiting until the point of reapplication. He also objected to being issued with short-term licences on an ongoing basis.

Agency response: The DVLA explained that, although it routinely dispatches driving licence expiry reminders and application forms prior to expiry, this is done solely as a customer service, and it remains the responsibility of licence holders to be aware of the expiry date of their licence, and to submit an application for its renewal.

ICA outcome: The ICA found that the DVLA missed an opportunity at the outset to advise Mr AB of the facility to submit a Group 2 reapplication up to three months in advance of licence expiry, and another opportunity to send him the renewal documentation the following month, thus contributing to a six-week delay in his application. He recommended an apology, a consolatory payment of £400 and compensation – taking all the facts into account – for four weeks' earnings. The ICA found that the time taken to process Mr AB's application was reasonable. He found that it was not possible, in policy, to carry out random CDT (carbohydrate-deficient transferrin) tests throughout the year. Nor was it possible for Mr AB to be issued with an unrestricted driving licence.

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Revocation due to undisclosed prescription drug on blood test; delay in processing reapplication

Complaint: Mr AB notified the DVLA that he was receiving buprenorphine treatment for a previous opioid dependence. Enquiries ensued, and his licence was revoked on the basis of a previously undisclosed substance, promethazine, having been detected in his urine. Mr AB explained that this was a prescribed hay fever medication and supplied a copy of his prescribing record from his GP. He expected that this would be sufficient to enable the DVLA to issue his licence, but the Agency insisted he complete a further application form, after which it sought further clarification from his GP. The GP's response to the DVLA was

impacted by the early stages of the pandemic. Mr AB was ultimately issued with a short-term (1 year) licence almost five months after his licence had been revoked.

Agency response: The DVLA maintained that its decision-making had been appropriate, and that the processing of Mr AB's reapplication had been impacted by the consequences of the pandemic.

ICA outcome: The licensing decision was outside of the ICA's scope as it had been made with clinical judgment, but the DVLA's most senior doctor had checked the decision and confirmed it had been correct. The ICA was satisfied that both Mr AB and his consultant had been given the opportunity to inform the DVLA of any medications that he was taking prior to the urine drug test; neither had mentioned promethazine. The ICA noted that promethazine is known to be a drug with the potential for misuse, due to its ability to potentiate the sedating effect of opioids such as buprenorphine. The combination of buprenorphine, promethazine, and a third medication which Mr AB had disclosed using, was potentially problematic for driving in that all three were known to have sedating effects. The ICA found that the DVLA was acting in line with its own policies in requiring Mr AB to reapply for his licence, and investigating further, rather than simply overturning the revocation decision. The ICA regarded the time needed in Mr AB's case as the product of the unprecedented and unforeseeable circumstances of the pandemic, rather than maladministration. He did not uphold the complaint.

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Licence refused due to drug misuse, but driving assessment required in relation to a different condition

Complaint: Mr AB's difficulties as a customer of the DVLA began after he was reported in as potentially medically unfit to drive due to his misuse of cannabis. The Agency investigated and revoked his entitlement seven months later. Mr AB's efforts at getting re-licensed over the following years were not successful. His 2020 application was the subject of a previous ICA review which found that the DVLA's actions and enquiries had followed standard practice. Mr AB's application, which was live during that review, was refused and the Agency issued him with a PDAL five months later to enable him to retrain for a driving assessment. Mr AB contested the necessity of the driving assessment, and of other DVLA enquiries. He complained of significant avoidable delays and flaws in the Agency's decision-making.

Agency response: The DVLA maintained that the refusal of Mr AB's application had been in line with the fitness standards. He had been referred for a driving assessment in response to information provided by his GP, which suggested that, as a consequence of his musculoskeletal disorder, he might require adapted controls to drive safely.

ICA outcome: The ICA found that the decision to refuse Mr AB's application had been made with clinical judgment, so was not for him to critique. However, as Mr AB had tested positive for cannabis use in the absence of an extant prescription, it appeared to be consistent with the Agency's fitness standards. Given the constraints caused by the pandemic, the ICA was satisfied that seven months – including three months for Mr AB to train for the driving assessment – represented an acceptable timescale to make a decision in his case. In addition, any modest delays had been remedied by the fact that the DVLA had (mistakenly) allowed Mr AB to re-apply three months early. The ICA could not make a finding on the DVLA doctor's decision to refer Mr AB for a driving assessment, as it too

was the result of clinical judgment. However, the ICA was satisfied that the DVLA had given Mr AB an adequate explanation as to why a driving assessment was required. Further, the ICA was of the view that, if Mr AB's musculoskeletal condition restricted his mobility to the extent that he was unable to perform activities of daily living without assistance, an assessment of whether any adaptations were required to enable him to drive safely did not seem an unreasonable requirement. The ICA concluded that, although Mr AB's previous application had been refused in relation to his misuse of cannabis, it was appropriate for the DVLA to consider all relevant conditions on his reapplication.

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Blood test difficulties: Two cases where CDT blood tests produced atypical profiles – and delays

Complaint 1: Ms AB complained about the time taken for the DVLA to make a licensing decision following a ban for drink driving. She said she had bought a vehicle in the expectation of being licensed but had been unable to use it. She asked for compensation.

Agency response: The DVLA said that Ms AB's blood test had returned an atypical profile and could not be used for carbohydrate-deficient transferrin testing, the standard test for recent alcohol use.

ICA outcome: The ICA said he was concerned at the absence of a process to cover atypical CDT results and recommended that this be clarified. He was also critical of the DVLA's failure to inform Ms AB that this was why her licence could not be agreed. In the event, a new process had now been introduced for tests with atypical profiles. The ICA did not endorse Ms AB's claim for compensation. Her decision to purchase a vehicle was at her own risk. But he felt the delays and lack of information constituted Level 2 injustice on the PHSO scale and recommended a consolatory payment of £350.

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Complaint 2: Ms AB's application to renew her restricted licence had been refused two years earlier. She reapplied and an independent medical examination was required but, as a result of the pandemic, it could not be arranged at that time. A year after applying, Ms AB was referred to a DVLA-appointed doctor for a CDT test that occurred a further two months later. Due to an atypical result, the Agency judged that it could not make a licensing decision for another four months. Ms AB complained that the lengthy delay in processing her application had made it hard for her to work, as the commute took two hours each way on public transport. A short-term licence was issued in June 2021.

Agency response: The DVLA said that the delays throughout 2020 were an unfortunate but unavoidable consequence of the pandemic. The four-month delay between the medical examination and licensing decision was due to the presence of an unusual form of transferrin in Ms AB's blood that meant that a reliable CDT result could not be obtained. A trial of an alternative form of testing (high-performance liquid chromatography) was planned, but ultimately abandoned, at which point Ms AB was issued with a licence without an objective measure of abstinence having been obtained.

ICA outcome: The ICA found that the referral to a DVLA-appointed doctor for the CDT test and associated medical examination should have been made at the same time as

enquiries were made of Ms AB's GP. However, it was unlikely that this would have resulted in an appointment before the first lockdown. The unprecedented pressures of the pandemic on the Agency, the laboratory, and the franchise doctors, meant that Ms AB's case could not be progressed between March and December 2020 through DM's standard CDT testing pathway. When getting a blood test result proved challenging, a pragmatic decision was taken by the DVLA to license Ms AB in the absence of an objective measure of abstinence – the ICA commended the Agency's flexibility in this regard. Any delay in organising an appointment with the independent doctor was not the fault of the DVLA, but a direct consequence of the pandemic. Other drivers were, however, referred more quickly, with comparable cases concluded within a range of 2-10 months from application. The ICA did not find that the time taken in Ms AB's case (over 16 months) was within reasonable limits, or the impact on Ms AB acceptable, even when no significant instrumental error had occurred in the handling of the case. He partially upheld her complaint of unreasonable delay, and, in recognition of the hardship that had flowed from this delay, he recommended a consolatory payment of £250.

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An error by a DVLA-appointed doctor creates a six-month delay

Complaint: Following a period of disqualification, Mr AB applied to regain his licence. Three months later he was referred to attend a medical examination including a CDT blood test, which took place another three months later. However, the chain of custody process for handling the blood sample was not followed correctly, and Mr AB was asked – although not for another five months – to attend a repeat examination. This took place another two months later, and a new licence was issued. Mr AB's complaints related to the time it took to license him, and particularly the time taken to arrange a repeat medical examination.

Agency response: The DVLA admitted the chain of custody process had not been followed correctly, and that a repeat test was required for licensing. They issued a consolatory payment of £100 to Mr AB in recognition of this poor service.

ICA outcome: The ICA found no fault with the Agency's actions leading up to the first medical examination – any delays were a direct consequence of the pandemic. The ICA said that the DVLA-contracted laboratory had rejected the blood sample because their appointed GP had not completed the chain of custody form correctly. The lab had advised the DVLA of this immediately, but the Agency expected that the lab would contact the doctor directly for the missing information. The lab did not do so, and the CDT test remained 'pending' on the system until Mr AB's complaints were escalated to the complaints team several months later. The ICA found the Agency accountable for the entirety of the six-month delay which ensued following the CDT test. Whilst the individual failings that occurred were the fault of external parties (i.e. the DVLA-commissioned doctor and the DVLA-contracted laboratory), overall responsibility for managing the medical enquiries process lay with the DVLA. He recommended that the Agency's offer of a consolatory award be increased to £400. The ICA considered whether it was reasonable that Mr AB was required to undergo a second CDT test once the error was realised, given that this lengthened further the licensing timescale. He concluded that it was reasonable, as Mr AB met the legal definition of a High Risk Offender (HRO), and that category is specified in law as one of the "disabilities requiring medical investigation". Objective evidence of Mr AB's alcohol consumption was therefore required for him to be licensed, and a CDT test was appropriate.

Medical standards for alcohol-related seizure

Complaint: Mr AB complained in relation to medical decision making that meant he could not drive. He disputed that he was either alcohol dependent or epileptic.

Agency response: The DVLA said that Mr AB had suffered an alcohol-related seizure and was correctly treated under the standards for alcohol dependence. This approach had been confirmed by the expert panel.

ICA outcome: The ICA said that he sympathised with Mr AB. However, licensing decisions and medical judgements were not within his jurisdiction. He could identify no maladministration in the DVLA's approach although he criticised some standard letters that gave the impression that the DVLA had made a diagnosis of alcohol dependence when it had not - it had applied the standard on alcohol dependence in line with panel advice (a difference that was more than semantic). The ICA offered the view that, while it was understandable that Mr AB and other customers were more persuaded by their own clinicians' judgments as to their fitness to drive, it was not always helpful for GPs to offer such views if they were not very familiar with the standards in *Assessing Fitness to Drive*.

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Pragmatic approach to medical licensing

Complaint: Mr AB complained about the time taken to agree a re-licensing decision following a ban from driving.

Agency response: The DVLA said that medical enquiries were necessary as Mr AB had been the subject of a previous notification for methadone use that had not been pursued as Mr AB's licence had been revoked for non-compliance.

ICA outcome: The ICA said there were good aspects of the DVLA's handling - including a pragmatic decision by the senior doctor to grant a one-year licence on the back of a report from a nurse prescriber in the absence of any contrary information. This was the very opposite of maladministration. The ICA welcomed this broader approach to the sources of medical information. However, there had also been significant delays. Indeed, without the personal involvement of the chief executive, it was likely that Mr AB would have waited even longer for a decision. Although not all the delays could be laid at the door of the DVLA, the ICA was critical of a failure to keep Mr AB informed. This was particularly the case in respect of the 'administrative issues' that meant urine samples could not be analysed. The ICA part upheld the complaint and recommended a consolatory payment at Level 2 of the PHSO scale.

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When is delay maladministration, or the unavoidable result of the pandemic?

Complaint: Ms AB complained about the time taken by the DVLA to agree her re-licensing application following a disqualification for drink driving.

Agency response: The DVLA said that it had not received notification from the court that the period of disqualification had been reduced. It acknowledged some delays but attributed these to the impact of Covid upon its operations.

ICA outcome: The ICA could not say why the DVLA had no record of the reduction in Ms AB's driving ban. However, he identified two periods of seven weeks each when no progress was made on her application and calculated that the whole matter had taken three to four months longer than might reasonably have been otherwise anticipated. However, the question here – as in so many complaints about similar matters over the last two years – was whether the undoubted delays constituted maladministration or were the unfortunate but unavoidable side-effect of the pandemic. The ICA took the latter view, but said he would entirely understand if Ms AB was of a contrary opinion.

Other DM cases

A complaint that a notification made to the DVLA did not reach the threshold necessary to mandate a driving assessment

Complaint: A police notification of erratic driving triggered medical enquiries, and culminated in a DVLA referral for a driving assessment. Mr AB highlighted the lack of medical evidence calling his fitness to drive into question.

Agency response: The DVLA maintained that a driving assessment was required as part of the investigation into his fitness to drive, and warned Mr AB that his licence would be revoked for non-compliance if he did not arrange and attend an assessment.

ICA outcome: The ICA explained that the DVLA will accept notifications from third parties in good faith, and act on them. The DVLA will not enter into any dispute between drivers and these other authorities. The ICA would have been critical if the DVLA had made a licensing decision (as distinct from the investigative decision it made to require a driving assessment) on the basis of a police report alone. However, that had not occurred. While a police notification has no medical weight, the DVLA will treat it as reasonable grounds to progress medical enquiries. The ICA agreed with Mr AB that, at the point at which the DVLA doctor decided to refer him for an assessment, the Agency was in receipt of very little relevant medical information about his fitness to drive. The ICA offered the view that the lack of information in itself was justification for an assessment to inform the future licensing decision. He noted that, in cases where the DVLA feels that cognitive impairment may have affected a driver's safety in the past, and may do so again in the future, the driving assessment is a frequent requirement and is set out as a standard investigative approach in *Assessing Fitness to Drive*. Mr AB had complained that the DVLA had requested his consultant's contact details but had not then contacted him. However, the ICA noted that the driver's doctor had a gastroenterology specialism that was not relevant to enquiries regarding potential cognitive impairment. The ICA found that the decision to refer Mr AB for a driving assessment had been made with clinical judgment that he had no jurisdiction to call into question. He explained that the police-initiated driving course which Mr AB had already undertaken would not have been administered in line with DVLA requirements by an Approved Driving Instructor (ADI) and a clinician. He did not uphold Mr AB's complaint.

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Medical information is received in good faith

Complaint: Mrs AB complained about a medical licensing decision. She said that the DVLA had relied on an inaccurate report from someone who was not her GP and that the whole process had taken far too long. She asked for compensation.

Agency response: The DVLA said that it had to accept the medical information it received in good faith. A one-year licence had been issued on the personal intervention of the Agency's senior doctor.

ICA outcome: The ICA said he had identified no maladministration. The medical information had taken a long time to gather, but he was uncertain how far that was the fault of the DVLA as Mrs AB had provided incomplete (and, as it turned out) inaccurate details. The ICA also accepted that the DVLA had to accept medical questionnaires in good faith, and in this case it seemed the report had in fact been completed accurately. The licensing decisions were in line with the standards and, while sympathising with Mrs AB, there was no case for compensation.

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Wording of standard DVLA letter creates massive anxieties for a pensioner

Complaint: Mr AB reported a collapse to the DVLA and was sent questionnaires related to heart difficulties and seizure along with the consent form for medical enquiries. The covering letter contained standard wording that his entitlement would be revoked if he did not respond within 14 days of the date on the letter. Mr AB complained that this letter arrived a week after the date on it. Further, that bank holidays, and pressure on the availability of his doctor, meant that he became extremely stressed about completing it. To make matters worse, he was unable to get through to the DVLA on the telephone due to significant operational pressures in play at the time. Mr AB complained repeatedly about the wording of the standard letter. He raised further complaints about why the Agency was asking him these questions when he had disclosed all that he knew from the outset, and had undertaken to provide more information when it became available.

Agency response: After saying that its standard policy had been correctly applied to Mr AB in the initial communications, a complaints team member rang Mr AB and apologised sincerely for his experience. The Agency acknowledged that the use of the standard letter in this circumstance was inappropriate as there were significant processing delays at its own end and customers did not have easy access to the telephone helpline. The wording of the letter had been referred to the relevant team for review.

ICA outcome: The ICA found that Mr AB's interpretation of the original letter had in part been incorrect. However, he was critical of the fact that revocation was threatened as a concrete event within a fortnight's time given the operational pressures in play in the Agency and NHS at the time. He reinforced the recommendation that this wording should be reviewed. He recommended that the DVLA consider changing its initial driver questionnaires to make it clear that the driver should indicate on the form if questions did not apply to them. He was critical of the fact that Mr AB's repeated requests for a telephone call had not been acted on until very late in the day. For this lapse in service, he partially upheld the complaint and recommended that the chief executive should apologise and that the Agency make a goodwill payment of £100.

Pandemic-related delays in relicensing a driver after brain surgery

Complaint: Mr AB had successful surgical treatment for a brain tumour. He complained that it then took over 15 months for the DVLA to conduct its medical investigation into his fitness to drive (he was relicensed 15 months later). He found the pace and content of DVLA enquiries completely inexplicable and unacceptable: he was unable to get to work for a long period, while the Agency repeatedly sent him questionnaires. Mr AB characterised the contact centre service as "awful" (when he could get through) as well as, at other times, constantly busy and unavailable.

Agency response: The DVLA admitted to some delays and explained that these were a consequence of pandemic-related reduced staffing on-site. They also apologised for the difficulty getting through on the phone, which was also a consequence of Covid-19 social distancing protocols.

ICA outcome: The ICA said the initial notification of a brain tumour had not been investigated, or Mr AB's licence revoked, as swiftly as he would have expected in normal times. However, he judged this to be an unavoidable consequence of the pandemic. He found that, when the revocation decision was made, the wrong revocation letter template was twice issued to Mr AB. The ICA recommended an apology and a consolatory payment for the lapse in service and the confusion that ensued. The ICA found that, as Mr AB's case was closed following the revocation decision, his re-application a year later would have been classed as a new application – it then took just over 100 working days for the Agency to issue the positive licensing decision (not 15 months as Mr AB complained). The ICA considered this reasonable in the context of the second wave of the pandemic. He also explained that it was standard practice to require a new set of questionnaires to be completed by drivers and their clinicians at the point of reapplication, given the passage of time and the potential for the clinical picture to have changed. Disputes between Mr AB and his doctors about the diagnosis added delay. The ICA found that Mr AB's claim that it was difficult – if not impossible – to contact the DVLA by telephone (he had called 279 times without success) was well founded. However, it was not something the ICA could address; his focus was on remedying avoidable maladministration, as distinct from crises created by the pandemic and related industrial action.

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A customer kept out of work after a DVLA error meant his licence was revoked

Complaint: Mr AB's Group 1 licence was revoked after he applied for a provisional Group 2 licence. Before disputing the decision, he moved town, and signed up with a new GP. The DVLA acknowledged that the revocation decision had been made in error and agreed to consider a claim for compensation. Mr AB submitted a claim covering lost earnings for three months, housing costs, the cost of a replacement vehicle, one year's car insurance, and several thousand pounds for "stress and emotional trauma".

Agency response: The DVLA offered an unreserved apology for the incorrect licensing decision, and the inconvenience and distress that had ensued. Mr AB had been kept off the road for seven weeks but, as he had not alerted the Agency to their error until five weeks had elapsed, they offered to compensate him only for the earnings lost in the two weeks between the DVLA being advised of the error and reinstating his licence. They also offered a consolatory payment of £500.

ICA outcome: The ICA found that the starting point for consideration of compensation for lost earnings should be the full period during which Mr AB had been kept out of work as a direct consequence of the Agency's actions. This began shortly after revocation and continued until he secured employment. The ICA agreed with Mr AB that, when he obtained a supportive medical opinion before questioning the DVLA's decision, he was acting directly in line with the Agency's advice. There were valid reasons why it took Mr AB several weeks to secure this medical evidence. However, the ICA judged that Mr AB could have attempted to mitigate some of his losses by asking for flexibility on the part of his employer, rather than tendering his resignation on the day he received the revocation notice. He therefore found the DVLA should compensate Mr AB for half of his lost earnings. The ICA dismissed Mr AB's claims for housing costs as these would have been paid out of his income, that had already been considered, and he had not incurred any additional losses. He was of the view that Mr AB could have mitigated his loss in relation to his car by selling it for a reasonable price instead of a sum representing one third of its apparent market value. He also dismissed Mr AB's claim for a year's car insurance as (a) he had only been kept of the road for seven weeks, and (b) all drivers are responsible for insuring their vehicles. Finally, the ICA considered that the consolatory payment offered by the DVLA should be increased to £600 in recognition of the significant hardship and distress that Mr AB had suffered as a consequence of the Agency's actions.

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Two medical questionnaires mean double trouble

Complaint: Mr AB complained in relation to a medical licensing decision that he said had taken too long.

Agency response: The DVLA said that its enquiries had been necessary and proportionate.

ICA outcome: The ICA found that exaggerated information had been fed back to Mr AB's doctors in 2018. He recommended that this be corrected. He also found that there were two questionnaires on the DVLA file from the same GP surgery but only one had been seen by the DVLA doctor in the case. One had expressed concerns about Mr AB's fitness to drive; one had not. Unfortunately, the DVLA had assumed that the questionnaires were duplicates, but in fact they had been completed by different GPs two weeks apart. In consequence, further enquiries had been initiated of the surgery and Mr AB had been asked to attend a medical examination with one of the GPs. The ICA felt the failure to identify the two questionnaires was maladministration. He also questioned why all medical enquiries could not have been commenced at the same time. He part upheld the complaint, but the actual medical decision making was outside his remit and had been endorsed by the DVLA's senior doctor.

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The DVLA's approach to medical delays during the pandemic

Complaint: Mr AB complained in relation to medical decision making and the DVLA requirement for a driving assessment. He said this decision by a DVLA doctor was based on the views of a GP he had never met.

Agency response: The DVLA said that its decisions were designed to ensure road safety. However, a review by the Agency's senior doctor had resulted in Mr AB undergoing a medical examination with his new GP. On the basis of that examination, a full licence was issued as the ICA was completing his report.

ICA outcome: The ICA said it was in the nature of medicine that different doctors might reach different views on the need for a driving assessment. The most interesting feature of his report was its focus on the eight months when no chaser was sent to the GP. It emerged that this was in line with DVLA policy at the time to limit the pressure on the NHS. The ICA said it was open to argument whether this was the appropriate approach in a national emergency or an extraordinary amount of time to leave matters not pursued.

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Delay in re-licensing after blackout

Complaint: Mr AB had been reported by the police as having been involved in a road traffic incident. He complained that he had been wrongly revoked on the ground of having experienced a hypoglycaemic incident. He said this was a mistake by his GP and he had never suffered hypos.

Agency response: The DVLA said its initial revocation decision was reasonable on the information provided. Thereafter, it said that even if Mr AB had not suffered a hypo he still needed six months off driving as he had suffered a blackout of uncertain cause.

ICA outcome: The ICA said the complaint was about medical decision making and therefore at the very limits of his jurisdiction. However, the ICA had the benefit of comments from the DVLA's senior doctor to the effect that, while the initial decision was reasonable, the DVLA had sufficient information to re-license Mr AB three and a half months before it did so. In these circumstances the ICA recommended a consolatory payment of £200 for distress and that the Agency invite Mr AB to submit a claim for compensation for any business losses he suffered for the period he was unnecessarily deprived of his licence.

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Poor service in medical licensing case

Complaint: Mr AB complained that the DVLA had mistakenly revoked his licence on medical grounds.

Agency response: The DVLA initially said it had acted on the information to hand but, in further comments, the Agency's senior doctor said there had been poor service. In effect, this meant Mr AB had been wrongly deprived of his licence for a period of two months.

ICA outcome: The ICA said this was a case at the margins of his jurisdiction as it centred on clinical decision making. However, it would be absurd to ignore the senior doctor's comments. In addition, the ICA noted that the initial decision to offer Mr AB a one year medically restricted licence (which he had declined) had been a one-off policy to reduce the pressure on the NHS of DVLA medical enquiries. The ICA said this was a laudable intention (to reduce the pressure on respiratory clinicians in particular), but Mr AB had not been told this was the policy/rationale for almost a year. As a consequence, he did not

know why he had been offered a one-year licence when he decided instead to submit to medical enquiries. The ICA recommended a consolatory payment of £200 having upheld the complaint in full.

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A complaint about a derisory consolatory payment in recognition of a mistaken revocation

Complaint: Mr AB had driven buses for a living since 2014. The context of his complaint was the DVLA's revocation of his driving entitlements in July 2020 after it received information that one of its doctors interpreted to mean that he did not meet the fitness standards. The revocation decision that flowed from this advice was quashed in court. The DVLA was then compelled to continue its enquiries into Mr AB's health. It went on to relicense Mr AB on both entitlements without any time restriction. Mr AB made a successful claim for four months' lost earnings and was also awarded a consolatory payment of £250 – he considered the latter sum derisory, and continued to pursue his complaint against the Agency.

Agency response: The DVLA accepted the court's ruling and their liability to compensate Mr AB for his lost earnings. However, they considered that the consolatory payment of £250 was appropriate in the circumstances.

ICA outcome: As a court had found that the decision to revoke Mr AB's licence had been made without sufficient medical evidence, it followed that the DVLA took the correct action in later seeking to obtain the relevant evidence from Mr AB's GP. On receipt of this information, the DVLA did, ultimately, consider that Mr AB had undergone a period of alcohol misuse during the summer of 2020. The ICA therefore found that it went in Mr AB's favour that his GP had not provided a response to the Agency until almost a year after this date. Had that response been submitted promptly on request in February 2021, it seemed likely that Mr AB would have been unable to meet the fitness standard for Group 2 driving, in that he would not have been able to evidence one year of controlled drinking following a period of misuse. In that case, his Group 1 licence would have been issued (because more than six months had elapsed since the episode of misuse), but his Group 2 licence would have been revoked again. The ICA found that most of the injustices visited upon Mr AB by the DVLA had been remedied by the legal appeal and the compensation payment already awarded to him. However, in recognition of the severity and duration of the distress and anxiety that the Agency's decision had caused Mr AB, as well as the financial hardship, he recommended a higher consolatory award of £500 in total (i.e. a further £250 in addition to that previously offered).

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A licence application closed by the DVLA because the driver delayed attending an assessment

Complaint: An anonymous informant told the DVLA that Mr AB was unsafe behind the wheel as a result of a multitude of complex health problems and old age. Mr AB was therefore subject to medical enquiries. He was unwilling to book a driving assessment until after he had had cataract surgery. The DVLA therefore withdrew his application (in the meantime, his short period licence had expired so he was left without entitlement). Mr AB complained that he had not withdrawn his application but rather had simply asked for a

postponement of the assessment. In withdrawing his application, the DVLA had in effect deprived him of legal appeal rights.

Agency response: The DVLA initially queued Mr AB's case for medical review for eight months – pressure of work on its doctors at the time meant that no action was taken. Its doctor then commissioned further investigations, none of which was conclusive, hence the driving assessment referral. Five months after that referral had been made Mr AB had still not attended, hence the decision to close his application. The DVLA undertook to prioritise his case upon reapplication.

ICA outcome: The ICA was critical of the eight-month delay in the Agency's initial enquiries – had Mr AB been as dangerous behind the wheel as reported then this would have represented a significant road safety risk. The DVLA assured him, however, that this reflected workload pressure two years previously that had since been addressed – the medical waiting time was now six working days. In other regards, the ICA felt that the Agency's investigations had followed established policy – the decision to proceed with further enquiries in the absence of debarring information was made with clinical judgment and was not one he could call into question. The ICA agreed that the DVLA could not 'withdraw' Mr AB's application without his say-so. However, he did not conclude that this represented an injustice given Mr AB's unwillingness to undertake an assessment organised five months previously. The Agency could in this circumstance have deferred the assessment for several months pending the cataract surgery (the risk here was that Mr AB might be unsafe with potential further deterioration in his vision). Alternatively, it could have refused/revoked his licence on the grounds that he was not complying with medical investigations under section 94 of the Road Traffic Act 1988 (this would have meant that he would be unable to drive on re-application even if his doctors supported him in doing so). The ICA advised Mr AB that the option of re-applying for his licence when he was able and willing to book and attend a driving assessment was open to him. He did not uphold the complaint.

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Doctors can reasonably disagree

Complaint: Mr AB, a vocational driver, complained about the decision of the DVLA to revoke his ordinary and vocational licences following what was believed to be a seizure or stroke. Mr AB said he had been misdiagnosed and sought compensation.

Agency response: Mr AB was invited to re-apply for his entitlements and a new licence covering both car and lorry was issued. However, his claim for compensation was subsequently refused.

ICA outcome: The ICA said that much of Mr AB's complaint concerned the DVLA's clinical decision making and was therefore outside his jurisdiction. However, he offered his lay assessment of the course of events. It was clear that the revocation decision was a marginal one (and not one that the Agency's senior doctor would himself have made). However, that did not make the original decision 'wrong'. The evidence in Mr AB's case was not all of a piece (and the DVLA has the difficult task of balancing the rights of drivers against the public interest in road safety). Given the size of vehicles they drive, and their hours behind the wheel, it is not hard to understand if individual decisions in the case of Group 2 drivers are risk averse. DVLA doctors may reasonably disagree in any particular circumstances without it being held that one was right and the other wrong. It followed that

a case for compensation from the public purse for Mr AB's lost earnings was not made out. Moreover, looking at the timeline, and conscious of the impact of the Covid-19 pandemic upon the DVLA's operations, the ICA was also not persuaded that the time taken to reconsider Mr AB's case was so protracted that it constituted maladministration.

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Delays in the latter stages of the pandemic

Complaint: Mr AB complained about delays, (a) in responding to his notification of a single seizure and revoking his licence, (b) in processing his re-application form and relicensing him, and (c) in responding to his complaint. When he complained, Mr AB said he was given excuses about the pandemic that he did not accept. He argued that the DVLA's service should not be affected by the pandemic in mid/late 2021.

Agency response: In responding to Mr AB's complaint, the DVLA apologised for the service provided and the length of time enquiries had taken. It agreed that the process could be a frustrating one, but said it was necessary in the interests of road safety. The DVLA argued that Covid was a reason for the delays, rather than an excuse, giving examples of some of the ways the pandemic had affected the Agency's operations.

ICA outcome: The ICA considered that much of the inconvenience Mr AB had experienced had indeed occurred because of the pressures the DVLA had been under throughout the pandemic. He found that the decision to revoke Mr AB's licence had taken three weeks longer than the Agency's six-week pre-pandemic target but, in the challenging circumstances the DVLA was operating under, the ICA did not consider this unreasonable. Mr AB had suffered no additional hardship in consequence. On Mr AB's re-application, the Agency's target to complete medical cases within 90 working days had been achieved, albeit only just. But the ICA considered that the DVLA's apology represented sufficient redress. The ICA noted that it had taken the DVLA 52 working days to respond to one of Mr AB's complaints, when the target was ten. Although the DVLA had again apologised, the ICA recommended that it make Mr AB a consolatory payment of £50 in recognition of the length of the delay.

(ii): VEHICLE REGISTRATION AND IDENTITY

Loss of a cherished mark

Complaint: Mr AB attempted to retain a cherished plate after the friend (Mr CD) to whom he had given title to the plate had died. It transpired that Mr CD had not renewed the certificate prior to his death in 2018. Despite telling the DVLA from the outset that entitlement to the plate had expired in July 2016, Mr AB was initially encouraged to supply paperwork for a retention application and led to believe it would be successful. Mr AB was under the impression that, under the former rules that expired just weeks before his application, it was open to the DVLA to transact a retention. He had not been told that the amnesty on cases like his would end on 18 December 2019. The application he made in early 2020 was therefore refused. Mr AB urged the DVLA to listen to the calls where he had been told that there would be no problem, but by the time the Agency looked, the key calls had been erased under its standard 90 days retention policy.

Agency response: The DVLA judged that Mr AB had had sufficient time to arrange the plate retention despite his explanation of the sensitive context. It maintained its stance

that the amnesty deadline had passed, and that restoration of expired marks could not lawfully be transacted after that date. The Agency's position meant that title to the registration was, in effect, lost.

ICA outcome: The ICA found that, when Mr AB had transferred the registration to a vehicle owned by Mr CD in 2013, he (i.e. Mr AB) had lost all rights to it. Mr CD later applied to retain the mark, which he held on a retention document (V778) until it expired in 2016. Mr AB told the ICA that, had the DVLA advised him when he called in November 2019 that the only person with a right to the plate was Mr CD, he would have arranged for Mr CD's widow to pursue the extension of that right before transferring it back to Mr AB. However, the ICA considered that, because the entitlement had expired in 2016, it would not have counted as part of Mr CD's estate, and Mrs CD would have had no title to it. She could not, therefore, have applied to re-purchase the right to the mark to transfer it back to Mr AB, as she was not the grantee of the number. The ICA found that the DVLA should have explained to Mr AB much more clearly that he had had no rights to the mark since 2013, and that he could not have retrieved these even if he had applied to do so in advance of the December 2019 deadline. The Agency's failure to explain this meant that Mr AB continued to pursue a line of complaint which was tangential to the key facts in his case. The ICA considered that the DVLA's first substantive response to Mr AB's complaint was insufficient, and the second was misleading, and that this amounted to maladministration resulting in gross inconvenience to Mr AB. He recommended that the Agency make Mr AB a consolatory payment of £150.

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Another personalised plate is retired

Complaint: Mr AB's entitlement to display his private registration plate had expired five years previously. He contacted the DVLA and was told that it was open to him to renew. He complained that he had been unable to do so and then, later, had been refused. In particular, he expressed concern that he had not been told that the deadline for the transitional scheme was approaching when he had made contact. His efforts at paying had also been unsuccessful, which he attributed to DVLA inefficiency.

Agency response: The DVLA explained that it had a file note confirming that Mr AB had called while the window remained open on the transitional arrangements. However, he had not followed up his undertaking to ring back and make payment over the phone. The transitional arrangements scheme had ended on 18 December 2019 after which point the DVLA had no way of restoring the right to display registration marks that had expired. The DVLA held the line that it had no scope in law to assist Mr AB.

ICA outcome: The ICA was unable to determine exactly what had been said late in 2019 when Mr AB had contacted the DVLA. He noted, however, that the Agency did have a record purporting to show that Mr AB had undertaken to ring back and renew the plate. The ICA expressed his personal disagreement with the legislative position prohibiting renewal of expired plates. It seemed to him that this was a lose/lose scenario: the DVLA and the taxpayer were unable to benefit from the revenue of backdated payments and ongoing subscriptions. At the same time, customers like Mr AB were left deeply disappointed. The ICA noted that there had been a six-week delay in the complaints process for which the DVLA had apologised. He did not uphold the complaint of unremedied injustice.

Possible fraud in acquisition of personalised plate

Complaint: Mr AB complained about the loss of a personalised number plate. He said he had been defrauded in that purchasers of his vehicle had notified the DVLA of a change in keepership when he had agreed with them that he would retain the plate. He held the DVLA responsible for his loss and wanted a stop placed on future transfer of the plate, or its return to him, or compensation amounting to the monetary value of the plate.

Agency response: The DVLA said that there had been no fraudulent use of its systems. It said Mr AB should not have shown the registration certificate to the purchasers, thereby enabling them to transfer the keepership online. It also said that he should have retained the plate before selling the vehicle and therefore this was a civil dispute in which it could not be involved.

ICA outcome: The ICA said that – with the probable exception of the date given for the transfer of keepership (the day before the sale) – he accepted there had been no fraudulent use of the DVLA's systems. Mr AB should indeed have retained the plate first. However, the ICA felt that the DVLA had taken a narrow view of fraud, and he was disappointed that the Agency would not share concerns about the transaction with the police. He also noted that the advice on gov.uk to potential purchasers of vehicles was to ask to see the registration certificate (V5C) – in clear contradiction with the advice to sellers not to show the document. He recommended that this be addressed. It was also clear that the online system for notifying change of keepership was vulnerable to abuse, and he further recommended that additional safeguards be introduced as quickly as possible. This was an important case, but one the ICA felt the DVLA did not treat with sufficient seriousness because the Agency itself had not been the victim of fraud.

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An unknown factor relating to a car's previous owner prevents a customer from retaining her personalised plate

Complaint: Mrs AB was selling her car and expected to be able to retain the personalised registration mark using the DVLA's online portal. The transaction failed because, unbeknownst to Mrs AB, a previous keeper had failed to maintain continuous licensing for a period exceeding 90 days in the previous five years. The DVLA therefore needed to transact the retention manually but there were significant delays caused by staffing shortages related to industrial action and the Covid pandemic. Mrs AB contacted the Agency on the day of the sale for advice. She was told to retain the plate before selling but she informed the DVLA that the vehicle had been sold. In fact, she had sold it to a dealer but she did not tell the Agency this. The Agency explained the steps she would need to take, in unison with the (assumed) new keeper, in order to get control of the plate back (this is known as the "third-party grantee" route). Mrs AB completed and dispatched the paperwork but the transaction failed a month later because the vehicle – now in the hands of a new keeper after the dealer sold it – was not taxed. Control of the plate was vested in the new keeper.

Agency response: The DVLA explained that registration marks were not private property but were rather assigned by the Agency on behalf of the Secretary of State. Only the registered keeper had the right to have the mark transferred or retained. Entitlement to display a plate is, in law, vested in the vehicle rather than the keeper and passes with keepership of the vehicle. Because Mrs AB had disposed before retaining, she had lost

the rights to show the plate. DVLA managers listened to the telephone advice that Mrs AB had been given on the day of the sale and confirmed that it had been correct.

ICA outcome: The ICA was puzzled by Mrs AB's account that the recipient of the vehicle was on board with the retention of the plate. This is because dealers do not generally involve themselves in plate transfer as to do so would mean registering themselves as keeper (and adding a keeper to the record), taxing or notifying SORN (Statutory Off-Road Notification) while being unable to sell the vehicle while the transaction is processed. The ICA found that Mrs AB and the DVLA had been at cross purposes while the 'third-party grantee' transfer method had been explained. Full cooperation of the new keeper would be required, including the taxing of the vehicle, for this to work. In reality, the dealer sold the car on within 24 hours and the new keeper refused to cooperate meaning that title to the plate was lost to Mrs AB. The ICA could not conclude that the loss of title to the plate was through wrong advice from the DVLA. He did not therefore uphold the complaint.

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The purchaser of a high value replica classic is forced to Q-plate it – and loses title to the personalised plate that was attached

Complaint: Mr AB had bought a high value replica of an even higher value, and very rare, pre-war classic sports car. It consisted of a chassis and body kit to which had been attached the 'donor' running gear of a much newer (and also classic) car of the same marque. The car had remained registered as the donor vehicle. When Mr AB tried to register himself as keeper, the DVLA had the car inspected and voided its identity because it was clearly not the pre-war classic sports car described on the logbook. Mr AB argued that, regardless of whether or not the vehicle should be allocated a Q-plate, he should be allowed to retain the registration that had been attached to it at the time that he had bought it for a five-figure sum. This registration had been in situ he understood for the preceding 15 years.

Agency response: The DVLA insisted that the Q-plate was justified given the failure of previous keepers to notify that this was a rebuilt car; furthermore, neither the provenance of the parts nor the date of the rebuild were known. The vehicle would also have to undergo individual vehicle approval (IVA) in line with the rules on the first registration of kit cars.

ICA outcome: The ICA found that the opportunity to retain the original plate had ended at the point that the monocoque chassis[10] had been removed from the donor car, given the law applicable to the retention of number plates. Mr AB's only prospect for avoiding a Q-plate would be to follow the requirements for age-related plating. However, the fact that Mr AB did not know the age of his vehicle's conversion into a kit meant that the DVLA would inevitably continue to insist that his vehicle be registered on a Q-plate. Although the ICA considered that the DVLA's responses to Mr AB's questions about retaining the plate could have been clearer, his overall finding was that policy had been correctly applied. He did not therefore uphold the complaint. However, the ICA found that the published guidance on kit registration should clearly spell out the Q-plate requirement (where the date of build cannot be proved). The Q-plate requirement cut across the age-related plate

[10] A monocoque chassis is a single-body structure that constitutes all mechanical parts and other components. Thus, components like the exterior panels, seats, suspension, engine and gearbox remain attached to the frame construction.

requirements (two major parts demonstrably from a specific donor car plus a new chassis/shell). As unregistered kit cars continue to be marketed for significant sums, in some cases with reference to their false DVLA credentials, the ICA also recommended that the Agency considers urgently any further steps it could take to protect consumers.

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Retention of plate means no replacement V5C can be issued for vehicle that is sold

Complaint: Mrs AB complained that the DVLA would not compensate her for the extra £250 she had paid to a motor trader when she was unable to supply a V5C for a car she part exchanged. She said she had retained the personalised number before using that V5C to notify disposal in the expectation that the DVLA would issue her with a new registration certificate showing an age-related plate.

Agency response: The DVLA said the advice available to customers online is that following a successful retention application the existing V5C cannot be used for any other purpose. The Agency said it was not party to Mrs AB's arrangement with the trader. It also said that electronic transactions were updated in batches at the end of the day.

ICA outcome: The ICA sympathised with Mrs AB. She had part-exchanged her vehicle on the spur of the moment and had believed she had followed the correct procedure in retaining her personalised plate and notifying disposal. However, it was clear that the DVLA's guidance was that, following a successful retention, the existing V5C could not be used for any other purpose. The ICA said he could identify no maladministration on the part of the DVLA save in respect of a carelessly worded stage 1 response that Mrs AB had understandably found unconvincing. The ICA also said that the DVLA's emphasis on the batching of electronic transactions was not really to the point. It was evident that the DVLA could not issue a V5C (demonstrating keepership) to someone who had notified disposal of the vehicle in question.

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Logbook travails …

Complaint: Mr AB bought a car at auction, and it was registered in his company's name. He decided to work for a private hire company that required the car to be registered to his name and therefore returned the logbook to the DVLA. However, the document was never received. Three months later he approached the Agency having been told on the phone that there were backlogs caused by the pandemic. A complication was that he wished the logbook reflecting him as keeper not to have an increased numbers of keepers recorded on it. In order for this to occur, the DVLA needed proof directly from the vendor that an error had been made in registering the vehicle. This added many weeks to the process during which time Mr AB complained that he was unable to work and should be paid significant compensation.

Agency response: The DVLA explained at various points that it required written confirmation from the vendor that a registration error had been made from the outset. This did not arrive until 10 weeks had passed since Mr AB chased up the lack of logbook.

ICA outcome: The ICA could not establish why the initial paper notification of change of keeper was not dispatched or processed. As information about how to get a logbook

issued was readily available online, he was not persuaded by Mr AB's claim that he had been unable to obtain a logbook and therefore unable to work. The ICA could not see why Mr AB could not register himself as keeper promptly using the online mechanism and make a case to have the total number of keepers reduced by one on the document when the requisite evidence was available. The ICA noted that the index error had been in the registration of the vehicle: the DVLA could not be held responsible for this. Other delays had occurred in putting things right, but the ICA judged that these were, in the main, unavoidable given the impact of the pandemic on the DVLA's operations.

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… and registration woes

Complaint: Mr AB made a series of complaints following difficulties registering a new car. He accidentally completed part 4 of the V5C/logbook reserved for disposals to trade. This meant that no logbook was issued to him, and he had difficulties taxing the car. These problems were compounded by the fact that the bank account from which he was trying to set up a direct debit had been blocked by the DVLA after payments had bounced repeatedly. He eventually set up the direct debit using a different account, but this also bounced meaning that the mandate was cancelled. Mr AB complained of obstructive and unhelpful dealings with the DVLA that were preventing him from using his vehicle and restricting his and his wife's ability to work. Understandably, he was also infuriated by the DVLA's claim that one of the bank accounts from which he had been trying to set up a direct debit was not blocked.

Agency response: The DVLA's wires were crossed in that it repeatedly informed Mr AB that the bank account which he had originally used to try and set up a direct debit was not blocked when in fact it was. However, its cancellation of the mandate on the other account was entirely in line with policy given the fact that payments had bounced from it. The DVLA explained why there had been problems issuing a logbook to Mr AB - it could not do so on the basis of the disposal to trade slip on the logbook.

ICA outcome: The ICA acknowledged that Mr AB's dealings with the DVLA had been frustrating, compounded by the fact that it had claimed that his wife's account was not blocked when in fact it had been blocked for two and a half years. But the ICA could not see that Mr AB's difficulties in taxing using direct debit were the DVLA's fault. Mandates had been cancelled and an account blocked as a result of repeated bounced payments. The ICA also noted that the difficulties getting the logbook issued had arisen from Mr AB's completion of the wrong paperwork. Again, the ICA was sympathetic to Mr AB's frustration, but he noted that the DVLA issues well over 11 million logbooks a year and, not unreasonably, relies on customers to complete the paperwork correctly. He did not uphold the complaint.

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Mistaken issuing of registration certificate for vehicle located abroad

Complaint: Mr AB complained that the DVLA had not sent him a replacement V5C in 2019, only doing so in 2020. He said he lived abroad and had been unable to use his vehicle for the time he was without the V5C. He asked for £3,000 in compensation.

Agency response: The DVLA said that it had issued the V5C as an exceptional measure (addressing it to Mr AB's former address in the UK, and then posting it to his current country of abode). It had declined to pay compensation.

ICA outcome: The ICA said he did not believe any compensation was due. Indeed, it seemed to him that the 2019 decision was correct as V5Cs cannot be issued if vehicles have been permanently exported as was the case here. Although the decision in 2020 was doubtless well intentioned, the ICA recommended that staff be reminded that V5Cs could not be issued in these circumstances.

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Statutory Declaration insufficient to prove licence entitlement

Complaint: Mr AB complained about the decision of the DVLA that it would not accept a Statutory Declaration as proof of his foreign driving entitlement when applying for a GB licence. He said he had passed his test in the late 1960s but had now lost his foreign licence. Mr AB also said the DVLA would not clarify where in law it was stated that a Statutory Declaration was not acceptable.

Agency response: The DVLA had reiterated that it could not accept a Statutory Declaration. It had contacted the authorities in Mr AB's home country, but no records of his entitlement existed.

ICA outcome: The ICA said there had been no maladministration by the DVLA and commended the Agency's efforts to contact the authorities abroad. It seemed possible that records dating back to the 1960s had all now been wiped. The ICA said he did not disbelieve Mr AB, but it was not his job to decide licence entitlements. The DVLA had acted properly. Mr AB was right to say that there was no express statutory bar on Statutory Declarations as a basis for licence exchange, but the DVLA was entitled to apply this policy on behalf of the Secretary of State.

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Mistake by ATF does not mean DVLA is liable to pay compensation

Complaint: Mrs AB complained about the DVLA applying a scrappage marker to her vehicle having been wrongly informed by an authorised treatment facility (ATF) that her vehicle had been destroyed. She said the marker was still showing three years later and sought compensation.

Agency response: The DVLA said it had accepted the Certificate of Destruction (CoD) in good faith. As soon as it was notified of the mistake it had corrected the record.

ICA outcome: The ICA said he did not believe the DVLA had acted maladministratively. Indeed, it had acted very promptly when told of the ATF's error. Mrs AB had been referred to the Environment Agency and they in turn had told her that her grievance was against the ATF concerned. The ICA said he did not understand why dealers were telling Mrs AB that her vehicle was still showing as scrapped, as she had been able to tax the vehicle successfully in the intervening years. He suggested that she show his letter to any dealer concerned. Although Mrs AB was the innocent victim of the ATF's error, there was no case for compensation from the DVLA.

The keeper of a car bought at auction is unable to get it on the road

Complaint: Mr AB bought a car at auction that had been involved in crime. It was marked by the auctioneers as having a false vehicle identification number (VIN) displayed externally while the stamped in VIN had been physically removed. He complained that the DVLA unreasonably refused to register the car despite evidence of its true identity in the form of a former warranty and the engine number.

Agency response: The DVLA insisted that the car should have a DVLA identity/VIN applied to it given the significant doubt about its identity. The fact that the engine number was known did not mean that the engine originated in the vehicle as presented. It would then be submitted for individual vehicle approval (IVA) by the DVSA. Unfortunately, the DVSA's requirements included documentation from the manufacture/dealership associated with the vehicle before it had been involved in crime and Mr AB was unable to meet those requirements.

ICA outcome: Given the questions about the provenance of the vehicle, the ICA regarded the Q-plate decision as in line with standard DVLA policy. He did not uphold the complaint. The ICA made contact with the DVLA and the DVSA to see if there was a way around the circuitous process that Mr AB was trying to follow to get his car registered for road use. No clear way through the impasse emerged through his intervention.

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More keepership confusion

Complaint: Ms AB complained in relation to two keepership records. She said that she had never kept one of the vehicles and was the victim of fraud. She had received a Penalty Charge Notice (PCN) for a parking infringement which she was not responsible. She also rejected keepership of the second vehicle as she said it was not roadworthy when she bought it.

Agency response: The DVLA said that, if Ms AB had disposed of the second vehicle, she needed to tell the DVLA when so that the record could be amended. In relation to the first vehicle, the Agency had eventually written to the parking company (after wrongly telling Ms AB that this was not possible) and the enforcement activity had been halted.

ICA outcome: The ICA judged that the General Data Protection Regulation (GDPR) did require the data controller to contact a third party if, as in this case, data had been released in error. The DVLA had told him that it was actively pursuing arrangements to ensure that this happened in future. However, the ICA felt that a consolatory payment was also justified in recognition of delays and inconvenience to Ms AB. When this was speedily agreed by the DVLA, the ICA was able to withdraw the case.

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Decision to Q-plate classic vehicle

Complaint: Mr AB complained that the DVLA had decided to Q-plate his classic vehicle. He said the vehicle was genuine and he had a certificate from the relevant Heritage Club to prove this.

Agency response: The DVLA said that it was not in doubt that the vehicle bore a replacement VIN plate. It had organised an inspection and taken the advice from the relevant specialist owners club. There was sufficient doubt about the vehicle to justify Q-plating.

ICA outcome: The ICA said it was not his job to validate Mr AB's vehicle but to determine if the decision to Q-plate was maladministrative. It was apparent that the vehicle carried a replacement plate attached in the wrong position. The VIN was also stamped on the chassis which the ICA learned was not the factory practice when the vehicle was built. He also noted that the engine number recorded by the inspector differed from that on the certificate – which in any event only showed that a vehicle with the relevant VIN was constructed in the 1950s – not that Mr AB's vehicle was the car in question. For these reasons, the ICA felt that the DVLA decision was not maladministrative.

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Confusion follows attempts by keeper to register a car to his company and then to himself

Complaint: Mr AB attempted to register his car to a company giving a mail drop address (MDA) as the registered keeper address. This transaction was rejected because the DVLA will not accept an MDA as a keeper address. He was, however, successful in taxing the car. Mr AB then applied to register himself to the car using a V62. Shortly afterwards the Agency started to write to Mr AB telling him that his car had no tax coverage. This was because Mr AB's V62 was processed as a new keeper registration invalidating the tax cover. Mr AB complained that threatening enforcement correspondence followed and that his complaint was not handled properly through the DVLA's published procedure.

Agency response: It took several months for the DVLA's vehicle casework unit to resolve the confusion over tax for the car. In the end, Mr AB escalated the matter to the complaints team who clarified the situation and made a £40 consolatory payment. The tax coverage Mr AB had originally applied to the vehicle was restored.

ICA outcome: The ICA was critical of some aspects of DVLA handling. First, Mr AB should have had the vehicle tax refunded to him if his V62 application to register himself to the car was construed as new keepership. This would have alerted him to the fact that his car was out of tax. Secondly, the ICA judged that the vehicle casework unit should have got to the bottom of the confusion over tax for the vehicle much sooner. He acknowledged, however, that some of the difficulty had been created by Mr AB's attempts to register the vehicle to his company using an MDA. The DVLA had not been able to link this with his own application to become the registered keeper on the information available to it. The ICA recommended that the consolatory sum be increased to £100.

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Use of mailbox address to register vehicle

Complaint: Mr AB complained that the DVLA would not accept his business address was also his home and therefore refused to allow him to register his vehicle at that address. He said that personal circumstances had forced him to reside at his business and that the DVLA's enquiries were intrusive.

Agency response: The DVLA said it was its policy not to allow mailbox addresses to be used to register vehicles as the keeper could not readily be contacted. It had exceptionally agreed that Mr AB could retain the address on his V5C for six months but said it would permit this no longer. The Agency said it would consider any further evidence Mr AB submitted to show that his business address (from which he offered a mailbox service) was also his residence.

ICA outcome: The ICA was content that the DVLA's policy of not registering mailbox addresses was a sensible one. He also felt the DVLA had shown a good deal of flexibility in Mr AB's possibly unique circumstances. Neither the ICA nor the DVLA could be certain of Mr AB's domestic circumstances, but it was not unreasonable for the DVLA to say that the evidence he had submitted to date was insufficient. The ICA could not determine what evidence the DVLA would find sufficient, but he suggested that an affidavit from a lawyer, or a letter from a Minister of Religion, or photographs, might all be helpful. Ultimately, it was for Mr AB to decide. No doubt he did find the questions intrusive, but state organisations (HMRC, DWP) often necessarily asked intrusive questions of customers to prevent fraud and other wrongdoing.

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Registration of electrically assisted pedal cycle in Northern Ireland

Complaint: Mr AB complained about the loss of a registration certificate for an electrically assisted pedal cycle (EAPC) in Northern Ireland. He said he had been tricked into sending the registration certificate to the DVLA and that he could no longer ride his bike legally.

Agency response: The DVLA said that a change in the law meant that EAPCs in Northern Ireland no longer needed to registered. It said that Mr AB was free to use his bike on the road, but no replacement registration could be issued as none was required. The Agency had admitted a succession of errors in the advice given to Mr AB and made a consolatory payment of £100.

ICA outcome: The ICA discovered that Northern Ireland had indeed required EAPCs to be registered – unlike the position in the rest of the UK – but the law had now been changed. However, the DVLA had continued to send V11s (reminders to tax) to the keepers of such bikes and it was removing the registrations on an ad hoc basis when they came to light. The ICA was struck by how poor the advice was that Mr AB had received – including to return the V5C so that its body type could be changed to EAPC when no such body type was recognised by the Agency and no internal instruction mandated this advice. However, it was right to say that no replacement V5C could now be issued, and that Mr AB was indeed free to ride his bike (in line with guidance issued by the Northern Ireland Executive). However, the ICA made no fewer than six recommendations designed to ensure that other customers in Northern Ireland were not given incorrect advice as Mr AB had been. He also increased the consolatory payment to £250.

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Registration of classic vehicle in Northern Ireland

Complaint: Mr AB, a resident of Northern Ireland, complained that the DVLA would not allocate a year-specific registration mark to his 1966 motorcycle. He argued that its policy of allocating a mark that was applicable to vehicles built between 1963 and 1975 gave the

impression that his bike was younger than its true age. He also said it was discriminatory against Northern Ireland residents given that people in Great Britain would be allocated a year-specific registration mark (VRM). Mr AB also objected to the DVLA's suggestion that he purchase a personalised plate.

Agency response: According to Mr AB, the officer he spoke to in the DVLA's first registration team at the outset of his dealings with the Agency had been defensive and irate. Unfortunately, some of his subsequent correspondence was not received in Swansea and an opportunity to listen to the call did not present itself. In the event, it took several months for the DVLA to respond to the complaint at which point it set out in detail its policy for allocating VRMs to Northern Ireland-registered vehicles. Long-standing policy was to issue registrations in a format of two letters followed by four numbers from within an unissued range reserved for historic vehicles. Although this was not date specific, the original range had ended in August 1963 so could not be said to make the vehicle appear younger.

ICA outcome: The ICA considered that the complaint was addressed, in essence to a policy, rather than customer service. He welcomed the DVLA's apologies for lapses in customer service and its issue of a £25 consolatory payment. He was unable to uphold the complaint given the exclusion of policy matters from his terms of reference.

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Once again, the meaning of *'Built up'* on a South African registration document

Complaint: Mr AB imported a 70-year-old motorcycle from South Africa only to run into difficulties registering it with the DVLA. The Agency conflated the two words 'built up' on the South African registration document with a lack of originality. It would not register the bike with an age-related plate under its original VIN unless Mr AB could furnish evidence from the South African transport authorities explaining why the marker had been applied. As is usually the case, it was impossible to obtain this evidence. Instead, Mr AB furnished evidence from an expert based in South Africa who had been involved in getting the bike fit for road use and registering it for the first time. Mr AB argued that it was commonplace for the South African authorities to register old machines that had not been registered before under a 'built-up' marker. The bike was inspected in the UK by the DVLA's specialist agent and inspected and certificated by the owners' club who concluded that it had been refurbished to original mechanical condition. No grounds to doubt the originality of the components arose, in fact the originality of the bike was commended. Mr AB also furnished a selection of photographs showing the machine before, during and after refurbishment, in support of his case that it was original and should be allowed to retain its identity.

Agency response: The DVLA refused to register the bike in line with its original identity unless the South African authorities would explain why the built-up marker had been issued. In one response, the DVLA added that it needed proof that the vehicle could be returned to the roads in South Africa under the original VIN (although it had been registered for road use in South Africa with that frame number, uneventfully). The DVLA reviewed the ICA report and insisted that its legitimate policy of conflating a South African 'built up' marker with damage or modification in that jurisdiction had been applied correctly. Its position therefore remained: Mr AB should either obtain the requisite evidence from South Africa or have his VIN struck out and replaced by a DVLA VIN and a Q-plate.

ICA outcome: The ICA noted similarities between this case and the complaint reported on page 48 of the ICAs' 2020-21 Annual Report (*The DVLA tries to force a Q-plate on a classic imported car, contrary to ICA findings*). In his review here, as in the preceding case, the ICA contrasted the significant body of evidence in support of the originality and identity of the vehicle with the contrary evidence – the catch-all words *'Built up'* on the South African registration document. The DVLA knew that this umbrella term could denote many things irrelevant to vehicle identity. The ICA highlighted the fact that the DVLA has no consumer protection function in law with regard to vehicle registration. He was highly critical of the suggestion that the Agency was mitigating a future risk of the vehicle being revealed to have been made up from the parts of different vehicles. There was clearly no such risk in this case as the bike had been physically inspected by a national authority in the marque and found to be original, as well as by the DVLA's own specialised agents. The ICA agreed with the DVLA that it should not ignore an overseas registration marker. Nothing on the file, however, suggested that the Agency had properly weighed the significant evidence of provenance that Mr AB had provided, versus the two words *'Built up',* in arriving at its decision. In particular, the DVLA had failed to explain why it regarded a South African 'umbrella' marker as of a higher evidential standard than expert inspection. He found that the DVLA's solution to a supposed problem of vehicle identity was the complete erasure of that historic vehicle's identity. This could only be maladministrative. The ICA concluded that the DVLA had failed to act in line with Regulator's Code requirements to take an evidence-based and proportionate approach. It had also fallen foul of the Ombudsman Principles of thorough and fair investigation with decisions based on available facts and evidence, and the avoidance of a rigid, process-driven one-size-fits-all approach. Nor did the ICA consider that the DVLA had behaved reasonably and ensured that the measures taken were proportionate to the objectives pursued and fair to the individuals concerned (also as provided in the Ombudsman's Principles). He reminded the DVLA that the Ombudsman expected public bodies to be alive to unfairness arising from the strict application of regulations and procedures, and that it should address any unfairness; this was another failure to meet a recognised standard. These shortfalls, along with the DVLA's refusal to make a fully evidence-based decision, and its rejection of the ICA recommendations on flimsy grounds, amounted to maladministration. The ICA recommended that the Agency should issue an age-related plate to Mr AB and should apologise for its failings and make a £100 consolatory payment. Given the failings revealed by the case and the Agency's inability to justify or meaningfully review its position, the ICA fully upheld the complaint.

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A classic car divided in two

Complaint: Mr AB bought a popular classic with an age-related plate that was not the original. However, given the presence of original features on his vehicle, he argued with the support of an owners' club that the more desirable original plate should be restored.

Agency response: The DVLA referred Mr AB to an investigation it had undertaken 20 years previously. It had established that car 1, the original bearer of the plate sought by Mr AB, had been written off in a crash and its parts provided to car 2 (Mr AB's car) and car 3 (the property of another claimant of the desired plate). This investigation had involved inspections of cars 2 and 3. It had concluded that neither was entitled to the identity of car 1. Nevertheless, cars 2 and 3 were, exceptionally, allowed to bear age-related plates.

ICA outcome: The ICA could not criticise the DVLA for basing its registration decision making on gold standard evidence, namely physical inspection of both vehicles claiming the plate. He commended the Agency for its flexibility in allowing cars 2 and 3 to bear age-related plates, in line with the provisions of the reconstructed classics scheme. The ICA accepted the differentiation applied by the DVLA between authentic age-related parts and parts that definitively were associated with the identity of a specific vehicle. No doubt Mr AB's vehicle's parts were authentic but the necessary nexus with the identity that would entitle car 2 to the plate was not demonstrated. The ICA did not uphold the complaint as the Agency had acted in line with policy and evidence of a high standard.

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Registration of former ambulance

Complaint: Mr AB purchased a former passenger transport ambulance and was told by the DVLA that he could register it from tax-exempt to private light goods (PLG) in his local Post Office. He complained that this proved impossible, and he was repeatedly misadvised both about the correct process and the time it would take. In the event it would be over three months before a correct registration document reflecting PLG tax status was sent to him. In the meantime, Mr AB complained of contradictory and confusing advice from DVLA staff that resulted in three wasted trips to the Post Office and being unable to use his vehicle for two months longer than he had originally been given to believe.

Agency response: Unfortunately, Mr AB's experience revealed a lack of clarity on the part of DVLA staff as to the requirements. Some told him that he could transact at the Post Office, others said he would need to send the documents into Swansea, some staff offered both options. Mr AB spoke to dozens of people over the three months, becoming increasingly frustrated. This frustration deepened when he was told, several weeks into the process, that he would need to submit a V10 vehicle tax form and a payment for the transaction to complete (this had been made clear in the original gov.uk advice and during at least one of the webchats provided to the ICA). The DVLA eventually apologised for the conflicting information provided to Mr AB and for the differing timescales offered, noting that transactions were taking longer because of industrial action and social distancing requirements.

ICA outcome: The ICA considered that Mr AB had made at least three fruitless trips to the Post Office as a result of DVLA advice and spent much time attempting to contact staff on the phone. His frustration had been compounded by the original suggestion that the entire transaction would take two to four weeks. The ICA balanced his criticisms of the DVLA with an acknowledgement that Mr AB had access to the correct advice from the outset as to the document set and fee that would need to accompany his application. Had he provided the requested fee and paperwork, he would have received his registration certificate with the correct tax category a month sooner than was the case. Given the avoidable frustration created by the poorly worded online guidance, and the advice provided by DVLA staff, the ICA recommended that the information on gov.uk be amended to make it clear that tax change should be transacted through paper documentation and not at the Post Office. He also recommended that Mr AB should be made a consolatory payment of £175 on top of the £50 already paid by the DVLA.

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Re-registering a classic vehicle

Complaint: Ms AB ran into difficulties trying to re-register her classic car to herself in order to have it licensed and insured for road use after a mechanical overhaul. The member of staff she dealt with would not accept the VIN provided by Ms AB by telephone because Ms AB did not quote a hyphen in it. Ms AB assumed that there was a significant problem with the registration and identity of her car and incurred expenditure having it MOTed (unnecessarily) and checked by a garage. She went on the accuse the DVLA of lying about the VIN and other matters, and to press the Agency for compensation.

Agency response: The DVLA investigated and established that the member of staff had not understood that the hyphen was not critical, meaning that Ms AB's VIN should have been accepted. The relevant teams were reminded. The Agency apologised and reimbursed the cost of the MOT and made a consolatory payment of £50.

ICA outcome: The ICA dismissed the complaint that Ms AB had been lied to. All that had happened was that someone had made a mistake on the day. He agreed that Ms AB had been put to some trouble and distress by the refusal of the DVLA to confirm that the digits she had provided were correct. He had much sympathy with her – she assumed that the vehicle was somehow unlawful. In order to reach the threshold provided in the PHSO's financial remedy guidance, the ICA recommended that the DVLA make a further consolatory payment of £50 to Ms AB.

(iii): VEHICLE TAX AND ENFORCEMENT

Two cases where Covid flight restrictions had consequences for untaxed vehicle

Complaint 1: Ms AB complained in relation to the clamping and subsequent disposal of her vehicle. She said she was abroad and could not return because of Covid restrictions on international flights. She also explained why no one else could collect her vehicle from the pound.

Agency response: The DVLA said that the vehicle had been removed because it was SORNed but on a public road. The wheelclamping contractor had capped the storage fees but the vehicle had eventually been sold at auction. The DVLA said that it had simply applied the law on vehicle taxation.

ICA outcome: The ICA sympathised with Ms AB. However, the root cause of the problem was that Ms AB had first not taxed her vehicle before going abroad and had then SORNed it but left it on the public road. (There was some dispute as to what she had discussed in a call to the DVLA when SORNing that the ICA could not unravel). Although the enforcement action might appear disproportionate, it was lawful and not maladministrative. The pound could not be expected to keep the vehicle indefinitely.

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Complaint 2: Mr AB took his car abroad in the summer of 2020, before travel restrictions were reintroduced in that country and in the UK in the run-up to what would become the second lockdown. He left the vehicle at his holiday home and flew back to the UK. The MOT was about to run out meaning that the direct debit for tax would fail, but Mr AB could not recover the car despite strenuous efforts (three flights were cancelled). He contacted the DVLA repeatedly and was told he could not SORN given the location of the vehicle.

Eventually, in the spring of 2021, the vehicle was identified as untaxed by the DVLA's mainframe and automated enforcement action in the form of a Late Licensing Penalty was applied. Mr AB repeatedly set out the circumstances, and involved a Minister and his MP, but the DVLA refused to waive the penalty.

Agency response: The DVLA repeatedly explained Mr AB's keeper duties under the continuous registration regime. While sympathetic to his position, it refused to cancel the enforcement (although it allowed Mr AB to settle at the reduced £40 rate).

ICA outcome: The ICA was clear that the enforcement had been applied lawfully and without any errors. However, he had reservations about the DVLA's intransigence, reminding the Agency of the significant operational difficulties it had experienced itself as a result of the pandemic. The ICA had been sympathetic to those difficulties and had urged customers to be respectful in their dealings with staff working in a genuinely stretched service. By the same token, the ICA expected the DVLA to make allowances for customers facing pandemic-related difficulties. He recommended that the enforcement action should, exceptionally, be waived in Mr AB's case. The DVLA agreed to do so, reminding Mr AB that the vehicle should be driven straight to a pre-booked MOT on arrival in the UK and that he should check in the meantime with the authorities abroad as to any legal requirements that might apply there.

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A disabled pensioner is fined for failing to 'tax' a tax-exempt car

Complaint: Mr AB, a disabled pensioner, acquired a nil duty car and for various reasons had difficulties obtaining a logbook. He did not understand that he needed to 'tax' it – i.e. license it – and the vehicle was clamped outside his home a couple of months later. He complained of unhelpful dealings with the DVLA and its clamping agent and that the Agency did not refund the £100 clamping fee. During the pandemic Mr AB spent several months abroad and, once again, overlooked the need to tax his car. On this occasion, after over six months of unlicensed use, he was caught by a mobile camera and fined again. Once more, he contested the morality of the DVLA's enforcement against him, characterising its responses to his complaints as robotic and lacking in sympathy and empathy.

Agency response: The DVLA repeatedly explained the necessity of taxing/licensing nil duty vehicles. Having established that both enforcements had been applied correctly, it declined to refund the clamping fee or to waive the £30 Out of Court Settlement (OCS) levied for the second enforcement.

ICA outcome: The ICA agreed with Mr AB that the first enforcement had been harsh. The Agency had grudgingly suggested that he had not been trying to evade his duties. The ICA noted that this was undoubtedly the case as Mr AB did not have to pay to tax his car. However, the clamping fee had been paid to the DVLA's agents not the DVLA and it was therefore incorrect to regard Mr AB's request of the DVLA as being for a 'refund'. The ICA could understand why the DVLA did not want to subsidise an enforcement that it regarded, legitimately, as having been applied correctly. While the ICA was disappointed in some aspects of DVLA handling (for example repeated failures to spell Mr AB's name correctly) he could not uphold the complaint about the discharge of a statutory enforcement function.

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Payment of road tax during the pandemic

Complaint: Mr AB complained that the DVLA would not refund him the road tax he had paid during the pandemic. He said he had followed HM Government advice and stayed at home and that he had paid for a service he had not received.

Agency response: The DVLA said that vehicle taxation was a matter for the Chancellor of the Exchequer and that it could only refund road tax in circumstances covered by law - such as the SORNing of the vehicle. Mr AB had not SORNed his car and evidence of non-use of his vehicle was not acceptable.

ICA outcome: The ICA said he agreed with the DVLA. Paying road tax did not equate to 'paying for a service' and was a legal requirement. If Mr AB took a different view, he would need to take his own independent legal advice.

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Scammed by bogus SORN website

Complaint: Mr AB complained that he had been scammed by a rogue website when attempting to SORN his vehicle. He had then been the subject of enforcement action. Mr AB blamed the DVLA for allowing websites that mimic Government sites to continue and asked for the enforcement action to be waived.

Agency response: The DVLA said it had applied the law on vehicle taxation. It had no record of Mr AB's vehicle being SORNed until after the enforcement had taken place.

ICA outcome: The ICA said he sympathised with Mr AB but customers had to take responsibility for their own actions. The DVLA was not responsible for the content of websites operating lawfully and had explained the action taken across Government to try to ensure that official websites appeared first on search engines.

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Mistaken advice about VED refunds

Complaint: Mr AB complained that the DVLA had provided mistaken information in respect of a refund of vehicle excise duty (VED) for a vehicle in the disabled class. He also said that the DVLA had failed to refund tax that was due to him.

Agency response: The DVLA had quoted the terms of the legislation that all refunds of VED must be applied for within 12 months of the expiry of the tax. This excluded a period for which Mr AB was claiming. The Agency said it had no recording of the conversation Mr AB reported.

ICA outcome: The ICA said that there was evidence that the adviser had given incorrect information, and the ICA also judged that the internal guidance was poorly drafted. However, he agreed with the DVLA that no refund was due for the earliest period for which Mr AB had claimed. The ICA awarded a consolatory payment of £100 for the mistaken advice (which had given Mr AB a false hope that further refunds would be made) and recommended that the internal guidance be reviewed.

Enforcement after direct debit does not auto-renew

Complaint: Mr AB complained about the enforcement action taken after his direct debit for road tax did not auto-renew. He said he had not been told that this had happened by the DVLA.

Agency response: The DVLA had explained that the direct debit had not auto-renewed as Mr AB's vehicle did not have a valid MOT. The Agency said that Mr AB had received a 'V11DD' letter to remind him of the need to ensure a valid MOT was in place and that he should have noticed that the direct debit had not been taken nor a schedule of payments received. The Agency also said that Mr AB had received an OCS after being spotted by a ANPR (Automatic Number Plate Recognition) camera and should have contacted the DVLA at the time.

ICA outcome: There was little that the ICA could add. It was clear that Mr AB's vehicle was correctly clamped as it was untaxed on the public road. It was also clear that Mr AB had known of the need to have a valid MOT as he had taken it for a failed test a week or so before the tax expired. Mr AB had also ignored the first OCS (and it had not been chased) for many months. The DVLA was entitled to rely on customers to exercise due diligence in relation to the legal requirement on keepers to ensure their vehicles are properly taxed or declared SORN at all times.

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Mishandling of disposal notifications

Complaint: Mr AB had sold one vehicle and bought another. He initially complained that the DVLA had not refunded the vehicle tax he was due. It subsequently became clear that the DVLA had twice removed him from the record for the vehicle he had bought, causing a succession of tax refunds and considerable inconvenience. Mr AB was especially concerned about the insurance and legal implications had he been stopped by the police or involved in an accident when he was (unknowingly) driving an un-taxed vehicle.

Agency response: The DVLA had accepted that it had twice removed Mr AB from the vehicle record incorrectly. It had made a consolatory payment of £100. The DVLA said it could not comment on the insurance issue and Mr AB would have to approach his own insurance company.

ICA outcome: The ICA set out the entire course of events. It came to light that the removal of Mr AB from the vehicle record was less the result of a mistake by DVLA staff and more the result of 'fast keyers' following their instructions and not reading the entirety of an item of correspondence and simply working on the first registration that was mentioned. The ICA said that a single review could not lead him to say that this practice was maladministrative, but he felt the consolatory payment to Mr AB was too low. He recommended it be increased to £250. He agreed with the DVLA that a hypothetical question about insurance cover was not one the Agency could answer. It seemed likely that different insurers would have different approaches to their customers who were driving untaxed vehicles without knowing.

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Delay in processing tax refunds

Complaint: Mr AB bought, taxed and sold three vehicles within eight working days and received standard DVLA communications promising an automatic refund of vehicle excise duty. The refunds did not arrive, and he had to chase - a process made trickier by the difficulties the Agency was facing in running its customer contact centre during the pandemic. In the end it took many contacts over a three-and-a-half-month period before the DVLA refunded the tax.

Agency response: The DVLA stated that the tightly timed nature of the transactions against the three vehicle records had meant that its systems had not automatically triggered the refunds. It apologised for the delays in responding to Mr AB, eventually making a consolatory payment of £50 in recognition of poor service. Mr AB did not want money but rather an assurance that the DVLA was not deliberately hoarding refunds. For its part, the DVLA explained that un-refunded tax was kept in a fund pending contact from keepers. In scenarios like Mr AB's, refunds needed to be triggered by customer contact.

ICA outcome: The ICA noted that in almost nine years of complaint reviews, this was the first correctly transacted refund case where the DVLA had not paid. He reminded Mr AB that, as a tax-collection agency, the DVLA had no interest in trying to avoid paying refunds: all the money involved was paid to the Exchequer. He agreed with Mr AB that he had received very poor service, clearly a product of the DVLA's difficulties in running its customer contact centre, and other operations necessitating staff being on site, given Government restrictions under the pandemic. The ICA did not have the jurisdiction, the project management resources or the expertise to say whether a different approach would have been more effective. Given the remedial action offered by the DVLA, and the explanations, the ICA did not uphold the complaint of unremedied injustice.

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Failed attempts to SORN a motorbike

Complaint: Mr AB repeatedly attempted to notify SORN for his motorbike, unaware that the DVLA's systems registered his efforts as 'abandoned by user'. Eventually, the DVLA's continuous registration system identified that his bike was out of tax and issued an OCS. Mr AB was afraid of the threatened legal action and paid, but under duress, pressing the DVLA to explain why his repeated efforts at notifying SORN had not registered. Eventually, he succeeded in notifying SORN over the telephone.

Agency response: The DVLA repeatedly explained that the enforcement had been correct in that Mr AB had neither taxed nor SORNed his bike. He should have expected written confirmation of a successful SORN notification. Eventually, the Agency cancelled the enforcement and asked Mr AB to only pay the arrears of duty. However, it got the figures wrong resulting in Mr AB paying the fine. Eventually this was refunded, and Mr AB was given a £30 poor service payment.

ICA outcome: At ICA stage, Mr AB remained aggrieved that he had, from his perspective, been 'found guilty' despite following all necessary steps to notify SORN online. He was convinced that there had been a system glitch that the DVLA had not properly investigated and resolved. The ICA found no fault in the DVLA's administration, however. He noted that 1.5 billion online transactions per year pass through DVLA systems, in the main uneventfully. There had been no evidence of a systemic fault to explain Mr AB's

experience. While optimal customer service might have involved a more nuanced account of how the system will declare a user abandoned transaction, the ICA regarded the quashing of the enforcement and eventual payment of a £30 goodwill gesture as sufficient remedy. He emphasised to Mr AB that there had been no finding of guilt. Enforcements were, in any case, conducted through the vehicle register not the keeper register so there was not, as he feared, a marker against his name.

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One of many complaints over the years regarding VED refunds

Complaint: Mrs AB complained on behalf of her husband that he had been denied three months of vehicle excise duty refund due to DVLA maladministration and intransigence. She noted that the Agency had collected VED for the same three months from the new keeper of the car. The withholding of the refund for those three months meant that the eventual sum paid was £61.50 short of the amount that Mr and Mrs AB had expected.

Agency response: The DVLA maintained that its refund policy reflected the legal requirements and restrictions. It had not received a valid notification of disposal until over three months had passed since the disposal date (this notification had consisted of a letter from Mrs AB, the logbook slip notifying disposal would not arrive via the new keeper for a further two months). The DVLA emphasised that the refund amount was based on the date of receipt of the notification of disposal could not be varied.

ICA outcome: The ICA said he customarily expressed doubts about the extent to which the law prevented rebate dates being backdated. However, he accepted that this was policy related to the DVLA's tax collection operations on behalf of the Exchequer. As such, he had no grounds to call its application into question. He could not therefore uphold the complaint.

(iv): OTHER CASES – DRIVERS

Complicated issue of foreign licence recognition

Complaint: Mr AB complained that the DVLA had revoked his driving entitlements and removed his ability to work as a vocational driver and volunteer for the NHS during the pandemic. He said he had successfully transferred his entitlements from a Dutch licence some 15 years ago and undergone three D4 re-applications without a problem.

Agency response: The DVLA acknowledged the inconvenience to Mr AB and said the problem should have been identified earlier. However, Mr AB's entitlements related to a country with whom the UK did not have a licence recognition agreement. In consequence, he should not have been allowed to transfer his Dutch entitlements. The Agency said Mr AB would have to take all relevant driving tests again.

ICA outcome: The ICA said the DVLA appeared correct in its interpretation of the relevant legislation, and he could not restore Mr AB's entitlements. However, all his sympathies were with Mr AB who was the innocent victim of a mistake made many years ago. The ICA welcomed the DVLA's commitment to learn the lessons from this sorry affair, but recommended a consolatory payment of £500 in recognition of the impact on Mr AB.

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Validity of photo licence

Complaint: Mrs AB complained that the DVLA would not extend the validity of her photo licence. She said her passport had expired and she was unable to obtain a photograph during lockdown.

Agency response: The DVLA said that the Government had decided not to extend the validity of photo licences as had been done in 2020. It said that it could accept a photograph taken by Mrs AB herself if it adhered to the relevant guidance, and had given advice about applying at a Post Office as Mrs AB could not use the online service without a valid passport. The Agency had also said that the validity of a photo licence was a matter of law, but that there was a distinction between having a valid licence and the entitlement to drive which continued until the age of 70.

ICA outcome: The ICA said he was hugely sympathetic to Mrs AB. However, he could not adjudicate on a matter of Government policy. With the easing of lockdown he hoped that Mrs AB would now be able to obtain a photograph and make a licence re-application. The ICA inferred that this was an issue that must have affected many hundreds of customers during the height of the Covid-19 restrictions.

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A missing driving entitlement going back 48 years

Complaint: Mrs AB was adamant that she had passed her practical driving test in 1973 and been issued with full driving entitlement. She complained that the DVLA unreasonably refused to issue her a replacement licence after she had lost it 30 years previously. In support of her application, she provided statements from four people attesting to having seen her full driving licence. This evidence had assisted her in court when the police attempted a prosecution for driving without a licence or insurance. Years later, the police had again attempted a prosecution of Mrs AB for driving without a licence and, during her correspondence with the Agency, she was found guilty. She suggested that the absence of any record of her entitlement may have been a clerical error by the DVLA.

Agency response: The DVLA conducted manual and computerised searches against its registers using variations on Mrs AB's particulars. Unfortunately, these searches were fruitless. The only record the Agency could find was of an application for a provisional entitlement made some eight years after Mrs AB said she had passed the test. Mrs AB explained that this had been due to an error she had made in completing an application form for a replacement.

ICA outcome: The ICA noted the difficulty of resolving complaints like Mrs AB's given his reliance on the DVLA's assurance that it had thoroughly searched for the entitlement. The ICA was satisfied that full searches had been undertaken and could see no merit in asking the DVLA to repeat them. In policy, the DVLA would not consider witness statements sufficient evidence to support the issuing of a licence in the absence of an image of the licence or the driver number. It was unable to assist Mrs AB who was advised she needed to (re-)sit and pass the driving test. The ICA noted that a letter had been sent in error by the DVLA to a neighbouring address to that of Mrs AB. This had resulted in a third party becoming aware that Mrs AB was in dispute with the DVLA and had been taken to court. The ICA welcomed the DVLA's admission of error and £100 consolatory sum but recommended that a further £150 be paid in line with the *DfT Charter: Principles for*

Remedying Complaints as the disclosure represented gross embarrassment. The ICA was unable to assist in the matter of Mrs AB's licence.

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Consequences of exchanging Canadian driving licence

Complaint: Mr AB had exchanged a Canadian licence for a GB one some years ago. In line with standard practice, it had shown automatic entitlement only as Mr AB had not been able to demonstrate he had taken his Canadian test in a manual vehicle. When he passed a manual test in the UK he complained that the start date on the licence effectively wiped out his previous 25 years' experience of driving. He said this affected insurance rates, car hire etc. He accused the DVLA of discrimination and cultural bias.

Agency response: The DVLA said it could not show separate start dates for automatic and manual entitlements on driving licences although its background system contained all the data. The Agency also said that the start dates for separate categories (like towing a trailer) would show an earlier start date.

ICA outcome: The ICA said he was familiar with the difficulties that Canadian and New Zealand licence holders had when exchanging, but this was not the result of discrimination but just a different approach to licensing (where manual entitlements included automatic but not vice versa). Mr AB made a good point that all vehicles would become automatic in due course because of the development of electric cars, but the DVLA was entitled to follow the Government's current approach. He had no reason to suppose that the exchange agreement between Canada and the UK had not been agreed in full understanding of the different licensing approaches. The ICA sympathised with Mr AB, but said he was free to show his report to any insurance company etc. The ICA could not mandate what appears on driving licences (which might well involve legislation). In the absence of maladministration, he could not uphold the complaint.

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Nuanced approach to exchange of Canadian licence

Complaint: Mr AB complained that the DVLA would not exchange his Canadian driving licence for a full manual GB licence. He said he had passed his test in the Canadian military and the vehicle concerned had only ever been manufactured with a manual gearbox.

Agency response: The DVLA had said that it could only offer Mr AB an automatic entitlement without evidence from the Canadian authorities that he had passed his test on a manual vehicle.

ICA outcome: The ICA said the correct approach was to look at the suite of evidence presented by Mr AB, which included details from the Canadian armed forces. Pleasingly, the DVLA agreed to do so and then issued Mr AB with a full manual licence. As there was no further remedy to be achieved, the ICA was able to discontinue his review.

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Agreed outcome to complaint about wrongful disqualification record

Complaint: Mr AB complained that the DVLA had wrongly recorded that he had been disqualified under the totting up procedure. He said that in consequence he had been unable to use his vehicle.

Agency response: The DVLA said that it had processed a court notification in good faith but acknowledged delays and handling errors. It had refunded Mr AB's road tax for the period and made a consolatory payment of £100. It had declined to pay Mr AB's car loan for the time he could not drive or to refund un-evidenced taxi fares etc.

ICA outcome: The ICA said that the only issue for him was the compensation/consolatory payment made to Mr AB. He felt that the DVLA could reasonably say that the taxpayer should not meet the car loan or unevidenced costs, but the consolatory payment was at the bottom of the PHSO scale and not proportionate to the maladministration. He invited Mr AB and the DVLA to consider a consolatory payment of £250. When this was agreed he closed the case without the need for a full review.

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Wrong details attached to driver record

Complaint: Mr AB complained that he had wrongly been denied his driving licence for eight months following a disqualification. He sought £8,000 in compensation.

Agency response: The DVLA said that a record in relation to a CDT test for another customer had been wrongly attached to Mr AB's file. It also acknowledged that opportunities to spot the mistake had been missed. It had offered £400 in consolation and to pay for Mr AB's second CDT test.

ICA outcome: The ICA said that the only remaining issue was the size of the compensation/consolatory payment made to Mr AB. Such was the scale of the maladministration that, while £400 for eight months without a licence was in line with other awards, he felt the case was in Level 3 of the PHSO scale of injustice. Exceptionally, he recommended increasing the sum to £750 (which would require the DVLA to seek Treasury consent).

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Failure to return identity documents

Complaint: Mrs AB complained that the DVLA had not returned identity documents when she applied to change the name on her driving licence. In consequence a planned holiday to see relatives had been cancelled.

Agency response: The DVLA had acknowledged delays in handling paper applications in consequence of the Covid-19 pandemic. It had provided Mrs AB with a compensation form that she had yet to complete.

ICA outcome: The ICA said this was the first case he or his fellow ICA had received in respect of documents that were delayed at the DVLA during the pandemic, although they were conscious that this was a situation that had received much media comment. He said

Mrs AB had clearly taken a risk in supplying the documents at this time for a non-urgent application. But she was outside the four weeks that the DVLA said on the D1 was long enough. The ICA was critical of the fact that the DVLA had not provided information to its Post Office partner to alert staff and customers to the actual delays. He made a recommendation on this point. He also recommended that the DVLA write to Mrs AB with details of the reforms and improvements it was making to reduce the backlogs and make a consolatory payment for poor service of £250. It was arguable that the ICA referral was premature as the ICA could clearly say nothing about compensation – whether any was justified, or what proportion of Mrs AB's losses the DVLA should meet.

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Loss of a Biometric Residence Permit leading to significant hardship

Complaint: Mrs AB completed the paperwork and provided her original biometric residence permit (BRP) card in support of her provisional licence application. The DVLA later admitted they had returned the BRP to the wrong address. Mrs AB submitted a claim against the Agency. This included £1,000 for distress and inconvenience, and £350 for solicitor's costs.

Agency response: The DVLA agreed to cover the costs of replacing the BRP (including the cost of the permit itself, and of the required appointment, and travel expenses), but declined to pay Mrs AB's legal fees. It offered £200 for poor service and inconvenience.

ICA outcome: The ICA had sympathy for Mrs AB's position that neither she nor her husband felt confident in completing the BRP application form independently, particularly in the context that the first time Mrs AB had applied for her BRP (as part of her spousal immigration application) it had been turned down. However, he considered that:

- Although the BRP replacement application process could appear daunting, it did not require a grasp of the technicalities of immigration law,

- The form to apply for a *replacement* BRP was significantly shorter and simpler than the application for an initial BRP,

- The online application portal directed customers towards an organisation that provided free support to people who do not have the confidence to pursue their application independently, and

- The DVLA had set out explicitly that reimbursement of legal fees would not be considered. Should Mrs AB have deemed the services of a solicitor to be crucial to her application, she should have contacted the Agency to request special dispensation to incur these costs in advance of doing so.

On balance, the ICA did not find that the DVLA should compensate Mrs AB for the legal fees she had incurred. The ICA considered Mrs AB's own account of the distress caused by her experience, which included that:

- She had called the DVLA repeatedly to chase up her application. Each time, she was advised that it was caught in the backlog of applications caused by the pandemic (it wasn't).

- It took six months from the date of her application for the DVLA to establish that her application had been rejected, and her BRP sent to the wrong address some five months earlier.

- During the many months that she was without a BRP, Mrs AB had been unable to access NHS treatment easily as the permit was proof of her entitlement to it.

- Mrs AB had needed her BRP to complete some paperwork with the local council that would have enabled her to be added to her husband's tenancy agreement. The council's rules had since changed, meaning that the option to become a joint tenant was no longer open to her.

- The stress of the situation, and the feelings of insecurity and instability she experienced due to being without a BRP, had led to many sleepless nights for both Mrs AB and her husband. Her blood pressure had risen, and for the first time since 2016 she had needed to commence medication.

The ICA considered that the injustice Mrs AB had suffered, and the distress she had experienced, fitted most closely to Level 3 on the Ombudsman's Severity of Injustice scale. He recommended a consolatory payment of £900 (i.e. £700 more than previously offered by the DVLA).

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DVLA's responsibility for data breach

Complaint: Ms AB applied to the DVLA to change the name and address on her driving licence to reflect her new single status. She provided original documentation related to her marriage, divorce, driving entitlement and address along with her application. Unfortunately, her postcode was mis-keyed by the DVLA resulting in the dispatch of her original documentation to a different address. Ms AB was distressed to receive a voicemail from the occupier stating that they had received the paperwork. However, the caller did not provide contact details, so Ms AB was unable to arrange the return of her documents. She contacted the DVLA who wrote to the occupier of the incorrect address requesting return of the documentation. It also reported the breach to its Information Assurance Group (IAG). Because of pandemic-related difficulties, the Agency was not responsive to Ms AB's repeated contact that, in the event, would span six months following the data breach. She was particularly concerned by the apparent lack of recognition of the impact of having her personal documents in the hands of unknown parties. After a month, these had been returned to her in an insecure fashion, and she remained concerned at the risk of identity theft. All her efforts at communicating with the DVLA proved problematic - it took a long time to get through to the relevant staff and for any action on her case. At the end of the process, after the complaints team had formally apologised, Ms AB was still very unhappy about the apparent lack of concern for her as a single woman caring for a small child. She had fitted enhanced security to her home and remained anxious that her security/identity may have been compromised in some way.

Agency response: The DVLA eventually received the information about the breach when Ms AB made contact by webchat, having been unable to get through on the telephone. As well as writing to the occupier of the incorrect address, the Agency made arrangements to

pay for Ms AB to submit a new application by recorded delivery (unfortunately, it took months for the recorded delivery cost to be reimbursed). A complaint was eventually logged almost three months after the breach, but it would not be until six months had passed before it was properly addressed by the complaints team with an offer of £50 consolatory payment. The DVLA had also offered to pay the £25 cost of registration with a fraud protection company. At ICA referral stage, senior managers in the complaints team revised the offer to £300 but Ms AB remained exasperated by her experience and requested ICA review.

ICA outcome: The ICA outlined the framework that organisations controlling and processing data like the DVLA had to work to. He emphasised that he had no role in determining whether the DVLA's actions had been in line with its legal duties. The Agency explained to him that its IAG had judged that the breach had been contained and therefore it had not been reported to the Information Commissioner. The ICA spoke at length with Ms AB who emphasised the difficulties she had faced in getting through to the DVLA, and in obtaining any concrete assurance that the matter had been properly handled. She remained very anxious about potential ramifications. When the documents had been returned, they had been simply shoved into her letterbox and left in an insecure position. They revealed her previous and current address, religion, marital and divorce status and details of family members. The ICA recommended that the DVLA write to Ms AB explaining how the breach had been handled by the IAG and the remedial actions taken. He considered precedent cases and Ombudsman guidance and decided that Ms AB should receive a consolatory payment of £500 given the significant impact. He did not judge that the circumstances of the case were such that he could recommend that the DVLA pay for Ms AB's security equipment. But he also recommended that the DVLA should ring Ms AB to talk through the process for registering with Cifas (the fraud prevention service) and the scheduled renewal of her driving licence three months hence, as she was anxious that dispatching original documentation to the DVLA might result in another data breach.

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A lost passport leads to a customer being stuck in the UK for a decade

Complaint: The DVLA had lost Ms AB's passport in 2012 and paid her £90 the following year for the cost of a replacement. Ms AB was unable to obtain a replacement passport from her Embassy, so she was given an undertaking that the Agency would also contribute towards any application for British Citizenship she made. Eight years later, after preparing for and passing the Life in the UK test and English Grade 5 Speaking & Listening, Ms AB paid £1,350 for citizenship and reminded the DVLA of its offer to assist.

Agency response: The DVLA suggested that Ms AB's claim was 'out of time'. They also argued that the DVLA could not be held liable for the length of time Ms AB had taken to apply for citizenship, during which the cost of doing so had doubled. However, when she had contacted the Agency prior to submitting her application, a member of staff had raised Ms AB's expectation that the DVLA would still be able to accept her claim. On that basis, the DVLA made Ms AB an offer of £500 towards the costs she had incurred, and the inconvenience caused. Ms AB regarded this offer as unsatisfactory, given the impact of the Agency's original error and its historic undertakings.

ICA outcome: On balance, the ICA found that it was reasonable that it had taken Ms AB several years to be ready to apply for citizenship, and, as the DVLA had never mentioned

a time limit, she had a reasonable expectation that the Agency would contribute towards the costs of her application when she was in a position to make it. He found that Ms AB also had a reasonable expectation that the DVLA would cover some, if not all, of her costs. It was not Ms AB's fault that costs had increased in the interim. The ICA considered that the DVLA had a duty to restore Ms AB to the position that she would have been in had things been done correctly: that meant restoring her to the position in 2012, when she held a valid passport and a visa stamp that evidenced her indefinite leave to remain. As meeting the entirety of Ms AB's claim would result in her being placed in a superior position than when the error was made (in that she had achieved full British citizenship) the ICA recommended that the DVLA should compensate Ms AB for half of the costs she incurred in pursuing citizenship, plus the entirety of the costs incurred in replacing her lost visa stamp with a Biometric Residence Permit. The ICA found that the DVLA's computation of an appropriate consolatory payment was not properly informed. He considered that the stress and distress that Ms AB experienced because of the DVLA's error went well beyond anything that could adequately be captured by the term 'inconvenience'. The error itself may have been minor, but the consequences of it were little short of devastating for Ms AB: she described how she had been 'trapped' in the UK for close to a decade, and how she was still haunted by the fact that she had been unable to attend her mother's funeral. The ICA considered that the injustice Ms AB had suffered, and the distress she had experienced, fitted most closely Level 4 on the Ombudsman's Severity of Injustice scale. He recommended a consolatory award of £1,500 in recognition of the emotional hardship which had flowed from the Agency's original error.

(v): OTHER CASES – VEHICLES

One of several campervan complaints as they enter year 3

Complaint: Mr AB and his wife complained that the DVLA unreasonably refused to reclassify their converted panel van as a motor caravan despite the fact that the conversion met the criteria provided in the online guidance. They also complained that the Agency had refused to explain its decision-making. As the van contained adaptations for Mrs AB's disability, the couple also argued that the DVLA had Equality Act duties to vary its policy. They pointed to other body type classification decisions about identical vehicles that had been favourable to the applicants.

Agency response: The DVLA reiterated its view that Mr and Mrs AB's vehicle looked like a van with side windows in traffic and should be so classified on its logbook. It denied discrimination and repeated that this classification did not affect their use of the vehicle.

ICA outcome: The ICA could not comment on the DVLA following its standard policy. He judged, however, that its explanations had not met the Ombudsman Principle of openness in decision-making. He provided figures showing that the DVLA's decision making was far from inconsistent – almost all applications were rejected. He did not detect that Mr and Mrs AB's access to the DVLA's registration team had been restricted in any direct or indirect way as a result of a failure to make an adjustment. He partially upheld the complaint on the basis that the DVLA had not met the requisite standard for clarity in its decision making.

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Action to remove a false salvage marker

Complaint: Mr AB complained that it had taken months for the DVLA to remove an incorrect salvage marker from his car. It transpired, as demonstrated by extensive evidence provided by Mr AB, that the car he had acquired had displayed a personal registration to which the previous keeper had title. That registration had been on a similar model of car at the time driven by the vendor that had been involved in an accident. Somehow the salvage category C had been attached to Mr AB's car.

Agency response: The DVLA repeatedly told Mr AB to take the matter up with the insurer (although at one point it asked him for the logbook). Mr AB was infuriated by the Agency's refusal to assist and critical of the attitude of its staff. He said he would take the DVLA to court because of the impact on his mental health of what amounted to libellous information on the logbook. Eventually, four months after Mr AB had initially raised the issue, the complaints team became involved and liaised with the Motor Insurers Anti-Fraud and Theft Register (MIAFTR) to rectify the record. In recognition of the incorrect advice given to Mr AB, the DVLA paid him a £50 consolatory sum.

ICA outcome: The ICA noted that the standard DVLA response to disputes about the extent of accident damage, where an accident had been incorrectly attributed to a car, was to refer the keeper to the insurer to resolve any dispute about the correct salvage category. However, in cases where the category had been applied to the wrong car, the DVLA could take action as it eventually did in this case. The ICA considered that the Ombudsman Level 2 hardship was applicable, and he recommended that the DVLA should increase its consolatory payment to £100. As the DVLA had recognised and acted on the error, the ICA did not uphold the complaint.

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DVLA mistakes lead customer to scrap his vehicle unnecessarily

Complaint: Mr AB complained that the DVLA had wrongly advised him to scrap his vehicle, and this had resulted in a loss of thousands of pounds. He asked for compensation.

Agency response: The DVLA acknowledged that it had wrongly removed Mr AB as keeper from his new vehicle and kept him as keeper of his old one despite Mr AB's instructions. It also said it had mistakenly issued a tax refund in the wrong name that Mr AB could not cash (and which would take a while to remedy because of Covid-related postal problems at the Agency). However, it said at no point had Mr AB been advised to scrap his vehicle. Indeed, he had been told to re-tax it and that everything could be put right. A consolatory payment of £100 had been offered that Mr AB had refused.

ICA outcome: The ICA said this was a very, very unfortunate matter. Mr AB had properly informed the DVLA of selling one car and buying another. A mistake at the DVLA had resulted in the transactions being reversed. In consequence, Mr AB was sent a VED refund he was not due and denied the one to which he was entitled. This was compounded when the refund cheque was sent in the wrong name and could not be cashed. However, having listened to the calls made by Mr AB, the ICA was content that at no point was Mr AB told to scrap his new vehicle. As the DVLA had said, the correct advice to tax or SORN had been given and Mr AB had been told that everything could be sorted. In these circumstances, although he had every sympathy with Mr AB, the ICA did

not think he was entitled to compensation. However, the very poor service offered was at the top end of Level 2 injustice and the ICA said the consolatory payment should be increased to £400. An interesting feature of the case is that the DVLA advisers had correctly advised that the tax that was wrongly cancelled could not simply be reinstated. However, in practice this was exactly what was done when it became clear that the refund cheque could not be cashed. The ICA said this was a sensible and customer-friendly approach (albeit one that did Mr AB no good as he had already scrapped his car). But given this was not a standard practice, or one of which the advisers would be aware as it ran counter to their instructions, he recommended that the DVLA consider if a change in those instructions should be made.

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Irrelevant emissions data must remain on V5C of motorbike converted to electric propulsion

Complaint: Mr AB complained that the DVLA had refused to amend the emissions data on his registration certificate for a motorcycle he had converted from petrol to electric propulsion. He also said that he had been given mistaken advice about the need for a DVSA Ministerial Single Vehicle Approval for his bike and been sent no fewer than three mistaken V5Cs.

Agency response: The DVLA said it could not amend the V5C despite it showing engine capacity and emissions data that were no longer relevant. It had acknowledged poor service and offered a consolatory payment of £30. It had then offered a further payment of £20 for not sending a letter the ICA later discovered it had in fact sent.

ICA outcome: The ICA said he shared Mr AB's bewilderment that his V5C had to show details that were plainly incorrect. This would become a growing issue as more and more vehicles were converted from petrol to electric. He recommended that the DVLA give consideration to changing its Operating Instructions although the DVLA said, on advice from the Department for Transport, that the details in respect of these matters could not be changed given the existing Regulations. He also recommended that the Agency consider changing its standard list of requirements for changes to V5Cs as they seemed to be impossible for someone who carried out their own conversion to achieve. In light of the serial mismanagement evident in this case, the ICA also recommended increasing the consolatory sum offered to Mr AB to £150.

****

Victim of fraud loses vehicle to finance company

Complaint: Mr AB complained that the DVLA would not meet his claim for compensation in relation to the loss of his vehicle that was reclaimed and sold by a finance company after it was clamped for being untaxed. He held the DVLA responsible for the fact his vehicle was not taxed.

Agency response: The DVLA said that it was Mr AB's responsibility as keeper to ensure that the vehicle was within the law at all times. A consolatory payment of £100 had been offered for poor service.

ICA outcome: The ICA said he sympathised with Mr AB. He had been removed as registered keeper fraudulently having allowed would-be purchasers to see his V5C reference number. In consequence his direct debit had not automatically renewed. However, Mr AB must have ignored the acknowledgment letter sent by the DVLA and the refund of one month's road tax and not noticed that no renewal documentation was sent in respect of his direct debit (or that the direct debit had stopped being taken). He was also responsible for the vehicle being on the public road when knowingly untaxed. On the other hand, the ICA felt that the advice given by the DVLA via webchat had been flawed: Mr AB should have been told to go to the Post Office to tax his car. Instead, he was told to send the existing V5C and proof of keepership to the Agency for investigation (that eventually resulted in the fraud being recognised). The ICA recommended an increased consolatory payment of £350 and repeated recommendations that advice be strengthened so customers were warned not to share V5C reference numbers and there were greater safeguards against online fraud. However, the ICA was unpersuaded by Mr AB's claim for compensation – most of which was for legal fees in relation to the action taken by the finance company and to which the DVLA was not a party.

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Customer scraps own vehicle while DVLA conducts enquiries

Complaint: Mr AB complained that the DVLA had wrongly recorded his vehicle as having been scrapped. He had only found out when the direct debit he had set up to pay for road tax had failed.

Agency response: The DVLA said that it had received a Certificate of Destruction from an approved treatment facility (ATF) and the vehicle record had been amended automatically. It said that it had made good the mistake by the ATF within eight working days. Unfortunately, Mr AB himself had then scrapped the vehicle during this period (he said it was because he had nowhere to store the vehicle after a friend told him to move it from his drive).

ICA outcome: The ICA said he sympathised with Mr AB as he had correctly taxed his vehicle and was the victim of a mistake by the ATF. However, the ICA did not think he had a claim against the DVLA and would need to consider action against the ATF. It was also Mr AB's own decision to scrap his vehicle while the DVLA was conducting enquiries and any losses were not the responsibility of the taxpayer.

****

Customer's address abused by relative

Complaint: Mrs AB complained that she was receiving documentation and demands for payment. These were in relation to offences committed by a relative with whom she was no longer in contact but who was falsely using her address. She wanted the address records amended for both the vehicle used by her relative and his driving licence (which had recently been re-issued).

Agency response: The DVLA said that it had amended its vehicle record. The Agency said it could not amend the relative's driver record on the basis of third-party information - however compelling.

ICA outcome: The ICA said he sympathised hugely with Mrs AB. She could be confident that the DVLA was not responsible for releasing her address in relation to the vehicle, but this did not mean there would be no more enforcement correspondence if the offences committed by her relative dated from before the address record was changed. The ICA could not adjudicate upon DVLA policy not to change driver records (this related to data protection concerns). But he was surprised that a marker had not been placed on the relative's licence to prevent him transacting online. Had this been done, it was likely that a new 10-year licence showing Mrs AB's address would not have been issued. The ICA was also critical of the DVLA's correspondence. He recommended that a copy of his report be seen by the Head of Policy and that a marker be placed on the relative's record.

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(vi): OTHER CASES – ACCESS TO DATA

A customer incensed by the sale of his personal data by the DVLA to a mileage tracking company

Complaint: Mr AB, who had sold his car years previously, was contacted about that car by a mileage tracking company who had obtained his personal details from the DVLA. He complained that the Agency had disclosed his details without reasonable cause for profit and he dismissed the Agency's explanations as preposterous.

Agency response: The DVLA responded within the parameters of the information provided by Mr AB who did not name the company. It explained the reasonable cause data disclosure framework under section 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. It declined to intercede with the company concerned having identified no error in the disclosure process nor any misuse of the data so provided.

ICA outcome: The ICA judged that the essence of Mr AB's complaint was against the application of standard DVLA policy to disclose past keeper data to mileage checking companies. The ICA noted that three such companies were in receipt of DVLA-held data and he set out the explanation provided by the company concerned as to why they needed the information. This was a matter of policy over which the ICA could not adjudicate. He reminded Mr AB of the opportunity of consideration by the Information Commissioner's Office (ICO), a complaint route that had been flagged from the outset by the DVLA.

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Disclosure of keeper data to parking companies

Complaint: Mr AB complained that the DVLA should not disclose vehicle keeper data to parking companies that were in breach of the Advertising Regulations under the Town and Country Planning Act. He said that (i) breach of these regulations meant that no lawful contract existed between a driver and the parking enforcement company; and (ii) that breach of the Regulations meant that the firms concerned breached their Accredited Trade Association (ATA) rules and were therefore not compliant with their KADOE (Keeper at Date of Event) Service Contract. He said the DVLA was aware that it was acting unlawfully and that this represented corruption. Mr AB said that the DVLA staff concerned were acting in breach of the Civil Service Code.

Agency response: The DVLA had said repeatedly (as had the Minister) that breach of the Advertising Regulations did not invalidate the driver's contract to adhere to the parking rules. In consequence, the 'reasonable cause' clause for the release of information was engaged. The Agency said that it had taken legal advice when determining its policy position.

ICA outcome: The ICA said he could offer no determinative legal judgment and much of what Mr AB had raised could only be settled in the courts or by an Information Commissioner investigation. Absent any legal judgment to the contrary, the ICA was content that the DVLA could rely on 'reasonable cause' in parking cases. The ICA said Mr AB was right to say that any firm acting in breach of the Advertising Regulations would therefore be breaching its ATA's code of conduct and would therefore be in breach of its KADOE. However, even in such circumstances, the DVLA would be entitled to share information if remedial action was being taken.

****

Release of data to private parking company

Complaint: Mr AB complained that the DVLA had released his data to a private parking company. He said that he had paid for the parking in question (at a hotel) and the DVLA did not have reasonable cause to release his data as he was an innocent party.

Agency response: The DVLA said that its release of the data was in line with Regulation 27 and its KADOE agreement with parking company in question. However, it had acknowledged poor handling of Mr AB's correspondence and it made a consolatory payment of £200.

ICA outcome: The ICA said the core issue was for the Information Commissioner and it was apparent that the ICO was still considering its position. So far as the matters within the ICA's remit were concerned, he agreed that the correspondence handling had been lamentable. It appeared the same letter had been sent to Mr AB on no fewer than six occasions although it was unclear how many he had received as his email address had been wrongly recorded – an error not identified for three years. That said, the ICA was content that the consolatory payment of £200 was in line with the PHSO guidance for level 2 injustice.

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Non-disclosure of keeper data

Complaint: Mr AB complained that the DVLA would not release keeper information to him under Regulation 27. He said he needed it as a builder's van had damaged his boundary wall.

Agency response: The DVLA had rejected the request on the grounds that Mr AB had provided insufficient information to show 'reasonable cause'. It had invited Mr AB to re-submit his V888 (Request by an individual for information about a vehicle) and the additional details but he had declined. Mr AB argued the DVLA had no right to the additional information, or it was irrelevant to the circumstances of his case.

ICA outcome: The ICA said that he agreed with Mr AB that damage caused to his property by a vehicle could meet the 'reasonable cause' test. However, he also agreed with the DVLA that insufficient details had been provided – such as a photograph or a bill for repairs. It was understandable that the DVLA took a cautious approach to requests for data from its records from members of the public.

****

Long-running dispute about release of data

Complaint: Mr AB's details were released to an applicant following a V888 keeper enquiry after an alleged collision between his wife and the data applicant. He instructed lawyers and complained to the ICO who upheld his complaint that the disclosure represented a breach of the Data Protection Act. He pressed the DVLA for compensation, arguing that the disclosure had traumatised him. The DVLA sought a review of the ICO decision and was, in the end, successful, six months later. The ICO had looked at all of the evidence provided by the applicant and decided, on reflection, that the disclosure had met the reasonable cause test set out in the legislation. Two years later Mr AB wrote to the DVLA to ask whether the matter was closed.

Agency response: In its initial response, the DVLA had explained the reasonable cause provision through which it had provided Mr AB's data to the applicant. As noted, the Agency then successfully appealed against the ICO judgment that the disclosure had been contrary to the Data Protection Act. After Mr AB resumed contact, the DVLA realised that it had not formally closed the case. The Agency apologised, noting that it had assumed that Mr AB had been told of the ICO judgement. It made a £30 consolatory payment for the lapse in service.

ICA outcome: The ICA explained that there was no prospect for ICA review to lead to a recommendation of remedy in relation to the disclosure of Mr AB's data. This was because the ICA had no jurisdiction in relation to complaints that DfT bodies had failed to adhere to their data handling duties. Further, in this case, the disclosure had been adjudged by the relevant authority to have been made appropriately anyway. The ICA said that the £30 consolatory payment was reasonable in the circumstances. He did not uphold the complaint.

(vii): OTHER CASES – EQUALITY ISSUES

Reasonable adjustments during the pandemic

Complaint: Mr AB complained about the dreadful service he had received from the DVLA throughout the first eight months of 2021. Getting through on the phone and webchat had been impossible, and on occasions the Agency had not rung him back despite knowing that he was dyslexic. When DVLA staff had returned his calls, they had no idea what his requirements were – meaning he had to explain himself from scratch. When Mr AB challenged the Agency for being discriminatory, he said there was a delay in response. He was then given excuses about the pandemic that he did not accept. Mr AB argued that the DVLA's 2021 telephone service should not be affected by the pandemic.

Agency response: The DVLA apologised for the areas where customer service had fallen short of a reasonable standard. The Agency waived the cost of a logbook for Mr AB's

motorbike and made a consolatory payment of £50. Mr AB said this was insufficient given the failure of the DVLA to make reasonable adjustments for his disability.

ICA outcome: The ICA had sympathy with Mr AB's frustration at the difficulties he had experienced in getting in touch with the DVLA and in obtaining a response via the most appropriate medium for his needs. However, the ICA considered that the poor customer service that Mr AB had undoubtedly experienced had been appropriately remedied by the DVLA in the form of an explanation, an acknowledgment of the areas where they fell short, an apology for these shortcomings, and a reasonable consolatory payment. The ICA found that much of the inconvenience Mr AB had experienced had indeed occurred because of the pressures the DVLA had been under throughout the pandemic and the related industrial action.

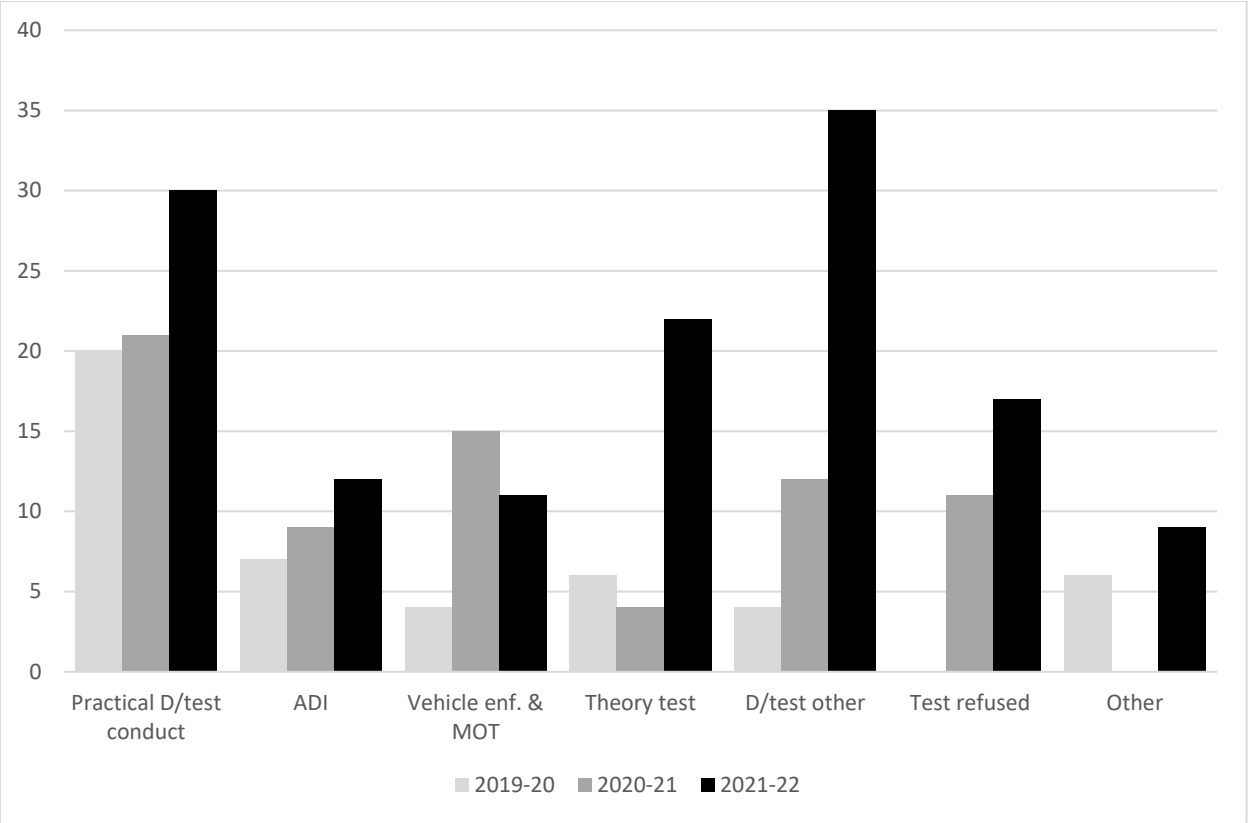
3. DVSA casework

Incoming cases

3.1 We received 136 cases from the DVSA in comparison with 72 cases in 2020-21, an 89 per cent increase. For the second year running, significant numbers concerned the content and application of policies and practices introduced by the DVSA in reaction to the pandemic, in particular rules on test vehicle cleanliness and systems for allocating precious test appointments.

3.2 Figure 3.1 plots incoming ICA cases in the main complaint areas over pre- and post-pandemic times.

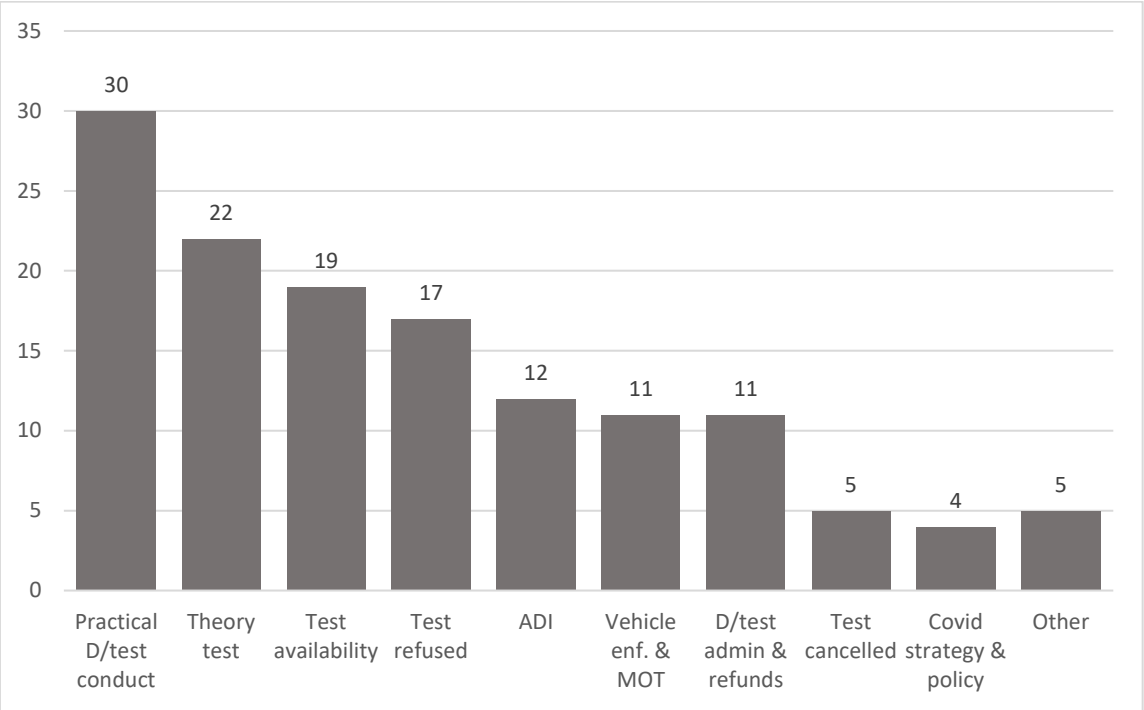
Figure 3.1: Incoming DVSA cases, 2019-2022, by main topic[11]



3.3 Figure 3.2 illustrates the 2021-22 intake with more specificity in the 'driving test other' and 'other' categories.

[11] **Practical d/test conduct**: complaints about the attitude, conduct and/or judgment of DVSA examiners; **ADI**: complaints brought by approved driving instructors or people getting trained for the role, often related to the conduct of tests or the DVSA's oversight of the profession or the DVSA's oversight of the profession or the DVSA's regulatory oversight of the profession; **Vehicle enf. & MOT**: complaints about the DVSA's vehicle enforcement operation and oversight of the MOT system; **Theory test**: complaints about theory tests; **D/test other**: complaints about practical driving test administration, allocation and availability; **Test refused**: complaints that practical tests were refused, in particular due to the cleanliness of the test vehicle. **Other**: complaints not meeting any of the above criteria.

Figure 3.2: Incoming DVSA referrals, 2021-22, by main subject area



3.4 Referral of many of the cases had been delayed for up to six months because of the redeployment of DVSA staff to other tasks during the pandemic. This has obviously caused great inconvenience to complainants, but we have taken the view that it did not constitute maladministration – indeed, quite the opposite. Prioritising tasks focussing on key workers was the response of many organisations in responding to the unique challenges of Covid-19.

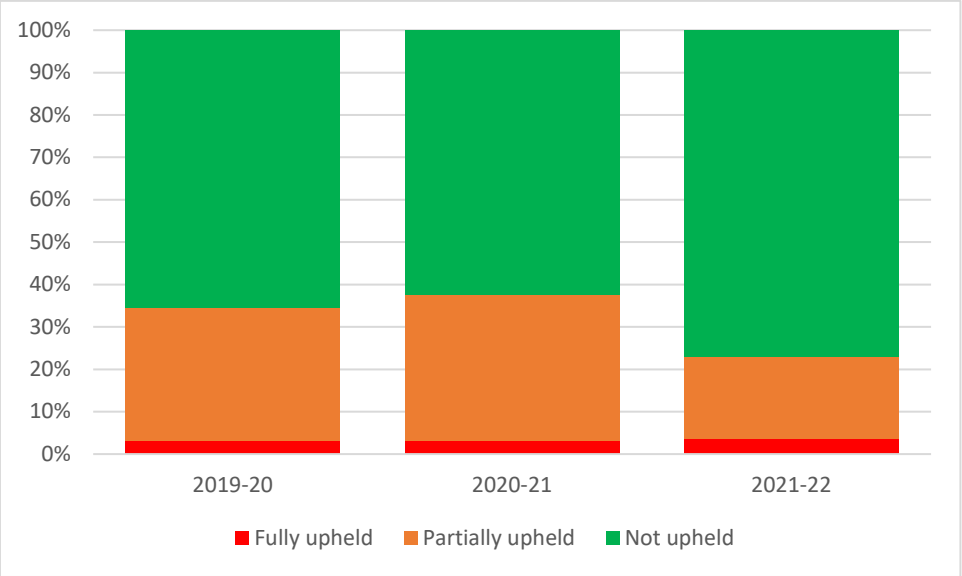
3.5 As in previous years, the single greatest complaint area was the conduct of practical driving tests. Unsurprisingly, candidates' frustration at what they regarded as arbitrary and inaccurate examiner judgment has been amplified by the long waits many have experienced for test appointments and the difficulties in booking new ones. As we noted last year when we reported on year one of the pandemic, the Government's decision not to extend the currency of theory test passes beyond two years has also played a part in people's frustrations.

3.6 Like the DVLA, the DVSA has experienced increased use of its MP complaint portal, but this has occurred alongside heavy traffic through stage 1 of its complaints procedure (it averaged over 2,000 stage 1 complaints per quarter with just under 200 per quarter arriving via MPs). The DVSA MP complaint volumes (a total of 789) do not approach those received by the DVLA. Roughly speaking, 30 per cent of the DVSA's 448 stage 2 complaints escalated to our stage 3.

Cases we completed

3.7 We completed 143 DVSA cases in the year, the overall outcomes of which are summarised as percentages in Figure 3.3, alongside outcomes for the previous two years.

Figure 3.3: DVSA case completions by outcome for the past three years



3.8 We commend the Agency for maintaining a low ICA uphold rate (23 per cent compared to 37.6 per cent last year and 52.6 per cent in 2019-20) despite intense operational pressures and the redeployment of many of its customer service staff into operational roles. As with other DfT bodies whose operations were upturned by Covid-19, we have drawn a distinction between avoidable lapses in service and maladministration, and lapses in service flowing from the unprecedented circumstances of the pandemic.

3.9 Themes arising from the complaints we received include:

Theory and Practical Driving Tests. The impact of Covid-19 was demonstrated in many of the complaints we received. Some of these concerned Government policy – in particular, the decision not to extend the currency of theory test certificates which meant that many expired before a practical test could be taken. Others concerned the measures taken by the DVSA to protect its own staff – especially the judgments as to whether cars presented for test were sufficiently clean that a practical test could proceed. We took the view that the DVSA was entitled to rely upon the professional decisions of its examiners in determining whether a car was indeed clean, although we felt that the Agency had been unclear in some of its messaging to customers.

ADI and ATB complaints. We have reservations about the suitability of the ICA scheme for resolving complaints from approved driving instructors (ADIs) or those running training companies (approved training bodies or ATBs). These disputes are better treated as exchanges between fellow professionals. In any event, we cannot act as an appeal mechanism against regulatory decisions such as whether an ADI meets the 'fit and proper person' test to remain on the register.

A particular theme in complaints from training bodies was whether the DVSA's trainer booking system operated fairly or could be 'gamed' by the larger operators to the disadvantage of smaller firms or new entrants. Although the trainer booking system is DVSA 'policy' and therefore outside our jurisdiction, we recommended that several of our reports should be copied to the chief executive so that she could consider

whether the current arrangements were indeed working fairly as is the policy intention.

Other matters. In a number of our reviews, we have criticised the way in which the DVSA considers the most serious complaints it receives – for example, those alleging racism. It is not satisfactory for the DVSA to fall back upon general statements of its commitment to treat all test candidates equally. The case histories also include a number of cases where the internal DVSA review of a complaint has not engaged with the points made by the complainant and not demonstrated a sufficiently detached and inquisitive mindset. There might be benefit in some job swapping or shadowing between the complaints staff of the DVSA and the DVLA as we judge the latter to be more willing to challenge the business and to approach their task more rigorously.

CASES

(i): THEORY AND PRACTICAL DRIVING TESTS

One of many complaints when an allegedly unclean car meant a practical driving test was cancelled

Complaint: Miss AB complained that her partner had needlessly had his practical driving test cancelled on the grounds that the car was not sufficiently clean. She contested this with reference to photographs of the interior. She emphasised that all guidelines on vehicle presentation had been followed. Miss AB stated that the impact on her partner was disproportionately great given his learning disability. She felt that he may have been discriminated against, and she characterised the approach of the examiner as brusque and uncaring.

Agency response: The DVSA undertook a standard investigation, gathering evidence from the examiner and the Local Driving Test Manager (LDTM). The Agency concluded that the cancellation had been reasonable and justified. It declined to reimburse the test fee.

ICA outcome: The ICA outlined the policy framework that hinged on decision-making about vehicle cleanliness being made on the day by the examiner. He acknowledged the efforts that Miss AB and her partner had taken to present a vehicle in satisfactory condition. However, he could not adjudicate over the difference in perception between the complainants and the examiner on the day. Nor did he regard the disproportionate impact of events on Mr AB as indicative of discrimination. He understood why the DVSA had reservations about accepting photographic evidence given the nature of Covid-19 transmission from surfaces. He could not uphold the complaint.

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Another ‘dirty vehicle’ complaint leads to speedy action

Complaint: Mr AB complained that the DVSA driving examiner would not proceed with a practical driving test on the ground that the car intended for use had not been cleaned. He disputed the examiner's account of events. Mr AB also said that photographs of his car had been taken without his permission.

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. It said the photographs had been destroyed after the examiner's manager came to inspect the car.

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. There was no maladministration in so doing. However, he was concerned that the DVSA should clarify its policy on the taking of photographs to cover: the circumstances in which it should do so, their evidential value, the danger of irritating would-be candidates already upset that their test had been cancelled, and any data protection issues. This was agreed and actioned very speedily.

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Another allegedly dirty car presented for a practical driving test

Complaint: Ms AB complained that her son's practical driving test did not proceed as the examiner deemed the car dirty and covered in dog hairs. She said this was not the case and the family had never owned a dog. She provided photographs of the inside of the vehicle.

Agency response: The DVSA said that the examiner judged the vehicle to be unclean and therefore did not allow the test to proceed. It said it did not consider photographic evidence.

ICA outcome: The ICA said he had to defer to the examiner's professional judgement. However, he was critical of the guidance on gov.uk which appeared to define the cleaning of a vehicle in terms of the removal of litter and other detritus. He recommended that this be amended. The ICA was also very critical of complaint handling. The LDTM had not been consulted and the same member of staff had replied on four separate occasions. He therefore recommended a consolatory payment equivalent to the cost of the cancelled test.

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One of many complaints about the expiry of a theory test pass following cancellation of a practical driving test

Complaint: Mrs AB complained to the Prime Minister and then to the DVSA about the cancellation of her son’s practical driving test. She demanded that the test date be honoured, or the window during which he could attend for a practical test should be extended, given the fact that he had been unable to book for much of the previous year given the pandemic.

Agency response: The DVSA set out its policy on the allocation of practical driving test slots in England, explaining that even though Mrs AB’s son was a critical worker it was

unable to offer him a test appointment. The Government's position on the two-year currency of a theory test pass remained unchanged for road safety reasons.

ICA outcome: The ICA explained that the decision not to extend the validity of theory test passes had been subject to Ministerial and Parliamentary scrutiny following the submission of a petition containing in excess of 100,000 signatures. The Government's position remained the same and, as an unelected complaints reviewer, the ICA had no jurisdiction to challenge it. Nonetheless, he acknowledged some of the valid points made by the petitioners, including that road safety considerations had been in play when MOT cover had been extended across the board early in the pandemic. He regarded the responses to Mrs AB's complaints and challenges as reasonable and did not uphold the complaint.

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Motorcycle test certificate expiry

Complaint: Mr AB complained that the DVSA would not extend the currency of his motorcycle theory test certificate, and that he would need to re-take his module 1 test. He said he had been abroad and unable to return to the UK because of Government advice against all but essential travel. He sought compensation for the costs of the theory and module 1 tests.

Agency response: The DVSA said that the legislation meant a theory test pass lasted two years, and the Government had decided not to legislate to extend this period. The module 1 test also had expired and was no longer valid as Mr AB did not have a valid theory certificate. No compensation would be paid.

ICA outcome: The ICA said that the decision not to extend theory tests had been taken by the Government and he had no authority to oversee it. The DVSA also had to follow the law as legislated by Parliament and the instructions of Ministers. This was not a matter that could be resolved by an administrative complaints process. In the absence of a Government-wide compensation scheme, there was also no maladministration on the part of the DVSA in declining to compensate Mr AB. However, the ICA did identify minor handling errors by the DVSA including the mislabelling of legislation, and the refusal to provide a contact address for Mr AB's lawyer until the complaints procedure had been concluded.

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Customer challenges the recording of a serious fault

Complaint: Mr AB complained that he had unfairly picked up a serious fault while approaching a roundabout on his driving test. In the absence of signage indicating that the exit road he had been asked to go down was at '2 o'clock', or road markings clearly delineating lanes, he had been failed for approaching a right turn on the left-hand side of the road. While generous in his comments about the examiner, he remained dissatisfied with the DVSA's explanations.

Agency response: The DVSA reiterated that there had been a clear opportunity to manoeuvre into the correct side of the approach lane that widened just before the roundabout.

ICA outcome: The ICA examined Google Earth images of the area taken a few weeks after Mr AB's test. He was satisfied that the DVSA's explanation of events did reflect the condition of the road, signage and positioning of the exit road Mr AB had been asked to select. He did not uphold the complaint.

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Time constraint on complaints about practical driving tests

Complaint: Ms AB complained that the DVSA had refused to investigate her complaint about a driving test she had failed the year before on the grounds that she lodged the complaint over six months from the test date. She explained that she had followed the appeal instructions on the DL25C slip given to her by the examiner on the day. This had only advised about the legal appeal option that she had initiated to recover the cost of the test. After two adjournments related to the Covid pandemic, she attempted to complain, explaining that she needed to be able to drive for family reasons. She had found the examiner distracting and unprofessional on the day.

Agency response: The DVSA repeatedly declined to investigate, citing its six-month time bar on complaints about the conduct of practical driving tests.

ICA outcome: The ICA considered that the DVSA had acted unreasonably in invoking the time bar when it was not referred to in any published information about its complaints procedure. He also noted that Ms AB had been challenging the conduct of the test in court. Given that she had lodged her appeal within the six-month period required, and had therefore presented it to the DVSA, the ICA was sympathetic to her position that it should now be considered through the complaints procedure. On balance, given the fact that the time bar on complaints was unpublished and the complaints option unpublicised at the time, the ICA upheld the complaint. He recommended that the DVSA should now investigate the conduct of the driving test. The ICA further recommended that the DVSA should speak with Ms AB so that a full account of her grievance could be considered within the investigation. He also recommended that she should receive a £100 consolatory payment given the trouble she had gone to following the prescribed routes to challenge the conduct of the test. The ICA noted that the information given to unsuccessful candidates now referred them to the relevant gov.uk webpage that in turn had links to the complaints procedure and information about the legal appeal option. He made no recommendation therefore about the material given to unsuccessful candidates. However, he did recommend that the DVSA should change the wording of its published complaints procedure to make it clear that complaints about the conduct of a practical driving test should be made within six months of the test date.

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Difficulties in booking a practical driving test

Complaint: Mr and Mrs AB complained that their son had been trying to book a driving test for a year and a half and had experienced five cancellations. They characterised DVSA communications as confusing and its priority booking system for cancelled candidates as a shambles.

Agency response: The DVSA said the first cancellation (pre-pandemic) had been due to examiner availability: the standard email had been dispatched two months in advance but, for unknown reasons, not received. The next four bookings were affected by Government lockdown announcements, and the priority rebooking slot Mr and Mrs AB's son was offered was unsatisfactory as his preferred driving test centre was not available. He was therefore part of the scrimmage of candidates trying to book in the late summer of 2020. DVSA offered explanations for events and, at ICA stage, provided Mr and Mrs AB's son with a bespoke appointment without charge at the preferred centre on his preferred date.

ICA outcome: The ICA accepted that the root cause of the problems was the pandemic, and he outlined the impact on the DVSA. For example, 175,000 priority rebooking emails were dispatched to cancelled candidates before the Agency opened up its booking portal. The ICA was critical of aspects of DVSA administration. Complaints were not always answered in a timely fashion either. The ICA recommended a consolatory payment of £50 to reflect deficiencies in the DVSA's administration and partially upheld the complaint.

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Mistaken comments by Local Driving Test Manager

Complaint: Mr AB complained about the outcome of his practical driving test. He said the fault he admitted to was not a serious one.

Agency response: The DVSA had said it was content with the examiner's conduct of the test. Unfortunately, at stage 2 it reproduced mistaken comments from the LDTM that suggested the examiner had completed the DL25 incorrectly. This led to Mr AB arguing that the Regulations had not been met and asking for a refund.

ICA outcome: The ICA noted that the DVSA had acknowledged its error when making the referral and offered an apology via the ICA. However, the ICA felt that Mr AB had been put to the inconvenience of pursuing a complaint on incorrect grounds and, though it was no one's fault, had waited nearly five months to learn that there had been no breach. The ICA therefore recommended an *ex gratia* payment of £50 (just shy of the test fee).

****

A flat tyre deflates a planned driving test

Complaint: Mrs AB complained that her daughter's practical test did not go ahead because the examiner 'thought' the front tyres were flat. She said the examiner should have used a pressure gauge and she asked for a refund of the test fee.

Agency response: The DVSA said the examiner was entitled to make her own judgment. She had involved her manager and another examiner and Mrs AB's husband had acknowledged that the tyres were flat. The examiner had tried to supply a foot pump but unfortunately it did not work. The request for a refund was refused.

ICA outcome: The ICA said there had been no maladministration. The examiner was fully entitled to use her discretion not to proceed with the test. Indeed, she had gone further than the guidance in involving her manager and a colleague and in trying to assist Mrs AB's daughter to inflate the tyres. The DVSA was also entitled to rely upon the professionalism and expertise of its staff and to conclude that no refund was due.

Poor handling of complaint about rebooking of driving test

Complaint: Ms AB complained that she was not sent an automatic link to re-book her practical driving test after it was cancelled during the pandemic. She said she was aware of another learner driver whose test had been cancelled after hers but who had received a new date.

Agency response: The DVSA said it had not been aware that Ms AB had not received the electronic link to re-book. It attributed this to a 'technical issue' but did not explain more. In further correspondence the DVSA said the technical issue was beyond its control.

ICA outcome: The ICA said that he was underwhelmed by the DVSA's handling. No enquiries had been made into the cause of the technical issue, and it was not satisfactory to claim that the issue was beyond its control (even if this was so, the Agency still had to take responsibility for the inconvenience caused). While the DVSA had speedily booked a new test for Ms AB when the issue came to light, the ICA was surprised that Ms AB had not been offered a free re-test in recognition of the poor service she had received. This might also have prevented an ICA referral which was much more expensive and caused Ms AB further inconvenience.

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Poor handling of complaint about driving test delays

Complaint: Mr AB complained in relation to the difficulties his son was facing in booking a practical driving test. He said that there were never any free slots at his local test centre and he accused local managers of incompetence.

Agency response: The DVSA said that the local test centre was very popular; Mr AB's son might be able to take a test earlier at another centre. The Agency also spelled out the impact that Covid had had upon its operations.

ICA outcome: The ICA said he could not carry out a forensic examination of the local test centre's performance over the years. He was content that the undoubted inconvenience that Mr AB's son had suffered was very largely the result of Covid-19. He could not make a finding of maladministration in these circumstances. However, the ICA was critical of the DVSA's approach to a request from Mr AB for information. He had been told to reapply to the Freedom of Information (FOI) team when this could and should have been put in hand immediately. He also did not understand why this request had resulted in a delay in Mr AB being able to ask for an ICA review.

****

Wrong advice about legal challenge to driving tests not conducted in line with the regulations

Complaint: Mr AB complained about the conduct of a driving examiner during his practical driving test. He said that the examiner had been rude and had assessed the test unfairly.

Agency response: The DVSA had conducted standard enquiries and said it was content that the test had been properly conducted.

ICA outcome: The ICA said he was limited by his terms of reference in respect of complaints alleging that a driving test had not been conducted in line with the regulations. But the DVSA was entitled to rely upon the professionalism of its examiners and had made appropriate enquiries. However, Mr AB had been wrongly told by the Agency that he had six months to appeal to a magistrates' court when in fact he had taken his test in Scotland and had just three weeks (which had already passed by the time the wrong advice was given). He recommended an apology.

****

Confusing account of customer's knowledge of cancelled theory test

Complaint: Mr AB complained that he had not received a notification that a theory test would not go ahead because of the Covid pandemic. He said he and his mother had been on a fruitless journey to the test centre – he asked for compensation.

Agency response: The DVSA had said that out-of-pocket expenses were not paid for cancelled tests caused by Covid-19.

ICA outcome: The ICA could not be certain whether Mr AB had received the email notification or not as these were generated automatically and the DVSA had no individual records. However, he noted that Mr AB had himself rescheduled his test to a week later on the morning of the day in which he claimed he had travelled to the test centre in the afternoon not knowing that the test had been cancelled. The ICA said he was bemused by this account of events, but it was apparent that no compensation was due. However, the ICA accepted that contact with the DVSA during the worst of the pandemic and afterwards was very difficult for customers, and he said he found plausible Mr AB's report that an out-of-date message was heard when telephoning the contact centre. The ICA mentioned that this accorded with his own experience of ringing the DVSA.

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Two cancelled motorcycle theory tests

Complaint: Mr AB complained about poor customer service in relation to two cancelled motorcycle theory tests. He said he had received no notification of the first cancellation and that in relation to the second he had lost pay. He asked for compensation.

Agency response: The DVSA had apologised for the second cancellation which it said was due to technical problems. Out-of-pocket expenses were not paid for tests cancelled as a result of the pandemic.

ICA outcome: The ICA said he could not be certain whether Mr AB had received the email notification or not as these were generated automatically but it was entirely plausible that no notification had been given. It was also likely that Mr AB had been misled by the information on gov.uk indicating that if a candidate had not heard to the contrary then their test would be going ahead. While mindful of the impact of the pandemic, the ICA was also critical of the ability of customers to access the DVSA contact centre. The ICA said that the first cancellation did not invoke the DVSA policy on out-of-pocket expenses, but this was less obviously the case with the second and he recommended that Mr AB should be invited to claim for expenses he had incurred. He also recommended an apology for the

poor quality of enquiries conducted by the contractor, Pearson VUE, into Mr AB's report that staff at the test centre had been using their phones and not acting in a professional or Covid-sensitive manner.

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Confusion about the end date of the second lockdown leading to a loss of income

Complaint: Mr AB runs an ATB. He complained that, during November 2020, he was misinformed by the DVSA about the date for restarting driving tests in December. He had initially been told that, following the November lockdown, tests would recommence on 2 December, only to be later informed that the actual date would be 3 December. This resulted in a need to rebook tests for his candidates that in turn created losses to his business. Mr AB also sought a consolatory payment. On 1 December the DVSA clarified that tests could go ahead on 2 December, but by then it was too late for candidates to be booked in.

Agency response: The DVSA attributed changes in its communications to changes in the guidance provided by central government – the information it had given Mr AB had been correct at the time. His claim did not meet the Agency's out-of-pocket expenses criteria, meaning that no payment was made.

ICA Outcome: The ICA found that the DVSA had provided a reasonable response to Mr AB's complaint. Each of the communications the Agency had issued to ATBs throughout November 2020 had been based on the official advice provided by central government at the time. The ICA had every sympathy with the inconvenience and frustration Mr AB experienced in consequence of the confusion, and the resultant financial impact on his business. However, he could not criticise the DVSA for acting in line with government advice, even where that advice was later changed – and then changed back. The emphasis on refunding out-of-pocket expenses was not directly relevant to Mr AB's claim, but had been included in an attempt to provide him with an avenue for redress. As he did not find that the DVSA acted in error, the ICA could not find that any compensation was due to Mr AB.

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Access to toilet facilities during the time of Covid

Complaint: Mr AB complained that he was unable to use the toilet facilities at a temporary theory test centre as they were out of order. He said this affected his performance in the test. He also complained about the conduct of staff and said he had been promised a test refund that had not materialised.

Agency response: The DVSA said it was limited in the extent of the investigation it could carry out as the test centre was now closed and staff not available. However, responsibility for the toilets rested with the landlord of the premises. The DVSA also pointed out that on the second occasion Mr AB had been permitted to use the disabled toilet. It disputed that staff would have told Mr AB he was entitled to a refund.

ICA outcome: The ICA said he could not adjudicate on the factual aspects of Mr AB's complaint, but he did not feel a refund was justified as Mr AB had used the disabled toilet and gone ahead with his test. It was obviously very unfortunate that the toilets were out of order, but this was not the direct responsibility of Pearson VUE or the DVSA. The ICA did

not know if the local problem had been escalated, but in any event it would not have been sensible or proportionate to have cancelled theory tests at a time when there was such a large Covid backlog.

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A motorcycle examiner botches the eyesight test and cancels the on-road test

Complaint: Mr AB complained about the conduct of the examiner in his module 2 motorcycle test. He said he was grumpy, and had a poor attitude, and had made Mr AB attempt the eyesight check with the sun in his eyes. Having passed eyesight checks on two previous attempts at the module 2 driving test, Mr AB failed, noting that he had not been given the opportunity of looking at a white number plate at 20m but rather a plate on the wall directly below the sun. Mr AB felt that the examiner was having a bad day or just wanted an easy morning.

Agency response: The LDTM investigated and concluded that the eyesight test had indeed been mishandled. A refund was offered which Mr AB accepted. However, he remained dissatisfied, citing an experience six months previously in a different test where a very hostile examiner had left him on his own on the motorway after the Bluetooth helmet had stopped working. Mr AB had received a refund on that occasion too but felt that his full costs for both tests should be refunded. The DVSA declined to make any other payment or to consider the earlier complaint as it had been lodged six months after the driving test.

ICA outcome: The ICA reminded the DVSA that it should update its web page on complaints to reflect the six-month time bar on driving test complaints. However, he did not judge that the absence of references to the time bar had prevented Mr AB from complaining about the first test much sooner. He therefore made no recommendation about the first test. As far as the second test was concerned, the ICA reminded the DVSA of its policy on out-of-pocket expenses when tests are cancelled. In effect, Mr AB's test had been cancelled, and the ICA judged that any out-of-pocket expenses claim he made through the existing policy should be handled sympathetically. Given the significance of the error in testing Mr AB's eyes, and the hassle and frustration occasioned by his subsequent dealings with the Agency, the ICA also recommended that a consolatory payment of £150 should be made. Finally, the ICA recommended that any training needs identified by Mr AB's experience should be addressed to prevent recurrence.

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A motorcycle examiner accused of racism

Complaint: Mr AB complained that the examiner on his module 1 motorcycle driving test was rushed, rude and irate. His hostile attitude had been a significant factor in Mr AB's difficulties carrying out manoeuvres during the test. According to Mr AB the examiner had been sarcastic and hostile throughout. Further, his approach had upset Mr AB so much that he (Mr AB) terminated the test. Mr AB suggested that the examiner may have been racist.

Agency response: The DVSA provided the examiner's account after an investigation by the LDTM. The examiner denied being hostile and sarcastic, attributing Mr AB's difficulties

following instructions perhaps to language difficulties. The DVSA accepted the outcome of the LDTM's investigation and concluded that the test had been conducted appropriately.

ICA outcome: The ICA felt that the DVSA's response to the complaint would have been more robust had specific reference been made to Mr AB's version of the words used by the examiner. The ICA inferred from the examiner's evidence, however, that he felt his conduct had been wholly appropriate and was therefore unwilling to provide the requested apology. The ICA considered that employees are entitled to a presumption of good faith and competence on the part of their employers. In this case, where two quite different versions of events were finely balanced, the ICA did not think that it was maladministrative of the DVSA to accept its employee's account. He did not uphold the complaint.

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A third motorcycle examiner is criticised

Complaint: Mr AB complained initially about the attitude and judgement of the examiner on his module 1 motorcycle driving test. In particular, he was concerned that he had been failed for failing to act quickly, and to bring his bike to a halt, in the emergency stop procedure. The test had been terminated at this point. He went on to complain about what he felt was the lack of objective measures of candidate performance in the driving test. Such a measure, for example video footage, would assist candidates in understanding why their performance had been deemed substandard.

Agency response: The DVSA explained why its examiner had recorded the test as a fail. The LDTM had been present in the debrief and did not agree that the examiner's attitude had been surly and hostile. The DVSA accepted that the outcome was based on professional examiner judgment and set out the measures in place to ensure consistency. It explained that it did not admit video evidence within the complaints procedure.

ICA outcome: The ICA found that the DVSA had responded reasonably to Mr AB's questions and challenges. He referred Mr AB to previous ICA annual reports where the point had been made repeatedly that video evidence should be admissible within investigations into driving test complaints. The ICA understood that this could never be determinative but it would represent a better evidence base than was currently available.

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Two complaints about theory test pass validity

Complaint 1: Mr AB, a prospective ADI, complained that the DVSA would not extend the validity of his part 1 (theory) test. He said that he had been delayed in taking his Part 3 test (which he had failed) as a result in part of the pandemic. He said he had lost thousands of pounds and would now have to start the whole process again. He also said that a theory test for a learner driver was very different from one for an experienced driver aiming to become an ADI.

Agency response: The DVSA said that it could not extend the time available to Mr AB as Ministers had decided that theory test certificates (including the Part 1 for ADIs) could not be extended.

ICA outcome: The ICA said he could not overturn the Ministerial decision and, given the terms of the legislation, theory tests expired after two years. However, Mr AB was clearly right in saying that in practice he had had less time to complete his Part 3 than other prospective ADIs before the pandemic. The ICA could not uphold the complaint, but he said it was unfortunate that Mr AB's ambition to become an ADI had been thwarted at a time when the country was crying out for driving instructors. He also sympathised with Mr AB's view that not all theory tests were the same.

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Complaint 2: Mr AB complained (i) that his theory test would expire if he did not pass his scheduled practical test, and (ii) that the DVSA had not met his out-of-pocket expenses for a practical test that had been cancelled without telling him. He pointed out that much of the currency of the theory test certificate had coincided with a time when neither tuition nor testing were available.

Agency response: The DVSA had acknowledged it was likely Mr AB had not been informed of the cancelled test and had paid for the hire of his instructor's vehicle for two hours in line with its policy. It had also invited Mr AB to submit a claim for lost earnings but he was unable to provide the necessary validation of his claim. The DVSA had said it was a Ministerial decision not to extend the currency of theory test passes.

ICA outcome: The ICA said he could not comment on the Ministerial decision not to extend the validity of theory test passes beyond two years. He was critical of the DVSA's other handling but said that in the context of Covid the findings of his independent report represented sufficient redress. However, the ICA was concerned that the information on gov.uk did not specify that the Agency would only pay for two hours car hire if a test was cancelled without sufficient notice. He recommended that this be amended.

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Practical driving test outcome

Complaint: Mr AB complained about the outcome of a practical driving test. He said the examiner had been unfair in her assessment.

Agency response: The DVSA said that it was content the examiner had conducted the test properly. The Agency had declined to provide details of any other complaints against her, and said that it had no video footage to confirm the length of the test itself. The DVSA had continued its correspondence at stage 2 arguing that Mr AB was raising new issues.

ICA outcome: The ICA said he was content that the DVSA could rely upon the professionalism of its examiners and that the training and checking in place were sufficient to ensure fair outcomes. The ICA said that the fact there were differences in outcomes between test centres did not mean that the subsequent success of Mr AB in passing his test meant the previous outcome was wrong. Most candidates were successful in time. The ICA said the decision to continue the correspondence at stage 2 was a marginal one, and in the event Mr AB had had to involve his MP before getting any reply. However, the ICA did not think this represented a sufficient flaw in the process to constitute maladministration given the Covid pressures and increased correspondence the DVSA was receiving. However, as before, he commented that in time he hoped the DVSA would use video evidence in the consideration of complaints.

Driving test ends up in smoke

Complaint: Ms AB complained that the examiner who took her driving test smelt strongly of cigarette smoke and seemed confused. Nonetheless, she was happy with the drive she delivered on the day. Ms AB was therefore dismayed to learn that she had accrued a serious fault at the very end of the test when she was adjudged to have just missed a parked vehicle. She denied this and requested a refund plus reimbursement of all her test expenses.

Agency response: The DVSA accepted that the examiner's presentation on the day had not been up to scratch and refunded the test fee. It explained that it could not lawfully reverse the test outcome. In any event, its examiner had provided a full and plausible account of the fault and the Agency had no reason to doubt his judgment.

ICA outcome: The ICA was unable to resolve the profound difference of opinion as to the respective performances on the day of Ms AB and the examiner. He commended the DVSA for acknowledging that Ms AB's exposure to the smell of tobacco was not conducive to the level of customer experience it aimed to provide. But in the absence of objective evidence that the examiner's judgment on the matter of the fault was incorrect, the ICA could not uphold the complaint.

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Allegation of lack of professionalism by theory test centre staff

Complaint: Ms AB complained that staff in her local theory test centre had been incredibly rude, making her and other candidates afraid. She felt that she had been treated worse because of her nationality (English was not her first language). She compared her negative experience with the warm and professional way she had been treated in a different theory test centre.

Agency response: Pearson VUE, who at the time managed booking and stage 1 complaints at the theory test centre in question, referred the complaint to the regional manager who simply stated that staff were professional and treated all candidates with consideration. He attributed Ms AB's difficulties to her false expectations of the admissions processes. This was the message repeated throughout the complaints procedure.

ICA outcome: The ICA noted that changes in the way that the DVSA managed its test centre service would have created uncertainty and stress for staff in the specific centre concerned. This did not excuse poor service and complaint handling, however. The ICA did not regard the complaint as having been investigated and, accordingly, concluded that Ms AB's account of rude behaviour was correct. He considered that she had been treated in a harsh and dismissive fashion. This had added to the pressure on the day and reduced her test performance. He recommended that she should receive an apology, a refund of the test fee and a consolatory payment of £100.

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Poor investigation into allegation of poor conduct by examiner

Complaint: Ms AB complained that the examiner on her practical driving test was rude to the point of hostility throughout the process. There was no small talk or niceties and no attempt to put her at ease. This had continued in the drive with no talking at all. Ms AB said her spectacles had repeatedly misted up (she was wearing a mask), but the examiner's approach had been harsh and dismissive, blaming the instructor for not resolving this before the drive. Ms AB complained that the examiner had appeared to laugh when she made an error while parking. She could accept the fact that she had committed serious faults but felt that her performance in the test had been severely affected by anxiety created by the behaviour of the examiner.

Agency response: The DVSA explained why Ms AB had failed the test and, drawing from the examiner's account, endorsed his conduct of the test. The Agency emphasised that the procedures he had undertaken had been necessary. He had not wish to speak during the drive as he felt it important that Ms AB could concentrate as she was accruing faults throughout.

ICA outcome: The ICA emphasised that the guidance for examiners said a pleasant and outgoing approach throughout the duration of the test is necessary in order to put the candidate at ease. The issue of spectacles misting up when candidates wear face masks should be flagged before the drive and candidates given every assistance in the test if this became a difficulty. The ICA found no evidence on file that these aspects of the complaint had been considered. Instead, the DVSA had recited stock wording that was tangential to the points Ms AB had made. Late in the day, the DVSA had realised this and apologised. It had made a £30 goodwill payment and acknowledged that it should not have told Ms AB that she had been wrong in what she had said. The ICA pointed out that Ms AB's complaint would remain on the examiner's file for two years. Any further complaints about his attitude would be looked at alongside Ms AB's feedback. The ICA upheld the complaint that the examiner had not established the necessary rapport on the day and expressed his disappointment at the DVSA's concentration on procedural aspects of Ms AB's drive rather than her underlying complaint.

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Poor communication and poor behaviour

Complaint: Mr AB complained that his practical driving test had been terminated on spurious grounds, namely that the vehicle was not clean enough. He argued that the DVSA's Covid requirements had not been properly explained to him in advance. As a result of staff reports of his behaviour, and that of his accompanying driver on the day, restrictions were placed on his future attendance for driving tests. Mr AB was initially banned from re-sitting at the same test centre. He was also required to attend in a four-door car, with dual controls, under the supervision of an ADI. Mr AB contested these requirements but reflected that his behaviour had not been ideal on the day. He experienced various difficulties getting through to the DVSA in the weeks and months that followed before going on to pass the test at a different centre a year later.

Agency response: The DVSA activated its formal incident reporting mechanism as a result of the behaviour of Mr AB and his partner. These restrictions were communicated to him through the complaints process and in a separate letter. For reasons unknown, the address that the DVSA had for Mr AB did not seem to be current and, by his own account, he did not receive the necessary notification of the restrictions. Nonetheless, he was

made aware of those restrictions while continuing to press the Agency for compensation for poor service.

ICA outcome: The ICA noted that the LDTM had accepted Mr AB's initial apologetic reflection on his behaviour and agreed that he could re-sit at the original test centre. This concession was not communicated to Mr AB who was told repeatedly that he would need to book at a different centre (which he went on to do, going on to pass there). While the ICA judged that the DVSA's handling was broadly in line with its published policies, and he could not adjudicate over the behaviour of those present on the day, he recommended that the Agency make a £50 payment as the availability of the original test centre had not been communicated to Mr AB.

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Poor investigation following failed tractor test

Complaint: Mr AB failed his Class 1 C+E driving test because the examiner judged that he had not undertaken a tug (or drag) test. (In the re-coupling procedure, the test consists of selecting a low gear and attempting twice to pull away gently while the parking brake on the trailer remains engaged. It is intended to highlight any problems with the locking mechanism between tractor and trailer.) In his driving test report, the examiner stated that he had prompted Mr AB several times. Mr AB was adamant that he had undertaken the tug test, to the extent that the wheels of his tractor had spun on the tarmac. This had been observed by two members of staff from the company that had instructed him.

Agency response: The DVSA investigated the complaint, and the examiner said he noted the different views of the instructors and the consensus that the tug had included a wheel spin. He put this down to excessive force being used by Mr AB in the coupling sequence. Supported by his manager, he remained convinced that Mr AB had not undertaken the tug test.

ICA outcome: The ICA noted that it appeared to be common ground that excessive force had been used by Mr AB during the re-coupling procedure (as indicated by his and his instructors' recollection that the wheels on the tractor unit had spun). He noted that the instructors had been viewing the procedure at a distance. There had needed to be two distinct shunts forward. It was not contested that Mr AB had been prompted repeatedly by the examiner. On balance, the ICA did not judge that the DVSA had acted unreasonably in accepting the opinion of its examiner. The ICA was mildly critical of the DVSA for not responding to representations from the instructor at the beginning of the complaints process, despite Mr AB's reference to available witness evidence. He recommended that the Agency should apologise and make a goodwill payment of £50 to reflect the fact that the investigation did not take on board fully the available evidence.

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Booking difficulties for candidate with existing qualifications

Complaint: Mr AB, a bus driver, was made redundant in March 2020 following lockdown and decided to add modules 2 and 4 to his Certificate of Professional Competence (CPC) in order to change his career to lorry driving. Along with all other candidates, he faced major difficulties booking a module 2 theory/case study test. He thought he had succeeded through a third-party company (he provided a date nine months after lockdown

had been declared) but Pearson VUE had no record of the booking. It would transpire that Mr AB, as a candidate with pre-existing CPC qualifications on his licence, could not book online and needed to do so by telephone so a 'manual' check of his entitlements could be made by the DVSA along with the DVLA (whose records were not remotely accessible to the DVSA). As the test date approached, Mr AB learned that there were problems with what he thought was his booking. He then faced massive difficulties getting through by telephone and it would take multiple complaints and calls before a booking could be confirmed. This was then cancelled as a result of another lockdown, and it would not be until 15 months had passed from his initial decision to re-train that he sat the module 2 (and passed). Still convinced that an original booking had been made and 'binned' by Pearson Vue, Mr AB continued to complain and to press the DVSA for compensation.

Agency response: The DVSA explained that no record existed for the 'phantom' initial module 2 booking – Mr AB should raise this with the company he used. They repeatedly explained the need for a manual check on his existing entitlement and that the online booking portal would not work for Mr AB. The DVSA made a poor service payment of £50 but Mr AB declined the offer. He renewed his correspondence with the DVSA after delays in his CPC card arriving after he had passed the required modules 2 and 4.

ICA outcome: The ICA was mildly critical of the DVSA for not referring the matter for independent review sooner, given the obvious deadlock. He balanced that with an acknowledgment that Mr AB had continued to raise new matters and that he needed to reconfirm the referral after the consolatory offer. Generally, the ICA found the DVSA's responses to be of a good standard. It had explained the requirement for the booking to be made by phone and repeatedly stated that it had no record of the phantom booking. The DVSA had also made a consolatory offer. The ICA judged that a decision to pay the compensation sought by Mr AB would need to be made at a political level given the many thousands of affected candidates and the sums that would be involved. He judged that the £50 consolatory payment was adequate. The ICA did not uphold the complaint of unremedied injustice.

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The challenges of the pandemic

Complaint: Ms AB complained following the cancellation of her practical driving test and its rescheduling two months later. She said she had childcare booked for the duration of the first test appointment and a preparatory drive with her instructor, and asked if it was possible to reinstate the appointment. Failing that, she asked if the DVSA could find a date that was not a Monday (she had noticed a pattern of Monday cancellations). Ms AB was unsuccessful in persuading the DVSA to meet her requests. The examiner had not been available for the first appointment and the DVSA, constrained it said by resources, could do no more than point Ms AB towards its live booking portal to see if cancellations prior to the new date came up. Ms AB maintained that the DVSA did not consider itself accountable for the substandard service it was offering.

Agency response: The DVSA apologised for the cancellation – it said it had been a last resort, and the limited availability of a replacement examiner or sooner test slot reflected the impact of the pandemic. The DVSA was unable to meet Ms AB's request for a different examiner on a different weekday, explaining its allocation system and that there was no pattern of cancellations. Happily, Ms AB passed on the rescheduled date.

ICA outcome: The ICA, while sympathetic to Ms AB's position, noted the impact of the Covid-19 pandemic. Hundreds of thousands of tests were cancelled, examiners had to self-isolate after Covid exposure and infection, restrictions were applied on the number of tests individual examiners could safely oversee, and tests for key workers were prioritised. With all of these pressures in mind, the ICA could not reasonably reach a finding of maladministration. Overwhelmingly, the problems that Ms AB and tens of thousands of other people encountered were the result of the pandemic and the DVSA's adherence to those Government policies designed to minimise the spread of Covid-19.

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Difficulty in supplying evidence of racism

Complaint: Mr AB complained about the conduct of his practical driving test. The examiner had been 20 minutes late and mentioned that she had not had a break. Mr AB said he had been told early in the test to perform a parking manoeuvre in an off-road location. A serious fault was recorded after the examiner used the dual brake as she judged that Mr AB was at risk of colliding with a static vehicle. The test was then ended in line with Covid guidelines. Mr AB was critical of the way that the instruction had been given and of the judgement informing the fault. Later in his correspondence he suggested there might have been a racial motive for the examiner's decision-making on the day.

Agency response: The DVSA set out the basis of the serious fault decision. It explained that it took allegations of racism very seriously and would investigate further on provision of evidence.

ICA outcome: As so often in practical driving test/examiner judgment cases, the ICA was unable to reach findings of fact as to the performance of Mr AB and the conduct and decisions of the examiner during the test. However, he explained to Mr AB that employees are entitled to a presumption of competence on the part of their employers in the absence of compelling evidence to the contrary. Mr AB's complaint did not reveal such evidence. The DVSA had also, entirely correctly, been prepared to investigate the racism allegation. But the ICA was sympathetic to Mr AB's position that it would be difficult for him to provide the requested evidence as racism is often covert.

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A forgotten licence

Complaint: Mr AB's daughter forgot her driving licence on the day of her theory test and was refused admission to sit the test. Mr AB complained about the unhelpful attitude of staff and said that they would not consider admitting his daughter and allowing her to start the test while he dashed home to retrieve the licence. Nor would they consider an emailed photograph of the licence to enable Ms AB to commence the test pending presentation of the actual document. Mr AB argued that his daughter could have been admitted half an hour late when he arrived with the licence – even if this meant she was not allocated the full test timing.

Agency response: Pearson VUE and the DVSA explained that it was established policy that candidates could not be admitted in the absence of a driving licence. This had been emphasised in information supplied to all candidates before the test. As standard policy

been followed, the DVSA declined to reimburse the test fees. Apologies were given if the attitude of staff was not up to the requisite standard.

ICA outcome: The ICA reproduced the relevant section of the front desk administration instructions for Pearson VUE staff confirming that candidates could not be seated for an exam unless they had provided valid ID. He also noted the requirement that candidates present 15 minutes before their appointment time to allow for the necessary ID and security checks, and that late admissions were not generally allowed. As there had been no failure of service, the ICA was unable to uphold the complaint.

(ii): ADI and ATB COMPLAINTS

A failed standards check

Complaint: Mr AB failed his third ADI standards check meaning that he was removed from the ADI register and would have to retake the ADI tests to join the register again. He complained that his pupil had been distracted by the examiner opening a rear window on the motorway, making the car judder. This had also made communications difficult between him and his pupil. He disputed the assessment that he had over-instructed his pupil and had not developed his driving skills.

Agency response: The DVSA's ADI enforcement manager investigated and found no grounds on which to uphold the complaint. The Agency provided further detail about how Mr AB's performance had been marked.

ICA outcome: The ICA noted the examiner's perception that the pupil was driving "very, very well" and thought it possible that, in selecting a pupil with high-level skills, Mr AB had set himself a more difficult instructional task than if his pupil had clear development needs. As the ICA flagged from the outset, there were real limits to his ability to resolve matters for Mr AB. Like the courts, an ICA has no power to nullify the outcome of a test. Even if he was to find failures of customer service in the overall process, the test result would still stand and have the same impact on Mr AB's career. In the event, the ICA found that the DVSA's investigation was of a good standard with further comments from the examiner informing the responses and being consistent with the marking and comments on the day. He did not uphold the complaint.

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Two complaints about closure of waiting rooms at test centres

Complaint 1: Mr AB, an ADI, complained that the DVSA had closed waiting rooms at test centres. He said that this had created problems for instructors with health needs - especially during the winter months.

Agency response: The DVSA said that its decision was in line with Government guidance during the pandemic. ADIs and pupils could use the toilets on request, and there was a poster visible to that effect.

ICA outcome: The ICA said that he could identify no maladministration in the DVSA following Government guidance designed to prevent the spread of Covid-19. He noted that waiting rooms had been reopened from November 2020. He understood the

inconvenience caused to Mr AB and others but could not uphold the complaint. The pandemic had presented major problems for all organisations including the DVSA.

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Complaint 2: Mr AB complained about the lack of access for him and his staff to test centre toilet and waiting rooms during the pandemic. He said he had been in contact with the Health and Safety Executive and that the DVSA was in breach of the Regulations.

Agency response: The DVSA said it too had been in contact with the HSE. Access to toilets had been permitted but only when a member of DVSA staff was present. Waiting rooms were open in some centres but not in others. The Agency regretted the inconvenience to Mr AB and his staff, but said it had to follow Government guidance designed to prevent the spread of Covid-19.

ICA outcome: The ICA said that this complaint was principally a question of the interpretation of the Regulations and their relationship to Covid restrictions. This was a matter for the HSE or the courts. It was apparent that routine access to toilets was not available, but the ICA said in his lay opinion the Regulations did not require access to waiting rooms. The ICA sympathised with Mr AB and his staff, but he did not believe he had evidence of DVSA maladministration.

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Retention of complaints against ADI

Complaint: Mr AB, an ADI, complained that a malicious complaint against him would be kept on his file for two years. He said the DVSA had not conducted a full investigation.

Agency response: The DVSA had said that its policy was to retain such complaints for two years. It said this was to assist the Registrar to ensure the fit and proper person test was met. It also said it could not determine between the accounts of Mr AB and his pupil, but no further action had been taken.

ICA outcome: The ICA said he was content that the two-year rule amounted to a policy over which he had no sway. He also felt that it was a reasonable approach in line with the approach taken by other investigative bodies when looking for a pattern of events. However, he was critical of aspects of the DVSA's handling. There had been long delays; the explanations Mr AB had been given were incomplete (the two-year rule applies to all incoming stage 1 correspondence); and the suggestion that the 'policy' was not disclosable because it was 'sensitive' was simply not true. The ICA could not adjudicate formally on the handling of Mr AB's FOI request for a copy of the policy and details of who had been consulted, but he felt that details included in his report could reasonably have been included in the reply (not least that there had been no consultation as regards a two-year retention period for complaints against ADIs as this was simply the application of a wider DVSA policy). He also felt that some of the language used by the DVSA vis- à-vis a fellow professional was not very collegiate and doubted that it would have been used about a DVSA staff member who was the subject of a complaint. In light of his many criticisms (notwithstanding the not uphold outcome), the ICA recommended that a copy of his report be shared with the chief executive for her consideration.

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Shortage of lorry and van testing slots

Complaint: Mr AB complained in relation to the difficulty his HGV and LGV driver training company was facing in obtaining test slots. He said the DVSA's booking system favoured larger companies or those who did not follow the rules.

Agency response: The DVSA said that the allocation system was a fair one, but it was aware that some driver training firms did ‘business book’ slots with the effect that less were available to others. Where this happened, the Agency took action including removing access to the booking system entirely.

ICA outcome: The ICA said he could identify no maladministration in respect of the booking system, but he shared the concern that some people 'gamed' the system to the disadvantage of others. He again recommended that a copy of his report be shared with the chief executive for her consideration. The ICA agreed with Mr AB's view that, with the shortage of lorry drivers now evident, the training and testing of new entrants should be a priority.

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Trainer booking limit of zero

Complaint: Mr AB, who runs an HGV training school, complained that he had been given a trainer booking limit of zero. He said that his company could not exist on this basis.

Agency response: The DVSA said that the decision was in line with Agency policy and additional tests for Mr AB would be at the expense of other providers. The DVSA said its objective was to be fair to all.

ICA outcome: The ICA sympathised with Mr AB as the DVSA policy did not seem best designed to assist new providers into the market. However, since the Agency's decision was in line with its policy there had been no maladministration. The ICA could not design the Agency's policy for it, but the ICA once more recommended that his review be forwarded to the DVSA's chief executive.

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Three complaints about service to ATBs during the Covid pandemic

Complaint 1: Mr AB, who runs a motorcycle training school, made a wide-ranging complaint in relation to the advice given to ATBs during the pandemic. In particular, he said it was unclear if training as well as testing was suspended, and that some ATBs planned to continue training to gain a competitive advantage over those who followed the rules. He also said he had been subject to slander by the DVSA, and that one of his pupils had been wrongly failed on their MOD 2 test.

Agency response: The DVSA said that the examiner had made a mistake in the MOD 2 test and it had refunded the test fee and invited the candidate to claim out-of-pocket expenses. It denied that Mr AB had been slandered and explained the difficulties it had faced in giving advice during the pandemic.

ICA outcome: The ICA said he regarded the MOD 2 test issue to have been resolved. Although it would be a matter for the courts, he also doubted that Mr AB had been slandered by DVSA staff. However, his general view was that professionals should speak respectfully to one another, and he did not think the correspondence reflected well on either party. The ICA also criticised a decision not to reply to Mr AB on the grounds that his 'tone' was not acceptable (a decision Mr AB had to chase to discover) and a failure to reply to eight emails from Mr AB except with a single nominal response. The ICA also agreed with Mr AB that there had been inconsistency and uncertainty in the information provided by the DVSA as to whether motorcycle training was to be suspended as well as driving instruction and all practical tests. He therefore upheld the complaint in part but felt that with the passage of time there were no recommendations he could sensibly make.

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Complaint 2: Mr AB, an ADI running a specialist training school, complained that he had been unable to book slots for his pupils when lockdown came to an end. He said there had been fraud and made a number of other allegations about the DVSA.

Agency response: The DVSA said that it had procedures in place if fraud was identified.

ICA outcome: The ICA quoted from a previous report in which the DVSA had acknowledged that some training schools did set out to 'game' the booking system. However, in this case the root cause of Mr AB's problems was an error by a newly appointed member of staff. Although the DVSA had said that it had provided full explanations to Mr AB, this staff error had never been acknowledged. The ICA recommended that the Agency should write to Mr AB with a full explanation of what had occurred. The ICA did not uphold other aspects of Mr AB's complaint, but as previously he asked for fellow professionals (both ADIs and the DVSA) to speak with one another in a collegiate and mutually understanding way – even under the unique circumstances of the pandemic.

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Complaint 3: Mr AB complained that his motorcycle training school, dependent before the pandemic on candidates booking their own tests, was disadvantaged in the allocation of test appointments through the trainer booking facility that became the default booking facility during the pandemic. His problems were compounded by difficulties getting through to DVSA staff by telephone.

Agency response: The DVSA reviewed the allocations to Mr AB's school and offered bookings at a driving test centre nearby (not his preferred one). It explained that he had not been given an allocation at the outset because he had not used the trainer booking facility before. The DVSA explained how it calculated test slot allocations, with reference to past booking history. Because Mr AB had not booked tests through the trainer facility, his initial allocation had been zero. This was increased but not to Mr AB's satisfaction. Approaching a year after making his original complaint during the first, post-pandemic, summer, Mr AB told the ICA that allocations were still skewed towards bigger companies and he was still unable to service his customers.

ICA outcome: The ICA was very sympathetic to Mr AB's predicament. He noted that the Agency had responded to his complaints by providing him with an allocation. Regrettably this was not sufficient. The ICA was unable to reach any conclusion as to whether this

represented unfairness to Mr AB or was another by-product of restrictions related to the pandemic. He noted that the allocations to Mr AB's school had followed policy and that the DVSA had responded helpfully and courteously to his requests and challenges. He did not uphold the complaint.

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The handling of correspondence related to the removal from the register of an ATB

Complaint: Mr AB complained that the DVSA had failed to offer appropriate guidance to ATBs for motorcyclists about its expectations for the length of a compulsory basic training (CBT) course. The DVSA had removed his company from the register based on the time he allocated to the course. Mr AB also complained that one person provided the decision on his removal and the response to his appeal and that there was no fair process. He provided examples of other ATBs that he considered had been treated more favourably by the DVSA. Mr AB further complained that the DVSA had failed to consider all the evidence and representations he had put forward in relation to his case.

DVSA response: The DVSA clarified the reasons for the removal of Mr AB's ATB and that it had been concerned that the CBT course being offered could not have been provided to a sufficient standard in the time that Mr AB allowed. The DVSA was not persuaded by the arguments that he had put forward to justify the length of his course.

ICA outcome: In line with his remit, the ICA was unable to consider the merits of DVSA's decision to remove Mr AB's company from the register of ATBs. Overall, the ICA was satisfied that the DVSA had responded to Mr AB's representations, but he identified three areas that had not been addressed. The ICA agreed with Mr AB that there would be merit in the DVSA providing some guidance to ATBs about the expected length of a CBT course, but was not persuaded that the absence of that guidance meant that the DVSA could not reach the decision that a course was too short to meet the minimum standards. The ICA was unable to comment on the other ATBs that Mr AB felt had been treated more favourably but provided further clarification about the basis of the DVSA's approach. The ICA was satisfied that the proper process had been followed. The ICA recommended that the DVSA apologise to Mr AB for any frustration he had suffered because some of his representations had not been addressed. The ICA further recommended that the DVSA issue guidance on the average time it expects the CBT course to take.

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Criticism of extent of DVSA investigation

Complaint: Mr AB, an ADI, complained that a DVSA manager had contacted one of his suppliers with an allegation that he had not been wearing a face covering in a test centre waiting room. He said this was not true, that there was no need for the manager to contact his supplier, and that his reputation had been impugned.

Agency response: The DVSA said that the manager had been told the events over the phone and had contacted the supplier as a courtesy to explain why the waiting room had been closed as a safety precaution. Mr AB's name had not been shared in full – and only volunteered when the manager was asked – and there had been no further contact.

ICA outcome: The ICA could not say what had occurred in the waiting room in question and was not empowered to carry out primary investigations. However, he was critical of the DVSA for not seeking statements from those present. It had instead relied upon what the manager had been told although she was not herself present at the time. The ICA also agreed with Mr AB that the information on gov.uk relating to the DVSA complaint system was currently inaccurate in that it refers to the standard 15-day target for ICA referrals without explaining that at the time in question there could be delays of up to six months.

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Cancelled motorcycle tests

Complaint: Mr AB runs a motorcycle training company. He complained that when he attended with two pupils for a MOD 2 test he was told the tests had been cancelled. He said he had been able to book online, and no notification had been provided that the tests were cancelled. He asked for compensation.

Agency response: The DVSA said that a notice had been sent to all schools nine months previously to say that business booking would not be allowed. It had been decided to send no further notifications. The DVSA accepted that its system did not prevent business booking at the time and that the code on its Testing and Registration System (TARS) showed that the business cancelled when this was not in fact the case.

ICA outcome: The ICA said the failure to notify Mr AB was poor customer service and he recommended an apology. He also recommended that attention be given to the fields on TARS so that accurate information was shown. The ICA did not feel that compensation was due as it was Mr AB's responsibility to run his school in line with DVSA requirements.

(iii): VEHICLE STANDARDS

Errors in the MOT of a heavy goods vehicle

Complaint: Mr AB, who worked for a company that services HGVs, complained about a DVSA MOT inspection in which an HGV was failed as a result of a misunderstanding of the condition and operation of the suspension under load simulation. In particular, he complained that the inspection manual protocol related to suspension testing had not been correctly followed.

Agency response: The DVSA refused to revisit the MOT as the HGV was re-presented and passed. It accepted its assessor's account that the airbags had not remained inflated meaning that the failure had been correctly marked. The vehicle was no longer in its test condition meaning that an appeal could not be entertained. Mr AB insisted that the manual required two operations to occur to reinflate the bellows, recognising the design of this specific HGV. It was unfair, he argued, that the operator should suffer detriment related to adverse OCRS (Operators Compliance Risk Score) points when the original problem had been with the DVSA's assessor's lack of familiarity with the operation of the bellows in this make of HGV. He suggested that the assessor's view that a recalibration had occurred during the test related to a different vehicle of the 12 tested that day, and offered to provide evidence in support of his point.

ICA outcome: The ICA noted that the DVSA had not considered Mr AB's evidence and he therefore obtained it and referred it to the Agency. His view was there were

inconsistencies in the DVSA's account of why the assessment met the manual requirements and he recommended that the DVSA review its position in light of Mr AB's evidence and his own observation. The DVSA undertook the requested review and agreed to nullify the MOT test fail and remove the OCRS points from the operator's licence. In addition, the ICA recommended that an ambiguity in the wording of section 48 of the inspection manual should be addressed on the next occasion the manual is reviewed. He partially upheld the complaint.

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Arrangements for MOT re-tests during the pandemic

Complaint: Mr AB complained in relation to an MOT. He said the garage had found faults that in his view should have been recorded as advisories only. However, when Mr AB was told by an examiner (mistakenly) that the mechanic from the garage would be present at any re-test, he decided not to go ahead. When he subsequently asked for a re-test he was told it was too late.

Agency response: The DVSA said that the garage concerned was usually invited to a re-test but this process had been suspended during the pandemic. It said that the subsequent request for a re-test was too late.

ICA outcome: The ICA said he was not sure what practical benefit he could offer Mr AB whose car was now MOT'd successfully. He noted that the MOT manual did not seem to refer to the circumstances of Mr AB's case (i.e. it was not an appeal against a failure nor a reverse appeal) but it was closer to the former to which a 14-day time limit applied. The ICA said that Mr AB had been misinformed about the presence of the tester and, without this incorrect information, it was likely the first re-test would have gone ahead. But testers were normally present and Mr AB had to accept the consequences of his decision. The ICA part-upheld the complaint and recommended that the DVSA consider if amendments to the MOT manual were required.

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Validity of MOT certificates during the second Covid wave

Complaint: Mr AB complained about the decision not to re-extend the validity of MOT certificates during the second wave of the Covid pandemic. He said those who were shielding should not be expected to take the risk of catching the coronavirus. Mr AB blamed the DVSA and said they were putting money before lives. He also criticised the service provided by the Agency's customer service centre (CSC).

Agency response: The DVSA said it had been decided not to extend MOTs any further. Covid-safe procedures had been introduced at test centres and those shielding would either not need their vehicles and could SORN them or could make other arrangements, as many garages were offering collect and return services. The DVSA had criticised the content of Mr AB's emails but accepted that on one occasion a manager had not provided information that was freely available. It said it could not comment on discussions with the CSC as calls were not recorded.

ICA outcome: The ICA said the decision not to extend MOTs further had been taken by Ministers and was therefore outside his jurisdiction. He felt that the DVSA could have

made this clearer in its correspondence as well as explaining the rationale for the policy (albeit this was implicit in the information provided). The ICA said he shared the DVSA's concern about some of Mr AB's language although it was not the worst he had seen. However, one junior member of staff must have found some of Mr AB's messages upsetting. The ICA said he too could not comment on what members of the CSC had said to Mr AB but recommended that, in line with practice in most call centres, consideration should be given to recording calls. This was of course mainstream in the DVLA.

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A family day trip attracts a DVSA stop check

Complaint: Mr AB was driving 16 family members to the countryside in a minibus when he was pulled over and taken off the motorway by a DVSA vehicle enforcement manager (VEM). He complained that the VEM had a chip on his shoulder, wrongly accusing his passengers of consuming alcohol, threatening to subject the vehicle to further investigation and entering the interior of the minibus without following social distancing rules or wearing a mask.

Agency response: The DVSA obtained a statement from the VEM in question who gave a different account of the check. He had not stopped the vehicle on the motorway as claimed by Mr AB and he had not asked the passengers if they were drinking, or threatened further investigation. He agreed with Mr AB that the trigger for the check had been his perception that the vehicle was overloaded. He had also asked the passengers what they were paying towards the fare. He had accepted that Mr AB was not working in effect as a taxi driver and he had released the vehicle without any further checks. The DVSA regarded his conduct as reasonable and acceptable.

ICA outcome: The ICA could not adjudicate over the two versions of events. He concluded that the DVSA had conducted a timely and proportionate investigation.

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Another complaint about staff handling of a stop check during the pandemic

Complaint: Mr AB's truck's number plate had become detached, and he was subject to a DVSA stop check. He complained that the staff had entered his cab without wearing a mask and had threatened him with being banned by the Traffic Commissioner if he did not cooperate. He characterised the DVSA's responses as siding with its staff and reflecting their untrue and dishonest account of events.

Agency response: The DVSA investigated and provided Mr AB with details of how its Covid-19 procedures had been informed by expert advice and guidelines. The DVSA told Mr AB that he had been agitated on arrival at the check site and had been cautioned accordingly. No sanction had been applied. According to the DVSA, the member of staff who entered the cab had worn a mask and gloves. It concluded that all relevant procedures had been followed.

ICA outcome: The ICA could not adjudicate between the two accounts of the stop check. He was mildly critical of the Agency for stating, incorrectly, that both staff had entered the cab but did not regard this as relevant to the plausibility of the vehicle examiner's account. He was unable to make any findings about the complaint.

A customer complaining about the DVSA's response to what he regarded as a safety critical component failure and the loss of a damaged fuel filter

Complaint: Mr AB complained that the DVSA had failed to act quickly and decisively when he reported the failure of the fuel filter in his imported car. He was dissatisfied with the outcome of the manufacturer's investigation (which was that the part had most likely failed due to unexpected pressure during use) and of the DVSA's decision that no further action would be taken. He criticised the DVSA for encouraging him to hand over the part to a UK dealership who in turn shipped it abroad for testing but did not return it. Mr AB threatened legal action for this and other alleged failings by the Agency.

Agency response: At the outset, the Agency encouraged Mr AB to return his part to the manufacturer and it tracked the progress of the manufacturer's investigation, keeping Mr AB informed. This took nine months, a period of time that Mr AB characterised as far too long given the safety critical nature of the fault. The DVSA explained that this was often the case in automotive investigations. It also explained that parts would not normally be returned after testing, not least as they would be further damaged by the testing process. The DVSA answered a series of challenges and questions posed by Mr AB but drew the correspondence to a close when it became clear that he could not accept its explanations.

ICA outcome: The ICA noted that the published guidance in relation to the recall of vehicles and the reporting of faulty components asked drivers to report in the first instance to the manufacturer. Mr AB's criticism that it had taken the DVSA too long to get involved should be balanced, the ICA found, with an acknowledgement that it had been open to Mr AB to follow the guidance and contact the manufacturer himself. The ICA considered that most people would think that handing over a defective part for testing would not guarantee that the part would then be returned. The ICA judged that it would be a reasonable expectation that, if return of the part was wanted, then this should be expressly arranged in advance. He did not hold the DVSA responsible that the part had not been returned. Nor did he regard the Agency's regulatory position in relation to the report as unreasonable, given that there were over one million vehicles on the road with the same part and no other reported defects. He emphasised that the DVSA's role was to promote vehicle safety not to involve itself in what amounted to disputes between customers, service providers and manufacturers. He did not uphold the complaint.

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The DVSA has no part to play in a complaint about an MOT garage

Complaint: Mrs AB complained to the DVSA that her car had been failed at MOT over defects that she had commissioned the garage to repair before subjecting the car to the test. She characterised this as dishonest and a manufacturing of a test fail. She was highly critical of the DVSA for failing to involve itself in what she regarded as a cynical and dishonest manipulation of the testing regime, to her disadvantage.

Agency response: The DVSA contacted the manager of the test station and established that the causes of the fail were legitimate and that the test itself had been carried out correctly. The vehicle had indeed failed on the defects that Mrs AB said should have been fixed before the test. But from the DVSA's perspective, the key principle underpinning the integrity of the MOT regime – that the vehicle had the correct assessment at the point that it was presented for testing – had not been contradicted. It therefore took no further action.

ICA outcome: The ICA noted that there was no disagreement that the vehicle was not in a condition to pass the MOT test. The matter of the sequencing of the repair work and the test itself was, as the DVSA had maintained, a civil dispute between a customer and a service provider in which the Agency had no role. The ICA did not therefore uphold the complaint.

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IVA tests during the pandemic

Complaint: Mr AB complained that the DVSA had not allowed him an extension of time to re-apply for an IVA (Individual Vehicle Approval) test on his kit car following an earlier failure. He said that the pandemic had made it more difficult for him to correct the defects.

Agency response: The DVSA said that the six-month re-application period was set in Regulations and there was no case for extending it. The Agency acknowledged that an earlier extension had been agreed, but this was to assist those customers who could not have a re-test during the first period of lockdown as no tests were taking place.

ICA outcome: The ICA said that Mr AB made a good point about the difficulty he had faced in remedying the defects on his car during the pandemic, but the previous extension had not been for that purpose but to assist those customers whose re-tests could not in fact go ahead. By the time of Mr AB's test, there were no delays, and test sites were Covid-safe. The ICA was critical of the wording of DVSA letters that seemed to imply that the previous extension was a DfT policy when in fact it was a short-term informal practice on the part of the DVSA following advice from the Department. The ICA said he thought it was legally dubious in any case given that the normal six-month period for IVA re-tests is in the statutory Regulations. The ICA was also critical of the information available to customers which could lead those like Mr AB to believe that a re-test had to take place within six months whereas it is the re-application (or multiple reapplications) that must take place within six months of the initial failure not the re-test itself.

(iv): EQUALITY ISSUES

Two complaints about a lack of volunteer examiner – mask exemption

Complaint 1: Ms AB complained that when she arrived for her mask exempt test there was no examiner available to take her out. She said she had invested heavily in driving lessons to ensure she was ready for the test and had informed the DVSA of her special needs.

Agency response: The DVSA said there had been a deployment failure in not providing an examiner. The Agency had offered a free re-test and the costs of hiring the test vehicle for two hours. However, it had declined to pay any additional sum under its out-of-pocket expenses policy.

ICA outcome: The ICA said Ms AB had done all she could do at the time (new guidance was issued subsequently) to advise the DVSA of her special needs. While the Agency was right to say that its out-of-pocket expenses policy did not cover the costs for which Ms AB was claiming, different considerations applied to the making of a consolatory payment.

The 'deployment failure' was maladministrative and had caused Ms AB inconvenience and distress. He recommended an *ex gratia* payment of £250.

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Complaint 2: Mr AB had booked a mask-exempt driving test as he had a health condition that entitled him to do so. When he turned up at the test centre, he was dismayed to find that no volunteer examiner was present and that a glitch in the booking system had allowed him to book there. After a discussion with DVSA staff, he was offered either an opportunity to sit the test while wearing a mask or to cancel and rebook. In the event he attempted the test wearing a mask, but his performance was significantly impaired, both by the mask itself and by his dealings with the staff. He accrued a serious fault early in the drive. Mr AB complained of disability discrimination and that he had been coerced into taking a test thereby exposing him and other road users to potential risk.

Agency response: At the second stage of its complaints procedure, the DVSA waived the test booking fee for Mr AB's next practical driving test and strenuous efforts were made to secure him a prompt mask-exempt booking. Unfortunately, this did not prove straightforward, but a new date was rebooked and apologies were offered.

ICA outcome: The ICA emphasised that he could not provide a legal ruling under the Equality Act. His emphasis was on discrimination and unfairness as provided in the ICA terms of reference. The ICA established that it had been a system glitch that had resulted in Mr AB being booked as a mask-exempt candidate in a driving test centre from which no volunteer examiners were operating. He did not regard the staff that Mr AB dealt with on the day as discriminatory; the problem was that all they could offer was tests for people wearing masks. Mr AB understandably perceived this as unfair. The ICA felt that reasonable efforts had been made systemically to remedy this by providing a specific booking service with volunteer examiners. It was clear that such bookings were in short supply, but strenuous efforts were made to accommodate Mr AB after the first inauspicious experience. The ICA did not agree that Mr AB had been 'coerced' into attempting the test with a mask. It was up to him, as a person with capacity and awareness of his duties as a driver, not to place himself and others at risk. The ICA welcomed the fact that the new test booking had been free, and that the Agency had apologised for the difficulties Mr AB had experienced. But he was disappointed that the DVSA had not apologised for failing to allocate Mr AB a mask-exempt test in the first place. He considered that this amounted to a cancellation of the booking that Mr AB had made. He therefore recommended that Mr AB's out-of-pocket expenses, including his car hire for the test, should be paid through the relevant DVSA policy. He also recommended that a token consolatory payment of £100 should be made to reflect the distress experienced by Mr AB.

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Difficulties experienced by a candidate with autism in accessing an appropriately modified driving theory test

Complaint: Ms AB complained about the difficulty in securing reasonable adjustments to a theory test for her daughter who had autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD). She complained that the adjustments offered by DVSA, in the form of a reader or extra time, did not address her daughter's problems and as a result she had failed her theory test six times. Ms AB also complained about the "discriminatory"

nature of the test and some of the processes associated with it, including the need to remove clothing for the security checks.

Agency response: The DVSA explained that an oral language modifier (OLM) might be available. One was secured in early 2020 but the test was cancelled due to the first lockdown. The DVSA explained that the rebooked OLM-assisted test had been cancelled due to the second lockdown. The DVSA set out its security checks and the reasons for them. It also explained the availability of OLM support and the requirement for some objective evidence of need before securing it.

ICA outcome: The ICA found that the DVSA had not properly identified and responded to Ms AB's complaints. It should have explained to Ms AB that significant changes had been made to the theory test following consultation with stakeholders including the National Autistic Society. He also found that the delay in acknowledging and responding to Ms AB's complaints about the removal of her daughter's hoodie, and the failure to attempt to secure the tape of Ms AB's telephone call, were maladministrative. The ICA recommended that the DVSA should apologise to Ms AB and her daughter for the shortcomings identified and that it should actively seek the views of individual disabled candidates and/or their representatives when considering non-standard adjustments.

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Covid-inspired reduction in length of ADI Part 3 tests

Complaint: Mr AB, an ADI, complained that the Covid-related reduction in the length of the Part 3 test discriminated against him. He also criticised a phone call he had received which he said was insensitive to his special needs.

Agency response: The DVSA said that the reduction in the length of the Part 3 test was to reduce the risk of Covid spreading and had been the subject of consultation with representative bodies who had supported the proposal. It also said that phone calls were not recorded but apologised for any hurt caused, saying this was unintended.

ICA outcome: The ICA said he could not adjudicate on the second limb of Mr AB's complaint but repeated an earlier recommendation about the recording of calls. He understood that call recording had been agreed for calls to the DVSA contact centre, but this had been delayed because of the pandemic. The ICA was also content that the proposal to reduce the length of Part 3 tests had been introduced for a good reason and after supportive comments from consultees. It was true that the measure had not been subject to a formal equality impact statement, but none was required.

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Use of volunteer examiners for mask-free tests

Complaint: Mr AB complained that the DVSA policy of requiring candidates who could not wear a mask to take their test with a volunteer examiner, possibly at another centre than the one of their choice, was discriminatory and contrary to the Equality Act. He said that the DVSA should be encouraging examiners to get vaccinated and be educating them on the low risks associated with the virus. He also said that information about this policy was not made available.

Agency response: The DVSA said it had a duty of care to its staff and was following Government advice. It was content that Mr AB's test had been conducted properly.

ICA outcome: The ICA said that issues of Agency/Government policy were outside his remit. He also could not adjudicate on legal questions. However, his lay view was that the provision of volunteer examiners for those who had good reason not to wear a mask represented a reasonable adjustment. If Mr AB felt otherwise, he would need to pursue the matter by other means. The ICA was also content that sufficient information was provided on gov.uk. However, the ICA was critical of the DVSA's correspondence handling which was poor even given the impact of the pandemic. He therefore part upheld the complaint but felt that sufficient redress was afforded by the findings of his independent report.

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Requirement for face mask

Complaint: Mr AB complained that the DVSA had refused to allow him to take a practical driving test wearing a face visor. He said the mask supplied had caused his glasses to steam up and contributed to the serious fault that resulted in the test been halted. He asked for a free re-test.

Agency response: The DVSA said that the purpose of visors was as PPE. It said the Government's view was that visors did not constitute face protection as they did not stop particles from being passed. The Agency had declined the request for a free re-test.

ICA outcome: The ICA said he was surprised that the DVSA had refused a free re-test. It was clear that Mr AB had had no intention of breaking the rules on face coverings and most people would not know, without ploughing through gov.uk, that the Government did not regard a visor as a face covering. The costs of an ICA review would be vastly greater than a free re-test. ICA recommended that Mr AB be granted the free re-test, and that the Agency give consideration to improving the information on gov.uk to make clear that face masks must be worn on practical tests (visors would be permissible in addition). He also said that the information for candidates with glasses should be improved so that they were advised to practise in a mask before taking their test.

(v): OTHER MATTERS

The DVSA's portal for checking MOT status does not cover MOT passes in Northern Ireland

Complaint: Mr AB complained that the DVSA's online portal for checking the MOT status of a vehicle (www.check-mot.service.gov.uk) did not include MOTs conducted in Northern Ireland. Although his car had passed an MOT in Northern Ireland, the DVSA's portal served a page with a red notification stating that the MOT had expired. Mr AB requested that the portal be updated so as not to provide false information.

Agency response: The DVSA explained that limitations on the system meant that it could only handle data from England, Scotland and Wales. It regarded the notes on the website saying this as sufficient. It referred Mr AB to the service run by its sister organisation, the DVLA (https://vehicleenquiry.service.gov.uk), that did draw from Northern Ireland data.

ICA outcome: The ICA was not sure why two separate portals were necessary but he noted that the DVLA service did indeed include Northern Ireland data. However, he sympathised with Mr AB's point. Although the webpage hosting the DVSA portal did refer to the limitation on the information it could provide, those cautionary words were not evident on the portal itself nor on the page served by the portal after the registration of the vehicle had been entered. The ICA could therefore see how the vehicle could be misrepresented in the way that Mr AB had described. He recommended that the DVSA take steps to resolve this, at least by flagging clearly at every stage that Northern Ireland data was not included. He also noted that the DVSA had referred to legislation as a ground for not including Northern Ireland data. On reflection, the Agency agreed with the ICA that this was not completely relevant to Mr AB's complaint, and it therefore apologised for the reference.

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A complaint about failings in the prosecution of an enforcement case

Complaint: Mr AB had long-standing concerns about the activities of individuals operating HGVs from a premises in his town. He alleged criminal activity and other nuisance behaviour involving the use of the vehicles. In particular, he stated that the vehicles were being used for commercial purposes without the requisite operator's licences contrary to the Goods Vehicles (Licensing of Operators) Act 1995 (as amended) – the 1995 Act.

Agency response: The DVSA told Mr AB that aspects of his complaint involved matters over which it had no jurisdiction, including that vehicles were untaxed. It looked into his complaint of a breach of the 1995 Act and impounded one of the vehicles on the basis that it was being used for commercial purposes. However, at a Traffic Commissioner hearing the impounding was quashed due to the lack of evidence to contradict the account of the owner of the HGV as to its use on the day. Mr AB complained to the DVSA that it had not briefed its prosecutor properly and that substantial evidence of commercial activity had not been taken into account.

ICA outcome: The ICA was clear that his jurisdiction did not extend to the DVSA's competence in investigating and acting on intelligence of unlawful vehicle use. The ICA noted that the intelligence provided by Mr AB had been referred to an enforcement team and that surveillance and impounding had followed. The ICA acknowledged Mr AB's understandable impatience but emphasised that surveillance, of its nature, was a time-consuming activity, and that the DVSA's intelligence teams should be credited with an understanding of the quality of evidence necessary to ensure impounding. Mr AB was simply not entitled to the level of information and feedback that he expected in relation to the intelligence he had provided. The ICA did not uphold the complaint.

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Difficulties of completing drink driving rehabilitation course during the pandemic #1

Complaint: Mr AB complained that he was unable to take his drink driving rehabilitation (DDR) course and thus reduce the length of his disqualification following a conviction for drink-driving.

Agency response: The DVSA said that Ministers had agreed that only those who had commenced a DDR course in person could complete the course online. The Agency said that the MoJ advice was that any extension of the period within which a DDR course could reduce a disqualification period would require a change in legislation.

ICA outcome: The ICA said that it was clear that the decision relating to online completion of DDR courses was a Ministerial one and that he had no jurisdiction. His lay opinion was that any change in the period within which a DDR course was undertaken would require a change in the law. In these circumstances, while the ICA sympathised with Mr AB and others in the same position, he could discern no maladministration on the part of the DVSA and could not uphold the complaint.

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Inability to take drink driving rehabilitation course because of the pandemic #2

Complaint: Mrs AB, who lives in a remote rural area of the UK, complained that she was unable to complete a three-day drink drive rehabilitation course as a result of the DVSA's response to pandemic. This meant that the opportunity of reducing her driving ban by 25 per cent to 12 months was lost. Her communications with DDR providers in her area reinforced the view that the DVSA was presiding over an inequitable framework that reduced access to sentence reduction through DDR attendance for people in her circumstances.

Agency response: The DVSA explained its post-lockdown arrangements and advised Mrs AB to contact her providers without delay. DDR was designed to have a group rehabilitative element and therefore it had been decided that physical attendance in the classroom was essential. However, for people who had attended day 1 in the classroom, it was open to them to complete days 2 and 3 remotely.

ICA outcome: The ICA set out the DVSA's response to the pandemic. Ministers had not given approval for complete online attendance at DDR courses until after the deadline that applied to Mrs AB had passed. The ICA noted that Mrs AB had a clear period immediately after her sentencing to undertake DDR but that the pandemic had later prevented her. He did not see her difficulties as arising from failings in customer service, but rather from decision-making at Ministerial level that reflected views of the many stakeholders both nationally and in the devolved administrations and in the judiciary.

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Questions about neighbouring MOT test centre

Complaint: Mrs AB complained that the MOT testing centre adjacent to her property had improperly gained a licence while knowingly using her land. She said the licence should be withdrawn.

Agency response: The DVSA said the operator had submitted all the appropriate documentation including a letter from a solicitor. An inspection had also found that the centre could operate properly. If Mrs AB had concerns about parking these should be addressed to the local authority.

ICA outcome: The ICA said he appreciated Mrs AB's strength of feeling but he could identify no maladministration by the DVSA. The licence had been properly granted and there were no grounds for it to be withdrawn. Nor was there any evidence of malpractice as Mrs AB had alleged. He did not uphold the complaint.

****

Policy dispute wrongly channelled through complaints process

Complaint: Mr AB had written to the Secretary of State criticising the questions in the driving theory test as an exam designed to fail candidates and raise money. In particular, he said that questions about towing caravans were irrelevant as he had no intention of owning a caravan and nor did many other drivers.

Agency response: The DVSA said that the questions reflected all the entitlements associated with a category B licence. To have separate tests for those towing caravans would add to the cost and inconvenience for drivers.

ICA outcome: The ICA said he did not believe Mr AB's correspondence should have been treated as a 'complaint'. It clearly engaged with Government and DVSA policy and legislation, and it was surprising that Mr AB had been channelled down the complaints route. However, while the ICA felt the matter was outside his terms of reference, he could identify no maladministration in the arguments advanced by the DVSA in support of the current arrangements for theory tests.

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Damage to vehicle

Complaint: Mr AB's classic vehicle had been damaged by a member of DVSA staff carrying out his duties. Mr AB arranged for the vehicle to have a complete re-spray in the knowledge that his insurers would not meet the costs, and without seeing the vehicle or consulting the DVSA. He was concerned that the vehicle should not present with half-and-half paintwork.

Agency response: The DVSA said it would meet Mr AB's insured losses including his insurance excess but was not responsible for the complete re-spray. It pointed out that the quotation Mr AB had received from a specialist body shop was for the new paint to be blended in with the old.

ICA outcome: The ICA said Mr AB had arranged the total re-spray at his own risk. He did not think it was maladministrative for the DVSA to decline to meet the costs when it had had no opportunity to see if the paintwork blended in or not. If Mr AB took a different view, this would be for the courts (which is really how this matter should have been handled at the outset since it represented a claim against the DVSA's insurers). However, the ICA was critical of the DVSA's handling. The stage 1 response was very poor – making incorrect assumptions about the course of events. The stage 2 reply was also poor and appeared (wrongly) to have come from the same member of staff as at stage 1. Only when the ICA completed his report would Mr AB know the true circumstances. The ICA included an apology from the DVSA in his report, and concluded that sufficient redress for the correspondence handling flaws was provided by the results of his independent review.

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The investigation of the most serious complaints #1

Complaint: Ms AB complained about the conduct of her daughter's practical driving test. She accused the examiner of racism and said that the DVSA had not conducted a proper investigation since no one had spoken to her daughter.

Agency response: The DVSA said that it was confident the test had been properly conducted and it denied any improper discrimination on the part of the examiner. No previous allegations of this kind had been made against her. The DVSA had explained the special arrangements for ending tests early during the Covid-19 pandemic.

ICA outcome: The ICA said that he could not adjudicate upon the factual aspects of Ms AB's complaint. But he agreed that the DVSA's systems were not best suited to investigating serious complaints such as alleged racism. He recommended that the DVSA consider if there were changes it needed to make to its processes. The ICA was also critical (not for the first time) of the published statistics on test outcomes, given that so few candidates provide ethnicity data. He repeated a recommendation that the DVSA consider how its statistics could be made more robust.

****

The investigation of the most serious complaints #2

Complaint: Ms AB complained about the actions and demeanour of staff employed by Pearson VUE at her theory test. She accused them of racist and disablist discrimination and asked for a free re-test or refund.

Agency response: The DVSA said that Ms AB had arrived late for her theory test and could not be accommodated. She had then caused a disturbance such that the police were called. The Agency and Pearson VUE both said that discriminatory conduct was not permitted.

ICA outcome: The ICA could not adjudicate upon the factual differences between Ms AB and the DVSA and its contractor, and did not have grounds to recommend a free re-test or refund. However, he again noted that the Agency did not have bespoke arrangements for investigating the most serious complaints. Instead, it relied upon general statements that discriminatory conduct was not allowed. He recommended that the DVSA consider what other arrangements could be put in place.

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Nuisance from learner drivers

Complaint: Mr AB complained about the over-use of a residential street by learner drivers including the drivers of HGVs. He said this caused air pollution, noise and other discomforts. He asked the DVSA to instruct ADIs not to use the road.

Agency response: The DVSA had placed a poster in the driving test centre to advise ADIs not to use the road in question unnecessarily. It had also raised the issue in the

LDTM's meeting with local ADIs. However, the DVSA said that it could not instruct ADIs where to take their pupils on a public road.

ICA outcome: The ICA said that, while deprecating some of the language used by Mr AB, he sympathised with him and local residents. But the street was a public road to which all road users had access. Nor could he instruct the LDTM which test routes to use. The ICA was content that the DVSA had done all it could do and its correspondence with Mr AB had been appropriate. Indeed, if anything, the ICA felt the Agency should have been more robust in challenging some of Mr AB's language. He did not uphold the complaint.

****

Negated test pass

Complaint: Ms AB complained that the DVSA had negated her driving test pass in 2015 but she had only found out when trying to renew her photo licence. She was adamant that she had personally taken her theory and practical tests in 2012 and asked for the DVSA's evidence in support of its decision to negate the test pass.

Agency response: The DVSA said that all the paperwork had been destroyed in accordance with its retention policies. It and the DVLA had written to Ms AB in 2015 to tell her that her licence was revoked at the address then on the DVLA's records. Ms AB would now have to re-sit her theory and practical tests to be granted a full licence.

ICA outcome: The ICA said this was an unfortunate matter but there had been no maladministration. The DVSA could not now say why it had negated Ms AB's test pass but the destruction of the paperwork was in line with its retention policy over which he had no jurisdiction. Nor had the Agency been in error in writing to the address then on record. The ICA could not uphold the complaint but criticised aspects of the complaint handling. The ICA felt that the complaint could have been escalated to stage 2 more quickly as no new issues had been raised by Ms AB. He also said that it was only following Ms AB's subject access request that she was given a fully accurate account of the retention policies.

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Application of European Directive

Complaint: Mr AB, the owner of a driver training company in Northern Ireland, complained that the DVSA and its sister organisation in NI, the DVA, had misinterpreted the European Union CPC Directive of 2018 regarding the prohibition of repeat CPC training courses and had ‘gold-plated’ the Directive. Mr AB also said they had failed to carry out consultation as required and/or failed to act in accordance with the outcome of the consultation, failed to conduct an impact assessment, and imposed unnecessarily onerous requirements on CPC trainers. He further complained about the Joint Approvals Unit for Periodic Training (JAUPT) in respect of administrative errors and breaches of the General Data Protection Regulations (GDPR). He also accused JAUPT of harassment.

Agency response: The DVSA had acknowledged some administrative failures at JAUPT. It said it had not gold plated the Directive but was entitled to ensure that drivers undergoing CPC did not undertake unnecessarily repetitive training and had the opportunity to expand their skills.

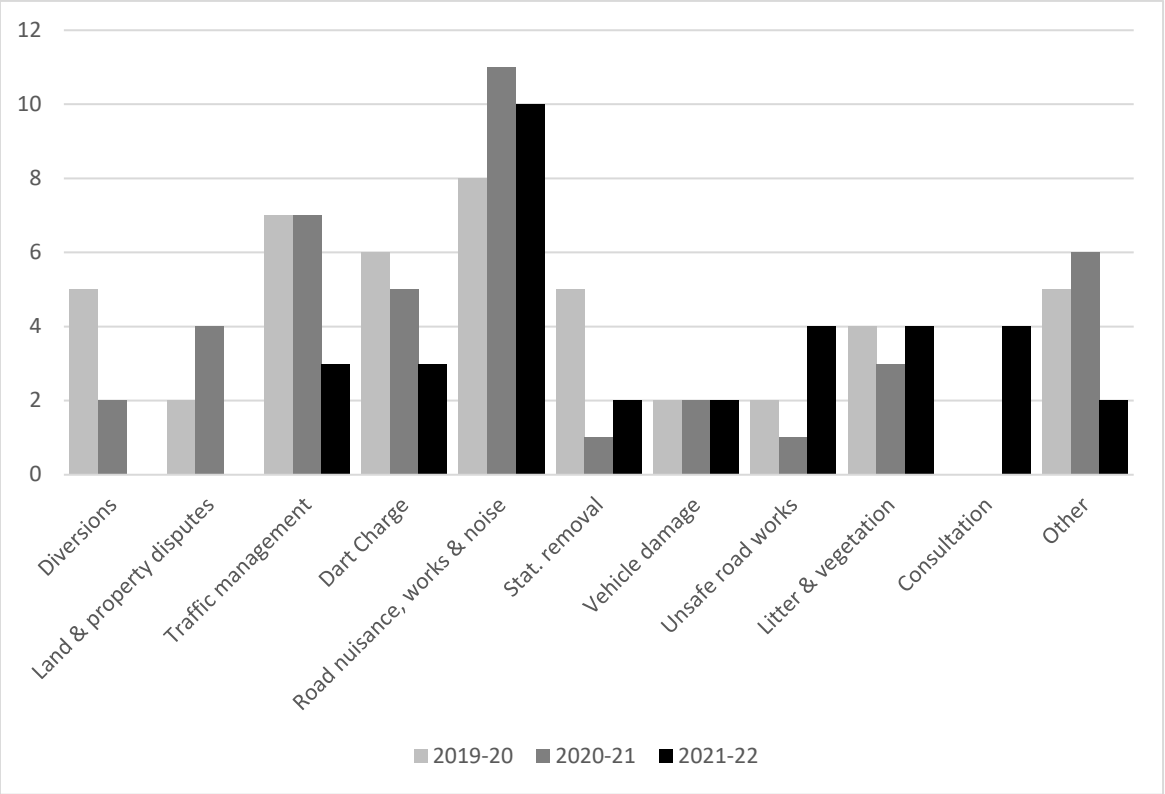
ICA outcome: The ICA said it was clear there had been problems with JAUPT but apologies had been offered and remedial action taken. He was not a lawyer but, in his view, the DVSA had not gold plated the EU Directive and was entitled not to have conducted a full impact assessment. He could not identify actions by JAUPT amounting to harassment.

4. National Highways casework

Incoming cases

4.1 The 34 complaints we received from National Highways represented a reduction in numbers of about 25 per cent from 2020-21. Figure 4.1 charts incoming cases over the last three years against the most frequent complaint subjects. No clear pattern or trend is evident.

Figure 4.1: Incoming National Highways cases, 2019-2022



4.2 As the case histories below also demonstrate, complaints against National Highways cover a wide range of different issues with few discernible patterns or trends. Given the recovery of traffic volumes after the worst of the pandemic, we believe the relatively small number of complaints that come for ICA review reflects well upon the company.

4.3 Having said that, we have felt that some cases could have been resolved without our involvement had a more proactive approach been taken. We are also uncertain how familiar some National Highways staff are with the ICA process.

4.4 As lay people, with no expert knowledge of traffic planning, prescribed consultation mechanisms, or road engineering and maintenance, we are simply not able to adjudicate upon complaints that are highly technical in nature. (There are examples of such complaints in the case studies that follow.) And, as with all DfT bodies, we have no authority to mandate National Highways' spending priorities, an issue that often arises in complaints about motorway noise and other nuisance.

Cases we completed

4.5 We upheld 17 of the 32 National Highways' cases we completed in the year, to some extent (53 per cent). The numbers upheld to some extent against complaint areas are as follows:

- Litter and vegetation: 3
- Unsafe roadworks: 3
- Vehicle damage: 3
- Infrastructure: 2
- Statutory removal & TO conduct: 2
- Traffic management: 1
- Road nuisance, noise and works: 1
- Consultation: 1
- Other (complaint handling): 1

CASES

Three Dart Charge complaints

Complaint 1: Mr AB wished to add his bank account to the Dart Charge Pre-Pay Account for his vehicle but was unable to do so, he assumed because his Dart Charge account was linked to his business. In fact, it was linked to his partner's bank account meaning that payments for crossings were debited against her bank balance. On providing proof that he was the registered keeper, Dart Charge removed Mr AB's partner's account and gave him information about how to register a different account to the Pre-Pay Account. Somehow Mr AB and Dart Charge were at cross purposes. Mr AB expected that payment would be debited from his Dart Charge account when he made crossings, but it was not because no account was linked. After the payment window he chased this up and paid the £5 for two crossings but was informed in standard terms that he would need to make representations on receipt of the penalty charge notice (PCN). Mr AB, whose car was registered to a relative's address, did not do so, instead digging in and raising complaints about Dart Charge's customer service and policies. Several months later, debt collection agents attempted to conclude the enforcement process, directed to the relative's address to which the car was registered.

National Highways response: Dart Charge had repeatedly stated that a payment received outside of the prescribed window could not be offset against the charge. Mr AB would have to wait for the PCN and appeal in the prescribed way. When Mr AB raised complaints following the visit of the debt collection agents, Dart Charge swiftly cancelled the enforcement. However, Mr AB continued to complain, arguing that Dart Charge's communications had been inaccurate and confusing and that there had always been a provision to receive late payment for first-time offenders: why had this not automatically kicked in when he had paid shortly after the crossings in question?

ICA outcome: The ICA noted that the root cause of the difficulty had been identified by Dart Charge in its dealings with Mr AB. After his partner's bank account had been removed from the Dart Charge Pre-Pay Account, payment for future crossings would need to be made through another account but none was arranged. This triggered the automated enforcement procedure. The ICA noted Mr AB's understandable wish to close the enforcements down outside of this procedure as he had paid for the crossings, albeit

belatedly. However, the ICA recognised that the Dart Charge agents had no authority to close down an enforcement that had already been triggered and credit the £5 payment he had made against the crossings in question. The ICA noted that this was a high-volume operation with over 2 million PCNs issued in the UK alone in a normal year against a backdrop of 50 million crossings. He agreed that Dart Charge had, through its responses in the early stages, given Mr AB the impression that matters would be progressed outside of the prescribed route. Instead, they were escalated to Order of Recovery stage. The ICA balanced this finding with a recognition that Mr AB had been told repeatedly that the only way to get the PCNs cancelled was through the prescribed representation route. The 'first offender' mechanism that Mr AB had argued should have kicked in when he belatedly made the £5 payment was for the PCN to be paid at the normal road user charge rate. The ICA did not uphold Mr AB's complaint of unremedied injustice. However, he did recommend that National Highways should apologise for not reverting to Mr AB in the way its correspondence had suggested it would do.

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Complaint 2: Mr AB complained that he was unable to add a vehicle to his Dart Charge Pre-Pay Account. He blamed Dart Charge for wrongly allowing his registration to be added to the account of another customer. He asked for compensation for his time and for an *ex gratia* payment.

National Highways response: National Highways said that the registration had been added to another account by customer error. It had explained why in such circumstances it asked to see a copy of the V5C to transfer the account, but Mr AB said he could not locate the logbook. It also said that Mr AB could continue to pay for crossings manually. In the event, once the mistake was identified, Mr AB was able to have the vehicle added to his account without the need for additional documentation.

ICA outcome: The ICA said that Mr AB had suffered some inconvenience, and it was understandable that he did not want the small extra cost and bother of paying for crossings manually. However, while the ICA could not comment on National Highways' policies, it was clear why they required evidence before transferring vehicles from one Pre-Pay Account to another, but did not require such evidence upfront (as this could prevent customers adding family members etc to their account). As the whole matter had been sorted within a fortnight, and the error had not been the fault of Dart Charge, the ICA did not feel that a consolatory payment was due. He also advised Mr AB that it was not normal practice to pay customers for their time in pursuing grievances against public bodies, quoting from the DfT *Charter* to this effect.

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Complaint 3: Mrs AB disposed of her car but did not follow through on the lack of confirmation of disposal from the DVLA. She therefore did not know that the transaction had not been processed and she remained registered keeper. In the months following the disposal, the car accrued seven penalty charge notices following unpaid Dart Charge crossings. These were pursued to the address that the car was registered to: Mrs AB's former home. She remained unaware. Four months later, debt collectors traced and made contact with her and, over the following weeks, acrimonious exchanges followed. In this time Mrs AB complained that National Highways had failed to respond to clear evidence that she had not been the keeper of the car at the time of the crossings. She

threatened National Highways with action in the small claims court for not terminating the enforcement sooner and pressed the company to pay her four figure legal charges.

National Highways response: The matter had been escalated in line with National Highways' standard policy to its debt collection agency, CDER, who eventually traced Mrs AB at her new address. The requisite evidence to show that she had not been keeper at the time of the crossings was requested but instead National Highways received a solicitor's letter. It looked further into Mrs AB's case and, three weeks later, decided to terminate the enforcement. It declined to pay compensation on the grounds that the requisite evidence had not been provided and the enforcement had been correctly targeted and escalated.

ICA outcome: The ICA agreed with Dart Charge that the principal cause of Mrs AB's difficulties had been the fact that she remained the registered keeper of a car that she had sold. The ICA noted the DVLA advice that former keepers should chase up the lack of acknowledgement of disposal of a vehicle within four weeks of disposal or run the risk of accruing liabilities from others' use of the vehicle. Had Mrs AB done this, even given the slowdown in document processing by the DVLA, the enforcements could have been redirected to the correct address and Mrs AB's appeal would have avoided bailiff action. The ICA therefore disagreed with Mrs AB that any liability for her decision to instruct solicitors should reside with the taxpayer/National Highways. She had been told what she needed to produce but instead had unnecessarily instructed lawyers and accrued further costs. He did not uphold the complaint.

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Graffiti on the motorway network

Complaint: Mr AB complained about graffiti on motorway bridges and acoustic fences. He said that National Highways did not take the problem seriously.

National Highways response: National Highways said that it shared Mr AB's concern about graffiti and was doing its best to tackle the issue. A routine programme of graffiti removal was in place. However, 24-hour surveillance was not feasible, nor was it possible to guarantee that would-be graffiti 'artists' could be prevented from accessing the motorway.

ICA outcome: The ICA said that he too shared Mr AB's concerns about graffiti on the motorway network which was unsightly and a possible distraction for drivers. The perpetrators were also putting themselves in danger. He also commended Mr AB's helpful use of the 'broken windows' metaphor from criminological research (which also applies to litter removal): that any failure to make good the damage leads to further vandalism. However, he could not mandate how frequently National Highways should remove graffiti or the methods used. For these reasons, in the absence of maladministration, he could not uphold the complaint.

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Traffic management

Complaint: Mr AB complained about traffic management on a motorway. He said the speed limit had been introduced but was being ignored by drivers as there were no roadworks in place and no workers on the carriageway.

National Highways response: National Highways said that traffic management had to be put in place before repairs took place to ensure the safety of the workforce. Even if drivers were unhappy with a speed restriction, they still had to obey the law. The company had apologised for a delay in answering Mr AB's correspondence.

ICA outcome: The ICA said that in general he could identify no maladministration in National Highways' approach. The apology for the delay in replying was sufficient redress. It was also apparent that traffic management had to be put in place before roadworks started. However, the ICA also found an internal National Highways email indicating that at least two members of staff felt that the traffic management on this occasion had been introduced too early – causing unnecessary restrictions to road users. This had not formed part of the stage 2 response. The ICA therefore upheld the complaint in part. He did not need to make a formal recommendation as National Highways said at draft stage that it would be considering how to prevent similar events in the future. However, in further correspondence Mr AB asked the ICA to issue guidance to National Highways on the use and timing of signage at night on motorways. The ICA explained that he did not have the authority to issue such guidance, but by copy of the exchanges National Highways would know of the ICA's views and that the ICA report could have been more emphatic in endorsing what National Highways had said about trying to prevent such events in the future. Mr AB was content that this action resolved his complaint.

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Promises to unblock drains not kept

Complaint: Ms AB complained about water ingress to her property as a result of blocked drains on a trunk road. She said that promises made by National Highways to remedy the problem had not been met.

National Highways response: National Highways had carried out inspections, and some drainage work, but acknowledged that there was a problem with the height of the carriageway as it passed Ms AB's property, and that some drains were still blocked. It said that work on these drains required coordination with Network Rail as the drains adjoined a level crossing.

ICA outcome: The ICA said he sympathised with Ms AB. Although he could not mandate how National Highways used its resources, and it was not maladministrative to prioritise road schemes that affected public safety, it was poor customer service to offer assistance and not to provide it. The ICA was also critical of the record keeping of the relevant contractor and recommended that a copy of his report be shared with the company. He also encouraged National Highways to re-double its communications with Network Rail.

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Methodology to justify trunk road expansion

Complaint: Mr AB complained about the methodology used by National Highways in support of a road scheme. He said that the methodology was flawed, and that National Highways had failed to answer his questions showing it to be in error.

National Highways response: National Highways said that it was content that its methodology to calculate the Benefit to Cost Ratio (BCR) was sound, and that Mr AB's alternative approach was not consistent with the guidance to which National Highways worked.

ICA outcome: The ICA said that he was not qualified to adjudicate on the technical aspects of Mr AB's complaint. This was true of many Highways cases. However, he was content that National Highways had engaged repeatedly with Mr AB both on this issue and on many others over a long period. The answers Mr AB had received may not have satisfied him, but the level and quality of engagement had been very good. Although the ICA could not uphold the complaint as he was not qualified to do so, he recommended that a copy of his report be shared with the chair and acting chief executive of National Highways as an additional safeguard that the methodology in support of a road scheme costing hundreds of millions of pounds and intruding into one of the most scenic parts of England was properly justified on its merits.

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Delay on the motorway

Complaint: Mr AB complained about traffic management on a motorway following an accident. He said that he and others were caught up in a queue of traffic for many hours and asked how the elderly and disabled were expected to cope without access to food and toilet facilities. He also said that National Highways had failed to answer his questions.

National Highways response: National Highways said that the police had had primacy for traffic management and that toilet/food facilities were the responsibility of the relevant local authority. National Highways had acknowledged an error in the first stage 1 reply which included information relating to a complaint from a different complainant entirely.

ICA outcome: The ICA said that anyone caught in a long delay would sympathise with Mr AB. But while the stage 1 reply was short and inaccurate, happily this had largely been made good at stage 2. The ICA was also able to include in his report information about contingency planning that arguably could also have been included at stage 2. The ICA could reach no views on the technical aspects of traffic management but was content that National Highways had been correct to say that the police had primacy. He also included details of the difficulties faced in reversing the traffic flow.

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Noise from a road improvement scheme

Complaint: Mr AB complained about noise from a major road scheme close to his home. He said that National Highways had been unable to identify the cause. The disruption to his sleep had gone on for over a year.

National Highways response: National Highways said that two face-to-face meetings had been held and a member of the contractor's staff had contacted Mr AB on a weekly basis. Although it was assumed that the initial noise reports related to piling and the removal of barriers, the company could not identify the cause of the continuing noise. A noise monitor had been installed in Mr AB's garden.

ICA outcome: The ICA listened to recordings of the noise that Mr AB had supplied. He said he could not say what had caused the noise, but it was not surprising that Mr AB's sleep had been disturbed. However, the ICA could not conduct a technical enquiry and could focus solely on the level of engagement shown by National Highways and its contractor. The ICA judged this to have been of a very high standard indeed. In his report, the ICA endeavoured to put Mr AB's voice at its centre. However, he could not resolve the fundamental problem or uphold the complaint.

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A customer challenging National Highways repeatedly about overgrown vegetation and detritus on its network

Complaint: Mr AB complained that National Highways had failed to remove litter and detritus, including overgrown vegetation, from sections of its motorway network. He was also critical of the company for not responding to his communications and for, in his eyes, failing to manage its contractors. In his view, National Highways had failed to deliver on undertakings to improve the appearance and safety of its network by keeping on top of litter and vegetation removal.

National Highways response: There were delays in National Highways' response to Mr AB's initial reports of litter clearance. The company pinpointed areas of concern to Mr AB that were the responsibility of the local authority. After Mr AB complained again, the area was inspected but not judged to be in a state requiring clearance. In its second stage response, National Highways detailed its maintenance programme in the area and other initiatives, explaining that poor weather had necessitated prioritising of safety critical repair work. In further comments to the ICA, National Highways affirmed its commitment to removing litter. For reasons of safety and economy, as well as to minimise disruption, litter picking is usually combined with other maintenance. National Highways itself undertook safety inspections. On one section of the network alone it had collected 23,000 bags of litter the previous year.

ICA outcome: The ICA was appreciative of efforts to resolve Mr AB's earlier complaint that had included a tour of the network with National Highways staff and its contractor. On this occasion, Mr AB's initial correspondence was not responded to which meant he had to chase two months later. The ICA was pleased to see an apology and expedited handling after this as well as phone contact from the route manager. The second stage response was of a good quality, and the undertaking that the team would respond separately to additional concerns raised by Mr AB was delivered on positively. The ICA partially upheld the complaint and recommended that National Highways apologise for the shortcomings identified.

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A shocked driver, post-motorway collision, who assumed Traffic Officers were police officers who would help her make an insurance claim

Complaint: A lorry collided with Mrs AB's car on the motorway and she dialled 999. She assumed that the officers who turned up in uniform were the police. In fact (in line with standard procedures agreed between the police and National Highways in vehicular collisions not involving injury or criminality), they were National Highways Traffic Officers (often abbreviated to HETOs). Mrs AB was told by the lorry driver that it had been his fault. A HETO had said words to the effect that she should not worry because liability had been admitted and this would be logged. Mrs AB was then told, when she tried to chase up a copy of the record, that HETOs have no part to play in matters of driver liability for accidents on the network and National Highways could not provide a report in support of Mrs AB's insurance claim. Mrs AB complained that the identity of the HETOs had not been made clear at the scene and the information they had given her about the other driver was not sufficiently clear or legible to assist in the pursuit of an insurance claim. It had taken months to identify the lorry driver and the haulage company. Mrs AB and her husband asked that National Highways ensure that its officers are fully supportive to drivers who find themselves in the unenviable position of having suffered a collision. Procedures should include clear identification of their role and names, and provide a systematic and consistent approach to providing the necessary information to drivers on the scene.

National Highways response: National Highways explained that it had no role in assisting drivers in establishing liability and had not logged comments related to blame or culpability. The HETO said that he had merely reflected back to the customer the encouraging fact that liability had been admitted to her by the lorry driver. When she complained again several months later, National Highways explained that as a general rule the police only responded to and attended road traffic collisions where injuries had occurred. Other collisions were attended by HETOs. The incident log was provided. Mrs AB remained dissatisfied, highlighting the unclear writing on the scrap of paper she been given with the lorry driver's details. National Highways' acting regional director told Mrs AB that the HETOs' uniforms and vehicle had "Traffic Officer" clearly written on them, but he accepted that some customers were unaware of their role. The necessary information had been imparted and the correct procedures had been followed. However, the HETOs had been asked to use the accident/exchange cards where possible. If a piece of paper was necessary, they should ensure that the customer understood it as well as providing guidance on how to take pictures of the incident and any third-party registration marks to support their claim.

ICA outcome: The ICA accepted that the HETOs had fulfilled their primary role of ensuring the safety of the scene. The reason the complaint had progressed to his stage was that Mrs AB and her husband did not accept that any meaningful changes to practice had occurred. The ICA noted that the Acting Director's stage 2 response had been rather hedged. On one hand, he was saying that the staff had done everything correctly. On the other, he seemed to be apologising for a lack of clarity and had put in place remedial measures. The ICA asked National Highways to be more specific about the latter. In response, National Highways undertook to feed back to all heads of service delivery at the next forum the recommendation that HETOs ensure that customers at incident scenes know who they are and are clear about the content and status of information they are given.

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Alleged breach of Nolan Principles

Complaint: Mr AB complained that those responsible for planning a major road scheme had acted in breach of the Nolan Principles and that this demonstrated ineffective governance by Highways England. He drew attention in particular to changes in the Benefit to Cost Ratios that had been published.

National Highways response: National Highways denied that the team had acted in breach of the Nolan Principles or that governance was ineffective. It said that changes to the BCR during the course of planning a road scheme were an anticipated part of the methodology as greater certainty was introduced.

ICA outcome: The ICA said that, like many Highways complaints, he could not judge the technical aspects of road schemes, or the methodology used to justify them. He said that Mr AB's charges were very serious ones: amounting to the claim that National Highways staff had deliberately set out to deceive local residents. But beyond Mr AB's assertion he could see no evidence of this. He quoted from the relevant guidance that demonstrated that changes to the BCR were to be expected. He also said the fact that these had been reported demonstrated that the team had acted openly and honestly. However, to ensure that governance of the proposed scheme remained robust, he recommended that a copy of his report be shared with the chair and chief executive of National Highways.

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Uncertain handling of request for information

Complaint: Mr AB complained that when he made a FOI request to Dart Charge the reply had been channelled through the complaints system. He said he had not made a complaint.

National Highways response: National Highways said that Mr AB's request had included personal details and therefore triggered one of the exclusions under the FOI Act. In addition, any reply under FOI would be public and therefore against Mr AB's interests. In practice, a further response had been issued under FOI.

ICA outcome: The ICA said that his lay judgment was that Mr AB's information request was hybrid in nature. It did include some matters personal to him, but also invoked issues of policy. The ICA said that in these circumstances, while he had no doubt that the person first replying had done so with good intentions, it was a mistake to invoke the complaints procedure. Indeed, it should have been treated as mainstream business-as-usual between a public body and a citizen. Moreover, the fact that a FOI request could subsequently be processed rather undermined National Highways' argument at stage 1 and 2 that the initial answer was 'entirely appropriate'. However, the ICA concluded that the maladministration was at level 1 on the PHSO scale, and no consolatory payment was due. He therefore upheld the complaint but made no recommendations, judging that sufficient redress was provided by the findings of his review.

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An infuriatingly timed traffic light sequence creating major tailbacks

Complaint: Mr AB, a regular user of a specific motorway roundabout, complained repeatedly that the traffic light sequencing on the approach road allowed only two or three cars through at a time. This resulted in significant delays on the motorway exit slip road. He also complained that, despite raising the matter repeatedly, and being told the matter was in hand, the problem kept repeating.

National Highways response: Confusion appeared to reign within National Highways from the outset as to which department was in charge of the lights and responsible for the complaint. The complaint was initially handled by the Smart Motorway Project Team who repeatedly promised remedial work over the following months only for nothing to happen. It would transpire that the lights were not actually their responsibility at all. However, works undertaken at the motorway junction nearby had necessitated the sequence changing. This work was completed around the time that the ICA's review was concluded. National Highways outlined other measures it was taking to improve the junction.

ICA outcome: The ICA upheld the complaint as Mr AB's experience had been beset with confusion and undertakings to remedy the situation that had not materialised on the ground. He recommended that National Highways should apologise and ensure that communications with customers going forwards were better coordinated. He asked National Highways to provide specific information about the source and solution to the problem. It transpired that the sequencing that had caused the tailbacks had been an unintended side-effect of the lights reverting to automatic operation after a period of work on the Smart Motorway scheme. Various measures had been applied to ensure temporary and longer-lasting efficient operation of the lights.

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Delay in carrying out repair to carriageway

Complaint: Mr AB complained that a promised repair to a motorway slip road had not been carried out in the time promised. He further complained about the quality of the repair. Mr AB also accused National Highways of breaching his data rights when phoning him out of the blue from a withheld number.

National Highways response: National Highways accepted that the repair had not been carried out as promised. It also accepted that some of the information it had provided had been incorrect. It denied breaching Mr AB's privacy rights.

ICA outcome: The ICA said that it was disappointing that a mainstream activity like a driver reporting a pothole had escalated all the way to an ICA review. However, Mr AB was quite right to say that the repair had not been carried out as promised, and that other information had been incorrect. The ICA recommended a further review of the pothole and damaged kerb to ensure the repair was robust. He also said that National Highways should write to Mr AB to explain why the initial timetable was missed and to share photographs of the site that Mr AB had said were fictitious. He could not adjudicate upon Data Protection Act issues, but he felt that the member of staff had acted with good intentions and National Highways was not debarred from using withheld numbers (the ban on which applies to calls for marketing purposes).

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Request for information from insurance agent

Complaint: Mr AB complained that National Highways would not release information from its log in relation to a Green Claim[12] where he was representing the defendant (or his insurance company). He said that National Highways possessed the information and should release it.

National Highways response: National Highways said that Mr AB should address his enquiries to the law firm representing the contractor who would be carrying out the repairs to the road network. The company said it did not have detailed information about the repairs or their cost.

ICA outcome: The ICA had obtained the advice of the National Highways FOI team. Their view was that the material was disclosable (and the ICA noted that analogous information had been disclosed before). National Highways may not have been in possession of the detail, and their policy position was that Green Claims were a matter for its contractor's lawyers. The company was also fearful that Mr AB was trying to obtain information by the 'back door'. However, the ICA said that Mr AB had not asked for detailed information about costs. He had simply asked when the repairs were carried out and the time of the first cone down and the last cone up. This was information in National Highways' possession and came within the terms of the FOI Act and should be released. The ICA recommended accordingly. Although this was a case at the very margins of the ICA's jurisdiction, he had decided to pursue his review as the referral had been made and to assist both parties. However, he did not want to comment on other matters or risk becoming involved vicariously in any dispute between Mr AB and those he represented and the lawyers for National Highways' contractor.

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When a vehicle barrier is inappropriate

Complaint: Ms AB complained that National Highways would not install a vehicle barrier between a trunk road and her company's yard. She said that vehicles involved in crashes were a threat to the company's property and staff.

National Highways response: National Highways said that it had engaged closely with Ms AB and her company and had tried to identify the root cause of the accidents. Drainage works had been carried out and new signage installed. It said a vehicle restraint system was not appropriate as the verge was too narrow and would not allow for the requisite 1.2 metre gap. This could have meant vehicles being diverted back into the carriageway creating a further road safety hazard.

ICA outcome: The ICA said he could not dictate where National Highways should install barriers as this was the result of professional judgment and he was a layperson with no specialist knowledge of road engineering. However, he could identify no maladministration in National Highways' decision which was in line with its guidance. He also felt the company had engaged well (both face to face and in correspondence) with Ms AB and her

[12] Claims where National Highways seeks to recover monies from a third party in respect of damage caused to the Strategic Road Network (SRN) are known as "Green Claims".

firm and had taken appropriate remedial action in relation to likely aquaplaning by vehicles travelling too fast in wet conditions.

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Nuisance from neighbouring motorway

Complaint: Mr AB lived in an urban area very close to a major motorway, with his back garden a few metres away from the carriageway. He had complained over many years of noise, pollution, vegetation (leaves building up in his garden), and nuisance behaviour emanating from the motorway, convinced that a solid barrier would be the best way to mitigate the impact. To this end he resumed contact with National Highways and its contractor in 2020, pressing management for a home visit so they could understand the issues.

National Highways response: National Highways assumed that contact from its contractor had resolved the problem. In fact, the contractor had visited and recommended that fencing be considered by National Highways. The complaint was prematurely closed, repeatedly, due to this and similar misunderstandings. Mr AB's home was on a stretch that was not eligible for a fence anyway. Eventually, a landscape manager visited and a cut back of vegetation was organised. Unfortunately, this exposed Mr AB to more nuisance from the carriageway. National Highways and the contractor explained that the noise mitigation on Mr AB's stretch would be the installation of reduced-noise tarmac in the following year. Mr AB remained dissatisfied.

ICA outcome: The ICA noted the frustrating experience of Mr AB in the early stages of his complaint due to poor communication between National Highways and its contractor. He also felt that the messages about whether or not fencing was a solution were mixed. He recommended that National Highways should apologise to Mr AB and spell out clearly what its position was on fencing on this stretch of motorway and say what mitigation it intended to put in place, and when. He partially upheld the complaint.

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Lighting columns not working for five years

Complaint: Mr AB complained over a five-year period that three lighting columns on a stretch of trunk road managed by Highways England were not working. He expressed safety concerns about the impact on drivers reaching the stretch having driven down a well-lit part of the network. Latterly, he also complained that a verge on a slip road nearby had been left in a messy condition after drainage works had been completed.

National Highways response: Mr AB was given various undertakings and explanations in relation to the non-functioning lighting columns over the years. When promised repairs repeatedly had not materialised, he escalated his complaint and was told that the problem was that the electricity supplier, over whom National Highways had no jurisdiction or apparent influence, had not connected three of the columns to the grid. Eventually, over five years after Mr AB had raised his original complaint, the columns were connected to electricity. This operation had proved more complex than was first thought as groundwork was needed in the vicinity to facilitate the connection. The fact that Mr AB was not informed that the columns were working added to his frustrations. After investigation, National Highways informed Mr AB that the area of embankment of concern to him was

not regarded as of any particular amenity and it would therefore remain a scrub. Its messy condition was not, it transpired, the result of any failure on the part of the drainage contractor.

ICA outcome: The ICA upheld the complaint that National Highways' responses to Mr AB's complaints about the lighting columns had been delayed, inaccurate and inadequate. In line with Mr AB's own suggestion, he recommended that National Highways should review the processes employed in this instance to monitor and ensure the full functioning of the lighting in question. He noted that it should not take five years of customer representations to get the lights fixed. He also recommended that the chief executive of National Highways should apologise to Mr AB.

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Missing information sign

Complaint: Mr AB complained in relation to an accident on the exit from a trunk road. He said that a sign was missing and sought compensation for the damage caused to his vehicle.

National Highways response: National Highways had dealt with this matter both as a Red Claim against the company (that is, a claim for compensation for damage) and as a complaint. It had acknowledged that a directional sign had been reported missing but explained that its replacement was subject to a delay as a road closure would be required. During the course of the complaints process, National Highways had said that additional observations would be taken, and a temporary A frame sign put in place.

ICA outcome: The ICA said he could not determine National Highways' spending priorities when it came to sign replacement. He was content that Mr AB had received courteous and comprehensive replies. The ICA could offer no views on Mr AB's Red Claim for compensation for the accident that had occurred when Mr AB had hit a kerb.

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Never mind the bollards

Complaint: Mr AB complained over a decade about missing and displaced bollards on a multi-lane junction of a major motorway. Maintenance only seemed to occur after he had reported a problem and, despite repeated undertakings by National Highways and its contractor to find a lasting solution, nothing changed (even after the whole junction was subject to a multi-million pound refurbishment). Mr AB involved his MP and kept the pressure up, emphasising the safety ramifications of bollards strewn on the road and gaps in the sequence at a point where vehicles were changing lane quickly.

National Highways response: National Highways and its contractor responded to Mr AB's reports by either removing/fixing the problem or adding it to scheduled works. The matter was referred to the relevant improvement teams repeatedly. The bottom line was that National Highways and its contractor could not establish, from road safety data and inspections, the same level of risk as Mr AB. In November 2021 a full review of the lane segregation system at the site was undertaken that recommended further monitoring through CCTV to establish why the bollards were being damaged, and a safety risk assessment to better review the options and explore solutions. In response to ICA

questions, National Highways explained that the road safety data for the junction showed no personal injury incidents in the last five years. The specifications for radius of curve and width along the stretch were correct but did not require bollards – hence the monitoring and reconsideration of a lasting solution.

ICA outcome: The ICA could not comment on either the technical merits of the junction design nor the different computations of risk arrived at by Mr AB and National Highways. However, he noted that National Highways' risk assessment was supported by accident data. The ICA found that the company and its contractor had been responsive and sympathetic but that their responses had lacked detail. He conveyed National Highways' detailed answers to his questions about the safety history of the stretch and its consideration of permanent solutions and welcomed the company's undertaking to inform Mr AB of the outcome.

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Ragwort worries and the good neighbour principle

Complaint: Mr AB is a landowner and neighbour of National Highways along a stretch of its network. He had a long-standing difference of opinion about the effectiveness of National Highways' contractor in controlling ragwort. Mr AB repeatedly reported the contractor to Natural England for not controlling high-risk weed. National Highways and the contractor claimed, however, that Natural England had confirmed that the established approach was satisfactory. Mr AB maintained that this had been, to a large extent, because of his own ragwort removal efforts. Despite historic differences, Mr AB was invited by National Highways to collaborate on a verge enhancement project that would also be addressed to ragwort control. After extensive work, mainly by Mr AB himself, a written agreement was produced for balancing ragwort control and wildflower management. The 45-page scheme plan initially identified 20 biodiversity enhancement sites on two major trunk roads in the region. However, the contractor produced a management strategy to implement the biodiversity aims only. Fault lines in implementation emerged a couple of years later when, according to Mr AB, the contractor implemented only those parts of the project that involved reduced activity while failing to apply an enhanced, zero tolerance, approach to ragwort in designated hotspots. Mr AB repeatedly gathered high-risk ragwort and reported it, including in support of a neighbour's complaint to Natural England. Following this, National Highways staff ceased contact with him (although he was not told of this). He continued to report ragwort (and heard nothing back) until his contact with National Highways was deemed unreasonable and he was banned from any ragwort-related communications. Mr AB's complaint was structured in line with the Ombudsman principles that public bodies should: do what they are set say they are going to do; be open and truthful when accounting for their decisions and actions; take responsibility for the actions of their staff and contractors; and always deal with people fairly and with respect.

National Highways response: National Highways initially embraced the opportunity to further its biodiversity commitments through the verge enhancement project and emphasised to its contractor that more rigour would be required in the ragwort hotspot zones within which the company would work within a "whole neighbour" approach. However, the contract management team suddenly stopped responding to Mr AB and did not acknowledge any of his communications or reports of high-risk weed. A business services team manager attempted to rebuild the relationship, emphasising the limits on what project management colleagues felt was possible. Several more months went by

before Mr AB was told by the contract management team that they were under instruction not to correspond with him directly and that he was, in effect, sacked from the verge enhancement project. Mr AB challenged this and was told by a director that any further communications about ragwort would result in the invocation of the unreasonable customer policy. Mr AB was also told to stop depositing cut ragwort at National Highway's offices; his conduct was characterised as fly tipping, potentially contrary to the Environmental Protection Act 1990. For his part, Mr AB argued that he had been told by National Highways that his own ragwort control activities might be masking under-performance by the contractor. In depositing the weed at National Highways' headquarters, he argued he was laying bare contractor underperformance. Mr AB made no secret of what he was doing and made no gain either. He vigorously denied fly tipping.

ICA outcome: the ICA reflected that this was a particularly complex complaint to consider within the parameters of the independent review scheme. It was between former collaborators who were now in deadlock. National Highways had moved the case into the complaints procedure as a means of controlling the dialogue and bringing it to an end. Mr AB, who preferred not to complain against National Highways, reluctantly acceded but with the contrary aim of reopening communications. Mr AB was particularly eager to continue to contribute to the verge enhancement project and ragwort control programmes. In his review, the ICA emphasised National Highways' public commitments to working with staff and contractors, and in partnership with local stakeholders, to change the culture and working processes to facilitate sustainable biodiversity on its land. The emphasis was on localised approaches and "more assertive management of existing contracts with service providers" as well as negotiation with landowners. The ICA reflected that the company's assertive management had been of Mr AB and not of the contractor. The ICA was far from convinced that any of Mr AB's communications met the threshold to engage the unreasonable customer policy that had been frequently referred to. In fact, National Highways had attempted to limit Mr AB's contact by threatening him with the unreasonable customer policy, while not formally applying it (formal application of the policy would include setting out a defined appeal and review mechanism). In applying sanctions commensurate with the policy without its escalation and appeal mechanisms, the ICA judged that National Highways was maladministrative. The ICA highlighted that Natural England's guidance for people wishing to act on ragwort said they should first raise the matter with the landowner/occupier, a measure that Mr AB had been banned from implementing. The ICA also emphasised Mr AB's many hours of unpaid work in realising and implementing the biodiversity and ragwort control approaches. As a neighbour/collaborator, the ICA felt that Mr AB was entitled to clarity from National Highways as to how he should communicate the problems he was seeing every day, and clear notice of when his approach exceeded acceptable boundaries. Instead, National Highways had severed access with no notice, when the "whole neighbour approach" should have involved some effort by the company to repair the relationship. This was discourteous and maladministrative. The ICA was not able to judge the technical merits of the contractor's activities. However, the ICA challenged National Highways on its position that its contractor was performing adequately. Evidence for this had not been provided. Instead, the company's communications had majored on why managers thought Mr AB's behaviour was unreasonable (a characterisation that the ICA disputed). The ICA partially upheld the complaint, concluding that National Highways had failed to deliver to the good neighbour principle of its own policy and DEFRA's *Code of Practice on How to Prevent the Spread of Ragwort*. That failure should be considered alongside Mr AB's significant

unpaid contribution to furthering the company's biodiversity objectives and ragwort control duties. The ICA made four recommendations: that National Highways should: clarify how ragwort will be risk assessed and managed on the stretch on road in question; prepare a draft contract setting out how it will handle Mr AB's ongoing communications and offer him an opportunity to comment on it; remind customer-facing staff that restrictions based on unreasonable contact must be applied within the policy; and apologise for the specific failings highlighted in his review.

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A long detour

Complaint: Mr AB complained about what he described as the ridiculous incompetence of teams conducting work on a major motorway whereby there had been no signage warning drivers of the junction closure resulting in his going on a 35-mile detour. He also complained that he had been on the receiving end of verbal and gesticulated abuse by workforce at the scene.

National Highways response: National Highways initially apologised for any disruption caused by the closure while maintaining that no regulations or law had been breached as an applicable traffic order was in place. The report of workforce abusing Mr AB was investigated and management action taken. In its stage 2 response, National Highways also admitted that gantries had not been activated as early as they should have been to signal the motorway closure.

ICA outcome: The ICA considered that Mr AB's experience had been deeply frustrating and that the lack of warning of the precise closures sent him on a long detour. He recommended that National Highways apologise and make a £50 consolatory payment in recognition of the fact that aspects of his complaint were not fully addressed during local resolution.

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A complaint about National Highways' consultation process and the attitude of its staff

Complaint: Mr AB's concerns followed his attendance at a consultation event about a road widening scheme. He complained about the attitude and conduct of the National Highways staff members with whom he interacted at the event, and about the way in which the company had carried out its consultation, alleging a lack of consideration of alternative proposals.

National Highways response: The company apologised if Mr AB had felt insulted and patronised by its staff member's reference to himself as "professional"; that was not his intention. In response to Mr AB's complaint that staff members had reversed their name badges, the company explained that these badges displayed only job titles, not names. National Highways shared some previously unreleased traffic flow data with Mr AB, and explained that the purpose of the consultation was to present their chosen design only.

ICA outcome: The ICA said he could not adjudicate on the attitude and conduct of the staff at the consultation event as he had not been present. He focused instead on the way

in which the company had handled Mr AB's complaint. He found that, whilst the step 1 complaint did not reflect any investigation which National Highways may have undertaken, the step 2 response was reasonable. There was evidence that National Highways had sought to carry out an independent investigation into Mr AB's complaint, and that the company was open to any potential outcome. The complained-about staff had been spoken with, and a manager from outside the project team had been asked to review the complaint response. The ICA considered that the apology already offered by the company represented appropriate redress for the offence Mr AB had taken. The ICA accepted the company's explanation that the badges included only the staff member's job titles, not their names, hence there would have been no purpose in "hiding" them. The ICA noted that National Highways had consulted on a variety of route options in 2017 and 2019, and that it was consistent with the published consultation process that only the chosen route was presented at this later stage. However, the ICA found that the company's step 2 response did not explain clearly the various stages of the statutory consultation process that all nationally significant infrastructure projects (NSIPs) must undergo. Nor did it provide signposting to the relevant information that National Highways publishes online. He therefore upheld that aspect of Mr AB's complaint. The ICA welcomed the fact that National Highways had shared some previously unreleased traffic flow data with Mr AB.

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Misplaced signage

Complaint: Mr AB complained that signage and traffic management material was left on his property – the entrance to a boutique hotel and wedding venue near a major trunk road. He was incensed by the failure of National Highways' contractors to remove it in a timely fashion and pushed repeatedly for compensation.

National Highways response: The company responded quickly with an undertaking to remove the material, but this did not happen as promptly as all parties hoped and expected. National Highways explained that, as a public body with a statutory duty to maintain its network, it did not pay compensation for disruption caused by necessary roadworks.

ICA outcome: The ICA was critical of National Highways for conflating the local service manager's communications with Mr AB with a stage 1 response. Such responses should, he said, summarise the company's points on all issues raised and be clearly flagged as being at stage 1. National Highways undertook to ensure there was no repetition of the misuse of Mr AB's property (unfortunately a repeat event at the end of the ICA review triggered a new complaint). The ICA noted that Mr AB's repeated demands for financial redress were not accompanied by evidence of losses, and he emphasised that allegations of trespass are properly for the courts to determine. He regarded the apology and undertaking that there would be no repetition as reasonable remedies.

5. Other DfT and delivery body casework

(i): HS2 Ltd

5.1 We received just three HS2 Ltd referrals this year, one fewer than in 2020-21. Two were upheld partially and one was not upheld at all.

5.2 HS2 Ltd has invested heavily in its Public Engagement team and the fact that so few complaints escalate to ICA review is testament to the success of this approach. The complaints that do come to us tend to reflect the company's less sensitive engagement with those affected by the new railway during the early years of the project.

CASES

High Speed Two Limited's (HS2's) handling of correspondence about the acquisition of land.

Complaint: Ms AB, one of a group of foreign investors who invested in small parcels of land through a 'landbank' scheme, complained that HS2 Ltd delayed the review of a legal document for over five years and then shared the content of its review with the other party prior to sharing it with her. She also complained that HS2 Ltd allowed the other party to dictate the terms of the guidance note around the acquisition of her land and discussed her land with the other party against her wishes.

HS2 Ltd's response: HS2 Ltd clarified the reasons for the delay in issuing the guidance note and offered appropriate apologies for that. It confirmed that it had not discussed Ms AB's land with the other party and did not consider that it had delayed the review of the relevant legal document.

ICA outcome: The ICA could see no evidence that HS2 Ltd had unnecessarily delayed the progress of the review of the legal document, had inappropriately shared the guidance note with the other party, or allowed the other party to dictate its content. The ICA considered that HS2 Ltd could have better managed Ms AB's expectations about its remit and timing of the review of the legal document. The ICA also found that there had been handling issues in the way that HS2 Ltd had managed her correspondence about the review and the guidance note as well as its complaint responses. The ICA recommended that HS2 Ltd apologise to Ms AB for any frustration caused in consequence.

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Misleading information about the realignment of a road on a now-cancelled stretch of the route

Complaint: Mrs AB complained that HS2 Ltd had, through incompetence, planned to lower a road close to her home by three metres, a scheme that would be catastrophic to her community as well as unfeasible. This information, she alleged, was leaked during the company's 2016/17 consultation. The plan was withdrawn, she said, at the last minute at which point her husband was told that the road would be embanked by seven metres

instead. Mrs AB alleged that the original plan to excavate three metres had been the real plan and that HS2 Ltd had attempted to cover this up during her five-year correspondence with the company.

HS2 Ltd response: HS2 Ltd apologised for its error, explaining that it had arisen through confusion over two roads that had the same name. It also explained that the information had been in the context of a consultation and that further consultation would occur as plans were refined and amended. (In November 2021 the Secretary of State announced that this leg of the railway had been scrapped.)

ICA outcome: The ICA did not judge that there was any merit in looking deeply into the events of five years previously, noting that Mrs AB had had every opportunity to complain at the time. He also noted that this complaint had been presented within high-volume traffic about a variety of issues and had not been formalised until some years after the original events. The ICA did not ascribe inconsistencies in the company's record-keeping and explanations to fraud and deception. The different proposals for how the railway would cross the road close to Mrs AB's home did not represent maladministration or unremedied injustice. The ICA did not uphold the complaint.

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Poor handling of correspondence

Complaint: Mr AB complained in relation to his engagement with HS2 Ltd over many years. In particular, he drew attention to an incident at his home when an ambulance had been called. He said that HS2 Ltd did not appreciate the health impacts of the new railway.

HS2 Ltd response: HS2 Ltd had carried out a stage 2 review and apologised for poor correspondence handling. The company had made a consolatory payment of £150.

ICA outcome: The ICA said that he could not adjudicate on many factual elements of Mr AB's complaint over the past ten years. However, he was surprised that the company had no record of the events when the ambulance was called. He also criticised the long delays in responding to Mr AB's correspondence. The ICA recommended that a copy of his report be shared with the chief executive and Residents Commissioner. He also said the consolatory payment should be increased to £450 at the top of the PHSO scale for level 2 injustice.

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(ii): Maritime and Coastguard Agency

5.3 We received just three complaints about the MCA in 2021-22, the same tally as last year.

5.4 The two cases summarised below reflect well upon the Agency.

CASES

An accident aboard a ferry

Complaint: Ms AB complained about the MCA's actions following an accident her husband had suffered on a ferry. She wanted to know how he could obtain compensation and did not feel that the MCA had answered her questions.

Agency response: The MCA said it had received a report from the ferry company and was content there was no further action it needed to take given the extent of its legislative responsibilities. If Ms AB wanted to pursue compensation this was a civil matter between her and the company concerned.

ICA outcome: The ICA could identify no maladministration by the MCA. Indeed, he commended the actions taken by staff. Although not a lawyer, he was content that the MCA had acted properly and proportionately in response to what was a civil dispute.

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Helpful approach to resolving a complaint

Complaint: Mr AB complained about seafarer certification and other matters over a 11-year time span.

Agency response: The MCA had acknowledged there had been poor service and the chief executive had apologised.

ICA outcome: The ICA identified that the remaining outcomes Mr AB sought were a further letter from the chief executive and a modest consolatory payment. The ICA felt both outcomes were fair and therefore approached the MCA to see if they could be agreed without a formal ICA report. Pleasingly, this was indeed agreed, and the ICA was able to close the case.

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(iii): Civil Aviation Authority

5.5 We received six CAA complaints (compared with two last year). With such small numbers, it is difficult for the ICAs to identify any particular trends or issues.

5.6 We look forward to working alongside the first member of the new Independent Review Panel for CAA personnel licensing and certification decisions. It may be that our experience of the DVLA's medical licensing responsibilities will have some read across to the Panel.

CASES

Low flying aircraft and the CAA's regulatory role

Complaint: A residents group complained about low flying aircraft from a neighbouring aerodrome and what they said was the failure of the CAA to prevent breaches of air safety

standards. The residents also made other criticisms of the CAA in respect of the more than 500 reports of low flying aircraft they had submitted over the previous two years.

CAA response: The CAA had arranged a meeting between residents and a senior official. A reply had also come from the chief executive. The CAA said there had been no breaches of the regulations and no case for further action.

ICA outcome: The ICA said that he could not adjudicate upon the factual or technical aspects of the residents' grievance. He was content that the CAA had handled the matter well – acting outside its formal complaints process by arranging the face-to-face meeting. The ICA identified no maladministration, but recommended that the CAA consider if there was further information it could offer in respect of the investigations it had conducted into the residents' reports, notwithstanding that much of this might already have been covered in responses to FOI requests.

****

Long delay in responding to passenger

Complaint: Ms AB complained about the service provided by the CAA's Passenger Advice and Complaints Team (PACT) in relation to a dispute between her and an airline. She had been denied boarding by the airline as they said she did not have a QR code to demonstrate she could enter a foreign country under their Covid restrictions.

CAA response: The CAA had emphasised that it could not impose sanctions upon the airline and was satisfied that the airline's decision was in line with the procedures in place at the time.

ICA outcome: The decisions of PACT are not subject to appeal. But how PACT conducts itself is within the ICA remit. In this instance, the ICA was content that PACT had conducted a full review of Ms AB's grievance. However, he noted the very long delay between the CAA receiving a response from the airline and offering its view to Ms AB. While this was the result of the pandemic, the ICA said the information about timeliness on the CAA website should be updated to reflect the current reality. He was also disappointed to see that the stage 1 and 2 replies to Ms AB's complaint came from the same official and used phrases in common. He further recommended that the two stages should be properly differentiated.

****

CAA action following reports of pilot’s airspace infringements

Complaint: Mr AB, as pilot in command, had been subject to two reports of airspace infringement within a short period of time, in relation to the same controlled traffic region (CTR). This generated mandatory occurrence reports (MORs). After speaking informally to the CAA’s Airspace Infringement Group, Mr AB was surprised to be told that he must attend training or face the possibility of sanctions being applied that could include the suspension or cancellation of his pilot’s licence. He complained that this was contrary to the legislation at the time (Article 15(2)(a) of the then-applicable EU framework – specifically regulation (EU) No. 376/2014)) which provided that organisations were not allowed to make available or use occurrence reports in order to a tribute blame or liability. He pressed the CAA to answer his questions about whether he had been found liable.

CAA response: The CAA maintained that this was not a matter of blame or liability but whether Mr AB was sufficiently safe and possessed enough knowledge to exercise the privileges of his licence. The second limb of the applicable regulation (376/2014) provided that organisations could use occurrence reports to maintain or improve aviation safety. On this basis, the CAA had offered Mr AB the opportunity to demonstrate his competence. The CAA was clear that this process did not involve a formal finding of liability.

ICA outcome: The ICA judged that the essence of Mr AB's complaint engaged judgment calls that he could not make. The first was whether the MORs revealed legitimate concerns about the safety and competence of the pilot-in-command such that the action taken was proportionate. This was a technical matter over which the ICA could not comment. The second no-go area for the ICA was the policy position of the CAA whereby MORs could, for the purpose of maintaining or improving aviation safety, include measures that might involve the suspension of a licence or requesting a person to do additional training. This policy was an interpretation of the relevant law that again the ICA could not comment on. Turning to the customer service matters within ICA jurisdiction, the ICA found that the CAA had provided detailed and sympathetic explanations for its interpretation of the law and its application in Mr AB's case. The ICA did not uphold the complaint.

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(iv) Network Rail

5.7 Network Rail has now formally joined the ICA arrangements. We received 13 complaints about the company this year, six of which we upheld to some extent. The complaint areas were as follows:

- Noise and disruption (4)
- Trees and vegetation management (1)
- Policy on hunts crossing NR land (1)
- Litter & nuisance from a station (not a managed station) (1)
- Poor management of culvert resulting in flooding of neighbour's land (1)
- Scheduling of repairs (1)
- Station signage and information displays not helping disabled people (1)
- Staff conduct (1)
- Access to NR land for neighbours (1)
- Graffiti (1)

5.8 Successful engagement with trackside neighbours has already emerged as a key issue. The adverse impact of noise, light pollution, nuisance, and disruption caused by planned and unplanned repairs is understandably a cause of grievance on the part of those who live close to a railway line.

5.9 Similar issues affect other parts of the DfT – notably National Highways and HS2 Ltd – and there may be potential for shared learning about best practice.

CASES

Engagement with lineside neighbours

Complaint: Mr AB complained about the continuing failure of Network Rail to alert local residents to work on the rail network. He said that the lessons from an earlier ICA review had not been learned.

Network Rail response: Network Rail apologised. They said that the failure to alert residents had been well-intentioned (local staff did not want to share information until all the details were known) but mistaken.

ICA outcome: The ICA said that it was very disappointing that the commitments made by Network Rail following his previous review had not been implemented in practice. He was concerned that this might be indicative of wider problems of engagement with trackside neighbours across the network and recommended that a copy of his report be shared with the Network Rail board. He also recommended that the company give further thought to the measures it would take to make reparation to the local community.

****

Another complaint about engagement

Complaint: Mr AB complained that Network Rail had not responded appropriately to reports he had made of safety issues relating to works on a bridge. He also said that the site manager had behaved inappropriately in attending his home without an appointment and had made comments Mr AB deemed as racist.

Network Rail response: Network Rail had acknowledged that the site manager should not have gone to Mr AB's home unaccompanied and without an appointment. It said it had engaged very fully with Mr AB over a long period. The company had referred to its programme to promote its own values amongst contractors.

ICA outcome: The ICA said there were factual aspects of the complaint that he could not resolve (e.g. had staff and contractors behaved inappropriately towards Mr AB?). But while he commended Network Rail for its involvement with Mr AB over a long period, it was apparent that the initial health and safety reports were not attended to as speedily as they could have been, and the site manager was clearly in error in visiting Mr AB at home in the manner he did (albeit this was well intentioned). The ICA recommended that a copy of his report be shared with Network Rail's chief executive for his consideration.

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A complaint about graffiti

Complaint: Mr AB complained of graffiti on a railway bridge close to his home. A month after reporting it to Network Rail's helpline, the graffiti remained in situ and he therefore started to chase. Dismayed by Network Rail's inability to give him a clear undertaking about when it would remove the graffiti, he continued to push the company, eventually threatening to remove the graffiti himself with media on hand. Finally, a senior manager in Network Rail became involved and undertook to ensure the graffiti was removed.

Network Rail response: In its initial responses, Network Rail's helpline agent Civica provided standard information to the effect that the report would be added to the work list but that it could not provide a clear timescale for removal. Network Rail undertook to remove offensive graffiti within 24 hours, but the 'tag' graffiti reported by Mr AB was not offensive. The graffiti was removed and a litter clean of the area was undertaken by Network Rail who also secured the perimeter fence close to the scene. Network Rail apologised repeatedly for not calling Mr AB back and for the fact that he had needed to push. However, it could not guarantee that reports of graffiti would be acted on within any timescale.

ICA outcome: The ICA noted that graffiti removal and tackling vandalism had been prioritised by the Secretary of State some months before Mr AB had made his report. On its website, Network Rail publicised efforts it had made to address graffiti elsewhere on its network and to liaise proactively with line side neighbours. However, the ICA noted that there was no published policy on graffiti removal. He spoke to Network Rail who explained that graffiti removal sat alongside other safety-critical tasks within a specific budget and would be de-prioritised, routinely, if a safety-critical job was identified in that area. This led to inconsistent responses in different regions as well as difficulties in telling people when removal would occur. The ICA agreed with Mr AB that Network Rail should be able to provide customers and lineside neighbours with a clear indication as to when graffiti would be removed, and he recommended accordingly. This should be supported by published service standards and the removal of the operational and budgetary factors preventing the company from removing graffiti within specific timescale. He also recommended that Network Rail improve its complaints procedure to make clear that it covered more than its managed stations. He upheld the complaint, noting that while Network Rail's complaints responses had been of a good standard, its undertakings to improve had not been convincing in the absence of a change to its system for dealing with graffiti.

****

Line closure wrongly linked to political party conference timing

Complaint: Mr AB was informed by a Network Rail stakeholder information leaflet that a stretch of line feeding into a city where a political party conference would be held would be closed. He complained that this was discriminatory and unnecessary, and he demanded more information about the timing, basis and alternatives to the closure and its impact on delegates. He characterised the responses he received from Network Rail as dismissive, patronising, insulting, tardy and pathetic, and its staff as incompetent.

Network Rail response: The day after Mr AB first complained, a Network Rail senior stakeholder manager replied to explain that the closure affected only one of the minor routes into the city. The main line routes would function as normal. Full information about the closures and advice as to how to get into the city was available. Mr AB responded an hour later reiterating his discrimination complaint. He characterised the complaint handling as pathetic. The case was escalated through two more tiers of management up to regional managing director level but there was little that could be added.

ICA outcome: The ICA was unsure how a response to a complaint made at the close of day 1, that was dispatched at the beginning of day 2, could be characterised as tardy. The ICA found that all the complaint responses had been courteous, informative and timely. He accepted Network Rail's account that it had sequenced the repair work with reference to stakeholders, partner organisations (in particular, train operators) and with reference to

other relevant factors. The ICA noted that approximately 12,000 people attend each annual political party conference – 30,000 would be expected into the city to attend football matches every other week during the season. Clearly there were many factors in play and the ICA judged that this had been sufficiently explained. He did not uphold the complaint.

****

Noise nuisance and failure to notify repair works

Complaint: Ms AB complained about noise nuisance from employees of Network Rail and the continued failure of the company to alert local residents to repair work on the rail network. He said that commitments to avoiding these problems had proved worthless.

Network Rail response: Network Rail had apologised. It said it was unacceptable that residents had not been alerted to planned works and that staff had been reminded to behave appropriately when in residential streets at night.

ICA outcome: The ICA said that it was very disappointing that the commitments made by Network Rail had not been met and that staff had not behaved in a considerate manner. He recommended that his report be shared with the chief executive and that Network Rail consider what initiatives it might take to make good its failure to the local community.

****

Nuisance from nearby station

Complaint: Mr AB had complained for almost 20 years about litter, poor behaviour and other nuisance emanating from a neighbouring train station (one managed not by Network Rail but by a partner train operating company). His garden, that abutted a section of platform, was frequently littered and he was also exposed to excessive tannoy noise as well as poor behaviour from passengers who would congregate and drink alcohol at an adjacent area of platform. Mr AB criticised Network Rail and its train management partner, and the British Transport Police, for what he regarded as their ineffective management of the station, contrary to their published commitments. His most recent complaints concerned building waste dumped in his property, more noise nuisance, litter and a refusal to meet face-to-face.

Network Rail response: Network Rail met with Mr AB and agreed to clean up litter near his property, to seek approval to improve walling and fencing (but not Mr AB's own fence), and to construct fencing within the station to reduce littering into Mr AB's garden and prevent access to the rear of the waiting room. Delays set in for various reasons (including the non-availability of funding and the need for specialist cleansing resources given the presence of syringes). This added to Mr AB's frustrations, and he continued to supply pictures of litter in his garden. Network Rail apologised for confusion over the extent of the planned works. Its undertaking to scrutinise CCTV to identify potential culprits unfortunately did not get off the ground (this would be for the station management company to undertake).

ICA outcome: The ICA concluded that most of Mr AB's reports of nuisance were for the station management company (which was not in ICA jurisdiction) rather than Network Rail. His role and scope unfortunately precluded the joined-up review that the complaint required. Nor could the ICA get involved in disputes about the allocation of funding to

infrastructure; he judged that Network Rail had given a reasonable explanation for the undertakings it had made, but it was very unsatisfactory that those undertakings did not materialise for many months. The ICA said that Mr AB's complaint had been handled well with the company broadly meeting its obligations of responsiveness, courtesy and partnership working.

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(v) DfTc

5.10 Two complaints involving the Department centrally were referred to us in the year, one of which we fully upheld (the other we did not uphold). Only the upheld complaint was completed in-year and we summarise our review below.

CASES

Mistaken information about Covid testing

Complaint: Ms AB complained that the Department for Transport had given her incorrect information about the need for Covid tests after she had gone abroad for emergency treatment. She said that she had been refused access to the plane and had been forced to stay abroad for longer. She further complained about the handling of her correspondence.

DfT response: The DfT had initially said that Ms AB had been correctly informed throughout. After six months, a senior member of staff listened to the recording that Ms AB had provided and accepted that she had been misinformed.

ICA outcome: The ICA said this was a sorry story that did not reflect well upon the Department. He sympathised with the initial call handler since Ms AB's circumstances were unusual and the early advice he gave had been sound. However, it was not in doubt that he had also told Ms AB that the testing arrangements applied 'both ways' to those entering the UK for emergency medical treatment and for those returning to the UK from such treatment abroad. In fact, this was not the case at all and there was no parallel between the two situations. The ICA was more critical of the DfT's handling which had been slow, inaccurate and unfocused. Indeed, one member of staff had said she had listened to the call in question but somehow missed the incorrect information that was given by the call handler. He recommended a consolatory payment of £500. The ICA also proposed that the DfT should consider whether its policy on not naming officials in its correspondence was user-friendly or in line with practice in the delivery bodies. He commended the Department for changes to its processes to be introduced in light of his report and Ms AB's experience to try to prevent any recurrence.

Appendix 1

THE DEPARTMENT FOR TRANSPORT
INDEPENDENT COMPLAINT ASSESSORS – TERMS OF REFERENCE
JULY 2022

Introduction

1. 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.

2. The role of the ICAs is to review how a particular matter has been handled. It is a 'light touch' procedure; the ICAs do not conduct primary investigations, or routinely interview parties, and are usually unable to adjudicate upon contested versions of events where no independent evidence exists. The ICA process is intended to assist customers and users of DfT/DfT body services; it is not best designed for resolving disputes between fellow professionals.

3. The Department for Transport (DfT) independent complaints assessors (ICAs) provide independent reviews of complaints about the information and services delivered by:
   - the central Department for Transport (DfT(c))
   - the other bodies reporting to DfT as set out in annex C (DfT bodies).

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

5. 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

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

7. The DfT/DfT body will tell all complainants that they can ask for an ICA review through being provided with the information about the DfT/DfT body's complaint's procedure in the final response, including responses to complaints by Members of Parliament and others acting on behalf of the complainant.

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

9. The DfT/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, the DfT/DfT body will consult an ICA before the final

decision is made. Decisions about the extent to which a complaint meets the criteria for ICA review will be made by the ICAs.

10. The DfT/DfT body will usually tell a complainant they can ask for ICA referral after it has provided a final response. However, in some circumstances the DfT/DfT body may decide to refer a complaint to an ICA before it has completed its complaints procedure, given the agreement of the complainant and the ICA.

11. The DfT/DfT body may also ask an ICA for advice on a case before its final response.

12. The DfT/DfT body will aim to pass a completed referral form, chronology and all data exchanged between parties to the ICA no later than 15 working days of the complainant asking DfT/DfT body to refer a case to the ICA (a holding letter and explanation should be sent to the complainant if this target is not met).

13. The ICA will acknowledge receipt of a referral to the DfT/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.

14. The ICA will decide whether and how much of a complaint is in scope. They will do this after considering the information and documents the DfT/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
    - The DfT/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
    - The DfT/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

    - The DfT/DfT body has investigated the complaint properly and has found no administrative failure or mistake
    - the complainant objects to the DfT/DfT body's policy or legislation
    - the complainant has or had a right of appeal, reference, or review through another avenue, for example tribunal or legal proceedings
    - the essence of a complaint is a contractual or commercial dispute
    - a full review would be disproportionate.

15. Having considered the factors set out in paragraph 14, 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.

16. During the review the ICA may raise queries about the complaint history, or the policy

or legal background and the DfT/DfT body will try to answer these. The DfT/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.

17. An ICA may interview relevant parties by exception and should tell the DfT/DfT body (and DfT ICA sponsor if appropriate) beforehand.

18. The ICA will review the complaint and set out their conclusions about the way the matter has been handled.

19. 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.

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

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

    - whether the DfT/DfT body has been fair and unbiased and has met the relevant standards in its administration (including complaint handling)
    - 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.

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

23. The ICA will aim to complete their review of the case within three months. They should tell the complainant and the DfT/DfT body if they think it will take longer and explain the reason(s) why. With the agreement of the ICA and the complainant, reviews may be suspended or withdrawn at any point.

Remedies

24. The ICA may recommend the DfT/DfT body put right any complaint they uphold by:

    - apologising
    - 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 DfT/DfT body's decision, action or failure to act.

25. When making a recommendation for any financial payment, the ICA will consider the DtT/DfT body's policy, relevant HM Treasury guidance (currently *Managing Public*

Money) and the Parliamentary and Health Service Ombudsman (PHSO) documents, *Principles for Remedy* and *Our Guidance on Financial Remedy*.

26. 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.

27. At the ICA draft report stage, the DfT/DfT body should try to reach an agreement with the ICA about their findings and recommendations:

    - When the DfT/DfT body does not agree to implement a recommendation, it should tell the ICA at this draft report stage.
    - If the DfT/DfT body and the ICA cannot resolve any difference of opinion, the DfT/DfT body should tell the complainant and the ICA, in writing, after the ICA issues the final report.

    When the ICA has made recommendation(s) about redress, the DfT/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.

28. The DfT/DfT body must tell the relevant ICA as soon as they are aware that a case an ICA has reviewed has been accepted for investigation by the Parliamentary Ombudsman.

29. The DfT/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.

30. The DfT/DfT body must write to the complainant and copy in the ICA and DfT ICA sponsor to say whether they accept the PHSO's recommendations.

Confidentiality/personal information handling

31. When a complainant makes a complaint to the DfT/DfT body, they will use the complainant's personal information. Where appropriate, they will share that information with DfT and the ICA so they can handle the complaint properly. The DfT/DfT body must ensure that complainants are so advised before any ICA referral is made.

32. In the ICAs' annual report and elsewhere, the DfT/DfT body may publish anonymised data relating to a complaint to show the public how DfT and DfT bodies deal with complaints and what DfT ICAs do.

33. The DfT/DfT body may also use complainant personal data for producing anonymised statistical information.

34. The DfT/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.

35. Where a complaint has been sent to the wrong DfT body in error, they will forward it

to the right one and let the complainant know they have done so.

36. The DfT ICAs will destroy securely all data about a complaint that was referred to the ICA, including the report, generally after two years. DfT/DfT bodies have their own data retention and archive policy that they will conform with.

37. The 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.[13]

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

- where the DfT/DfT body has told the ICA some material they have provided is sensitive, the ICA must not disclose any part of it outside the DfT/DfT body without first obtaining consent from the appropriate Data Controller(s)
- in rare cases, an ICA might not be able to confirm or deny the existence of data. The DfT/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. As data processors, 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 the DfT/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 generally refer only to the 'preferred first name and/or title/role' 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. In line with paragraph 36, the DfT/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:

[13] 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.]

- how many complaints were referred to them
- how many complaints they upheld, partially or fully
- what recommendations and suggestions, if any, they made to the Department and/or DfT Bodies
- what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of the DfT/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
    - demonstrate the independence and impact of the ICAs' work
    - Draw attention to any other matter the ICAs consider the DfT/DfT body should know about.

45. The ICAs will invite the DfT(c) and the DfT bodies to check a draft of the annual 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/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 that DfT's services should be. If, while making a referral, the DfT/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[14] – 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, and you should not expect them to engage in further correspondence. In most cases, your further right of appeal would be to the Parliamentary and Health Service Ombudsman via an MP.

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

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

- failure to give information
- Mistakes (including decisions, actions and failures to act)
- 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 (i.e. the DfT or DfT body) handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
    - how we (i.e. the DfT or DfT body) 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 or the judgments of driving and vehicle examiners.

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.

Mutual Respect

16. The ICAs will behave in a respectful manner and expect the same in return. They cannot tolerate behaviour that creates an intimidating, abusive or offensive environment or which undermines their safety or wellbeing. Steps will be taken to address such a situation should it arise, which can include but is not limited to restricting their contact with complainants whose behaviour is felt unreasonable.

Annex B

ICA Referral form for Department 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:

Annex C

LIST OF DfT BODIES COMING WITHIN THE ICA JURISDICTION

British Transport Police Authority (BTPA) – not the British Transport Police
Civil Aviation Authority (CAA)
Driver and Vehicle Licensing Agency (DVLA)
Driver and Vehicle Standards Agency (DVSA)
High Speed Two Ltd (HS2 Ltd)
London & Continental Railway (LCR)
Maritime and Coastguard Agency (MCA)
National Highways (NH)
Network Rail (NR)
Vehicle Certification Agency (VCA)

as well as

The central Department for Transport itself (DfTc).

Appendix 2

COMPLAINTS STATISTICS FOR THE DEPARTMENT FOR TRANSPORT'S DELIVERY BODIES 2021-22

1. Complaints received across the Department for Transport

The central Department is committed to responding to complaints within twenty working days. The Department's public bodies, including executive agencies have their own complaints procedures and timelines within an overall Departmental policy framework. The number of complaints handled by the central Department, executive agencies, and other public bodies where data is available during 2021-22 and previous three years is provided in Table 1.

These show an overall increase in complaints which we put down largely to the pandemic and its impact on delivering services as well as handling business queries that become complaints.

Table 1: Gross Number of Stage 1 complaints

	2021-22	2020-21	2019-20	2018-19
DfTc	24	12	7	5
BTPA	0	0	0	0
CAA	270	153	105	195
DVLA	4,333	3,932 (4,462~)	3,448	3,736 (4,106~)
DVSA	8,699	5,985	8,809*	9,100
National Highways^	4,886	4,242	5,457	5,022
HS2 Ltd	1,637	1,841	867	518
MCA	66	84	70	80
Network Rail *	7,391	9,005 (1,636*)	8,329 (1,834*)	10,043 (2,405*)
ORR	1,079	1,257	1,722	1,638
VCA	10	11	9	3
Total	**28,395**	**26,522**	**28,823**	**30,340**

~ DVLA previous totals 2020-21 & 2018-29 included step 1 complaints moving to step 2 inflating numbers, and does not include complaints from MPs on behalf of individuals.
^ National Highways was previously Highways England and before that Highways Agency.
* Network Rail adjusted to reflect total complaints, figures prior to 2020-21 are only those made to the Board and CEO.

2. Lessons from complaints handling and improvements made during 2021-22

The following improvements have been reported using the feedback from complaints.

Civil Aviation Authority

Following a recommendation made by the ICA that we ensure stage 1 and stage 2 responses to complaints are properly differentiated, and the same member of staff is not responsible for both responses: We have made the appointment of a Corporate Complaint

Specialist, to focus on stage 2 responses with our Enquiries and Complaints Officer focusing on stage 1 responses.

Another recommendation from the ICA, that we consider whether the information about our Passenger Advice and Complaints Team (PACT) service on our website should be updated to give customers a better understanding of the likely timescale for the Authority to provide its final response: The website has been updated to inform customers that the timeframes for responding are a guideline and due to a large increase in demand response times may take longer.

Driver and Vehicle Licencing Agency (DVLA)

To note, we also had 27,505 ministerial enquiries, a small percentage of which were complaints. To further reduce waiting times for customers who have made medical applications, DVLA has opened new Customer Service Centres in Birmingham and Swansea with over 200 staff being recruited across both sites. DVLA have also introduced a Microsoft Dynamics pilot to handle diabetes online medical notifications.

In response to an ICA recommendation, a PIN number is now used for all CDT tests that are sent to the laboratories. CDT tests may be required when a customer is renewing their licence following disqualification for drink-driving offences and the labs have robust reject processes in place if this information is not received.

A new digital channel (DFAP – Digital First Application for a Provisional Licence) for applying for a first provisional licence was introduced to reduce the backlog of paper applications and progress chasing calls. The service allows customers to upload a photo and signature to address online applications that would otherwise require manual intervention and a paper response.

To address the HGV shortage, the removal of staging rules (having to sit a rigid test before trailer test) and the removal of the need to sit a BE (car and trailer) were introduced to streamline the licensing processes for HGV and bus drivers.

Additionally, lorry, bus, and coach drivers nationwide can now make their first application, renew, or replace their driver Tachograph cards online for the first time.

DVLA have continued to publish, and regularly update, the oldest dates of the most popular paper applications on GOV.UK to keep customers informed of when they are likely to receive their documents without them having to try and speak to a Contact Centre advisor.

The validity of Home Office share codes, which customers use to prove their immigration status and identity when applying for a driving licence, has been extended from 30 to 90 days.

Driver and Vehicle Standards Agency (DVSA)

The year 2021-22 was another extraordinary 12 months for DVSA as we work hard to recover from the effects of the COVID-19 pandemic. The main focus has been in driver services and, more specifically, on practical car driver testing, which was suspended for a

large part of the period and when it did return, did so at reduced capacity. This means there is considerable demand for tests.

Our efforts have been directed at throughput rather than service improvement. But we have now instigated service improvement teams for the main services, including driver testing, and we are about to introduce a new customer contact handling system that will improve the management information we have available, so we are planning to be more active in the improvement arena during this current year.

National Highways

National Highways published a customer service standard in June to improve the quality and timeliness of how we respond to customer contact. The standard sets out our commitment to provide polite, professional, and friendly responses to our customers and formalised our 10-working day response time target.

We've reviewed and updated our quality monitoring scorecard and guidance to ensure we continue to meet our customers' needs and expectations for the quality of response they receive from us. The scorecard and guidance help our people to structure and put together their responses to customer contact, to improve the quality of our customer responses.

By improving the quality, we hope to handle more customer complaints at our first stage, reducing escalations within our complaints process. We've already noticed a difference, our complaints escalation from stage 2 to 3 is at the lowest in years, and only 16% of stage 2 complaints were escalated to the DfT ICA in 21/22 compared to 25% in 20/21.

Some of our regional correspondence teams have also started completing additional quality checks on all stage 1 responses to further reduce escalation to stage 2.

With the continuing rollout of our new Customer Relationship Management systems, we are working to ensure we are consistently monitoring and tracking customer contact and complaints across the business to help us monitor performance, track trends, and identify issues. In addition, we:

- give regular performance updates to our senior leadership team and escalate any issues. They provide us with support to help drive improvements throughout the business.
- have introduced monthly dashboards and regular meetings to discuss issues with our correspondence teams and conducted a deep dive analysis of our performance to see where we need to improve.
- have been developing new ways to engage and communicate with our people, to help embed the complaints process and deliver against our targets, with hints and tips posters and doodles to help provide context to our messages.
- have improved the resources available to our people and updated our face-to-face training and e-learning including 'my call, my customer' to encourage our people to phone our customers more. We continue to run regular correspondence forums and

we have produced RACI (responsible, accountable, consulted and informed) charts and standard operating procedures to support our people in responding to customer contact.

We have produced a one-page hints and tips poster for the business. This highlights our targets and requirements and provides links to training and guidance to help the business to meet these.

High Speed 2 Ltd (HS2 Ltd)

The increase in our main works activity between London and the West Midlands is having a major impact on the lives of local people. We are working to improve the support we offer residents and businesses, the speed we take to respond to their concerns and complaints, and the way we resolve them. There are more than 340 active sites across Phase One and noise from equipment, traffic and disruption is a daily reality for many people as we move into peak construction.

We also recognise that communities along the Phase 2a route linking the West Midlands and Crewe are concerned about the start of construction work. Additionally, people living and working close to the Phase 2b route to Manchester may be uncertain how, and when, HS2 will affect them. To help address these major challenges, we refreshed our community engagement strategy in 2021 to make sure “respecting people and respecting places” is at the heart of the project.

We have also published improvements to our complaints procedure and the accompanying Plain English Campaign accredited booklet, which can be viewed here (HS2 Ltd complaints process).

Network Rail

A tighter, more transparent, and efficient, clearly defined 3 stage process for complaints has been in place since September 2021. The process ensures that the customer feels listened to and it enables us to manage complaints in a more timely way, and significantly curtails persistent, repeat and/or vexatious complainants.

We’ve also improved the leaflet we send out to complainants at the first stage and have available to anyone in our managed stations. This clearly shows in a visual flow chart, our complaints process so that customers know to expect from us.

Rationale for increase in ICA referrals: Network Rail only included ICA referrals as part of their complaints process in 9/21, since that time they are an independent stage offered to complainants that whose complaint remains unresolved.

The data for Network Rail over the last 3 years shows:
2019/20 – 20.57% decrease
2020/21 – 7.5% increase
2021/22 – 17.92% decrease

The impact of COVID-19 is clear in 2020 when staff absences were at their highest and as people spent more time at home in lockdown, we saw an increase of complaints, particularly about noise and vegetation from our many neighbours across the network.

Office of Rail and Road

There has been a further reduction in complaints received during 2021-22 compared to the previous year which may be due to the ongoing impact of the COVID pandemic on train usage. ORR were receiving a high volume of complaints relating to train services, fares and delays which is outside of the non-ministerial department's remit to investigate. Therefore, some minor adjustments were made to the department's website under General Enquiries and Complaints providing clearer information and signposting who to contact if a complaint relates to fares, train delays or train operators.

3. Complaints received by Independent Complaints Assessors

The data in Table 2 has been corroborated by the ICAs and each of the named DfT sources.

Table 2: Number of complaints referred to DfT ICAs

	2021-22	2020-21	2019-20	2018-19
DVLA	162	193	282	211
DVSA	136	72	47	59
National Highways	34	42	46	49
Network Rail	13	2	1	0
CAA	6	2	4	5
HS2 Ltd	3	4	1	13
MCA	3	3	2	7
DfTc	2	4	3	2
VCA	0	1	0	-
Totals	**359**	**323**	**386**	**346**

NB: the numbers reported referred, and those reported received by ICAs, may not tally as they may happen across year ends.

4. Complaints to the Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) investigates complaints about the Department and its delivery bodies when referred by a Member of Parliament on behalf of a complainant. Generally, the PHSO will expect the ICAs to have reviewed the matter before they consider investigating.

Where the PHSO believes there is evidence that there has been maladministration, unfair treatment, or poor service, it will investigate the issues, review the remedy provided, and may recommend further actions to resolve the matter. All recommendations made by the PHSO were implemented in the year by the Department.

The data supplied in Table 3 has been supplied by the PHSO and corroborated by the Department, this also appears in the DfT Annual Report and Accounts 2021-22.

Investigations into complaints by PHSO

When PHSO concludes an investigation, it may do so in the year(s) following when it was accepted. In addition, there can be several recommendations made to the Department or its public bodies to resolve a complaint, and the time between the conclusion of an investigation, issue of a report with recommendations, and when those recommendations are complied with or not can fall into a subsequent year. Table 4 includes the number of recommendations made by PHSO and those complied with in 2021-22.

Access to PHSO website is here: Welcome to the Parliamentary and Health Service Ombudsman | Parliamentary and Health Service Ombudsman (PHSO).

Table 3: Number of complaints investigated, upheld, and not upheld by PHSO

Organisation	Complaints accepted for detailed investigation			Investigations upheld or partly upheld			Investigations not upheld or discontinued		
	21/22	20/21	19/20	21/22	20/21	19/20	21/22	20/21	19/20
DVLA	4	12	10	5	4	3	2	8	8
HS2 Ltd	2	0	1	2	0	0	0	0	1
DfT ICAs	2	0	0	1	0	0	1	0	0
CAA	1	0	0	1	0	0	0	0	0
DfTc	0	0	0	0	0	0	0	0	0
DVSA	0	0	0	0	0	0	0	0	0
National Highways	0	0	1	0	0	0	0	0	1
MCA	0	0	0	0	0	0	0	0	0
VCA	0	0	0	0	0	0	0	0	0
Totals	**9**	**12**	**12**	**9**	**4**	**3**	**3**	**8**	**10**

Table 4: Recommendations (rec.s) made by PHSO and compliance with them

DfTc or Public Body	No. of cases with rec.s			No. of rec.s			Closed: Complied With			Open: In Compliance		
	21-22	20-21	19-20	21-22	20-21	19-20	21-22	20-21	19-20	21-22	20-21	19-20
DVLA	5	3	3	9	6	8	8	6	8*	1	0	0
HS2	2	0	0	2	0	0	2	0	0	0	0	0
DfT	1	0	0	1	0	0	1	0	0	0	0	0
CAA	1	0	0	1	0	0	1	0	0	0	0	0

* it was reported in 2019-20 as 7 complied and 1 open, this was subsequently complied with.