

A submission to the Department for Transport Consultation on Motoring Services Strategy
by the National Motorists Action Group

EXECUTIVE SUMMARY

The Driver and Vehicle Licensing Agency (DVLA) maintains two separate databases, the vehicle register and the driver register. There are 20 million register changes annually; at any one time nearly 4 million vehicle records are incorrect due to (e.g.) changes of vehicle ownership, change of address. Consequently many thousands of innocent people are pursued for such matters as being the keeper of vehicles which they have sold, and sent paperwork about contraventions that are nothing to do with them; or are sent paperwork to a former address which they may not receive.

The legal authority to release data from the registers states "The Secretary of State *may* make any particulars contained in the register available for use...by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting particulars to be made available to him." The DVLA and government have willfully misinterpreted "reasonable cause" to claim not only that *"Car parking enforcement companies can generally prove reasonable cause when they need to trace the keeper of a vehicle that does not comply with parking conditions"*, but "DVLA is required by law to provide the registered keeper's name and address to parking enforcement companies that can demonstrate reasonable cause for their enquiry." The DVLA/government has reinterpreted legislation from "may" to "must" in order to generate money by releasing motorists data to private land parking companies and bailiff companies.

The DVLA claims that *"Each request is looked at individually to ensure that the privacy of motorists is properly safeguarded...At DVLA we have tough safeguards in place to protect the privacy of information held within the vehicle register."* These claims are untrue. The DVLA provides data on an industrial scale, meeting 1.6 million requests p.a. via its Electronic Data Interchange (EDI) to private land parking companies and bailiffs. A Freedom of Information request covering the period 2008 to 2010 found that of the 3,746,000 requests for registered keeper data made via the EDI system, not a single one was refused. Over 2011-12 it sold 6,000 drivers' names and addresses to a company that has a criminal record and is run by a convicted criminal.

The DVLA claims it "does not sell personal data of a profit", and that "It costs DVLA £2.50 for each request for vehicle keeper information." While we can see that a paper inquiry and response would cost £2.50, it stretches credulity to believe that the DVLA does not make a profit of almost £2.50 from bulk electronic requests which incur minimal marginal costs. From the current 1.6 million requests by private land parking companies the DVLA generates a revenue of £4.0M most of which must be profit. And it is big money for the companies. Since 2007 about 4

million drivers have been chased for penalties between £60-150, representing a potential income of the order of £¼-½bn to the private land parking companies.

Bailiff companies were initially able to ask only whether or not a vehicle had the same registered keeper as at the time of a contravention. Now with their electronic link they also get the keeper's new address as they run around with ANPR devices in vans. Often their demands are fraudulent.

Since 2007 the British Parking Association (BPA) and DVLA have had a "Partnership for the Approved Operator Scheme and Accredited Trade Association" by which DVLA provides through EDI "access to its vehicle and keeper data registers by Approved Operator Scheme (AOS) Members...The DVLA accepts that the BPA, as an Accredited Trade Association (ATA), should be free to manage the performance of its AOS members undertaking this activity, (through its Code of Practice, its Scheme of Sanctions and the BPA Disciplinary Procedures etc), agreed from time to time, with the DVLA role to oversee the BPA's work in accordance with this agreement. In effect the BPA monitors its members and the DVLA monitors the BPA in respect of this activity." **We consider much of the above is meaningless rhetoric - if not cant - to cover the DVLA's back.** The BPA is dominated by private companies; their multiple abuses against motorists shows the claim to self regulation is false. From the complaints and representations it receives the DVLA knows full well that its release of data to private land parking and bailiff firms will often result in a chain of aggressive, threatening and deceptive letters to motorists.

The DVLA likes to talk tough about '*taking data protection very seriously*' and '*having robust safeguards in place*', which are specious claims. For example the DVLA could have:-

- Objected to many features in the new BPA code of practice
- Refused to require the BPA to publish its supposed 'annual audits' of companies' paperwork and signage that is meant to check compliance with the rules
- Refused to intervene against the BPA Approved Operator Scheme even though a judge ruled the signage at a car park in Stockport was not sufficiently clear to show the terms and conditions of parking. This allowed the parking company (whose owner was a member of the BPA's approved operator scheme board which prepares the code of practice) to continue imposing an average of 3800 £100 charges p.a. on drivers

NMAG objects to the release of OUR private data, which motorists provide (and pay) for the purpose of registering and taxing vehicles and licensing drivers, for its indiscriminate use to enforce civil contraventions by private land parking companies and bailiffs for their own profit when so many have a long record of behaving in an abusive manner. We consider that the root of the problem is access to the EDI system, which is based on a false exercise of discretion which is kept hidden and secretive by the further falsehoods on the DVLA website claiming

individual scrutiny. The Secretary of State, in allowing the DVLA to enter into contractual arrangements with private land parking companies which guarantees 100% data release, has unlawfully fettered his discretion.

We recommend:-

- As a public body entrusted with people's data, the DVLA should ensure that the purposes for which the data is used are likely to be ethical
- Private parties (including bailiffs acting as agents for local authorities) seeking DVLA data should have to make requests by paper so that they can be properly checked

INTRODUCTION

We focus our response on the DVLA, but not on its main functions of registering vehicles and drivers for which DVLA maintains two separate databases:-

- The vehicle register, which holds information about each vehicle and the name and address of the registered keeper
- The driver register, which holds each driver's name and various details

Rather we are concerned at the way it releases the personal and private data of registered keepers to private local parking companies and bailiff companies, an operation which often does not match DfT's vision "for motoring services that have the customer and businesses at their heart" (p5 of the consultation). Too often the release of data to private land parking companies and bailiff companies acting for local authorities results in an abuse of motorists. In this submission we:-

- Explain the background to data release and the willful misinterpretation of the law
- Show that the alleged checks by the DVLA are phantom
- Identify the profit the DVLA makes
- Comment on the sale of citizen's data
- Offer our recommendations

THE BACKGROUND TO DATA RELEASE AND THE WILFUL MISINTERPRETATION OF THE LAW

There are 20 million register changes annually. All of the DVLA's data is accepted from the public without any checks, and at any one time out of some 35 million vehicle records nearly 4 million are incorrect due to (e.g.) changes of vehicle ownership, change of address¹. Consequently many thousands of innocent people are pursued for such matters as being the keeper of vehicles which they have sold, and sent paperwork about contraventions that are nothing to do with them; or are sent paperwork to a former address, which they may not receive and so may not be aware of a contravention and the opportunity to appeal, or that a warrant of execution has been issued to a

¹ The DVLA has stated that "As at 30 September 2009 there were 34,395,400 licensed vehicles on the DVLA database. Our most recent estimate of the percentage of vehicle records that are correct in every respect is 88.6%." This means that there are 3.9 million vehicle records which are inaccurate.

bailiff. The first they know of an alleged contravention is a bailiff knocking at their door or clamping their car.

Originally the data system was not set up to service remote vehicle-detection issues; it was only intended to assist police with roadside stops and locating vehicles related to criminal enquiries. Initially the information was held on paper and kept extremely secure. Only the police and other government authorities could find out who the keeper of a particular vehicle was. Once the registered keeper data base was firmly established, successive governments have gradually through creeping legislation enabled wider, and therefore less secure, access. Now anyone with so called "reasonable cause", see below, can access the personal and private data of those registered keepers held in trust by the DVLA.

The DVLA states on its website (italicized script)²:-

"Regulations allow for the release of information from DVLA's vehicle register to the police, to local authorities for the investigation of an offence or on-road parking contravention, and to anybody who demonstrates reasonable cause to have the information..."

As a general rule, reasonable cause for the release of data from the DVLA vehicle register relates to motoring incidents with driver or keeper liability. These can include matters of road safety, events occurring as a consequence of vehicle use, the enforcement of road traffic or other legislation and the collection of taxes..."

"Reasonable cause is not legally defined. In DVLA's view it relates in general to incidents with liability involving the vehicle such as road safety, events occurring as a consequence of vehicle use, the enforcement of road traffic or other legislation and the collection of taxes, although this list is not exhaustive..."

Car parking enforcement companies can generally prove reasonable cause when they need to trace the keeper of a vehicle that does not comply with parking conditions. Similarly, land owners would have great difficulty enforcing their rights if motorists ignored parking conventions. In such instances, if requests for information were refused, land owners could argue that DVLA was denying them the ability to seek redress and it is likely that DVLA would be challenged through the courts."

This is a speculative and legally untested claim.

The legal authority to release data is Regulation 27e of the Road Vehicles (Registration and Licensing) Regulations 2002. This says that the DVLA (acting for the minister) must *exercise discretion* on whether it will release data:-

'The Secretary of State *may* [our italics] make any particulars contained in the register available for use... by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting particulars to be made available to him.'

² The quotations are taken from the sections "Release of information from DVLA's vehicle register", "The legal case for data release", "What is reasonable cause?", "Not for profit".

According to the Department for Transport (DfT)/Home Office in the Impact Assessment for the "Proposal to introduce keeper liability for parking charges on private land"³, "DVLA is required by law to provide the registered keeper's name and address to parking enforcement companies that can demonstrate reasonable cause for their enquiry." We do not know who was misleading the DfT, the British Parking Association or the DVLA or both because they both want money. The DVLA/government has reinterpreted legislation from "may" to "must" in order to generate money.

PHANTOM CHECKS

According to the DVLA:-

"We receive requests for information from private organisations as diverse as car parking enforcement companies, solicitors, finance houses and property managers. Each request is looked at individually to ensure that the privacy of motorists is properly safeguarded..."

This DVLA public reassurance that each and every request for the personal and private data of a registered keeper *"is looked at individually to ensure that the privacy of the motorist is properly safeguarded..."* is reiterated again on the DVLA's website under the following heading:-

"A balanced approach. We carefully evaluate every request for information and look to strike a balance between the individual's right to privacy and fair enforcement".

We do not believe the claim that there are any effective checks on individual requests for data.

The DVLA have introduced a number of fully automated systems to make the wholesale release of the personal and private data of registered keepers more cost-effective. One is the 'EDI' (Electronic Data Interchange) which enables the automated release of literally thousands of registered keeper data on a daily basis to private parking companies and bailiffs without any checks, scrutiny or safeguards. Rather than *the careful evaluation of every request* the actual decision to open the EDI floodgates of data release is based on a simple contractual agreement between a private land parking or bailiff company and the DVLA in which the DVLA signs away the rights of hundreds of thousands of registered keepers and guarantees to release their data on demand. This secret deal, struck between the DVLA and private companies, is akin to a company having its own DVLA computer terminal and using the DVLA as its back office. A freedom of Information request covering the period 2008 to 2010 found that of the 3,746,000 requests for registered keeper data made via the EDI system, not a single one was refused. The reason for this is because it is a fully automated process where none of the requests are scrutinized. The first casualty in the EDI drive to reduce costs has been the 'reasonable cause' consumer safeguard, and yet still the DVLA falsely claim that *"Each request is looked at individually"* and *"We carefully evaluate every request for information"*.

³ <http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/keeper-liability-parking-ia?view=Binary>.

"At DVLA we have tough safeguards in place to protect the privacy of information held within the vehicle register. One of those safeguards is that all unregulated organisations requesting information from us via a secure electronic link must be a member of a DVLA Accredited Trade Association (ATA)...[The British Parking Association (BPA) is one such ATA]"

We comment on the agreement with the BPA below; it is in fact the only ATA.

In theory all of the DVLA claims sound fine - but the theory is not reflected in practice. The DVLA is so lax over data control that over 2011-12 it sold 6,000 drivers' names and addresses to a BPA member firm that has a criminal record and is run by a convicted criminal.

THE PROFIT FOR THE DVLA

Relying on an unpublished legal opinion DVLA states that:-⁴

"Although regulations allow us to charge a fee to cover the processing costs of providing information under the reasonable cause provision, we are not authorised to make a profit from such activities. The charging of a reasonable fee prevents the costs of requests being borne by the tax payer. DVLA does not sell personal data for profit."

The Impact Assessment claims:-

"It costs DVLA £2.50 for each request for vehicle keeper information. This cost is recovered from the fee DVLA charges for providing the information. Current costs for obtaining keeper information would be 1.6m (tickets) x £2.50 = £4.0m p.a. This is the figure that will be used to estimate administrative savings."

While we can see that a paper inquiry and response would cost £2,50, it stretches credulity to believe that the DVLA does not make a profit of almost £2.50 from bulk electronic requests - some marginal costing is in order here to strip out irrelevant overheads and associated costs that may have been misallocated by DVLA.

CITIZENS' DATA FOR SALE

The DVLA provides the details from the vehicle register to some 20 different types of organization ranging from local authorities and their agents to private investigators. In 2011 DVLA received approximately 7.8 million requests from the police (who receive the information free) and local authorities (who pay an annual fee), and 1.6 million from private land parking companies⁵, which generates a revenue of £4M most of which must be profit, see above, and an unknown number⁶ from bailiffs pursuing warrants of execution. We are particularly concerned about DVLA's release of information to private land parking and to bailiff companies:-

⁴ 'Phoney fines and dodgy signs take drivers for a ride', article from Plain Language Commission's website <http://www.clearest.co.uk>.

⁵ The Impact Assessment., op.cit.

⁶ E-mail from xxxx (redacted personal information) of DVLA to xxxx (redacted personal information) dated 21/2/13 stated "I have been told that the information you have requested [viz the number of releases of data to bailiffs p.a.] is not held at that level of detail."

- Since 2007 about 4 million drivers have been chased for penalties between £60-150, representing a potential income of the order of £¼-½bn to the private land parking companies
- Bailiff companies were initially able to ask only whether or not a vehicle had the same registered keeper as at the time of a contravention. But with their electronic link they now also get the keeper's new address as they run around with ANPR devices in vans. Since as noted above some 4 million records are incorrect, in consequence many people do not receive Penalty Charge Notices and follow-on paperwork providing opportunity to pay and appeal. Thus the first they know of an alleged contravention is a bailiff demanding a possibly fraudulent amount and perhaps clamping their vehicle

Since 2007 BPA and DVLA have a "Partnership for the Approved Operator Scheme and Accredited Trade Association"⁷ by which DVLA provides through EDI "access to its vehicle and keeper data registers by Approved Operator Scheme (AOS) Members." Inter alia the Agreement states it "is for the purposes of:-

- DVLA and BPA working together to improve the performance of members in this activity and providing for disputes monitoring, investigation and escalation as appropriate
- Ensuring that enforcement activity is carried out with due consideration for the motorist..."

"The DVLA accepts that the BPA, as an Accredited Trade Association (ATA), should be free to manage the performance of its AOS members undertaking this activity, (through its Code of Practice, its Scheme of Sanctions and the BPA Disciplinary Procedures etc), agreed from time to time, with the DVLA role to oversee the BPA's work in accordance with this agreement. In effect the BPA monitors its members and the DVLA monitors the BPA in respect of this activity."

"The BPA will (inter alia):-

- Set and maintain standards of competence and behaviour [against a code]
- Monitor the performance of members against the Code and ensure compliance and apply sanctions against them as set out in the prevailing Schemes of Sanctions
- Investigate a member organization at the request of the DVLA"

According to the Impact Assessment:-

"BPA members must follow a Code of Practice, which includes a requirement for prominent signs at car parks that landowners consider sufficient to demonstrate that when parking a motorist has agreed to enter into a contract on the basis of the stated terms and conditions. These contracts have been upheld by the courts when they are shown to have been reasonable. The factors considered by the court will include the prominence and clarity of the signs and the amount of damages being claimed - motorists parking on such land are protected by consumer protection legislation. There is no consumer protection for a motorist who parks their vehicle on land where there are no signs indicating that parking is permitted."

⁷ It is annexed in Phoney Fines, op. cit.

We consider most of the above is meaningless - if not cant - to cover the DVLA's back. The Agreement explicitly states the DVLA will "Not unduly influence or control BPA processes/procedures". Since the DVLA has not released any results of its "monitoring", de facto the Agreement effectively appears to allow the BPA significant free reign. And as the BPA is dominated by private companies, which have a majority on its ruling council as well as total control of its 'approved operator scheme' for private parking companies, self-regulation means they are in effect sitting in judgment upon themselves. The attitude of xxxx (personal details redacted), to a judgment.

The claim to self regulation is an oxymoron - there is no meaningful or accountable regulation and no sign of consumer representation..

When the DVLA signs a contract with a private land parking company to allow EDI access, it negates the essential safeguard and discretion (on behalf of the Secretary of State) because once the contract is signed there is no discretion, and every single request is allowed because that is what the DVLA signed away in the contract. The argument that the Secretary of State has somehow exercised a genuine discretion at the point of signing the contract is nonsense.

From the complaints and representations it receives the DVLA knows full well that its release of data to private land parking and bailiff firms will often result in a chain of aggressive, threatening and deceptive letters to consumers and motorists. The DVLA is well aware that many private land parking companies try to pretend they are "official" by imposing 'parking charge notices' (PCNs), whose name sounds the same as the 'penalty charge notices' (PCNs) issued by local authorities. The get-up of parking charge notices tends to mimic that of penalty charge notices, e.g. by using a chequerboard pattern around the edge and by using bombastic language in which keepers are 'required' to do various things, eg, provide information or pay what is often little more than a speculative invoice⁸.

The DVLA likes to talk tough about 'taking *data protection very seriously*' and '*having robust safeguards in place*' and yet as we have seen this is not true. In reality the DVLA has a cosy, if not subservient, position relative to the BPA Approved Operator Scheme and its members. For example:-

- The DVLA could have objected to many features in the new BPA code of practice, e.g. the deferral of signage changes to 2015, the £100 maximum amount, the requirement to improve only entrance signs and to leave all the other obtuse signs the same with no proper scrutiny of language clarity or design clarity. But the DVLA prefers to avert its eyes from such matters of motorists' concern, preferring a less confrontational stance towards the BPA

⁸ See Phoney Fines op.cit.

- The DVLA refused to require the BPA to publish its supposed 'annual audits' of companies' paperwork and signage that is meant to check compliance with the rules. This allows the BPA, a private members trade body, to interpret who is complying and who is not, with no independent oversight or public scrutiny. This is open to abuse and corruption. As Phoney Fines⁹ shows some signs are patently unclear, ungrammatical, legalistic, and illegible, yet they are being passed as acceptable by the BPA. Yet the DVLA waves away criticism and blindly refuses to challenge or question BPA Approved Operator Scheme interpretations or decisions and closing the door in the face of the very motorists and consumers whose data they sold in the first place.
- The DVLA refused to intervene against the BPA Approved Operator Scheme even though a judge ruled that the signage at a car park in Stockport managed by Excel Parking, a BPA member, was not sufficiently clear to show the terms and conditions of parking. The response to his court case defeat of xxxx (personal details redacted) was to criticize the judge. He wrote to an MP¹⁰:-

"Firstly, the recent decision made by Deputy District Judge xxxx (personal details redacted) is an embarrassment to the judicial sector. Such an off the wall judgment leads one to question if there was indeed an ulterior motive. xxxx (personal details redacted) is not fit to serve the Civil Courts."

xxxx (personal details redacted) is a member of the BPA's approved operator scheme board which created and oversees the operation of the BPA code. This refusal by the DVLA to intervene gave a green light to the parking company concerned to carry on imposing an average of 3,800 £100 charges a year on drivers. The DVLA - BPA 'pact' says the DVLA should 'monitor' the BPA, yet on signage it looks the other way whilst trying to hide behind the misguided belief of 'self-regulation'

One wonders who in the DVLA (if anyone) and how is benefiting from the DVLA's supine stance vis-à-vis the BPA.

The Data Protection Act requires the DVLA as a data controller to investigate complaints that it has mis-sold data. It should determine which companies have broken the rules and which should be refused data either temporarily or permanently (both of which would cost the DVLA a loss of revenue - an obvious conflict of interest). The DVLA's current position is unsustainable; it unlawfully seeks to abdicate its duties and responsibilities under the Data Protection Act to the BPA, a private members club (and to bailiffs under cover of local authorities), and thereby wash its hands of all responsibility as to how the data it released has been used.

This unsustainable position held by the DVLA has seen a recent groundswell of motorist dissatisfaction and complaints about the DVLA, as they become more aware of the DVLA's role as the 'enabler' in the private land parking and bailiff abuses. Indeed, it was the sheer volume and persistence of campaigners that recently forced the DVLA to face down the BPA Approved Operator Scheme and suspend six private parking companies who had been breaking the rules with impunity. The complaints will undoubtedly continue to grow. **The long term reputational damage to the**

⁹ Op.cit.

¹⁰ <aolddb://mail/write/template.htm#_ftnref1>Letter to xxxx (personal details redacted), 19 October 2011.

DVLA is being gambled against the short term financial gain from the sale of the personal and private data of registered keepers to unscrupulous private companies.

CONCLUSION AND RECOMMENDATIONS

NMAG objects to the indiscriminate and potentially criminal release of OUR private data which motorists provide (and pay for the DVLA to maintain) when we register and tax vehicles and get licences. Although we accept that this data can properly be used for helping track criminal activities, we object most strongly to its indiscriminate use to enforce civil contraventions by private land parking companies and bailiffs for their own profit when so many have a long record of behaving in an abusive manner. We consider that the root of the problem is access to the EDI system, which is based on a false exercise of discretion that is kept hidden and secretive by the further falsehoods on the DVLA website claiming individual scrutiny. The Secretary of State, in allowing the DVLA to enter into contractual arrangements with private land parking companies which guarantees 100% data release, has unlawfully fettered his discretion.

We recommend:-

- As a public body entrusted with people's data, the DVLA should ensure that the purposes for which the data is used are likely to be ethical
- Private parties (including bailiffs acting as agents for local authorities) seeking DVLA data should have to make requests by paper so that they can be properly checked