

**Independent Complaints Assessors to the Department for Transport**

**Annual Report to the Department for Transport**

**2013–14**

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5 August 2014

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## **1: Introduction**

- 1.1 We are pleased to present our annual report for the year 2013–14. This report therefore continues the two-yearly report covering 2011–13 published by our predecessor, Mr Ian Bynoe, in October 2013.<sup>1</sup>
- 1.2 We must begin this report by formally offering our thanks to Mr Bynoe. The DfT was very well-served by him over a period of four years, and we have learned much from his example. He has proved an admirable teacher, counsellor and role model, and has left behind a body of work that we will continue to draw upon in our own practice. We are also grateful to colleagues in each of the agencies we oversee, and in the Department centrally, for assisting us into our new roles.
- 1.3 We were appointed as two additional Independent Complaints Assessors (ICAs), following a competitive process, in early spring 2013. However, it was not until the beginning of June that we were actually able to conduct our first reviews. Mr Bynoe continued to take some referrals until the autumn; as a consequence, the cases reported upon here may have been considered by any one of the three of us.
- 1.4 Now that there is more than one assessor, issues of consistency are very much in our mind. The Department's governance arrangements for our work have been strengthened, but no less significant have been the regular series of formal and informal meetings we have attended with DfT and agency officers during the year.

### **Jurisdiction**

- 1.5 During the period covered by this report, the Independent Complaints Assessors provided independent reviews of complaints about services delivered by the Department for Transport's executive agencies or other bodies that included:
- Driving Standards Agency;
  - Driver and Vehicle Licensing Agency;
  - Highways Agency;
  - Maritime and Coastguard Agency;
  - Vehicle Certification Agency;
  - Vehicle and Operator Services Agency; and
  - London & Continental Railways Ltd (L&CR)<sup>2</sup>.

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<sup>1</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279326/ica-report-2011-2013.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279326/ica-report-2011-2013.pdf)

<sup>2</sup> No referral was received from L&CR during the year.

- 1.6 The Driving Standards Agency and Vehicle and Operator Services Agency merged in November 2013 to form the Driver and Vehicle Standards Agency. We have generally retained the former nomenclature in this report<sup>3</sup>.
- 1.7 The ICA review constitutes the final stage of the Department's complaints procedure (and one that should usually be completed before the Parliamentary and Health Service Ombudsman (PHSO) will agree to consider the complaint). The ICA decides whether the agency in question has handled a complaint appropriately and whether its decision and/or the response to the allegation have been reasonable and justified.
- 1.8 The question addressed in an ICA review is whether or not there has been a failure in service and/or whether or not there has been maladministration in the way the complainant has been treated; and if so, what remedy is appropriate. Thus an ICA review can look at complaints about:
- bias or discrimination;
  - unfair treatment;
  - poor or misleading advice (for example, inaccurate information);
  - failure to give information;
  - mistaken application of policy or procedure;
  - administrative mistakes;
  - unreasonable delay; and
  - improper or unreasonable staff behaviour, e.g. rudeness.
- 1.9 An ICA cannot evaluate legislative provisions or matters of governmental, departmental or agency policy: he or she may not uphold a complaint where the applicable agency policy has been followed. However, it is not always easy to define what constitutes an agency 'policy'. In our view, policy implies something a lot more formal than simple custom and practice. The word 'policy' implies something considered, structured, and subject to review, often with a direct link to statute. We have no desire to embark upon 'mission creep' into areas that were never intended to come within the jurisdiction of an ICA. But an agency's administrative arrangements are not automatically a policy that is outside our jurisdiction.
- 1.10 In a recent meeting with the DVLA, we were informed that any administrative actions and policy by the agency could be subject to ICA comment, provided they do not derive directly from the law. This seems to us to represent the best value both for the complainant and for the agency itself.

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<sup>3</sup> We present DSA and VOSA data separately in this report.

- 1.11 A similarly nuanced approach has been apparent in the DVSA and in all the other agencies. A Highways Agency case upon which we reflect in this report exemplifies both our approach to defining ‘policy’ and the willingness of the bodies in remit to be more flexible than has been evident in the past.
- 1.12 In all cases, this new flexibility reflects the Department’s commitment to treating complaints as a source of learning, and the emphasis from the very top to put them at the centre of agency business improvements.
- 1.13 We also welcome the targets for reducing the escalation of complaints in the DfT’s motoring services agencies; in other words, for getting it right first time.

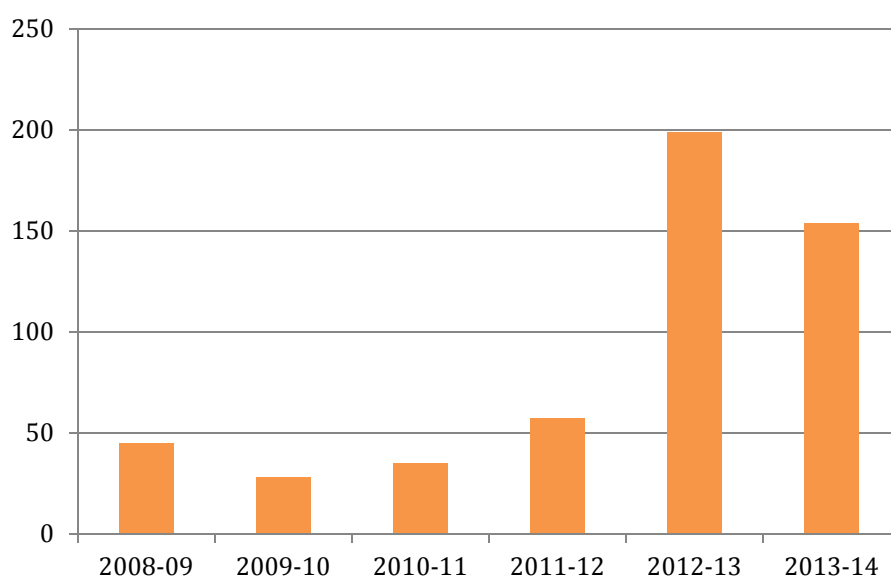
### **Operational guidance**

- 1.14 During the year, we played a full part alongside DfT colleagues in updating the Operational Guidance to which we work (in effect, our terms of reference). We are content that it now reflects both good practice in complaints handling and the actual day-to-day approach that we take. The Operational Guidance grants the ICA considerable discretion as to the best way of approaching a particular grievance, while making clear (in contrast to the previous version) that all complaints referred to an ICA are reviewed, to a greater or lesser degree, in a manner that pays heed to the particular circumstances of that complaint.
- 1.15 We have appended the Operational Guidance and the supporting protocol and referral form to this report.
- 1.16 In line with the Operational Guidance, this report and the Department’s response to it will be published on the DfT website. However, we note that there is no timetable within which the Department must respond and, so far as we are aware, no response has been published in respect of Mr Bynoe’s two-year report that was issued nine months ago.
- 1.17 **The Department should respond fully to the ICAs’ annual report within a set period of time as provided in section 5 (iii) of the Operational Guidance, say, within three months of its receipt. We recommend accordingly.**

## 2: Workload

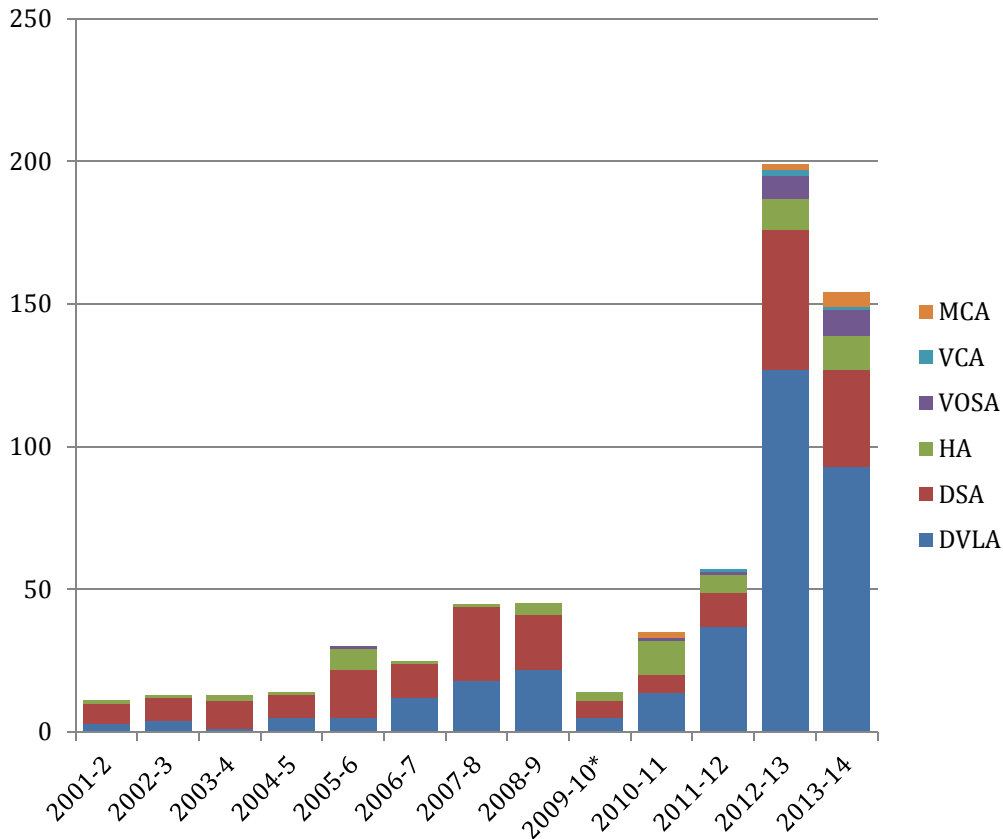
- 2.1 Figure 1 illustrates the very significant spike in ICA referrals that occurred in 2012–13 following a change in procedure that removed a filter mechanism that the agencies had previously operated. (Mr Bynoe’s report provides full details of this change.) It was this increase in workload that led directly to our appointment.
- 2.2 However, encouragingly, comparing 2013–14 with 2012–13, there was a decrease in referrals of nearly one-quarter.
- 2.3 We have not investigated the reasons for this welcome reduction in complaints reaching the independent tier of the Department’s complaints process, but a 27% drop in referrals from the DVLA (which accounts for 60% of our postbag) is obviously a major part of it. The fall is consistent with the DfT’s objective of more customer-focused complaints-handling by its own staff, leading to fewer complainants feeling the need to pursue matters further.
- 2.4 Notwithstanding the fall in the total number of complaints, if the volume of 2013–14 were to continue into 2014–15, then each of the ICAs would have a caseload roughly double that which would have obtained in most years since 2008, albeit we recognise that some more straightforward complaints may not have been referred to the ICA in previous years.

**Figure 1: Total ICA referrals 2008–09 to 2013–14**



2.5 Figure 2 disaggregates the referrals to the ICA over a longer period of time. It is clear that, as in previous years, complaints against the DVLA and DSA represent by far the largest proportion of the ICA workload (82%).

**Figure 2: Total ICA referrals 2001–02 to 2013–14, by agency**



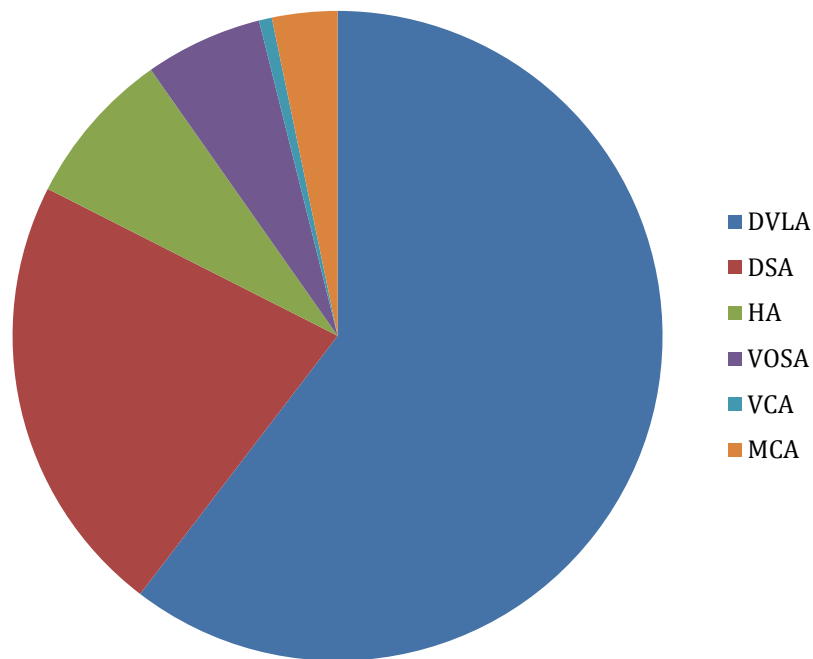
\* Period of six months from 1 September 2009 to 31 March 2010

2.6 This is not surprising, given the volume of actions and transactions for which the DVLA and DSA (DVSA) are responsible compared with the other agencies. Indeed, we have seen for ourselves the pile of post that arrives daily at the DVLA. It is said that one-quarter of all the mail delivered in Wales is addressed to the DVLA's Swansea headquarters. For its part, the DVSA is responsible for millions of theory and practical driving tests each year. What is perhaps most remarkable is that there are so few complaints, not that there are so many.

2.7 The other agencies are represented by a much smaller number of complaints; the Highways Agency is the third most represented (12 complaints), followed by VOSA (nine).

- 2.8 Figure 2 also demonstrates that it is only since 2011–12 that the DVLA has represented more than half of the total number of ICA referrals. In 2013–14, the complaints against the DVLA accounted for over 60% of all ICA referrals.
- 2.9 Figure 3 shows in more detail the breakdown of ICA referrals in 2013–14, while Figure 4 illustrates the proportion of 2013–14 cases where the ICA had upheld to some extent and/or recommended further action (VCA had a single case, partially upheld, in 2013–14).

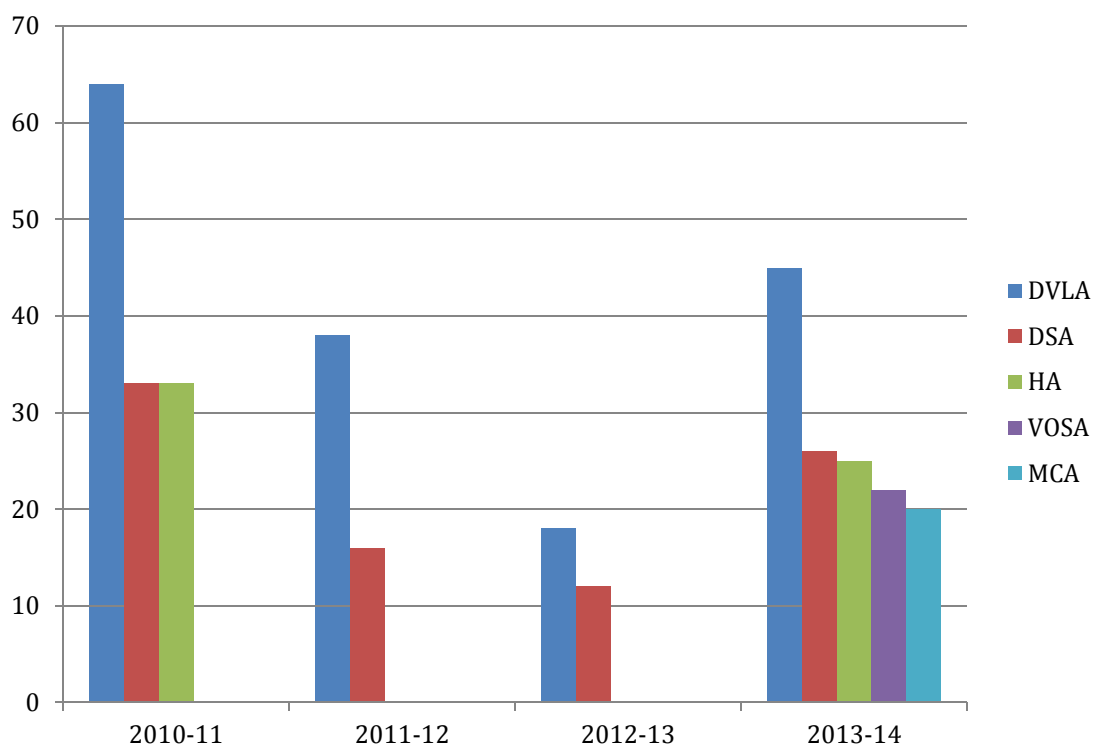
**Figure 3: Proportion of ICA referrals 2013–14 by agency**



- 2.10 However, it is worth pointing out that the notion of a complaint that is partially upheld may be somewhat misleading. It may be, for example, that the ICA has judged the agency's case-handling to have been first-rate in all but one instance; or that the majority but not all of a complaint has been upheld.



**Figure 4: Percentage of 2013–14 cases where the ICA has upheld to some extent and/or recommended further action**



2.11 Table 1 shows ICA performance in each quarter of 2013–14. The figures show a significant increase in incoming and outgoing cases in the final quarter (January to March 2014), which at the time of writing had, we are pleased to say, settled down markedly.

**Table 1: ICA throughput and performance 2013–14<sup>4</sup>**

	Cases in	Cases out	Average completion time (hours)*
Q1	34	13	06:59
Q2	37	38	07:40
Q3	33	46	06:04
Q4	50	56	05:50

\* For cases received in that quarter

<sup>4</sup> Some caution is required in interpreting these statistics as our new case management system was introduced mid-year and not all the data is comparable.

- 2.12 As would be expected, Table 1 also demonstrates the increase in ICA output following our appointment. A considerable advantage that we have enjoyed, and which was not available to Mr Bynoe before June 2013, was the ability to allocate and if necessary reallocate cases to the ICA with greater capacity.
- 2.13 A pleasing feature of Table 1 is that it indicates that the average time spent on cases (and hence the cost to the taxpayer) is falling as we have become more competent in our roles. However, we are acutely aware that average completion time is dependent upon the case-mix. Many reviews can be completed (and all the administration attended to) in a few hours or less. However, the more complex cases generate many hundreds of pages of documents even before they reach us, and reviews of such cases are the work of days not hours. This point is illustrated by the fact that Drivers Medical cases from the DVLA took on average 8 hours 45 minutes to review compared with 5 hours and 30 minutes for other DVLA cases.
- 2.14 The median completion time for the year for all agency referrals (4 hours 51 minutes) demonstrates the degree to which average completion time is skewed by the more complex cases. However, we are pleased to report that the overall time taken from receipt of referral to dispatch of review has reduced considerably in the year. In the first quarter, the average timespan of a review was 58 working days as we assisted Mr Bynoe in completing reviews of the overflow of 2012–13 cases illustrated in Figure 2. By quarter four, the average review time had fallen to 22 working days and for the year as a whole, 134 out of the 154 cases submitted for review were completed within our three-month completion target<sup>5</sup>.

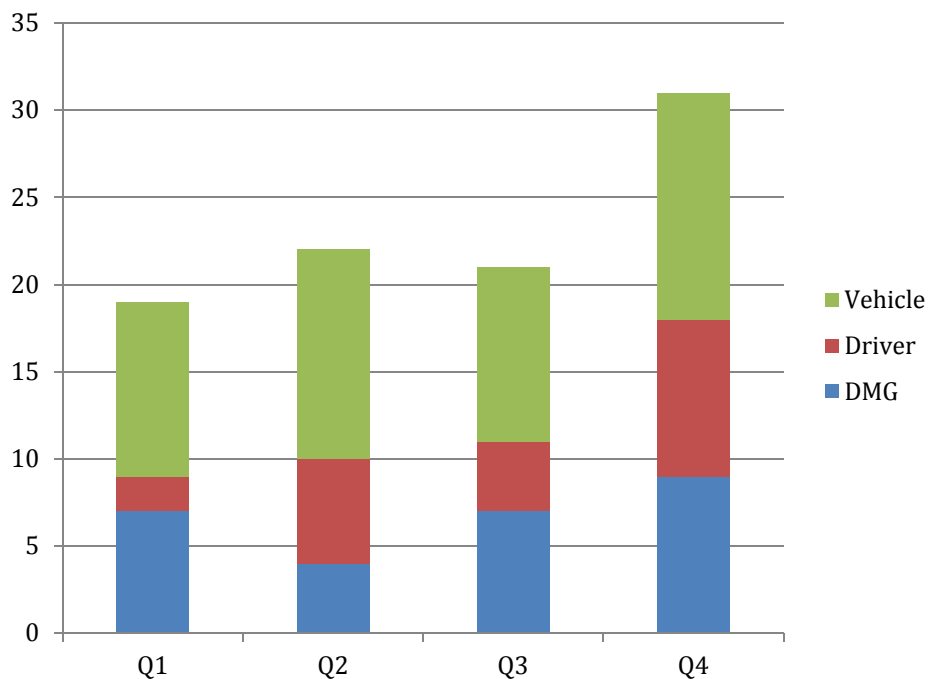
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<sup>5</sup> In cases where a complainant continues to interact with an agency after the ICA referral we may, with their agreement, defer our review until that interaction is complete so as to capture all the complainant's concerns in the review. This applied to approximately one-third of the 20 cases that we did not complete within three calendar months.

### 3: Driver and Vehicle Licensing Agency

- 3.1 We are pleased to report that the agency’s ICA referrals have dropped by 27% from the previous year. The success of the agency in resolving complaints locally is the single greatest determinant of our workload and after the spike in quarter four, early indications are that the rate of ICA referrals has, in the first quarter of 2014–15, dropped back to a similar level to the first three quarters of 2013–14.
- 3.2 We have received many complaints relating to SORN, Late Licensing Penalties (LLPs) and Continuous Insurance Enforcement (CIE). These complaints almost all relate to the responsibilities of the vehicle keeper (a concept we suspect is not well-understood by the public at large). Figure 5 represents incoming DVLA complaints for the year against vehicle and driver categories (with Drivers Medical, a subset of driver licensing complaints, represented separately).

**Figure 5: Incoming DVLA complaints by service area, 2013–14**

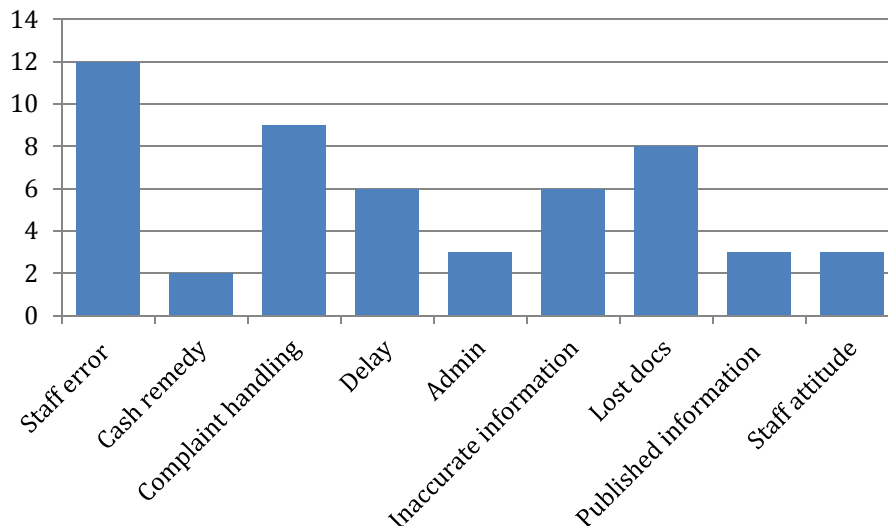


- 3.3 Given that Mr Bynoe reported at length upon vehicle licensing cases last October, we have judged that there is no need to provide further illustrations this year as the themes he identified have unsurprisingly carried forward into our postbag. However, we note that there has been no formal response to the recommendation he made (as did his predecessor) that the respective regulations setting out the duties of a registered keeper

should be amended to state, as a matter of law, that their notification/declaration is not made until an acknowledgement of it is received. (As an interim measure, Mr Bynoe also recommended that the DVLA could do more to impress upon the public the importance of obtaining proof of posting their notification/declaration by inserting this instruction on the relevant forms, guidance leaflet or web page as well as on form V5C and reminder letters.) **We repeat these recommendations.**

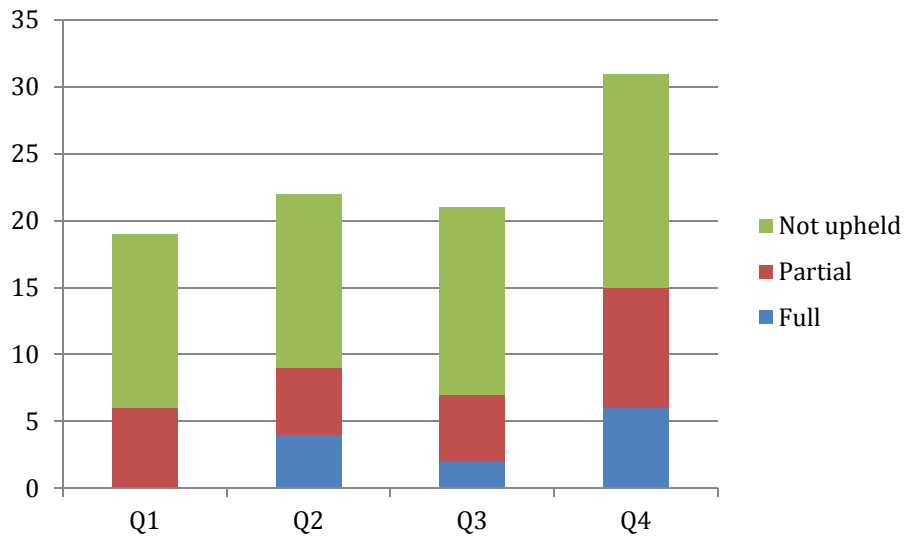
- 3.4 Figure 6 presents the main customer service issues referred to us in DVLA complaints. A theme of this year’s postbag has been difficulties complainants and sometimes the agency has experienced when multiple transactions occur in relation to a single vehicle in a short timeframe.

**Figure 6: Main service issues referred in DVLA complaints, 2013–14**



- 3.5 Figure 7 breaks down the 93 DVLA complaints referred to the ICAs in the year against outcomes. Over 60% of DVLA cases were not upheld. It is noteworthy that, in contrast, two-thirds of the 27 Drivers Medical cases reviewed in the year were upheld in full or in part (compared with 29% of the other 66 DVLA cases). Of the 12 DVLA cases fully upheld in the year, seven were Drivers Medical cases.

**Figure 7: All DVLA cases referred to the ICAs 2013–14, by outcome**



- 3.6 We have been pleased to learn that changes in the Drivers Medical group’s procedures are to be put in place, as well as additional recruitment. However, given the ageing population, we suspect that complaints about Drivers Medical cases will continue to feature strongly in our postbag. (As the figures above illustrate, and as noted earlier, Drivers Medical cases are amongst the most complex we receive and have a big impact on average case completion time.)
- 3.7 Our Drivers Medical casework this year has underlined the concern expressed by Mr Bynoe in his last annual report that the agency’s sequential approach to investigating fitness areas results in unfairness to a sub-section of drivers with multiple health problems. This takes the form of prolonged investigations as one fitness area is investigated at a time and multiple referrals to the agency’s oversubscribed medical advisers are required. The effect of this for revoked drivers and those who do not have entitlement to drive under section 88 of the Road Traffic Act is longer waits for a licencing decision. In contrast, in some cases we have had concerns that those able to drive during the Drivers Medical investigation were unsafe and would have been revoked quicker had the agency looked into more than one fitness area concurrently from the outset.
- 3.8 We next present some case summaries which illustrate some of the themes of the year’s postbag.

## **DVLA case summaries**

### ***An unsafe driver was allowed to drive for almost a year after concerns about their safety were referred to the agency***

**Complaint:** Mr AB complained that despite a clear notification of the fact that his elderly parent-in-law was unfit to drive, and posed a risk to road users, the agency subjected the driver to a prolonged and stressful investigation process which took almost a year to be concluded with licence revocation.

**Agency response:** In its responses the agency explained that its medical advisers were experiencing a heavy workload and that delays were inevitable while it sought medical information. It provided a series of stock responses to each iteration of the complaint, having established that Mr AB had his parent-in-law's consent to share medical information with him. Eventually, after a sequential process of investigation which included two eye tests and a driving appraisal, the agency revoked the driver's licence almost a year after the first report that the driver was unsafe. In its later response, the agency referred again to significant delays caused by a heavy workload.

**ICA outcome:** The ICA was critical of the agency for pursuing its investigation in a sequential fashion, particularly the two eye tests, one of which was a standard numberplate reading test undertaken by the DVSA and the other a full ophthalmology review. The ICA pointed the agency to the previous ICA's annual report, which had been critical of this process and opined that, with over four million drivers aged over 70 now on the road, he would expect a well-oiled agency response to a report of a potentially unsafe elderly person behind the wheel. He drew attention to a six-month period of dead time in which no case progress had occurred. While the ICA did not agree with the complainant that an automatic referral for a driving appraisal should have occurred from the outset, he noted that delays are increased by the number of referrals of a case to a DVLA medical adviser. In this case, an opportunity had been missed to investigate fitness areas concurrently and reduce advice stages. The ICA was critical of the agency's stock responses to the complaint and its failure to inform the complainant of its plans to improve the functioning of the Drivers Medicals group in response to the DVLA review. He recommended that the agency highlight how improvements in its working practices would address the shortfalls set out in the review. He also recommended that the head of Drivers Medical speak with the complainant in order to discuss the improvements in this service that were under way. After this discussion had occurred, the complainant contacted the ICA and the agency to say that his complaint had been resolved in every respect save for the matter of sequential investigation. He remained

of the view that a clear case existed to pursue fitness areas concurrently and this matter was taken up by the ICA in a subsequent meeting with the DVLA's CEO and head of Drivers Medical.

***Poor administration in the case of an elderly driver revoked on the basis of a police report of which he was unaware***

**Complaint:** Mr AB, an 88-year-old man, was involved in a minor collision in a supermarket car park. Unknown to him, the other driver and a witness reported the matter to the police, who in turn referred it to the DVLA. Mr AB complained that during the Drivers Medical investigation, he had been unreasonably referred for a second driving appraisal, having already had his licence revoked after scoring highly in a prior appraisal. Mr AB complained of inordinate delays throughout the two years of the fitness to drive process and of poor communications. Mr AB had no driving practice during his revocation and felt apprehensive about another appraisal.

**Agency response:** The DVLA apologised for the delays but considered that its medical adviser had been justified in requiring Mr AB to undergo a further appraisal as there had been shortfalls in his performance in his first appraisal.

**ICA outcome:** The ICA upheld the complaint that unacceptable delays had occurred and that communications with Mr AB had been poor, although he noted that the police should have informed Mr AB that they had referred him to the DVLA. Mr AB had struggled to understand over two years why the DVLA would not accept his doctors' reports that he had no cognitive impairment. The reason was that the initial reports of the collision, which Mr AB knew nothing about, had raised significant concerns within the DVLA as to his safety on the road. After receiving the ICA's draft report, the DVLA agreed to provide Mr AB with a licence that would enable him to prepare for a driving appraisal should he wish to sit one. The ICA also recommended that the DVLA review its systems for prioritising cases like Mr AB's.

***A historic case of an incorrectly issued HGV licence that had been withdrawn, depriving a driver of his livelihood***

**Complaint:** Mr AB complained that, having been granted a one-year HGV licence in 1998, he had been revoked in 1999 on the basis of information about his eyesight that had been freely disclosed to the DVLA when he had first applied for his licence. Despite complaining in 1999, 2009 and 2013, his revocation had not been overturned.

**Agency response:** The DVLA admitted from the outset that it had made an error in issuing the licence but declined to pay compensation as it did not accept that its error had resulted in financial losses.

**ICA outcome:** The ICA had reservations about the timing of the complaint but agreed to consider it for the following reasons: the DVLA's error had been significant and it would appear had enduring consequences for Mr AB; the facts of his case were not disputed or such that the passage of time was likely to result in unfairness at ICA review stage; the DVLA regarded his complaint as being within the ICA jurisdiction; and the matter of any remedy due to Mr AB for the DVLA's error had never been subject to Ombudsman or ICA consideration. The ICA found that Mr AB was not entitled to compensation but should be paid a consolatory payment of £350 given the gross inconvenience he suffered in losing his livelihood unexpectedly in the way that he had.

### ***Delays in medical enquiries concerning a professional driver***

**Complaint:** Mr AB complained about delays in handling his application for a Group 2 (bus and lorry) licence and the subsequent handling of his complaint.

**Agency response:** There had been a candid and comprehensive acknowledgement of poor service (four months has passed between receipt of visual field tests and the complainant being seen by a medical adviser) and other significant failures.

**ICA outcome:** In the light of the DVLA's acknowledgement, there was little further investigation required. The question for the ICA was whether the DVLA's apologies offered sufficient redress. He determined that they did not and recommended a £250 consolatory payment to Mr AB.

- 3.9 Many of these complaints raise questions about the DVLA's (and our) approach to compensation (reimbursement of financial losses) and consolatory payments ('botheration' payments for non-financial losses). However, in too many cases complainants are given insufficient information about the agency's policy and practice. As a result, complainants are often not clear about which losses may attract payments. Nor do they know what evidence of costs the agency requires. Further, it is not always made sufficiently clear that a claim for compensation that is rejected may meet the criteria for a consolatory payment. In some cases, both payments are applicable. We would remind all of the agencies of the Parliamentary and Health Service Ombudsman requirement that: *'Public bodies should be open and clear with complainants about what remedies may be available to them, and in what circumstances.'*



- 3.10 For our part, we endeavour to apply the principles provided by the Treasury and Parliamentary and Health Service Ombudsman. We recognise that these principles do not provide unambiguous guidance and that ‘maladministration’ itself is not clearly defined. We understand the DVLA’s view that Treasury advice is that consolatory payments should be modest sums made in exceptional circumstances, but we have frequently disagreed over when the threshold for payment has been reached and whether the sum offered is adequate. We therefore welcome the agency’s work in developing a redress and compensation claim form on which customers will be able to list their actual financial losses and supporting evidence. We also welcome the DVLA’s helpful internal guidance document on financial remedy that has been approved by the DfT and all of the agencies covered by the ICA scheme.
- 3.11 The maximum sum recommended in remedy for a DVLA case was £950 where the agency had repeatedly given incorrect advice to the keeper of a Luton van about what was needed in the way of conversion work to trigger its re-registration as a motor caravan. In following this advice, the keeper rendered the vehicle unusable and unsalable as a Luton van but was unable to register it as a motor caravan. Over the year, the average sum we recommended in the 21 (out of 93) DVLA cases where we felt financial remedy was payable was £223<sup>6</sup>. In addition, we referred three cases back to the agency where delayed medical investigations had prevented professional drivers from working, as we judged that insufficient consideration had been given to their entitlement to financial remedy in the agency’s complaint investigation.

***Inadequate compensation for the loss of a passport***

**Complaint:** Mr AB complained that an addressing error caused the agency to misdirect his passport, so it was lost/stolen. As a result he had had to replace it and reapply for a Home Office residence visa. It had taken over 12 months for him to obtain these, and during this time he had not been able to travel outside the UK (to see family abroad) and been unable to obtain better-paid employment and pursue his studies. He claimed a total of £7,000 from the agency to reimburse him for expenses he had incurred, lost earnings he could have been paid, and distress and inconvenience.

**Agency response:** The DVLA apologised for its error and offered to reimburse the cost of the lost passport (£90) and £100 for distress and inconvenience.

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<sup>6</sup> Half of the 16 cases where we stipulated a sum were £100 or under.

**ICA outcome:** The offer of compensation should be increased to £690 made up as follows: £90 for lost passport; £300 for solicitors' services in reapplying for visa; £300 for distress and inconvenience.

- 3.12 Other DVLA complaints illustrate the wide range of issues raised by the agency's customers.

***Disagreement between the agency and the ICA about the repayment of a month's road tax***

**Complaint:** Mr AB said that he received the six-month tax disc for his car (to which he had transferred a personalised numberplate) after the first month had already expired. In other words, he was paying six months' tax for a licence that would last five months. He wanted the 'missing' month restored.

**Agency response:** The DVLA said that its handling of Mr AB's application had been completed within its time targets and he had asked for the licence to run from the start of August, which it had. It argued that there had been no service failures and therefore no grounds for a consolatory payment existed.

**ICA outcome:** The ICA felt this was a most interesting case that demonstrated a one-dimensional approach to customer service. He agreed that there had been no service failure, but the outcome was one that not one person in a hundred would think was fair. Moreover, the cost of an ICA referral (and, still more, a referral to the PHSO) was hugely greater than the one month's tax at issue. This was an example of where good customer service would have meant understanding the customer's sense of unfairness rather than simply stating that the rules had been followed. The ICA recommended that Mr AB receive a payment equal to one month's road tax in full and final settlement of his complaint. However, the agency, which fielded new information that is disputed by the complainant, declined to implement this recommendation and we understand the complainant is now considering referral to the Ombudsman.

***Claim for consolatory payment rejected by ICA***

**Complaint:** Mr AB complained about his experience of telephoning the DVLA's Contact Centre to check whether the DVLA had received his licence application pack and documents that he had sent by recorded delivery the previous week. During the call the adviser expressed doubt that Mr AB was who he said he was and declined to provide the information. Mr AB argued that the adviser had violated his dignity and that he should be compensated for mental damage.

**Agency response:** The Agency accepted that Mr AB should have had his case escalated to a manager, as he had requested, and that additional security questions should have been asked. It emphasised that no malice or offence had been intended, and did not feel that compensation was due.

**ICA outcome:** The ICA, who listened to the recording of the call, accepted that the adviser had not intended offence. He rejected the claim for compensation on the ground that Mr AB had not suffered gross inconvenience, hardship or embarrassment.

***Agency unable to issue a replacement driving licence to a British citizen living in a non-EU country***

**Complaint:** Mr AB is a British citizen who lives abroad permanently. Unfortunately, his British driving licence was stolen in a burglary and he complained that the DVLA had refused to issue a replacement.

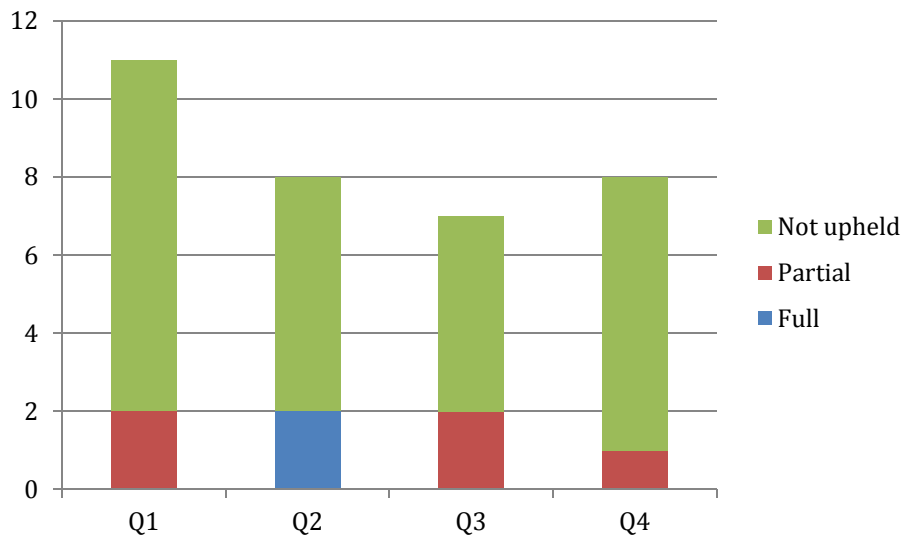
**Agency response:** The agency explained that it is a Europe-wide directive that licences (including replacement licences) can only be issued to those resident in the EU.

**ICA outcome:** In light of the DVLA's explanation, there was little the ICA could add. There was clear European-wide authority for the position that the agency had taken, and no known legal challenge. However, he noted that as more and more people live and work in more than one part of the world, the problems Mr AB had encountered were likely to be repeated many times over.

#### 4: Driver and Vehicle Standards Agency

- 4.1 We are pleased to report that the 2013–14 ICA referral tally on the DSA side of the agency’s operations has dropped by over 30% to 34, with only one case partially upheld in the final quarter. The figure for VOSA remained steady, rising from eight to nine referrals.
- 4.2 The merger of the DSA and VOSA presents an interesting story from the point of view of complaints management. The DSA has had a relatively high volume of generally straightforward complaints (usually resulting from a postponed driving test or a failed one). VOSA has had a low volume of more complex complaints. The relationship between the two bodies and their customers has also been a different one. The DSA rarely saw repeat customers once a driving test had been passed; VOSA enjoyed a continuing relationship with many vehicle operators.
- 4.3 Figure 8 presents the 34 incoming cases in the year for the DSA, broken down by ICA outcome. During the same period, VOSA referred nine cases to us, six of which arrived in the final quarter of the year. None was upheld fully, and only one in the year was partially upheld, which we think stems from a reflective ethos and commitment to customer care in VOSA that has been increasingly apparent across the whole organisation in the months following the merger.

**Figure 8: DSA incoming cases 2013–14, by ICA outcome**

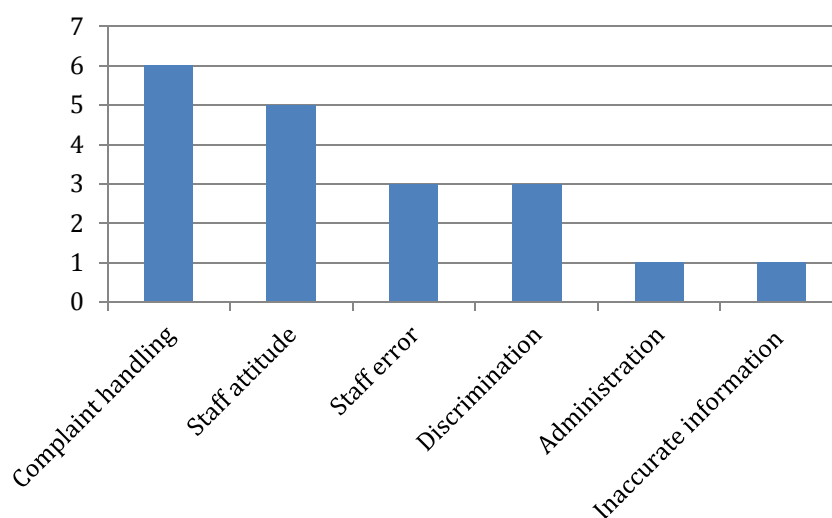


- 4.4 The new arrangements put in place by the DVSA seem to us to draw on the best of what the two merged agencies had in place pre-merger. We have found that the new liaison arrangements have worked very well, and

we have had very successful meetings with DVSA officers in Nottingham and Newcastle.

- 4.5 Many of the complaints received in respect of driving tests are actually brought by a parent of the person who has taken the test, and few are readily resolvable at agency or ICA level as they usually turn on one person's account of a test versus another's. In such cases, our focus is on the rigour of the agency's internal investigation and the escalation of the complaint to the appropriate tiers of management in the agency. We also expect the agency's governance arrangements to ensure that complaints feed into the performance management of driving test examiners even when they are not upheld.
- 4.6 Only two DSA complaints were fully upheld in the year and these were atypical cases where it seemed to the complainant and the ICA that almost everything that could go wrong did go wrong. One is summarised below (*Complete breakdown in the handling of the case of a man wrongly accused of impersonation in a driving theory test*). Both cases illustrate the truism that strong central case management and ownership are essential in complaints that engage multiple functions in an agency. Both of these cases arrived in the second quarter of the year when the agency was heavily occupied by the merger process, and happily to date there has been no repetition.
- 4.7 Figure 9 shows the main customer service issues raised in DSA complaints. Some complainants have alleged that there are racial biases in test outcomes and/or that examiners have discriminated against them because of their appearance.

**Figure 9: Main customer service issues cited in DSA cases 2013–14**



4.8 We next present some illustrative case summaries.

### **DSA complaint summaries**

#### ***Effective agency handling of a complaint about an accident in a driving test***

**Complaint:** Ms AB complained that the driving examiner had been negligent during her son's driving test. As a result, her son had been involved in an accident during the test.

**Agency response:** The DSA had carried out a full review and, in response to Ms AB, had set out the standard operating procedure relating to an examiner's duty when there is a danger to the public.

**ICA outcome:** The ICA considered that the agency's response to this unfortunate incident had been both comprehensive and courteous. A proper investigation had been carried out, the matter had been reviewed at an increasingly senior level, and full explanations had been offered in well-drafted letters. While the ICA could not say for certain what had occurred on the day in question, he judged that the matter had subsequently been handled well by the agency.

#### ***Reasonable handling of a complaint alleging racism. However, shortfalls in ethnicity monitoring by the agency highlighted***

**Complaint:** Mr AB complained about the outcome of two failed driving tests. He said the examiners had not been fair and had been racist towards him as he was a foreign person.

**Agency action:** The DSA said there was no evidence of improper discrimination, but there was evidence that Mr AB had been abusive (and he would therefore not be allowed to rebook online).

**ICA outcome:** The test results from five different examiners showed that Mr AB's driving was not up to the required standard. There was also contemporaneous evidence of Mr AB being abusive (and of using idioms the examiners were not likely to have invented). The ICA concurred with the agency's decision that Mr AB should have a male examiner in future and that he should not be allowed to book online. The ICA pointed to the fact that the statistics on pass rates by ethnicity<sup>7</sup> show a consistently more successful rate for white candidates compared with most ethnic minorities. But they also show that 70% of candidates do not declare any ethnicity

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<sup>7</sup> [www.gov.uk/government/publications/car-practical-driving-test-operational-statistics](http://www.gov.uk/government/publications/car-practical-driving-test-operational-statistics)

and that, as a consequence, the data sets are not representative, meaning that very few conclusions can be drawn. Since monitoring by ethnicity is an essential way for all public agencies to ensure there are no biases in the delivery of services – to say nothing of the public sector equality duty under the Equality Act – this is an area to which the DVSA should pay particular attention. **We recommend that the DVSA review ways in which the proportion of candidates declaring ethnicity can be increased.**

***Complete breakdown in the handling of the case of a man wrongly accused of impersonation in a driving theory test***

**Complaint:** Mr AB, who is Eritrean, complained initially that he had been falsely accused of impersonation when he presented for a driving theory test. He provided solid evidence to the DSA's theory test agents, Pearson Vue, in the form of his work timesheet, showing that he could not have attended the test centre as an impersonator on the occasion when the Pearson Vue officer had suspected. Mr AB was advised to reapply for a theory test while Pearson Vue investigated his complaint. When he reapplied he was once again accused of impersonation and turned away, on this occasion, he felt, rudely. Mr AB complained about staff attitude and he alleged racism. He also felt that the poor investigation undertaken by the agency had failed to answer his complaint.

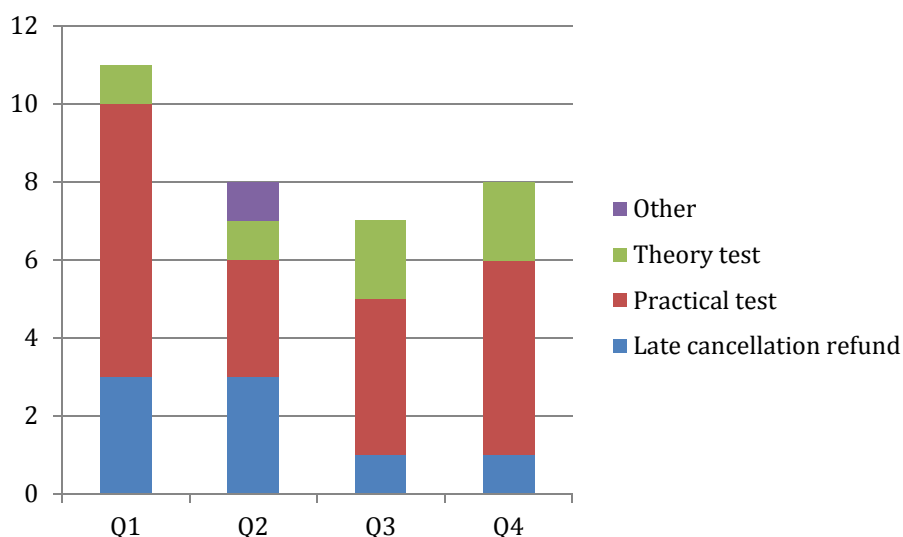
**Agency response:** The impersonation reports were referred to the agency's outsourced investigation service, Outforce, who established quickly that Mr AB had not been an impersonator. However, due to very poor administration, this outcome was not reported to Mr AB for five months despite his frequent contacts. After over seven months of pressure from his advocate, the agency eventually reimbursed Mr AB both theory test fees and made him an *ex gratia* payment of £100.

**ICA outcome:** This was one of the two complaints fully upheld by the ICAs in the year. The ICA contrasted the agency's external commitment to counter racism with its poor handling of an actual allegation of racism. Although he considered the test centre staff had been justified in acting on their suspicions on the first occasion (even though in the end these were not founded), he was critical of the way they handled Mr AB's second presentation. By then, Pearson Vue had proof that Mr AB had been confused with someone else first time around and had not been an imposter. The ICA was very critical indeed of the agency's complaint investigation, which he concluded was characterised by a complete breakdown in basic case management. The ICA found that the agency had caused Mr AB humiliation, distress, inconvenience and anxiety about re-attending the test centre. The ICA recommended that the agency pay Mr AB a further £150 in recognition of this. The ICA also recommended

that the agency review its arrangements for investigating racism allegations and provide Mr AB with an apology and an explanation for its poor handling. This matter is currently under Ombudsman investigation as Mr AB felt that the level of consolatory payment recommended by the ICA was inadequate.

- 4.9 Complaints about the DSA’s then policy of declining to make refunds of driving test fees despite compelling personal circumstances caused us considerable unease. Figure 10 plots all incoming cases against the main categories with late cancellation fee cases disaggregated.

**Figure 10: All DSA incoming cases 2013–14, by operational area**



***Candidate refused test refund despite emergency operation***

**Complaint:** Ms AB complained about the DSA’s refusal to refund her driving test fee even though she had been rushed into hospital for a major operation.

**Agency response:** The DSA had said that, as a matter of policy, the test fee could not be refunded if notice of three full working days was not given – even in compelling circumstances.

**ICA outcome:** The DSA’s then policy, which had been agreed by Ministers, was outside the ICA remit. He was told that the only exceptions to the policy were if the candidate was a serving member of the Armed Forces and was called into service, or if the candidate died.



- 4.10 Since this review was carried out, the DVSA has revisited its policy to ensure a more individualised and customer-sensitive approach to the issue of refunds. We commend the new policy.
- 4.11 As highlighted in the statistics we provided in paragraph 4.1, there are far fewer complaints from the former VOSA side of the DVSA. We next present case summaries from the VOSA side of DVSA business.

### **VOSA case summaries**

#### ***Complaint about VOSA's policy on missing mud-flaps***

**Complaint:** Mr AB is the transport manager of a firm, one of whose HGVs was subject to enforcement action because of a missing mud-flap. He said that the issuing of a prohibition notice, and the requirement for a full test for it to be lifted, were disproportionate as the flap had only become dislodged that morning and was in the cab.

**Agency response:** VOSA had explained that vehicle examiners had no discretion regarding the issuing of the prohibition notice – VOSA's policy was published in its Categorisation of Defects document. However, examiners did have discretion under the Road Traffic Act with regard to the test necessary to assess whether a vehicle is 'fit for service'. In this case, the examiner had exercised his discretion properly: it was more than six months since the vehicle's last full test, and he had also issued an advisory notice regarding a tyre that was near the legal limit.

**ICA outcome:** The ICA agreed with Mr AB that the action taken could appear disproportionate. However, it was fully in line with VOSA's policy and not improper. If Mr AB was unhappy with VOSA's policy, he would have to address it via other means than the complaints process.

#### ***No legal basis for the agency to require that a vehicle was examined***

**Complaint:** Mr AB complained that his concerns about two MOT test results for a vehicle he purchased – but subsequently sold back to the dealer – could not be taken forward through the MOT appeals procedure. He also questioned VOSA's assertion that it was unable to inspect the vehicle concerned to see if incorrect testing standards had been applied.

**Agency response:** The agency had explained that it could not require the present owners of the vehicle to present it for a further examination. It also explained that it did not oversee the used-car trade: that was the responsibility of Trading Standards. Because of data protection concerns, information could only be shared with Trading Standards in certain

circumstances. However, Mr AB's intelligence would not be lost and would be shared with the agency's Regional Intelligence Department.

**ICA outcome:** The ICA concluded that the agency had gone as far as it could within the law. Although he sympathised with Mr AB's concerns about testing standards, there was no legal basis for the DVSA to require an owner to submit their vehicle for examination other than the statutory requirement for the MOT test itself.

***A good agency investigation into staff conduct at a test site***

**Complaint:** Mr AB complained about the actions of VOSA staff at a goods vehicle testing station. He said that they had forced the driver of his vehicle to leave the VOSA site where there was adequate parking space and drive on a public road against a newly issued prohibition order.

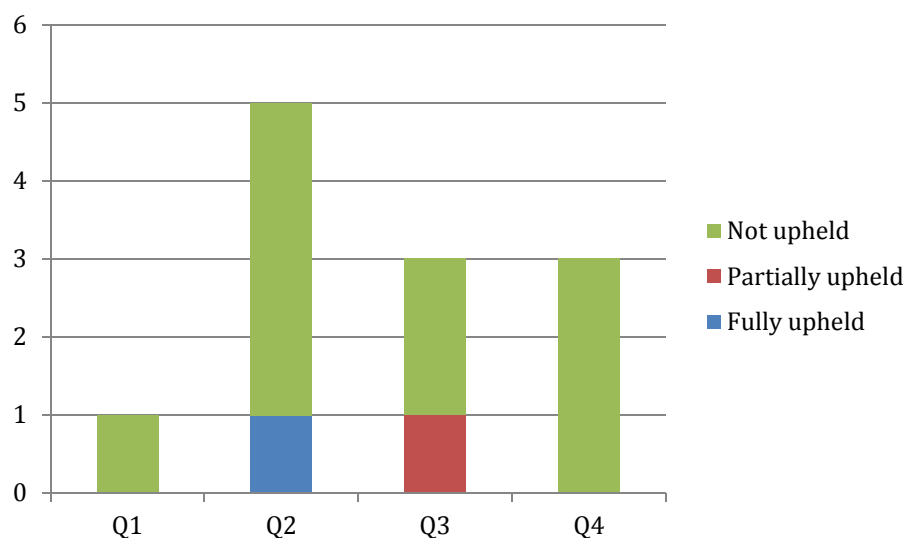
**Agency response:** VOSA conducted a comprehensive investigation resulting in a six-page report. It acknowledged that incorrect information had been given to Mr AB about the availability of interpreter services. It had also acknowledged a procedural error in the handling of the prohibition notice and apologised for the fact that the option of allowing the vehicle to remain on the site had not been fully explored.

**ICA outcome:** The ICA was impressed by the quality of VOSA's investigation and by its acknowledgement of where things had gone wrong. This was an unfortunate incident that could have been much better handled at the time. He made recommendations regarding VOSA's complaints procedure and asking the chief executive to write to Mr AB to acknowledge the findings of his review.

## 5: Highways Agency

5.1 Complaints regarding the Highways Agency are few in number but may be complex and longstanding, particularly if they involve land disputes. Figure 11 presents the 12 cases received in the year against the ICA outcome.

**Figure 11: All Highways Agency cases referred to the ICAs 2013–14, by outcome**



5.2 Of the 12 cases received:

- three involved vehicle damage caused by road defects and debris;
- one referred to defective road markings;
- one alleged a road scheme had damaged property;
- one alleged unsafe roadworks;
- one related to the removal of a vehicle from the highway;
- one concerned the conduct of a traffic officer who was assisting police with an incident;
- one involved a dispute in which the complainants argued that the agency had allowed a defective wall to be built adjoining its land and should adopt it;
- one complained of weeds and debris on a highway;
- one complained of inadequate information about roadworks and hazards; and
- one complained of loss of amenity caused by trees on agency land.

5.3 We next present illustrative summaries of Highways Agency cases.

## Highways Agency case summaries

### *Damage to car caused by displaced sign*

**Complaint:** Mr AB said that his car had been damaged on a motorway as a result of hitting a large road sign that had been blown onto the carriageway. He complained that this must have been the result of failings on the part of the agency's contractors.

**Agency response:** Most of the contact with Mr AB was by the contractors themselves. However, agency officials reviewed all the documentation and agreed that the contractor had acted appropriately and was not liable for the damage to Mr AB's car.

**ICA outcome:** The ICA made further enquiries and discovered that there had been no police reports of debris on the carriageway, nor reports from other drivers. Nor were there any reports of road signs going missing, or reports from safety patrols of signs being found where they should not be. In these circumstances, he could not uphold the complaint. However, aspects of the handling of the complaint were criticised and it was suggested that the agency consider a formal protocol with its contractors to specify who is responsible for responding to complaints from members of the public.

### *Agency asked to pay compensation for wheel damage and a tyre blow-out caused by debris*

**Complaint:** Mr AB complained on behalf of his daughter who had suffered tyre blow-out and wheel damage on the motorway. He said that she had hit debris from a pothole that had not been repaired properly.

**Agency response:** The agency declined to pay compensation. It relied on its regular checks to say it had met its obligations under the Highways Act.

**ICA outcome:** At the core of this complaint were matters of a technical nature in which the ICA could claim no specialist expertise. However, he made judgements on the balance of probabilities as to what had caused the damage to Mr AB's daughter's car. He further concluded that the likely cause indicated poor maintenance that would not provide a defence in an action for damages. While ICAs do not determine legal liability, the ICA said that the agency should reconsider its decision not to offer compensation and recommended it met the costs of £434.

***The ICA asks the agency to improve its approach to managing trees***

**Complaint:** Mr AB said that trees planted by the agency to mask the road above were now too tall to block the traffic. Instead they were simply blocking the light to his back garden. He wanted the trees pruned.

**Agency response:** The agency said that it only pruned trees when they were a threat to health and safety, which these ones were not.

**ICA outcome:** There was no evidence that the agency's practice of only pruning trees that were a safety hazard had ever been written down, and some evidence that it could be moderated at times. In other words, the ICA concluded this was custom and practice not a fully-fledged policy. As far as the practice itself was concerned, Mr AB had no 'right to light'. There was also a concern that lopping some branches off the trees might cause them to grow back more bushily, aggravating the problem for Mr AB or those living in the same street. But a spirit of good neighbourliness on the part of the agency ought to apply. It was clear from photographs that Mr AB was being disadvantaged. Confining the circumstances in which trees could be pruned to safety alone could constitute maladministration. (Ironically, it turned out that the local council had in fact been pruning Highways Agency trees in the same area on aesthetic grounds.) The ICA made three recommendations: (i) the agency should draw up and publish a list of all its agreed policies; (ii) a policy on pruning trees should be developed, reflecting the findings of the ICA review; (iii) once that policy was in place, Mr AB's request for the trees near his house to be pruned should be reassessed against that policy.

***Complaint about a car removed by the agency not upheld***

**Complaint:** Mr AB's car broke down on the motorway and was statutorily removed in his absence. He complained that money was stolen from the car, and that security tape could not be removed from the vehicle. In addition, he had been put to much inconvenience and sought compensation.

**Agency response:** The agency said that any complaints were matters between Mr AB, the company contracted to manage national vehicle recoveries (FMG) and the garage where the vehicle was eventually taken.

**ICA outcome:** While arguing that public authorities cannot divorce themselves entirely from those firms from whom they contract services, on this occasion the ICA thought Mr AB had no claim against the agency. In part, this reflected the fact that FMG had handled the matter well and made what the ICA felt was a reasonable offer to Mr AB. The agency's own complaint-handling also emerged well.

## **6: Maritime and Coastguard Agency**

- 6.1 Five MCA complaints were received during 2013–14. We summarise two cases below.

### **MCA case summaries**

#### ***Breakdown in working relationships between volunteer coastguards and agency staff***

**Complaint:** Ms AB complained about the impact on her husband and family of decisions taken by local MCA managers in respect of a volunteer coastguard rescue team. She further complained of delays and lack of response to her complaint.

**Agency response:** The MCA acknowledged that there had been a delay and had apologised.

**ICA outcome:** This was a long and very complicated review. Ms AB's complaint was just one of a number of related complaints and investigations resulting from a breakdown in relationships between the volunteers and local MCA management. In this report, the ICA simply dealt with the first half of Ms AB's complaint: that dealing with delays and lack of response. It was clear that an ICA review was not best designed to restore relationships that, sadly, had been badly fractured. However, by telling Ms AB's story, and offering an independent view of events, he hoped that a resolution could be found and lessons learned for the future. Part 2 of his report would follow once the MCA had completed its own investigations.

#### ***Complaint of unfair changes in certification requirements not upheld***

**Complaint:** Mr AB claimed that delays in implementing changes to the minimum training requirements for certificating experienced Electrical Technical Officers (ETOs) was treating them unfairly when compared with those recently qualified.

**Agency response:** The agency's timetable was well within the legal requirements and it was on course to implement the changes in a timely manner. There was no unfairness.

**ICA outcome:** The complaint mainly concerned policy decisions that were not within remit. After seeking more information from the complainant, the ICA concluded there were no grounds for proving discriminatory or otherwise unfair treatment of experienced ETOs.

## 7: Vehicle Certification Agency

- 7.1 There was just one complaint about the VCA during the reporting period, which we summarise below.

### VCA case summary

#### ***Complaint that the agency was responsible for inaccurate CO<sub>2</sub> emission data not upheld***

**Complaint:** Mr AB complained that prior to his purchasing a Mercedes-Benz car, he viewed the agency's published information on its website as to the CO<sub>2</sub> emissions and tax data for the vehicle. This data was incorrect and it misled him and resulted in his purchasing a vehicle he would not have chosen to buy had he known the correct information. He held the agency responsible for compensating him for the extra vehicle excise duty he would have to pay as a result.

**Agency response:** The VCA's website included a clear disclaimer of responsibility for the accuracy of the information. Mr AB had sought tax data for a vehicle with CO<sub>2</sub> emissions of 222 g/km and the information he had received was correct. He had then purchased a car producing 229 g/km because of its specification that, because of its date of registration, attracted a higher vehicle excise duty tax band.

**ICA outcome:** Although for a small number of vehicles first registered in March 2006 the online tools could have produced misleading information, there was not sufficient information to show that Mr AB had been actually misled in his purchase to uphold this complaint. However, certain aspects of the agency's handling of the complaint had lacked thoroughness and clarity. This had potentially aggravated the dispute since the VCA had failed to explain adequately why incorrect data would be provided for certain searches. For this reason, it was recommended that the chief executive should apologise to Mr AB.

## **8: Conclusions**

- 8.1 A multiple ICA setup evidently presents new challenges. We believe that, with the support of the Department and the agencies, we have risen to those challenges to provide a service that offers real benefits both to those dissatisfied by decisions, actions or inactions on the part of the DfT or agency staff, and to the Department and its agencies themselves.
- 8.2 Our new Operational Guidance reflects the new setup, explains what we do and do not do, and is sensitive to other changes in agency configuration and the complaints landscape.
- 8.3 We welcome the more flexible approach to our terms of reference that has been shown by the leadership of the DVSA and DVLA, and by the other agencies within our terms of reference.
- 8.4 We welcome the DfT Board's November 2013 decision to widen the scope of its ICA review process to cover the whole Department, its agencies and other bodies, in line with the Ombudsman's recommendations. Our service will also extend to 'High Speed 2', which joined in April 2014. We will, with the Department, continue to monitor the impact of changing numbers of incoming cases on the effectiveness of our service and, in particular, case completion times.

**Jonathan Wigmore**  
**Stephen Shaw**

**5 August 2014**



## **Appendix to ICA Annual Report to the Department for Transport, 2013–14**

### **Operational Guidance**

#### **Referrals to and reviews conducted by the Department for Transport's Independent Complaints Assessors**

##### **1. Introduction**

The Independent Complaints Assessors (ICAs) provide independent reviews of complaints about the services delivered by:

- (i) the central Department for Transport (DfT(C));
- (ii) the Department for Transport's (DfT's) executive agencies; **and**
- (iii) other bodies reporting to the DfT.

In this document, references to a 'DfT body' may refer to any of the above.

This guidance sets out the operational expectations for the ICA role and will apply for the duration of the current ICAs' terms of appointment. Any changes in the interim will be subject to agreement between the Department for Transport, the DfT bodies and the ICAs.

##### **2. Referral and review process**

- (i) The scope of the ICA scheme is defined by an agreed protocol which is annexed to this guidance (the 'protocol').
- (ii) The DfT body will inform people of the option of requesting an ICA review through the general information it provides about its complaints procedure and in its final response to each complaint. The DfT body will ensure that the complainant is aware of the ICA jurisdiction and of the fact that the complainant must request a referral within six months of the agency's final response.
- (iii) A complaint case will be referred to the ICAs when the complainant requests this after the DfT body's final response has been provided. A standard referral form for DfT body use is annexed to this guidance (the 'referral form'). Exceptionally, a DfT body may refer a complaint for ICA review where this has not been requested but will only do so with the express consent of the complainant.

The DfT body will aim to pass a completed referral form and timeline on the complaint, together with the case papers, to the ICA within 15 working days of being asked to refer a case to the ICA.

(iv) The ICA will acknowledge receipt of a referral to the DfT body and complainant within five working days.

(v) The ICA will decide the extent to which any part of a complaint case within the ICA jurisdiction should be reviewed after taking into consideration the information and documents supplied by the DfT body and any other relevant information. In so doing, the ICA will keep in mind the public interest.

Factors relevant to this determination include the following.

*Against a detailed review*

- The DfT body has conducted a proportionate and reasonable investigation of the complaint and has found no administrative failure or mistake.
- The essence of the complaint is the complainant's objection to the content and/or the outcome of DfT body policy or legislation.
- It would be disproportionate for the ICA to review a complaint in detail, given its nature, seriousness and the potential outcome of a review.

*For a detailed review*

- The complainant has, or may have, suffered significant injustice, loss or hardship due to the matters complained about.
- The DfT body's handling of the complaint has been poor, for example it has failed to undertake a proportionate and reasonable investigation; and/or has failed to apply an appropriate remedy.
- The 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.

(vi) During the review, the ICA may raise queries concerning the complaint history or the policy or legal background to the matter and the DfT body will endeavour to answer these to her/his satisfaction.

The ICA will go on to review the complaint and set out his/her conclusion as to whether the DfT body has acted in a fair and unbiased manner and has followed its complaints procedures correctly. This is mainly done by considering documents and seeking answers to written questions. An ICA only interviews witnesses exceptionally where there is good cause, and should discuss this beforehand with the DfT body (and the DfT if appropriate).

(vii) An ICA may seek advice and/or a peer review from another ICA if she/he feels it is appropriate to do so in the circumstances of a particular case.

(viii) The ICA will submit a draft review to the DfT body for it to check for accuracy. This is not primarily for the DfT body to comment on the ICA's conclusions and recommendations, but if the DfT body anticipates it will be difficult to accept and/or implement the ICA's recommendations then it may convey its objections at this stage.

(ix) The review will provide the ICA's findings and conclusions (with the reasons for these) as to:

- any key facts in dispute;
- the extent to which the complaint was justified;
- where any part of the complaint is upheld, any recommendation to put it right; **and**
- any recommendation or suggestion for improving the handling of complaints or the matter complained of.

(x) Exceptionally, the ICA may decide that a draft report (or part of this) should be issued to the complainant and to the DfT body for all parties to have an opportunity to provide their representations on it before it is finalised.

### **3. Remedies**

(i) The ICA is at liberty to recommend that the DfT body remedy the cause of any complaint found to be upheld, by:

- the making of an apology
- the giving of more information and/or explanation
- other remedial action
- the reimbursement of evidenced expenses reasonably and necessary incurred resulting from the matter complained of
- the payment of other evidenced financial losses
- the making of a consolatory payment, if this is proportionate and necessary, to reflect the inconvenience, injustice, hardship or delay experienced by the complainant as a result of the DfT body's mistake or failure.

(ii) When making any recommendation for any financial payment, the ICA will have regard to the DfT body's policy, relevant Treasury guidelines (currently *Managing Public Money*) and the Ombudsman's *Principles for Remedy*.

(iii) In suggesting any remedy, the ICA will have in mind the impact and seriousness of any poor service or maladministration on the complainant and 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 take into account any act or omission on the part of the complainant

that might reasonably be regarded as contributing to the hardship or losses under consideration or exacerbating their effects.

(iv) Where a DfT body does not agree to implement a recommendation, it should inform the ICA in the first instance at draft report stage. If any difference of opinion cannot be resolved to the satisfaction of both parties, the DfT body should inform the complainant and the ICA in writing after the final report has been issued, giving its reasons for not implementing the recommendation.

(v) In every case, the DfT body should send to the ICA a copy of the letter that it sends to the complainant setting out its response to the final report and to any recommendations that the ICA has made.

#### **4. Confidentiality/information-handling**

(i) The DfT body will inform all complainants of the following regarding their personal information before it submits their cases to the ICA.

##### *Your personal information*

When you make a complaint to a DfT body, your personal information will be used by that DfT body, and where appropriate by the Department for Transport and its appointed Independent Complaints Assessors, for the purposes of handling your complaint, producing anonymised statistical information and seeking to improve services through lessons learnt. Further information about how each DfT body or the Department for Transport look after personal information can be found in the Department's information charter (available on the DfT website).

(ii) The DfT body will provide the ICA with all documents and information that it holds relevant to each complaint case so that an effective review can take place. In order to conduct a review, the ICA may occasionally require access to material that is sensitive; for example because it is confidential, legally privileged or commercially sensitive. Where the DfT body has informed the ICA of the sensitive status of such material then the ICA is not permitted to disclose it or any part of it outside the DfT body or Department for Transport (central department) without the prior consent of the DfT body.

(iii) All documents and information provided to an ICA must be handled in keeping with the Department's and DfT body's requirements for the lawful protection of information, especially personal information.

(iv) Any requests made directly to an ICA for access to information under the provisions of the Freedom of Information Act or Data Protection Act will be passed immediately to the relevant DfT body or to the Department, together with any relevant documents or information to which the request may relate.

(v) The report issued by the ICA to the complainant (and any representative such as an MP) and to the DfT body shall be copied to the Department, if requested. It is not issued on a confidential basis.

(vi) After a period of 15 months has passed since the conclusion of a review or the issue of the ICA's annual report including the case (whichever is the later) the ICA will arrange for the secure destruction of all relevant case documents he/she holds; and the Department will be responsible for the destruction of any documents stored centrally.

## **5. Reporting by ICAs**

(i) The ICAs will report annually to the Department no later than 1 July each year on complaints cases handled in the previous year ending 31 March. The report will include:

- how many complaints cases have been referred to the ICAs for review;
- how many complaints have been upheld, partially or fully;
- what recommendations and suggestions, if any, have been made to DfT bodies;
- what recommendations and suggestions, if any, the ICAs have for the improvement and better performance of the DfT bodies' complaints procedures and their role; and
- any other matter that the ICAs consider should be brought to the attention of the Department.

(ii) Each DfT body will be invited to check a draft of the report for the accuracy of the respective parts dealing with its cases.

(iii) The Department will publish the ICAs' annual report and its response to it on its website when finalised.

(iv) Quarterly summary reports will also be produced by the ICAs to an agreed format. These will also be provided to the DfT bodies in draft form before submission to the DfT.

## 6. Target timescales

(i) Target timescales for the scheme are set out below.

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 DfT body and to inform complainant and DfT body of proposed timescale for review	Five working days from receipt of completed referral
DfT body to answer queries raised by ICA	15 working days of receipt of query
DfT body to respond to draft ICA report	10 working days of receipt of draft report
ICA to issue final report to DfT body and complainant	Five working days from response to draft report and within three calendar months of initial referral.

(ii) If an ICA expects that annual leave, illness or other absence from work will result in a failure to meet these targets, then s/he will inform the agencies and DfT, in advance if possible and practicable.

## 7. Diversity

It is agreed that the scheme should be as widely accessible as possible to all sectors of the community, in the same way that the Department for Transport's services are. Accordingly, if at the time of making a referral the DfT body considers the complainant has any disability that may affect the ICA's usual way of communicating with the complainant and vice versa, then it will report this to the ICA.

*March 2014*

## **Annex A to Operational Guidance: ICA protocol**

Information to be made available by agencies to complainants at or before the final DfT body complaint response.

### **Stage 4**

You can ask us to pass your complaint to the Independent Complaints Assessor (ICA) if you've been through stage 3 and aren't happy with the response.

The ICA is:

- independent of DfT and [insert name of DfT body]
- not a civil servant

The ICA looks at whether we have:

- handled your complaint appropriately
- given you a reasonable decision

It doesn't cost you anything to have your complaint assessed by the ICA.

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

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

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

When the ICA has completed their review, they'll contact you with their findings and any recommendations they consider appropriate to both you and us. This ends their involvement with your case.

The ICA can look at complaints about:

- bias or discrimination
- unfair treatment
- poor or misleading advice
- failure to give information<sup>8</sup>
- mistakes
- unreasonable delays

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<sup>8</sup> Apart from requests for information where the Freedom of Information Act, the Data Protection Act or the Environmental Information Regulations apply.

- inappropriate staff behaviour

The ICA can't look at complaints about:

- government, departmental or DfT body policy
- matters where only a court, tribunal or other body can decide the outcome
- legal proceedings that have already started and will decide the outcome
- an ongoing investigation or enquiry
- the handling of requests for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- the handling of Subject Access Requests made under the Data Protection Act
- personnel and disciplinary decisions or actions

An ICA cannot usually look at any complaint that:

- has not completed all stages of our complaints process
- is more than six months old from the date of the final response from us

If your complaint falls within either of these categories please explain why you believe it should be reviewed on an exceptional basis by an ICA. The DfT body will send your explanation with your complaint to the ICA.

An ICA cannot look at any complaint that has been, or is being, investigated by the Parliamentary and Health Service Ombudsman.



**Annex B to Operational Guidance: referral form for DfT body completion**

## ICA review referral form

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Notes:

1. BOXES 6–10: if letters or emails set these points out clearly and succinctly then they may be attached to the form instead of completing the box(es).
2. A timeline of all correspondence/actions should be attached to this form.

<b>1. DfT body &amp; contact details</b>	
<b>2. Name of complainant</b>	
<b>3. Address</b>	
<b>4. Email address and telephone if known</b>	
<b>5. Date complaint made and by what means</b>	
<b>6. Summary of complaint (attach letter/email if appropriate)</b>	
<b>7. Date of DfT body's initial response to complaint</b>	
<b>8. Summary of initial response (attach letter/email if appropriate)</b>	
<b>9. Date of DfT body's final response to complaint</b>	

<b>10. Summary of final response to complaint</b> (attach letter/email if appropriate)	
<b>11. What redress, if any, has been offered to the complainant (e.g. apology, reimbursement of expenses, <i>ex gratia</i> payment)?</b>	
<b>12. Date of request for ICA review</b> (attach letter/email if appropriate)	
<b>13. Does the DfT body know if a complaint has been made to the PHSO?</b>	
<b>14. Is the complainant's request for ICA review late? If so, does the DfT body think the ICA should waive the time bar?</b>	
<b>15. Does the complaint concern systems or processes that have since changed or will change in the near future?</b>	
<b>Date:</b>	<b>Person making referral</b> (if different from email)

**Any other comments:**