

Independent Complaints Assessor to the Executive Agencies

Report to the Department for Transport for 2011-2013

Ian Bynoe
October 2013

Summary of recommendations

- 1. That legislative amendments are made to DVLA vehicle licensing regulations to make clear the registered keeper's responsibility to ensure their SORN declaration delivery or disposal notification is effective. (Paragraph 48)**
- 2. That as an interim measure by DVLA, registered keepers are advised in writing to obtain proof of posting if their declaration or notification is sent by mail. (Paragraph 48)**
- 3. That the DVLA provide the public with a clear and accessible explanation of its penalty system, along the lines used by HMRC and Companies House. (Paragraph 49)**
- 4. That the Department consider with the DVLA how independent review can be extended to cover all aspects of wheel clamping enforcement action. (Paragraph 50)**
- 5. That the Department review and clarify the ICA's remit so that in future the ICA is not prevented from reviewing all aspects of a complaint about how a public service has been provided simply because it has been delivered by a private sector organisation. (Paragraph 51)**
- 6. That the DVLA's Drivers' Medical Group's approach to prioritisation is comprehensively reviewed and fresh guidance produced which can be published to customers and their doctors. (Paragraph 56)**
- 7. That the DVLA's standard letter acknowledging receipt of a driving licence application requiring medical investigation include (as a footer or shown in a text box) a clear reference to the INF 94 leaflet and how to obtain it. Subsequent letters should then repeat this information. (Paragraph 58)**
- 8. That the DVLA's Customer Complaints Resolution Team be enhanced by its team being supplemented by trained investigative capacity, either within the team or at least available to draw upon from elsewhere in the Agency when required and that Agency's Interim Chief Executive secures this capability for the team. (Paragraph 60)**
- 9. That the Department provide information about the ICA (who we are, what we do, how to request referral) on its web pages. (Paragraph 90)**

REPORT TO THE DEPARTMENT FOR TRANSPORT FROM THE INDEPENDENT COMPLAINTS ASSESSOR TO THE EXECUTIVE AGENCIES

APRIL 2011 – MARCH 2013

INTRODUCTION

1. The Independent Complaints Assessor (ICA) role provides an independent review of a complaint about a service delivered by one of the Executive Agencies of the Department for Transport, currently: Highways, Driving Standards, Driver and Vehicle Licensing, Vehicle Certification, Maritime and Coastguard and, lastly, Vehicle and Operator Services. It constitutes the final stage of an Agency's internal complaints procedure which should usually be completed before the Parliamentary and Health Service Ombudsman (PHSO) will agree to consider the complaint. The ICA decides whether the Agency has handled a complaint appropriately and whether its decision and/or the response to the allegation have been reasonable and justified.

2. The question which an ICA review addresses 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
- Improper or unreasonable staff behaviour e.g. rudeness

3. 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. Of course, a complaint must nevertheless be seen and understood in its legal and policy context. In addition, it is not the role of an ICA to provide a parallel jurisdiction and second opinion where there exists a specific right of appeal or challenge to a court, tribunal or other body whose jurisdiction means it can address the grievance at the heart of the complaint. For example, a landowner may disagree with the level of compensation offered to them by the Highways Agency for environmental damage (e.g. noise) caused by a new road scheme. This person has a right to apply to a tribunal for it to set the appropriate level of compensation. An ICA cannot decide on the fair amount of compensation, though a review may consider the way a claim was handled by the Agency administratively if this is complained about.

4. By way of further illustration, a driving licence holder who objects to a decision by the DVLA to revoke their licence on medical grounds may appeal to the Magistrates' Court against this decision. An ICA review cannot, therefore, enquire into the medical justification for such revocation though it can look at a complaint of unreasonable delay or administrative error or other unfairness before or after the decision was taken.

5. A complainant is not obliged to ask the Agency to refer their complaint for ICA review even if they are dissatisfied with the outcome. Many do not do so despite them asking their MP to forward the complaint to the PHSO. On receipt, the PHSO will usually decline to investigate until an ICA review has taken place and the Agency is then asked to arrange a referral.

6. In my first report in August 2011 I made two recommendations to the Department, viz:

- that the Department consider drafting and agreeing with its Agencies terms of a formal written protocol document defining the role and remit of the ICA
- that the Department consider publication on its website of the ICA's annual report.

7. I am pleased to report that shortly after receiving these recommendations the Department began the process of drafting and agreeing a protocol document to apply across all relevant Agencies coinciding with a fundamental change to the way that cases were referred (see following section). In November 2011 the Department published my report on its website and I trust that this report will also be published in this way.

8. This report covers cases which were referred for ICA review between 1 April 2011 and 31 March 2013 inclusive and completed before 1 September 2013. On this date, a small number of reviews remained to be completed from this period. At the start of June 2013, two additional ICAs were appointed and began work. They assisted me with completing four of the cases reported on below. Where I recommended an outcome and redress to remedy what had gone wrong for the complainant, then the Agency agreed to this and implemented these recommendations in each case.

9. During the two year period covered by this report the ICA's role underwent major change. I provide below to the Department and wider public statistical information on the ICA's workload, highlight trends in referral and outcomes and offer some observations and recommendations for the Agencies and Department which emerge from the cases considered.

10. It is important for the reader to interpret this information in its context and to understand that the number of cases referred to the ICA for review still represents a very small fraction of the total number of complaints received and responded to by each of the Agencies reported upon. In terms of the transactions which these Agencies have each year with the public and the numbers of people who received their services, measured in millions not thousands, the complaints totals themselves are relatively low.

CHANGES IN REFERRAL PROCEDURE

11. Prior to 1 December 2011, a customer could *ask* for an ICA review if dissatisfied with the final response from the Agency. However, the complaint would only be referred to the ICA if the Agency's Chief Executive agreed to this. In the DVLA and DSA, most cases where the customer requested this were not referred for review. Although the complainant would be told that a referral was refused because the complaint was outside the remit of the ICA, and an assessment of remit was certainly undertaken, what also appears to have happened in practice was an assessment of the merits of the complaint with a view to deciding whether or not there could be grounds for criticising how the Agency had performed. In those cases where there was an acceptance that the standard of service might have been poor or a mistake had possibly been made, the matter would be referred. Where there was no such acknowledgement and the Agency concluded that the outcome was entirely consistent with the law and policy, Agency procedure and established practice, then the customer's request would usually be refused. This would be so even if the customer *complained* of unfair treatment or that a mistake had been made.

12. From my reading of complainants' correspondence written to Chief Executives and to the PHSO after they were refused such access to the ICA¹ I can see that the approach attracted regular criticism. It was said that this showed a lack of necessary independence and that the Chief Executive was judge in their own cause. The PHSO also highlighted to the Department that it meant that the ICA service lacked the independence and transparency required of a modern public service complaints procedure². In the light of this, the Department decided that in future all requested reviews would be referred and in the summer of 2011 initiated the drafting and agreement of a new protocol, referral form and operational guidance document to implement this change. In future the ICA would be sole judge of how and when a review would be conducted.

13. From the start of December 2011, therefore, whenever a customer has requested an ICA review the Agency has forwarded the complaint and supporting documents to the ICA for him to consider what more information may be required of the Agency and/or customer and how the review should be undertaken. Prior to December 2011, every review resulted in a written report formally recording its scope, the history of the case, relevant law and policy, analysis, conclusions and recommendations (if any). This elaborate explanatory response is still required for a proportion of cases now referred. However, for many referrals a letter will suffice (albeit sometimes a lengthy one), even where I have upheld a complaint, criticised the Agency and

¹ I came to see such comments when the case had later been referred to me because the complainant had taken their complaint to the PHSO. The PHSO asked for an ICA review since her Office would not consider the matter unless the complainant remained dissatisfied after such a review had been undertaken.

² See also "*Responsive and Accountable? The Ombudsman's review of complaint handling by government departments and public bodies 2010-11*" Ninth report of the Parliamentary Commissioner for Administration Session 2010-12 HC 1551 (2011) London: The Stationery Office. At p. 16 the PHSO reports a case where she partly upheld a complaint against the DVLA, found maladministration occurred and decided that the Agency should have allowed the complaint to progress to the ICA.

recommended an apology, compensation or a change in procedure or practice. Figure 4 below shows the respective proportions of letters to reports in the two years covered. Furthermore, it is accurate to describe the response to every referral as involving some level of independent review firstly as to whether or not the case is within remit and, where it is, secondly as to its merits. Just because a case results in a letter rather than report does not mean that the ICA's review has been superficial or the decision is any the less justified or well founded.

14. The change in referral practice had an immediate impact on the ICA workload and, to an extent, on that of the Agencies required to prepare files for forwarding. Ten years before, the then ICA, Dame Barbara Mills QC, reported that she had been asked to review just 11 cases in that year. In my first year as ICA (2010 - 2011) the annual total had risen to 35 reviews. However, in only the first four months of the new procedure 47 referrals were received and in the succeeding 12 months 199 referrals were made to me, at an average rate of 17 per month.

15. There was no forward planning to secure the ICA time needed to cope with the huge rise in referrals and my part time resources soon proved insufficient for the new demands. Regrettably, this has resulted in a drastic drop in standards of timeliness, especially in the completion of longer and more complex reports. As reported above, the very significant increase in workload led the Department to appoint two additional ICAs who commenced work in June 2013, some eighteen months after the new procedure was introduced. Only with their arrival have we become able to tackle the backlog in reviews and restore more acceptable standards of performance. If the Department adds to the jurisdiction of the ICA in the future then it is essential for some forward planning to be done on predicted workload, the resources needed to undertake this and an assessment of whether these are currently available or need to be secured by additional recruitment.

16. Apart from these observations, I consider the new procedure to be effective and working well. I am confident that cases are referred when they should be, although some Agencies with low numbers of requested referrals need to develop robust systems to inform a complainant more effectively and promptly of their right to ask for this. The statistical analysis below shows that I have agreed with the Agency in the majority of cases referred - many of these being the complaints which formerly would not have been referred. However, there is and remains a strong argument for an independent review where a customer's complaint comes within the ICA's remit and this is entirely consistent with the PHSO's Principles of Good Administration. I offer the following reasons for reaching this conclusion:

- the previous approach was misleading since it purported to refuse a referral simply for being "outside remit" when in fact the grounds for refusing a referral invariably were that the Agency judged it had done nothing wrong – hardly a sufficient ground for excluding independent scrutiny
- by a significant margin, most of the new cases I have seen are referred by the DVLA and of these a high proportion concern enforcement of licensing legislation and the revocation of a driving licence or its refusal

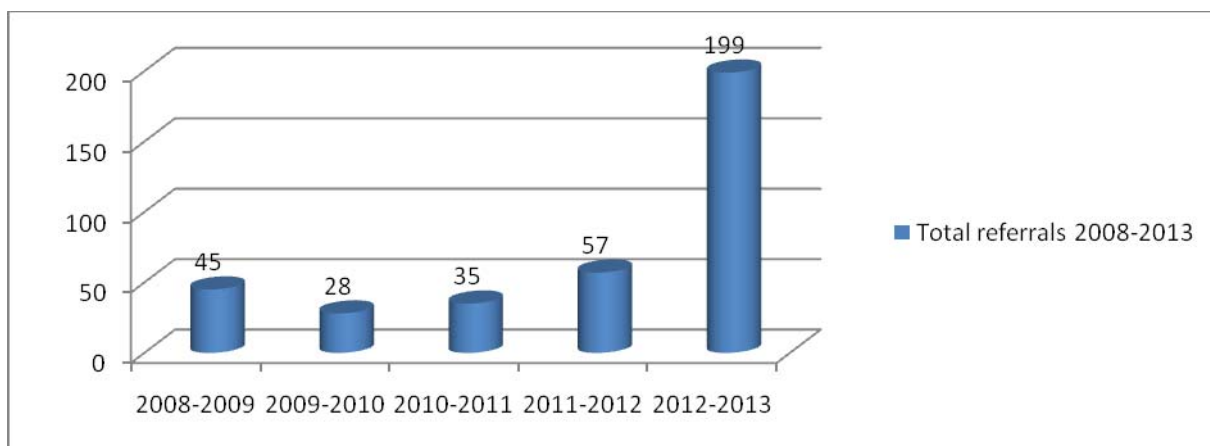
- these are activities which involve the imposition of a financial penalty, clamping or removal of a vehicle, limitation or withdrawal of the right to drive (often required for employment purposes)
- such decisions and activities have the potential to cause distress, inconvenience and substantial loss - there is a role for independent scrutiny to give credibility to the complaints procedure and help to spot the occasions when something has indeed gone wrong and this has not been recognised.

17. The protocol documents, referral form and operational guidelines are currently being revised to take account of the appointment of additional ICAs and to adapt to other developments in practice since December 2011.

OVERALL WORKLOAD STATISTICS AND ANALYSIS

18. Figure 1 below shows the total number of referrals over the past five years. It vividly shows the rapid and significant rise which followed the introduction of the new referral procedure in December 2011. I do not know if this increase mirrors a rise in complaints recorded by the Agencies over the same period.

Figure 1: Total referrals 2008-2013



19. Table 1 provides a breakdown of those referrals for each of the Agencies. It is striking that during the early years of this century the DSA referred most cases to the ICA and the number from the DVLA was very small. By the end of March 2013, the picture had completely changed. Now

the DVLA refers the vast majority of cases, the DSA a significant number and the other Agencies hardly any at all in comparison.

Table 1: All complaints referred for review

	HA	DVLA	DSA	VOSA	VCA	MCA	GCDA ³	TOTAL
2001-2	1	3	7	0	0	-	0	11
2002-3	1	4	8	0	0	-	0	13
2003-4	2	1	10	0	0	-	0	13
2004-5	1	5	8	0	0	-	0	14
2005-6	7	5	17	1	0	-	0	30
2006-7	1	12	12	0	0	-	0	25
2007-8	1	18	26	0	0	-	0	45
2008-9	4	22	19	0	0	-	0	45
2009-10*	3	5	6	0	0	-	0	14
2010-11	12	14	6	1	0	2	0	35
2011-12	6	37	12	1	1	0	1	57
2012-13	11	127	49	8	2	2	-	199

* = Period of six months from 1 September 2009 until 31 March 2010

20. Figures 2 and 3 present the respective referral totals for the two years covered by this report and demonstrate how much of the ICA’s workload during those years was drawn from the DVLA and from the DSA.

³ The Government Car and Dispatch Agency (GCDA) was one of the Agencies included in the ICA’s remit. It ceased to exist as an Agency in 2012.

Figure 2: Total referrals 2011-2012 by Agency

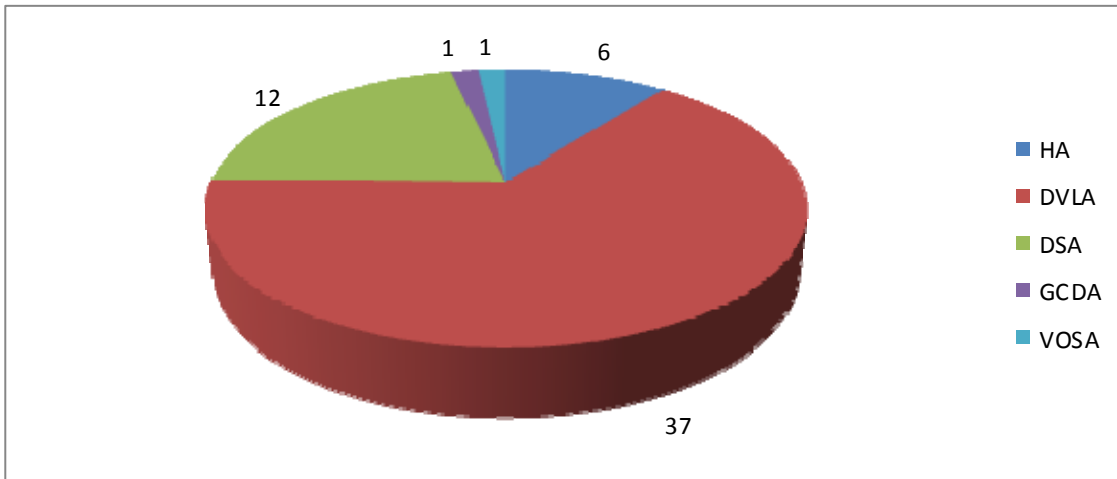
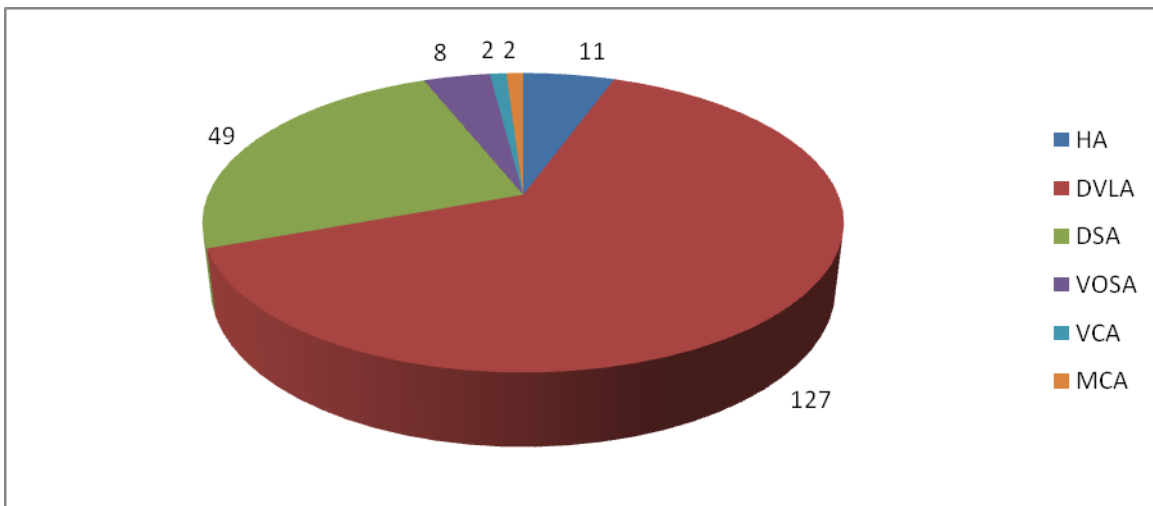


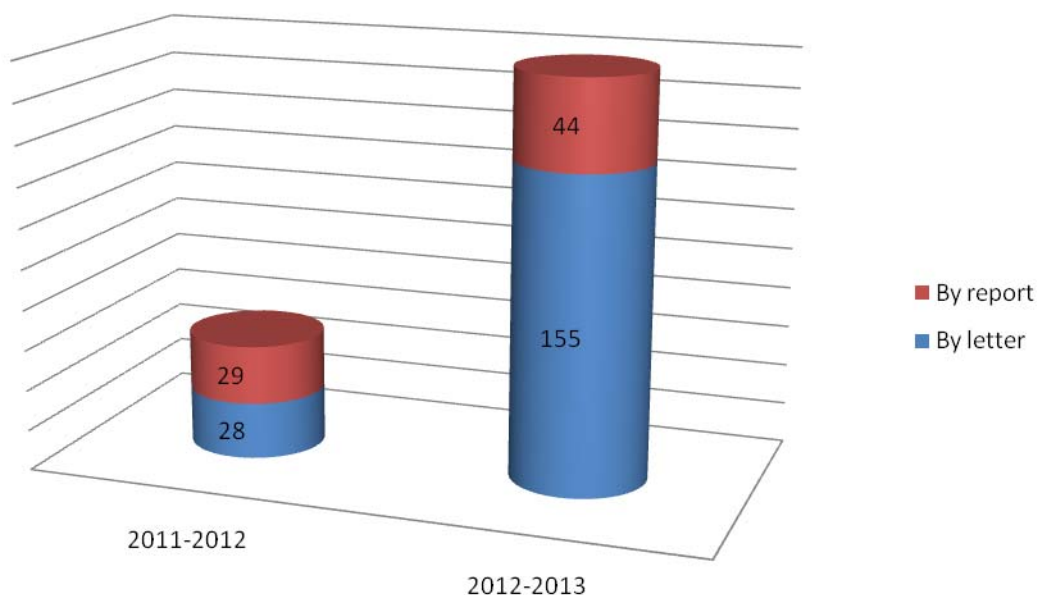
Figure 3: Total referrals 2012-2013 by Agency



21. Figure 4 shows the chosen method of response to the referral. In 2011-12, the new referral procedure was not introduced until two thirds of the year had elapsed. All referrals prior to this date had resulted in the issue of a review report which probably accounts for the higher

proportion of these. Also, I had yet to employ the letter for straightforward upheld complaint reviews, a practice which the ever rising workload rendered essential during the later part of 2012.

Figure 4: ICA format for responding to referrals 2011-2013



22. Table 2 presents statistics on the outcome of reviews. When conducting a review, I have examined the customer’s allegations in the light of the information and documents supplied to me, and reasons given in letters or emails for the Agency’s position. I have sought additional information or clarification where necessary. Where I have determined that a complaint is “not upheld” this means I have concluded there are no grounds for disagreeing with the Agency’s response, for reviewing the matter any further or for making any recommendation or suggestion about future performance or practice. This is usually so if the decision or action is consistent with established law, policy and fair administrative procedure. Where the case is shown as “upheld” then this means that I have concluded that one or more of the customer’s allegations are well founded and/or that I recommend that the Agency review or change some aspect of its operations or procedures or the information which it provides to the public or customers.

Table 2: Complaints where one or more allegations upheld and/or recommendation(s) made

	HA	DVLA	MCA	VOSA	DSA	GCDA
2004/5	0	0	-	-	0	-
2005/6	2	1	-	0	2	-
2006/7	0	2	-	-	2	-
2007/8	0	5	-	-	3	-
2008/9	0	4	-	-	1	-
2009/10#	0	1	-	-	2	-
2010/11	4 (12) ^o	9 (14)	0 (2)	0 (1)	2 (6)	-
2011/12	0 (6)	14 (37)	-	0 (1)	2 (12)	0 (1)
2012/13	0 (9)	21 (119)	0 (2)	0 (8)	5 (41)	-

Cases from 1 Sept 2009 – 31 March 2010

^o Figures in brackets are total number of cases reviewed

DRIVER AND VEHICLE LICENSING AGENCY

23. Figures 5 and 6 provide a breakdown by general category of the cases referred to the ICA by the DVLA during the two years covered by this report.

Figure 5: Breakdown by category of DVLA referrals 2011-2012

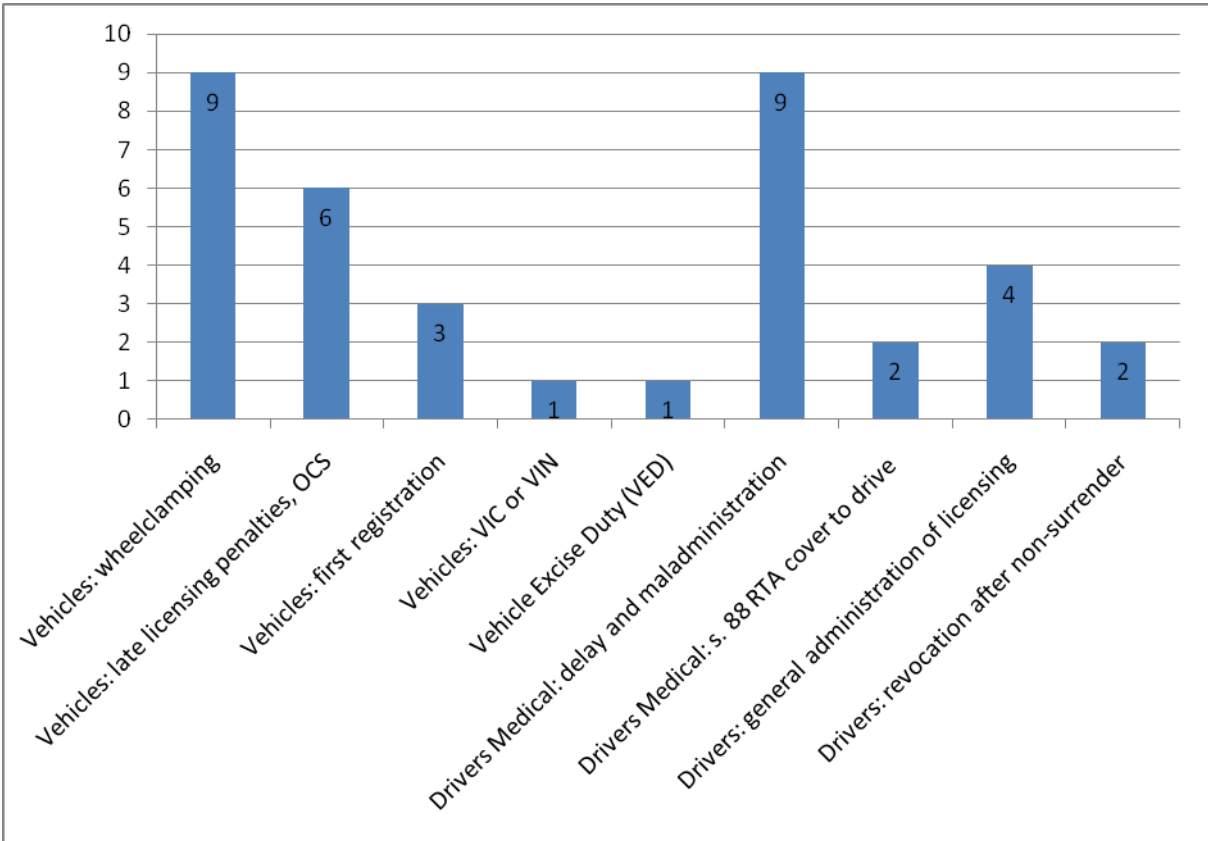
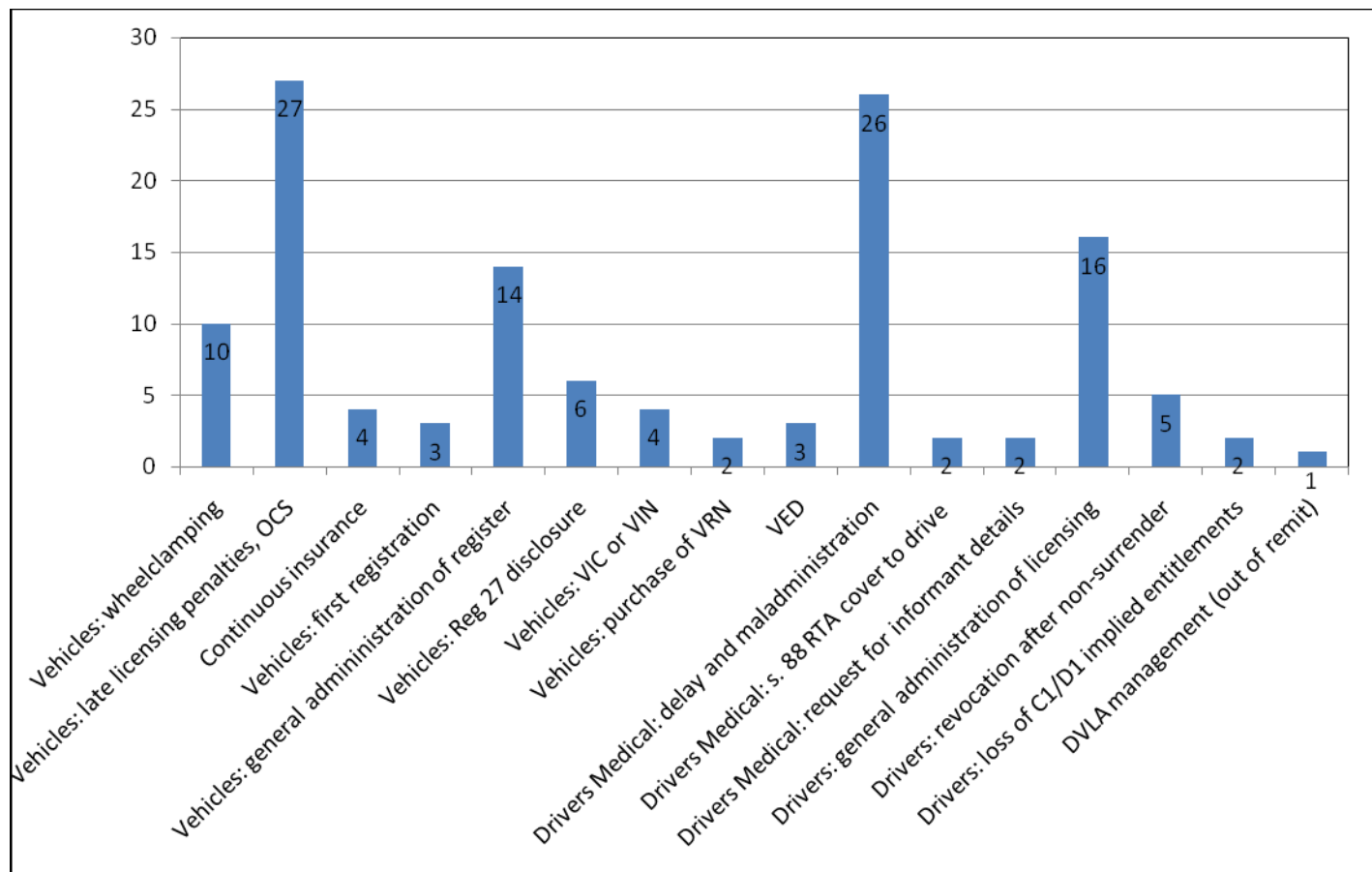


Figure 6: Breakdown by categories of DVLA referrals 2012-2013



24. These totals reveal a similar picture for each of the two years. Complaints about a demand for the payment of a Late Licensing Penalty (LLP) or Out of Court Settlement (OCS), comprising over a fifth of the total, were nearly matched by the number of complaints alleging unreasonable delays or other maladministration in decisions taken by staff in the Drivers Medical Group. The following provides the reader with illustrations of the categories of complaint given above and which are represented in these figures:

- a car owner complained that their vehicle had been wheel clamped and then removed from land which was not part of the public road
- a vehicle’s registered keeper complained that the Agency’s demand for a LLP was unjustified because they had notified the sale of their car to a third party by sending to the Agency the appropriate part of the registration certificate completed and signed, and it must have been lost in the post or mislaid at the Agency

- a vehicle's registered keeper complained about the penalty demanded for failing to insure their vintage car
- a home build enthusiast complained about the Agency's requirement for him to obtain an Individual Vehicle Approval (IVA) for his kit car, which he claimed was completed ten years earlier and was therefore exempt from this rule, before it would agree to its first registration
- a person complained that the Agency had negligently permitted a third party to become registered fraudulently as keeper of a vehicle and to obtain a registration certificate for it
- a vehicle keeper complained that the Agency had wrongly disclosed to a parking management company details of their identity and address in connection with an alleged parking infringement
- keepers complained of being required to obtain a Vehicle Identity Check (VIC) or to have a DVLA vehicle identity number (VIN) inserted in their vehicle instead of the one which was there, or that a claim to a refund of vehicle excise duty (VED) had been mishandled
- lorry or bus drivers complained that the Agency's Drivers Medical Group had taken too long to renew their vocational (i.e. employment related) entitlements resulting in their loss of salary or employment
- applicants renewing their driving licence complained that they had been unable to drive while their application was being considered because the Agency had not told them of their legal entitlement to drive under s. 88 Road Traffic Act 1988 after the old licence expired
- drivers complained about the Agency's refusal to identify the informant whose report had initiated medical enquiries into their fitness to drive
- customers complained that the Agency had lost original documents such as a birth certificate or passport
- drivers complained that the Agency had wrongly revoked their licence on the ground that this had not been surrendered for endorsement with a criminal conviction and penalty, when they had not been notified to do so
- drivers complained that their "implied" entitlements to drive C1 and D1 vehicle categories had been unfairly removed from their licence.

25. The new procedure for referrals has had a striking effect on the basket of cases seen by the ICA. I am not aware of any case reported by me or my predecessors which concerned the activities of the Drivers Medical Group (DMG). Its role and significance in the work of the Agency were not known to me and I was unaware of the high number of complaints which its activity attracted. During the sixteen months between December 2011 and March 2013, thirty nine cases arising from DMG work were referred to the ICA, a number of which have been upheld and I am able to report to the Department on some of the factors which emerge from reviewing these cases (see below).

26. Tables 3 and 4 provide an annual summary for each of the cases where the ICA has upheld one or more of the customer’s allegations and/or where a recommendation has been made to the Agency.

Table 3: DVLA cases where allegation(s) upheld and/or recommendation(s) made 2011-2012

Ref	Nature of complaint	Outcome	Recommendation
4	Vehicles, first registration of imported motorbike: maladministration	Upheld	Apology; training for staff; amend webpage information; £340.28 compensation
7	Vehicles, general admin, requirement for VIC: delay, incorrect information, maladministration	Part upheld (failure to inform)	Apology; £75 compensation
11	Drivers Medical: delay in handling application	Upheld	Apology and net earnings for defined period if confirmed by employer
13	Vehicles, general administration: errors in handling return of wrongly addressed post and actions of bailiffs	Part upheld	Apology; £370 compensation and review of guidance on dealing with returned post
14	Vehicles, enforcement: wheel clamping and handling of complaint by contractor	Part upheld (handling of complaint only)	Apology on behalf of (ex) contractor
16	Drivers Medical: disclosure of documents and unfair requirement to complete forms	Upheld	Apology; £350 compensation
19	Drivers Medical: information re s. 88 cover to drive	Upheld	Apology; revisions of letter and form giving information on s. 88 RTA 1988
22	Drivers Medical: review at request of Minister into handling of complaints about revocation decision	Part upheld	Apology
25	Drivers Medical: mishandling of renewal application; ineffective or misleading communications	Part upheld (ineffective, misleading communications)	Apology; £100 compensation; revise wording of address fields on standard letters

30	Vehicles, enforcement: wheel clamping	Upheld (service quality could have been higher)	Apology; £85.45 payment
31	Drivers Medical: maladministration in handling of LGV licence renewal	Upheld	Apology; payment of £1,650 for non-financial losses and £428 for financial losses
38	Drivers, general admin: error on issued licence	Upheld	Apology; payment of £250 for non-financial losses and £963.48 for financial losses
47	Vehicles, enforcement: wheel clamping and impounding car	Upheld	Apology
52	Drivers, general admin: delay in issue of renewed photocard; treating application as fraudulent	Part upheld (lack of information)	Apology; payment of £250 for non-financial loss; use report to improve DVLA liaison with Identity and Passport Service

Table 4: DVLA cases where allegation(s) upheld and/or recommendation(s) made 2012-2013

Reference	Nature of complaint	Outcome	Recommendation(s)
9	Vehicles enforcement: Late Licensing Penalty for failure to notify scrapping of vehicle	Not upheld i.e. LLP lawfully demanded	Refund of penalty paid due to circumstances
11	Drivers Medical: delay in determining medical renewal application, extra insurance cost	Part upheld	Apology
15	Vehicles enforcement: wheel clamping, impounding vehicle, refusal to release vehicle	Part upheld	Apology, send report to wheel clamping company, revise wording of information leaflet
23	Drivers Medical: failure to provide s. 88 cover to drive letter, failure to recognise "grandfather" rights re. eyesight standards	Upheld	£500 for non-financial loss; half net earnings lost if substantiated by employer
27	Drivers, general admin: mislaidd V5C application	Upheld	Apology and £50 for expenses and inconvenience
34	Drivers, general admin: loss of implied entitlements at 70 yrs	Not upheld	Review information provided to licence holders re losing entitlements
56	Vehicles, enforcement: wheel clamping, impounding of vehicle, handling of release	Part upheld (distance of pound from owner's home)	Apology, send report to contractor and provide nearer car pound
69	Vehicles, general admin: wording of V11 reminder	Upheld	NFA; since action had already been taken
78	Drivers Medical: communications and delay	Part upheld	Apology; £100 for inconvenience
86	Drivers, general admin: documents lost due to address error	Upheld	Apology; £120
97	Drivers Medical: delay	Upheld	Apology; £250 for inconvenience
99	Vehicles, enforcement: Late Licensing Penalty for failure to notify transfer to new keeper	Upheld	Discontinue enforcement proceedings; review contents of letter
115	Drivers, general admin: handling of surrender of licence for endorsement	Upheld	Apology; £100 for inconvenience and distress

118	Drivers, general admin: wording of leaflet misleading	Upheld	Apology and alter wording
129	Drivers Medical: delay and cover to drive	Part upheld	Reimbursement of road tax and insurance and a £300 consolatory payment
131	Drivers Medical: delay and failure to reply to GP	Part upheld	Apology to complainant and GP
140	Vehicles, enforcement: wheel clamping and demand for OCS for s. 29 offence	Part upheld	Enforcement proceedings discontinued and wheel clamping contractor to pay compensation
179	Vehicles, general admin: new V5C issued to person making false representation; police involved without informing complainant	Part upheld	Apology and £25 payment since Agency should have told the complainant it had involved the police
180	Drivers Medical: delay	Part upheld	Apology and £75 consolatory payment
188	Drivers, general admin: delay in issue of ordinary licence needed for travel abroad	Upheld	Apology
194	Vehicles, enforcement: wording of warning letter	Upheld	Apology; £75 for inconvenience and change wording of letter

27. The following summary case histories illustrate several of the principal decisions taken during the past two years concerning DVLA cases. Later I shall highlight key points which have emerged from all of the cases considered.

Misinformation and delay in registering and taxing an imported motorcycle

28. AB complained that the Agency had unfairly refused to compensate him for the costs he incurred due to its poor service, incorrect advice and unreasonable delay in handling his application for the registration and taxing of his vintage motorcycle imported from India. The Agency accepted its service had been poor and made a limited offer to reimburse some of his costs and pay him £50 for the trouble and inconvenience caused to him. I concluded that the DVLA had taken in excess of four months to complete a transaction which the directgov website page had said would take "about a week". There was repeated misinformation concerning the correct form to use which I found was maladministration and there were other aspects of the service which were poor. I recommended the payment of £340.28 to include £250 for

inconvenience. I further recommended changes to the information provided to vehicle importers to ensure that an accurate estimate of time was given.

Poor service to a customer who had bought an accident damaged car

29. CD complained that when he purchased a used vehicle which had been involved in an accident he was not aware of this at the time of purchase and the Agency was at fault. When he asked the Agency why he had not received the vehicle registration certificate as the new keeper he was not told why he could not obtain this until the vehicle's identity had been checked. I could not assess the DVLA policy which had led to CD's vehicle being assigned a category C write-off status so that its identity would need to be checked. However, I concluded that CD had not been provided promptly with accurate and sufficient information following his first contact with the Agency and I recommended it made him a consolatory payment of £75 for the hassle and inconvenience he had experienced. I recommended that the review report be passed to the Agency's policy department for it better to appreciate the impact of its current policy on vehicle purchasers and to help the Agency to improve this.

Debt collectors persistently pursued a late licensing penalty at the wrong address

30. EF complained when the Agency and its contracted debt collectors persisted in sending correspondence demanding the payment of a late licensing penalty to his address for a third-party who had never lived there or had any connection with the property. This review required thorough investigation as to the causes of this maladministration. It was due to a series of clear errors and what I concluded were weaknesses in the operating instructions providing guidance to staff on the handling of returned mail. I upheld three of the allegations made by EF, recommended that the Agency apologise and make him a consolatory payment of £350 and £20 to reimburse him expenses which he had incurred. I recommended that operational instructions be reviewed and if required be revised, the better to equip staff to deal fairly, consistently and properly with returned correspondence. The case highlighted what I concluded was an inflexible and potentially objectionable practice of the Agency which required a householder to "prove" their status as resident before the possibility of data error would be acknowledged by both the DVLA and its collecting agent and investigated.

Refusal to provide documents which showed error in decision not to renew licence

31. GH complained that when requested to do so, the Agency refused to supply him with the copy medical reports and other documentary evidence which were the basis for a decision to refuse to renew his licence on medical grounds. As a result he had to make his own enquiries of the doctors who had supplied this information. This led him to discover an error by a doctor which had resulted in the refusal decision. He also complained that he had been required, wholly unnecessarily, to complete questionnaire forms with information already held by the Agency. I upheld both complaints since I concluded the Agency should have provided GH with the information he had asked for and it did not do so at the required time. I also decided that he had

been required to devote unnecessary time and trouble in order to provide information already held by the Agency and the instruction to him to do so should have been cancelled. I recommended that the Chief Executive apologise; that the Agency offer an ex gratia sum of £350 for inconvenience and that the executive manager for the DMG together with the Senior Medical Adviser ensure that all DMG staff were made fully aware of and effectively implemented Agency guidance on the disclosure of medical information.

Better explanations of section 88 of the Road Traffic Act 1988

32. IJ complained of unreasonable delays by the Agency's DMG in processing his application to renew his entitlement to drive large goods vehicles. He also alleged that the Agency had failed to inform him reasonably clearly that he could still drive such a vehicle whilst awaiting the outcome of his application. Although I did not uphold either complaint, my review highlighted the different information provided to the public on the meaning and effect of s. 88 of the Road Traffic Act 1988, under which an applicant for a licence is permitted to continue to drive after their licence has expired but while their application to renew this is considered. Such a person is entitled to drive subject to defined conditions being met. I recommended that the Agency revised the wording of its standard letters giving information on this entitlement in the light of my analysis and observations.

Unreasonable delay in assessing a trainee bus driver's fitness to drive

33. KL complained of poor service, unreasonable delay, delay in responding to his complaint and a refusal to pay his compensation claim. He had applied for the granting of a provisional licence for passenger carrying vehicles and it had taken from mid-April until early November for the application to be considered and an extended provisional licence issued to him. This review required careful investigation of the causes of delay and whether, if at all, these were the responsibility of the Agency or, as is often the case, a third-party. From application until issue nearly 29 weeks elapsed and KL was unable to take up an offer of employment as a trainee bus driver throughout this period until he was issued the licence. It took an unreasonably long time for KL to be seen and tested by a consultant and for the results to be sent to the Agency. This was not the fault of the DVLA though I concluded that insufficient priority was given to this case thereafter and I upheld the complaint of unreasonable delay for the period after the test report was received. I found that the Agency's own policy on the prioritisation of cases requiring urgent attention had not been followed. I recommended the Agency's Chief Executive apologise and that the Agency offer to pay KL a sum equivalent to the net earnings he did not receive during the time his application was unreasonably delayed.

Refusal to accept responsibility for errors in a licence to drive passenger carrying vehicles

34. MN complained of poor service in that when he applied for renewal of his Passenger Carrying Vehicle (PCV) entitlement, that entitlement was missing from the licence which was issued to him, he had to return the licence for the error to be corrected and he incurred financial losses since he

could not start work until he held and could produce a valid licence for the training necessary. The Agency refused the claim for compensation arguing that MN should have checked his licence and if he had done so a replacement would have rapidly been provided to him. I concluded that the Agency was responsible both for the error and its consequences since the missing entitlement was a "latent" rather than a "patent" feature. I could not understand how the Agency expected a licence holder to check for mistakes without equipping them to spot these by providing information on the coding categories and symbols employed. Until August 2011 it had been the practice of the Agency to enclose with new driving licences its leaflet INS57P in which was provided a full and clear explanation of the licence format, categories, symbols and other information. After this date, no such information had been provided with new licences. I upheld MN's complaint, recommended the Agency apologise to him and pay him a total of £1213.48 comprising loss of earnings, postage expenses and inconvenience.

Poor administration in a case where an unlicensed car was impounded and auctioned

35. OP complained that the Agency was in breach of its procedures when it failed to contact her to inform her that her vehicle had been impounded and was liable to be disposed of. As a result, she had no means of preventing this disposal and her car was sold. This required investigation of the reason that normal procedure was not followed since if it had been then this registered keeper would have received a standard letter informing her of such enforcement action. The Agency misinterpreted correspondence which it had received from a third-party and removed OP's address from the vehicle record. Although I upheld OP's complaint, I did not recommend that the Agency compensate her from public funds for the loss of her vehicle since on the facts it was clear that she had failed to take any steps to monitor the safety and security of her vehicle whilst it was parked on a public road, unlicensed and far from her home. The Agency's initial response to the complaint in this case was poor and I recommended that the manager of its wheel clamping unit receive a copy of the report in order to understand the importance of the unit fully investigating and responding to a complaint when this was first received.

Complete breakdown in the handling of a lorry driver's attempt to renew his licence

36. QR complained that his application to renew his Large Goods Vehicle (LGV) entitlement was unfairly and unreasonably refused because the Agency had failed to send him a letter it had prepared asking him to obtain a further optician's report. If this letter had been sent, QR claimed he would have promptly obtained the report, returned it to the Agency and his entitlement would not then have been refused. As a result of the Agency's failure QR was without the means to work as a lorry driver for 22 days which caused him and his family substantial financial loss, anxiety and inconvenience, which effects he claimed had persisted for over a year because it took the Agency that long to acknowledge its error for the first time and offer him compensation in the sum of £883 for his losses. This required investigation as to what had happened both with the licensing decision and then in response to the complaint made by QR and, later, his MP. I concluded there was clear evidence of maladministration both in relation to the handling of the renewal application and in the Agency's wholly inadequate response to the complaint. Indeed, I found that

the history reflected a complete breakdown of the system established to investigate customer complaints. I upheld the complaint and recommended that the Agency's Chief Executive convey a detailed apology to QR and that the Agency offer him a payment of £1,650 for his non-financial losses and £428 for his financial losses.

Poor handling of a driving licence application wrongly assessed as fraudulent

37. ST complained that when he applied for a replacement photo card driving licence the Agency did not provide him with this within a reasonable time since it failed properly to investigate erroneous data which it had received indicating that ST was deceased; that a licence was only issued to him when his MP intervened; that no adequate explanation had been given to him for the Agency's actions and that his renewal application had been treated as fraudulent and he had been made to feel like a criminal which was deeply distressing and he had incurred significant financial losses due to being without a licence. This case was referred at the request of the PHSO and required me to investigate why ST's application had been considered fraudulent. I concluded that the Agency was not responsible for the erroneous data which it had reasonably assumed to be correct, prompting a preliminary investigation leading it to refuse to renew the licence until satisfied as to the applicant's identity. It only agreed to issue a licence when it initiated further enquiries of the Department for Work and Pensions as to ST's National Insurance record. I judged that ST should have been provided with more explanation and information when the Agency initially refused to issue the licence. I recommended that the Agency's Chief Executive provide a detailed apology to him; that action be taken to delete any information held by the police concerning the case and that the Agency make a consolatory payment to ST of £250 to reflect the distress and anxiety he had experienced by not being promptly informed that a criminal investigation had not been initiated. I further recommended that the Agency's senior managers employ the facts of the case and the review's findings to initiate improved liaison with the Identity and Passport Service, from which the erroneous data had come.

Failure to ensure assessment by a female driving assessor and poor administration

38. UV and her husband complained through their MP to the Minister responsible for the Agency about the manner in which UV's ordinary driving licence was revoked for medical reasons following a driving assessment. They claimed that the assessment had been improperly conducted and that a later assessment was deficient because it had not been undertaken by a female assessor, as had been promised by the Agency's medical adviser. The Minister offered a review of the case and I was asked to conduct this. I concluded that much of what had happened was consistent with the Agency's standard practice and procedures but that the complaint concerning the second assessment should be upheld. I recommended that the Minister apologise for what happened. In the course of this review I observed that the Agency had a practice of sometimes posting mail well beyond the date shown on signed correspondence. In other cases I had noted that customers complained of this poor practice and I drew the Minister's attention to the poor standard of administration which it reflected.

Photo ID wrongly demanded before car could be released from pound

39. WX complained that his car had been unlawfully wheel clamped, removed and impounded by the Agency's contractors when it was taken from a designated parking area. He also claimed that when he sought to release the vehicle from the pound he was unlawfully required to produce a photo card licence or valid passport before this would be done. I could not review the actions of the private sector contractors responsible for the Agency's enforcement by wheel clamping and removal and concluded the Agency was not itself responsible for what nevertheless appeared to have been a clearly mistaken and unauthorised vehicle removal. However, I concluded the Agency was partly to blame for the difficulty WX had experienced in obtaining the release of his car since it had produced a leaflet referring to the need to produce "proof of identity such as a photo card driving licence or passport". Although the Agency's contract with the wheel clamping company required only that ID be verified "from a driving licence or passport", staff were clearly referring to the Agency leaflet when insisting on photo ID being produced. I was informed that there were still over 10 million valid paper driving licences held in the UK. I concluded the WX was unfairly treated when his paper driving licence was rejected as proof of identity since it was not a photo card version. I recommended that the Agency's Chief Executive write to WX with a suitable apology and that the Agency forward my report to the wheel clamping contractor with a request that it respond directly to WX in relation to his claim to compensation for the inconvenience caused by its apparently unjustified actions. I further recommended that the wording of the offending leaflet be altered to reflect the fact that photo ID was not required to be produced before a vehicle could be released from a pound.

Failure to tell drivers under medical investigation that they could drive

40. In the first case YZ complained that the DMG had taken an unreasonable time to renew his daughter's ordinary driving licence; that she had been unable to drive while the application was being considered, causing him extra expense in unused additional insurance premiums; and that the Agency had failed to handle his complaint properly. I concluded that the response to his complaint could have been of a higher standard since it was clear that his daughter was not aware of her entitlement to continue to drive under section 88 of the Road Traffic Act 1988 and the Agency should have promptly informed him of this. In the second case, which was reviewed by a new ICA, BC made a similar complaint to YZ. Unlike YZ's daughter whose licence had expired, BC had a valid licence during the DVLA's 10 month investigation. However, like the former driver, she had not been told that she was entitled to drive during the investigation. In BC's case the ICA concluded, firstly, that the Agency had missed clear opportunities to expedite its investigation. Second, he was critical of the Agency's responses to BC's increasingly urgent requests for information. Despite her calls and letters she was not told she could drive. While he did not hold the Agency wholly responsible for her misunderstanding, the ICA concluded that given the delays and lack of information the DVLA should reimburse her four and a half months of road tax and car insurance and make a payment of £300. He also recommended that the Agency review its

sequential investigation process which had unnecessarily prolonged the investigation. These cases highlighted the difficulty of clearly communicating the fact that some drivers are entitled to drive during fitness to drive investigations. I suggested in YZ's case that the Agency revert to its previous practice of providing standard paragraphs explaining the status of drivers under medical investigation to ensure that licence applicants consistently obtain such information.

Unreasonable removal of a car to a pound 130 miles from the keeper's home

41. DE complained of the removal and impounding of his car whilst it was in the care of a garage which was undertaking an MOT on the vehicle. It was unlicensed when parked on the public road. The car was taken to a pound 130 miles from its owner's home. He complained that this distance was unfair and unreasonable and his MP supported this position. I did not conclude that the removal of the car was unjustified and unlawful but I did find that the pound location resulted in an unfair and disproportionate outcome for this car owner, when compared with the effects of enforcement action experienced by other car owners. I recommended that the Agency's Chief Executive write to DE with an appropriate apology and that the Agency provide its contractor with a copy of the report so that it acted promptly to provide pound facilities which were at a reasonable and acceptable distance from the homes of vehicle owners needing to release their cars. I also suggested that the Department of Transport and the Agency urgently considered how independent review could be extended to all aspects of complaints concerning enforcement by wheel clamping and removal of a vehicle by a contracted private sector company whose actions are outwith the ICA's jurisdiction.

Poor service in a case of an endorsement being quashed in court

42. FG complained about the poor level of service which he and his grandson had obtained from the Agency when he asked it to remove an endorsement from his grandson's driving licence after he successfully appealed in court. The Agency concluded it had done nothing wrong but I decided it had failed to write to the grandson when it should have done which caused confusion, inconvenience and avoidable expense. FG had had to write to the Agency and visit his local office as well as pursue a complaint before this was recognised. I recommended the Agency's Chief Executive apologise to him and offer an ex gratia payment of £100.

Misleading information on the Agency's V11 vehicle duty reminder

43. HI complained that he had been provided with misleading information on the Agency's V11 vehicle duty reminder form since this stated that the form could not be used at a DVLA local office to tax a vehicle when in fact a local office provided such a service to motorists wishing to tax their vehicle. He further complained that alternative wording suggested by the Agency would also be misleading. Although I acknowledged that it was for the Agency and its local management to determine what services were or were not provided at a local office I agreed with HI that the original wording was patently misleading. I also considered the alternative wording potentially

misleading but this was academic since the Agency had decided to remove any reference to the local office from its new V11 form.

Loss of birth certificate

44. JK complained that a mistake in the Agency caused the loss of her original birth certificate when the envelope containing this was wrongly addressed and could not be recovered since it was either lost or stolen. JK was also concerned that her documents would be used fraudulently. She asked for a review since she was dissatisfied with the Agency's offer of compensation. I recommended that the Agency pay her a sum of £120 to cover the inconvenience experienced and the cost of two years membership of the credit industry fraud avoidance system (CIFAS) database.

Unlawful clamping and removal of an unlicensed car

45. LM complained that the Agency had instructed its wheel clamping contractor to clamp and then remove her car illegally because the car, although unlicensed, was subject to a statutory off road notification and it was parked outside LM's home on an unadopted private road. I concluded that the Agency had not directly caused what appeared to be mistaken action by the clamping company. The case highlighted the limits of the ICA's jurisdiction since I was unable to review the actions of this private sector company. I recommended that the Agency send a copy of my report to the company for it to respond directly to LM in relation to her claim for compensation for the loss of her car and for the inconvenience she had suffered.

LESSONS EMERGING FROM DVLA CASES CONSIDERED

Late Licensing Penalties

46. I have considered numerous complaints of unfair treatment arising from the imposition of a late licensing penalty where the registered keeper claims to have sent their notification of a disposal or SORN declaration in the post to the Agency. In several cases the person can provide copy documents in support of this assertion, though not the proof of posting which the Agency would usually accept in the circumstances as sufficient justification to withdraw enforcement action.

47. In response to such complaints the Agency consistently argues that its "acknowledgement letter" procedure⁴ provides a fair and effective means for a registered keeper to check that their notification has been received and acted upon. However, the legal duty on the keeper is,

⁴ According to this, the V5C and other DVLA letters and documents advise a keeper that a letter acknowledging their disposal notification or SORN declaration will be sent to them within four weeks. If the acknowledgement letter is not received by the end of this period then the keeper is told to contact the DVLA by telephone on a number provided.

respectively, to “notify” and “deliver” a declaration, not to check on delivery. Neither the Agency nor Department should therefore be surprised when members of the public complain, as they regularly do, that a financial penalty has been imposed for their failing to do something the law does not require of them.

48. Like my immediate predecessor, I see no reason why the respective regulations which sets out the duties of a registered keeper cannot be amended to put beyond doubt what is required of the keeper and to state, as a matter of law, that their notification/declaration is not made until an acknowledgement of it is received. **I recommend such legal amendments are made.** I recognise that the acknowledgement letter system is, seen from the Agency’s perspective, a fair and effective means of coping with the demands created by the receipt of tens of thousands of documents every working day at the DVLA. However, for a significant section of the public I conclude that the current policy remains unsatisfactory and could cause injustice to those who genuinely send items of post which are not delivered or are subsequently mislaid. As an interim measure prior to amendment of the law, the Agency could do more to impress upon the public the importance of obtaining proof of posting their notification/declaration. It should surely be possible to insert this instruction on the relevant forms, guidance leaflet or web page as well as on the V5C and reminder letters. **I recommend action to achieve this.**

49. In my first report I recommended to the Agency that it provide the public with a clear and accessible explanation of its penalty system, along the lines used by HMRC and Companies House which both publish a comprehensive explanation of the penalty system which they operate. I note that this suggestion has not been acted upon. **I repeat my earlier recommendation.**

Private sector involvement in wheel clamping, removal etc.

50. I have mentioned above when discussing several cases that the ICA's jurisdiction does not extend to reviewing the actions or omissions of contracted private sector companies which carry out the Agency's wheel clamping etc. enforcement for it. This is despite the fact that the contractor’s vehicles will carry the DVLA logo and to all intents and purposes the company’s employees represent the Agency when dealing with the public. The effect of this restriction means that a customer is provided with an ICA review of the handling of their complaint but this is artificially limited to examining the Agency's contribution to what happened, which is usually judged to have been correct even where the contractor has acted mistakenly or unlawfully. When I recommended that it consider introducing an ICA for complaints against its contractor, the Agency told me that this would be unviable due to the extra costs this would cause for the enforcement service. This is not consistent with a customer focused approach. **I recommend that the Department consider with the Agency how independent review can be extended to cover all aspects of wheel clamping enforcement action.**

51. This recommendation highlights the need for the Department to ensure that the ICA’s remit extends to all activity undertaken on behalf of one of its Agencies by a private sector partner e.g. wheel clamping company or debt collection agency (DVLA), highway managing contractor (HA) or

theory test provider (DSA). **I therefore recommend that the Department reviews and clarifies the ICA's remit so that in future the ICA is not prevented from reviewing all aspects of a complaint about how a public service has been provided simply because it has been delivered by a private sector organisation.**

Drivers Medical Group: time scales and factors resulting in delay

52. As I have mentioned above, the new referral procedure has brought into the ICA's purview numerous cases which concern the activity of the DMG. Many of these involve a claim that there was unreasonable delay in deciding a case involving medical enquiries. Several drew attention to the difficulties for customers caused by the inaccessibility of medical advisers and some claimed that the letter and application form to renew their licence was received shortly before it was due to expire, not the two to three months expected.

53. In 2003, the Agency published to its customers a time target for cases involving medical investigation of *five weeks*. Performance seems to have declined significantly since then. Ten years later and the target is for 88 per cent of cases to be decided within 90 working days i.e. *18 weeks* approximately. I have seen numerous cases where it has taken the Agency many months to reach a determination on a licence renewal application. Where vocational entitlements are involved this has often caused the applicant serious employment and financial difficulties.

54. The time taken to conduct medical enquiries and finalise an application for a licence is influenced by the following factors:

- the medical condition(s) investigated (number and complexity)
- the priority status of the case
- the need to employ third parties to provide evidence following testing or examination
- the numbers of cases being handled by the Agency and its administrative and medical resources available to cope with this demand
- the well-established approach to investigation in the DMG where there is more than one condition needing enquiry viz. to investigate these sequentially not simultaneously. I understand that this is designed to save expense on medical fees for tests or examinations which are not necessary. In other words, if after investigating, for example, a visual defect, there are grounds to refuse a licence, the DMG will not investigate the driver's second condition (say, a cardiac disease) also disclosed which might or might not also provide grounds for revocation. Only if the visual defect does not bar the issue of a licence will the DMG then move on to investigate the second condition. Inevitably, this approach could mean that a driver with more than one presenting condition will find their application taking very much longer to deal with than someone disclosing a single illness or disability. In the cases where consideration of a renewal application has taken between six months and a year to be completed this is the principal cause of so protracted a process.

55. Giving an application priority status is one means of counteracting the tendency of the other factors shown above to cause delay. I have noted that when a case is given Priority 1 status this can result in more rapid handling within the DMG. It has little impact where a third party response or action is required.

56. I have seen and read the respective operational guidelines on prioritisation for staff for ordinary and vocational licence entitlements. I am not confident that these are fit for purpose given that some of the wording used is vague and unclear and, I am informed, the fact that it leads to a huge number of cases being classed as urgent. I note that other criteria not mentioned in these guidelines are then employed in practice, such as the fact that a complaint has been made or the customer's MP is involved. The DVLA has recently indicated that it intends to make major changes to DMG's working methods in order to reduce case delays without compromising road safety. **I recommend that prior to or during this process the Group's approach to prioritisation is comprehensively reviewed and fresh guidance produced which can be published to customers and their doctors.**

57. This work should also examine whether or not the sequential approach to investigation described above continues to be justified and fit for purpose. If its rationale is to save public expense then the Department and Agency must also research and then take account of the financial effects on employees, employers and those providing social security and other benefits. Section 88 of the Road Traffic Act 1988 does not provide cover to drive for all vocational drivers (such as those required to work abroad or those not insurable after licence expiry) and many will experience financial loss and hardship waiting for the renewal of their licence even where the medical picture is relatively straightforward.

58. One means by which information on priority status and other points can be disseminated to customers is by ensuring that they are aware of the good quality leaflet (INF94 Customer Guide for Drivers with a Medical Condition) downloadable from the internet or, presumably, available by post from the Agency or at a Post Office. The Agency now chooses not to send this leaflet to every person whose application involves medical investigation. **I therefore recommend that its standard letter acknowledging receipt of an application requiring medical investigation include (as a footer or shown in a text box) a clear reference to this document and how to obtain it. Subsequent letters should then repeat this information.**

Customer Complaints Resolution Team

59. In 2011, the Agency introduced a new team of staff tasked with responding to complaints at their second and third stages. Prior to this change, I observed that a complaint would sometimes be considered by numerous different staff in the Agency before referral to the ICA was initiated. The new approach has speeded up the process very significantly and a customer will find their grievance reaching an ICA review much earlier than in the past. This improvement is to be

welcomed. Concentrating expertise and tasks in a single unit should also encourage better liaison with first responders in order to raise their standards and introduce complaints prevention strategies.

60. The team’s managers candidly acknowledge that it is not an investigative unit and does not have trained investigators to call upon for any of its work. In several cases I have reviewed during this period, it has struck me that the Agency could and should have more thoroughly investigated the allegations in a more formal way, before responding to the customer, and it would have been proportionate to allocate staff resources to doing so. It should not be left to the ICA to embark on a fact finding inquiry at a significant remove in time and place from the events complained about. I am sure that the CCRT’s effectiveness would be enhanced by its team being supplemented by trained investigative capacity, either within the team or at least available to draw upon from elsewhere in the Agency when required. **I recommend that the Agency’s Interim Chief Executive secures this capability for the team.**

DRIVING STANDARDS AGENCY

61. Figures 7 and 8 below provide a breakdown by category of the ICA referrals from 2011-2013.

Figure 7: Categories of DSA referrals 2011-2012

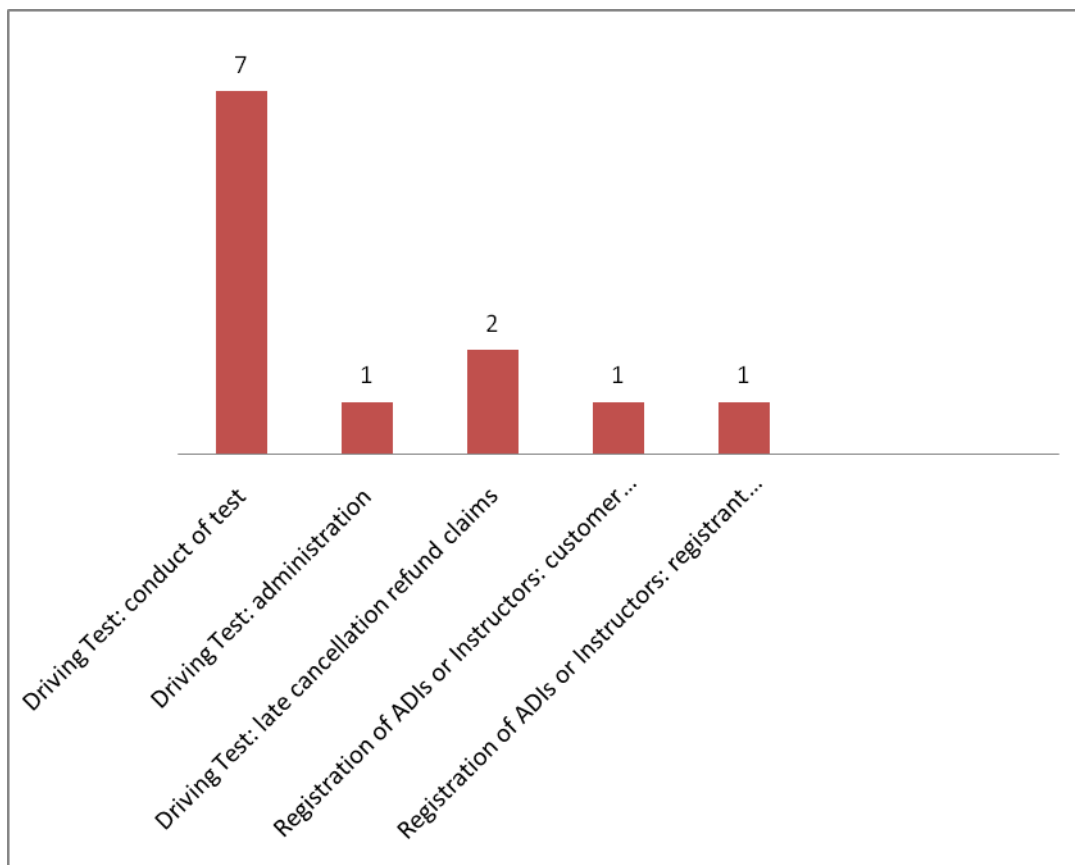
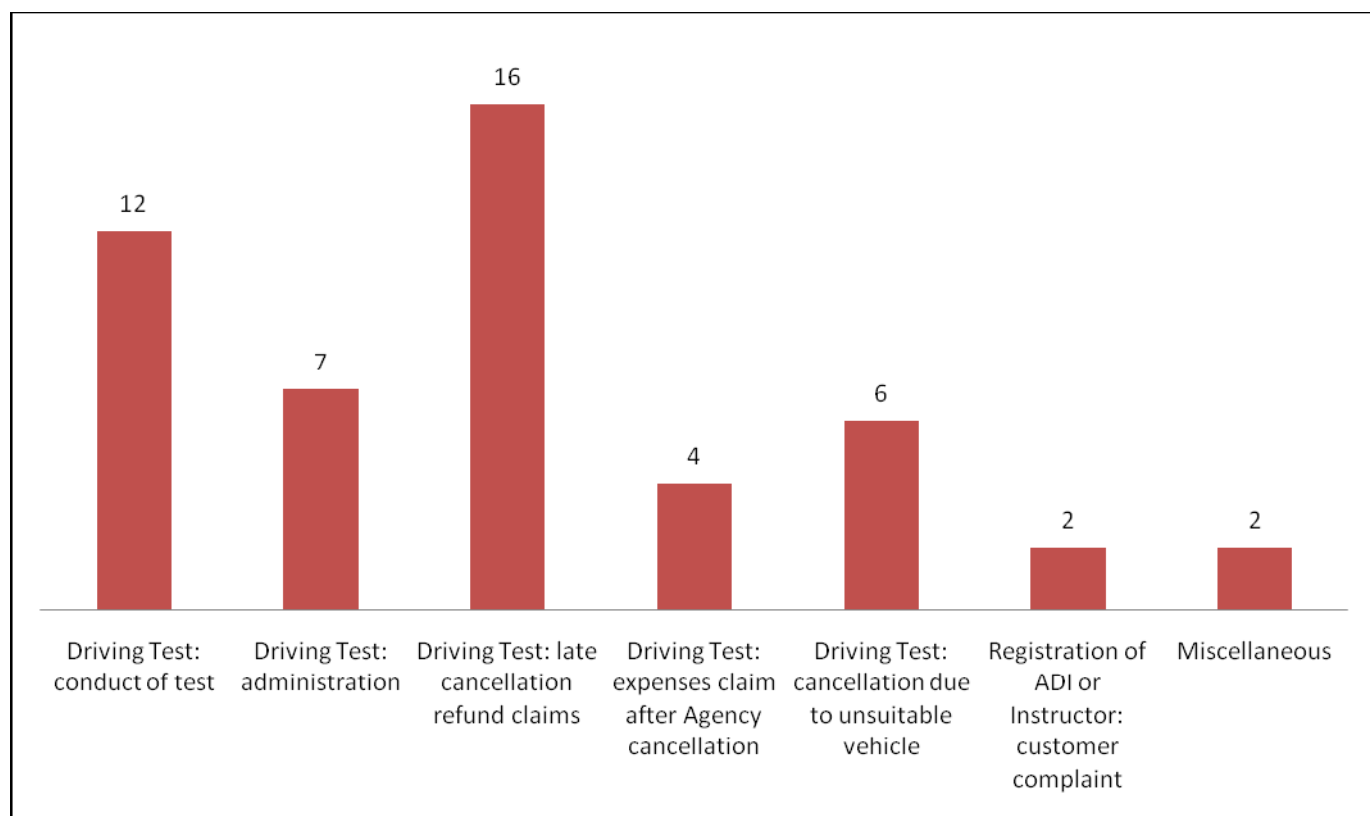


Figure 8: Categories of DSA referrals 2012-2013



62. The types of complaints about the DSA which I received for review are illustrated by the following summaries:

- a practical driving test candidate complained that their test examiner gave unclear and incorrect instructions for the independent driving section of the test, resulting in their failure
- a candidate claimed a refund for a cancelled test because they complained that they had not been informed of the need to fit additional mirrors on the vehicle they were being tested in
- a parent whose child's driving test was cancelled due to their emergency admission to hospital the night before it was due to take place complained that she had been refused a refund of the fee or free rebooking despite the cancellation being due to events completely beyond her control
- a parent whose child's driving test was cancelled due to staff industrial action complained that the Agency's offer to reimburse expenses was unfair and inadequate
- a candidate complained about the Agency's lack of action in investigating misconduct by their Approved Driving Instructor
- an applicant for a driving licence from the DVLA complained that the DSA unreasonably delayed arranging for him to have an eyesight test

- a Compulsory Basic Training instructor (for motorcycles) complained that the Agency unfairly and unreasonably removed him from the register of approved instructors which caused his business to fold and him to incur significant financial losses.

63. The totals are dominated by complaints about the conduct of practical driving tests and claims for a fee refund following cancellation within the three clear working days period prior to the test date. For such cancellation, the Agency will invariably refuse to refund the fee paid. Given the high rate of failure in the practical test (approximately 60 per cent for first timers) it is not surprising that a proportion of candidates find fault with how it was conducted and claim that something which the examiner did or did not do caused or contributed to this result. As the Department is already well aware, the law does not allow the Agency, the ICA or the Magistrates' Court to substitute a pass result for a fail. Only a free retest and any other appropriate compensation may be recommended. I am often unable to reach a firm conclusion on the allegation made due to a lack of corroborative evidence. An ICA review is not designed for fact finding or the assessment of the reliability or honesty of witnesses. This is especially highlighted when being asked to determine whether some words or actions (strenuously denied) actually were heard or seen.

64. As the Department is also aware, the DSA states that statute law prevents the refund of fees paid in all but wholly exceptional circumstances, e.g. where the candidate has died. The Agency now interprets this legislation to mean that it is not empowered to offer a person a free rebooking even where the cancellation was due to a medical emergency. Having read numerous complaints about this policy, I find the Agency is unable convincingly to explain its merits or fairness to a proportion of those affected since they have asked me to review the decision to refuse the refund/rebooking. I cannot question this policy, where it appears to have been correctly applied. I anticipate that the ICA will continue to receive such referrals so long as the policy causes this level of public dissatisfaction. Ministers should keep the approach under regular review since it affects the reputation of the Agency as a fair and humane organisation.

65. Tables 5 and 6 below provide summary details of cases for the period where I have upheld at least one of the allegations made by a customer and/or I have made a recommendation to the Agency.

Table 5: DSA cases where allegation(s) upheld and/or recommendation(s) made 2011-2012

Reference	Nature of complaint	Outcome	Recommendation
8	Driving test: conduct of examiner (incivility)	Upheld	Apology; free test; review arrangements for providing private facilities for test debrief
32	Registration of ADIs and motorcycle instructors: unfair removal from register	Upheld in part	Apology; recommendation for new procedure

Table 6: DSA cases where allegation(s) upheld and/or recommendation(s) made 2012-2013

Reference	Nature of complaint	Outcome	Recommendation
2	Driving test: expenses due to instructor following mistaken cancellation of car + trailer tests	Additional sum due	Additional payment of £44.80
50	Check test general administration: expenses due following late and non-notified cancellation	Upheld	Apology; £155 compensation
85	Driving test: unfair treatment in handling complaint about test	Part upheld (two aspects of examiner's conduct of test)	Apology; £75 consolatory payment for poor handling of complaint; amend standard correspondence and recommendations for investigating complaints
145	Registration of ADIs: unfairness in process for warning	Upheld	Apology; refund of subscription fees

	of striking off action		
187	Driving test administration: candidate claims wrong test centre booked	Not upheld	Suggestion that call centre staff use standard means of distinguishing similar sounding names of test centres
197	Driving test administration: offer of test date following cancellation due to weather	Part upheld (poor information given)	Apology; revision to wording of standard letter

66. The following summary case histories illustrate several of the principal decisions taken on DSA cases referred during the past two years.

Discourteous and unprofessional behaviour by an examiner

67. AB complained that his test examiner was discourteous and unprofessional towards him during the post-test debrief which left him feeling exposed, embarrassed and dissatisfied. He claimed this behaviour was deliberate and its result intended. I decided that although there was no proof the examiner intended to humiliate or embarrass AB it was more likely than not that the examiner's behaviour was discourteous and not professional. I did so after analysing which facts supported AB's account and which did not. It was possible to reach a conclusion as to what was more likely than not to have occurred, given the relatively low level allegation made. I recommended an apology from the Chief Executive and that AB be offered a free test should he decide to seek one in the future. I also recommended that the Agency should in future ensure that for the test centre in question (and others where the facilities are like it) examiners were enabled to and did offer test candidates private facilities for a debrief, where there was no prospect of being overheard.

Poor handling of motorcycle instructor's removal from the Agency's register

68. CD, a motorcycle instructor with a business providing such instruction, complained, amongst other things, that the Agency unfairly misled him over the representations which it requested he make giving him notice that the Registrar was considering withdrawing his authority to conduct Compulsory Basic Training (the initial training provided to motorcyclists). This case concerned the Agency's decision to remove CD's name from the register of those authorised to conduct motorcycle training and as a result end his ability to make his living from providing such training. It required careful and thorough investigation of the documentary history. I upheld CD's complaint that he had been misled since I concluded that the Agency's correspondence with him had failed to mention one of the allegations which the Registrar took into account when deciding to withdraw his authority. I decided that the way in which the Agency had asked him for his

representations was insufficiently fair and reasonable in the circumstances since he should have been given an opportunity to make representations on each one of the alleged or admitted breaches of regulations or conditions which were intended to be put before the Registrar as evidence. I recommended that the Agency introduce an entirely new procedure based on the principles of a fair administrative and appeal practice. Nevertheless, I decided it was beyond my remit to decide on the merits of the substantive decision as to whether or not CD's authority should be withdrawn. In the normal case, it was for the Agency and its Registrar to decide what was or was not fitness in someone whose approval was being considered, bearing in mind the nature of the regulated activities and the Agency's understanding of the public interest attaching to these.

Inadequate investigation of a complaint about driving examiner conduct

69. EF claimed that his complaint had been handled unfairly because he was not given information about the investigation into it; that the Agency dismissed all the points that he made without providing its own account and dismissed his own account as baseless. EF had failed his driving test and complained that prior to its starting he was improperly warned by the examiner in relation to illegal driving; received a threat from the examiner that he would cancel the test if the vehicle was not tidy; was shown an unfriendly attitude twice during the test and was spoken to disrespectfully during the debrief which followed it. I examined each of these allegations. There were aspects which the Agency had not investigated and responded to with the necessary thoroughness and promptness and apologies were offered late in the process not in its early stages. Nevertheless, I concluded that EF had received a fair outcome from his complaints and that further apologies from the Chief Executive, in the light of the report's findings, should be offered together with a consolatory payment of £75 to reflect the time and inconvenience of pursuing his complaint. I recommended to the Agency:

- that it review the guidance it gave test centre managers to ensure that a factual account was always obtained from the examiner about an incident complained of and a clear response to any detailed allegation as well as any observations on the merits of a complaint
- that in responding to a complaint it avoided, wherever possible, using phrases such as "the examiner would have....." when what was needed was a clear factual account reflected in wording such as "the examiner says he did/did not"
- that it recognise that minor allegations which are hard to investigate without unjustifiable time, effort and expense may not be fully investigated to a conclusion if they are not admitted. This should be clearly explained to a complainant, instead of it being suggested that the matter has been "fully investigated".

Failure to take reasonable steps to inform an instructor of a check test cancellation

70. A driving instructor, GH, complained that when his check test was cancelled at short notice he was not informed in advance and incurred expenditure and lost income which was not reimbursed by the Agency when he claimed for them. I found the Agency had failed to take

reasonable and practicable steps to inform GH of the cancellation. If it had done so then he would have been able to mitigate its effects. I therefore concluded that the Agency was responsible for reimbursing him for his loss of income when preparing his vehicle for the cancelled test; devoting time and overhead costs to attending with his pupil for the test; and further inconvenience resulting from the Agency's failure in service. I recommended the specifics of its apology and that it pay GH £155.

Insensitive and inflexible handling of a missed check test

71. IJ, a driving instructor, complained about the way that the Agency handled its arrangements for a check test. Although the Agency said it had invited him to attend a check test, IJ said he had not received the letter and this was the reason he did not attend. The Agency had then sent IJ a letter referring to his having failed to undergo a test stating that the Registrar was considering removing him from the register for this reason and inviting him to make representations as to why he should not do so. IJ complained that when he made representations and complained about his treatment - since he had an exemplary record of attendance for check testing and shown consistently high scores when tested - his complaint was ignored and not replied to as was a later letter. IJ resigned in disgust as an Approved Driving Instructor and complained that the Agency refused to refund him the pro rata element of his registration fees from the date of resignation until the expected expiry of his authority. I judged it unfair of the Agency immediately to seek representations from IJ on the basis that there were grounds for his removal from the register. It was insensitive and disproportionate for him to receive a letter written on the single assumption that he was refusing to undergo a test. The Agency then failed to acknowledge IJ's representations and to give an estimate as to when he would receive a decision from the Registrar which was insensitive and predictably added to the frustration which IJ felt towards the Agency and his sense of grievance. I recommended that the Agency's Chief Executive send him further apologies in the light of my findings and that it reconsider its refusal to refund the pro rata fees paid following his resignation.

Poor communications in relation to a test rebooking

72. KL complained when her practical driving test was cancelled due to unsuitable driving conditions because of bad weather. She claimed this was not necessary, that the Agency should have informed her of the cancellation earlier so she could have cancelled the additional test and car hire, and she should have been offered an alternative date prior to the expiry of her theory pass certificate. The delay caused additional unnecessary expense. I did not find the test had been unnecessarily cancelled given the reported poor weather at the time. Also, I did not disagree with the Agency's assessment of the fee and expenses it was prepared to reimburse KL. I was told that a test is cancelled due to bad weather "at the last minute" which means that not all candidates can be contacted in advance. A candidate is advised to telephone if there is fog, ice, snow, floods, bad light or high winds on the day of the test. I did not find any grounds to criticise the Agency's lack of direct communication with KL prior to the cancelled test. However, I did uphold her complaint about a lack of communication in relation to her rebooking of the test and a failure to

offer an alternative test. I found the email sent to KL was misleading in the circumstances and that although there was little time available before the theory certificate expired the Agency's handling of the rebooking was not as responsive or as communicative as it should have been, due to the features of the automated booking system and how this had been set up. I decided the Agency should prioritise over those candidates arranging their first test the allocation of slots to those whose tests had been cancelled at short notice due to bad weather or examiner illness particularly where a theory certificate was due to expire shortly. I recommended that the Agency's Chief Executive write to KL to apologise for the quality of service and inconvenience caused and that the Agency take steps to improve the system to make it more responsive and effective in linking "cancelled" candidates with early test dates.

HIGHWAYS AGENCY

73. During the year 2011-2012 I received only six referrals from the Highways Agency and responded to each of these by review report. During 2012 -2013 I received a total of 11 referrals. Six of these have been responded to by letter and five by review reports (in the case of two referrals, yet to be completed). The referrals covered a range of complaint areas illustrated by the following summaries:

- a driver complained that damage was caused to her vehicle when it collided with another due to defective road markings
- a driver who had been stuck in stationary motorway traffic for many hours when the road was closed due to a major incident complained that traffic officers did not conduct welfare checks on stationary vehicles and offer food and water to drivers
- a driver whose vehicle broke down on a motorway complained that traffic officers did not stop to help, having been called away to another incident
- a driver whose vehicle broke down complained when traffic officers arranged its statutory removal from the highway
- several drivers complained about the handling of their claim for compensation due to damage to their vehicle which they alleged was caused by the defective state of the highway often resulting in potholes
- a local resident who regularly used a road complained that an Agency scheme to make a junction safer had made it more dangerous and its handling of his complaint was unfair
- a landowner complained that the Agency's objection to his claim for adverse possession of land adjoining a trunk road was motivated by bias in favour of an adjoining owner and lacked impartiality
- two landowners complained that the Agency's construction of a new road scheme caused flooding to occur on their land, resulting in loss of amenity, expense and substantial physical inconvenience

74. Table 7 below provides details of the two cases in 2011-2012 where I upheld a complaint allegation and/or made a recommendation to the Agency. In 2012-2013, in the cases I have completed, I have not upheld any complaint nor made any recommendation.

Table 7: HA cases where allegation(s) upheld and/or recommendation(s) made 2011-2012

Reference	Nature of Complaint	Outcome	Recommendation(s)
5	(1) Flooding caused by discharge from highway (2) Delay in dealing with complaint	(1) Not upheld, out of remit due to county court jurisdiction over claim (2) Upheld	Apology and further explanation of reasons for Agency position; suggestion for regular liaison standard
17	Negligent placing of diversionary signage	Not upheld, but Chief Executive decided Agency practice not satisfactory and initiated change before referral	Ex gratia offer of £100 for inconvenience on night and making complaint

75. Further summary details of four of the principal cases from the period are as follows:

Delays in responding to a golf club complaining that the Agency had caused flooding

76. The AB golf club complained that the Agency had unfairly refused its claim for £157,930 being costs it had incurred due to flooding it said was caused by the Agency draining water from its highway into an existing watercourse which crossed the links. It also complained that the Agency had prevaricated in providing information and explanation for the causes of the flooding and when dealing with its complaint. This case required an examination of the protracted history. I upheld the club’s complaint that it had experienced long delays in replies to correspondence and suggested to the Agency's Chief Executive that he may wish to consider introducing a minimum standard for regular liaison. I made various suggestions and recommendations in relation to information or replies to questions from the club which remained outstanding. I had earlier referred the club to the provisions of section 308 Highways Act 1980 under which it could apply to the County Court for compensation and in my review report I explained that this removed the principal complaint from the ICA's remit.

No grounds for a complaint that the Agency had been biased in objecting to a claim to land

77. CD principally complained that the Agency had permitted itself to be pressurised by another landowner into objecting to CD’s application for adverse possession of land adjoining the highway

and in the ownership of the Agency. I found no grounds for concluding the Agency's staff or those of its managing agent had showed any bias towards the third-party mentioned. It had justified its action on the basis of settled Agency policy and what had happened appeared to me entirely consistent with this approach.

Misconceived complaint that the Agency should have assisted with a vehicle breakdown

78. EF complained that, when her car broke down on the M6 motorway and she had to bring it to a halt, traffic officers present at the time dealing with another stopped vehicle refused to help her and as a result she was put at risk and inconvenienced. The Agency's response had been to explain that she had stopped her vehicle in a live lane and so was instructed by a traffic officer to move it to the hard shoulder further along the road. Thereafter, the traffic officers were not able to attend on her because they were then called away to deal with a major incident involving multiple collisions elsewhere on the M6. I did not uphold any aspect of the complaints which I considered misconceived and ill-founded. I commented to the Agency on the standard of initial investigation which I considered was reasonably high. However, communication with the complainant thereafter had been less effective due to the investigating manager later suggesting there was fault by one traffic officer, when there was no basis for this finding and it was inconsistent with his principal conclusions. I understand that my review report was used by the Agency's Chief Executive to highlight to first response investigators how they should approach the task.

Agency Chief Executive initiated review of traffic diversion policy following complaint

79. GH complained that the Agency was negligent in arranging an overnight diversion for essential repairs to a trunk road. He claimed that the diversion was not only far too long and tortuous but signage was inadequate and as a result he and other drivers became lost and were extremely inconvenienced. The Agency explained the reason for the temporary road closure, the established means of diverting traffic affected mainly using symbols on existing traffic signs and that there had not been any negligence in arranging these. However, before the case was referred to me the Agency's Chief Executive had decided that this particular approach was not suitable for circumstances such as had occurred with this highway. He apologised to GH for the inconvenience he had experienced and had initiated a review within the Agency to formulate a better response. After investigating the basis for the Agency's procedures and its handling of them on this occasion, I concluded that there was no negligence. However, in view of the Chief Executive's concession that the current approach could be seen as wanting, I recommended the Agency offer GH an ex gratia sum of £100 for his inconvenience on the night and in having to complain.

HIGHWAYS AGENCY: FURTHER OBSERVATIONS

80. In my first year as an ICA the Highways Agency referred 12 cases to me for review. One might have anticipated that under the new system in operation from 1 December 2011, this total would

have risen. In fact, very few cases were referred during that year and only 11 referrals have been made in 2012-2013. This suggests to me that few requests for referral were ever refused in the past.

VEHICLE AND OPERATOR SERVICES AGENCY

81. In 2011-2012, VOSA referred only one complaint case to me. I dealt with this by letter and did not uphold the complaint. In 2012-2013 the Agency referred eight complaints cases to me. For seven of these I responded by letter and for the remaining one, by review report. I did not uphold any complaint nor make any recommendation to the Agency. I found the referrals without exception to be clearly and fully presented to me. They covered a range of complaint areas illustrated by the following summaries:

- a vehicle owner complained that a vehicle examiner was rude and unprofessional to him when he attended a testing station to have his imported vehicle examined for an IVA
- a coach driver complained that enforcement action for a tachograph offence was disproportionate and that VOSA staff had been unhelpful
- a vehicle owner complained about the conduct of a vehicle examiner at a re-inspection following a failed MOT
- a garage owner providing an MOT inspection service complained about the conduct of a VOSA enforcement officer who conducted a "mystery shopper" test and supplied a highly critical report leading to disciplinary action.

82. There are no further comments or observations which I wish to make concerning VOSA's cases or its liaison with the ICA service.

MARITIME AND COASTGUARD AGENCY

83. This Agency referred no cases to me during 2011-2012. In 2012-2013, it referred two cases to me. I dealt with the first case by a lengthy letter. In the first case, I did not uphold any complaint allegation. In the second case I did not uphold the substantive allegation of unfairness but did decide that the Agency should have given the complainant more information on how he could pursue his complaint to the CEO and/or ICA. I recommended that the MCA's Chief Executive apologise and ensure the provision of such information to complainants in future as a matter of course. I have no further comment or observations to make on either of these cases or generally about MCA work. The two referrals were promptly made with all necessary background information and explanation. Where I needed additional details these were provided.

VEHICLE CERTIFICATION AGENCY

84. During 2011-2012 I received one referral which I responded to by review report. In the period 2012-2013 I received two referrals both of which are being dealt with by review report (in the case of one referral, yet to be completed). VCA referrals involve fairly technical matters, often relating to information made publicly available by the Agency and which prospective car owners have obtained prior to their purchase. The Agency has provided clear background and explanatory information, and promptly responded to further questions when I have posed these. The following case history illustrates the nature of the Agency's work and this point. Although I supplied it with a copy of my report at the time, I again draw the Department's attention to my observations at the end of the summary.

Agency not responsible for "misleading" inaccuracies in MPG performance data

85. AB complained that the Agency's published figures on miles per gallon (MPG) performance for the vehicle which he had purchased relying on these, were erroneous. He said they did not represent what the Type Approval Test achieved since they inflated the car's performance and were fraudulent. He also claimed that information published by the manufacturer based on the Agency's officially approved figures misled him into purchasing the car since he relied on this information as to its performance and in practice the MPG achievable in the car that he bought was about 30 per cent less than the published figures. AB complained that the Agency did not warn him that the published figures could bear no relation to those obtained in practice. There was no evidence to show that the test data were fraudulently presented. This allegation was entirely conjectural and I did not review it further. Although I acknowledged that AB, like many other motorists, had good reason to be disgruntled as to the disparity between published MPG performance and that achieved in real driving conditions, I did not uphold the complaint that this "misled" AB for several reasons: the Agency was obliged by EU and UK law to publish the data from Type Approval Tests; its publications and web pages explained how the information was obtained including how tests are conducted and why. Responsibility for the information provided lay with governments at an international level not with the Agency. Warnings given in the Agency's guide and in the manufacturer's own brochure rendered the quoted figures fairly meaningless as a reliable indicator of practical fuel consumption performance. There was no evidence the Agency had given AB data which it represented to him was MPG performance which he would obtain for his specific vehicle. I observed to the Agency and Department that it seemed highly unsatisfactory (and damaging to the credibility of the Agency) that car manufacturers should be required to publish the officially approved MPG figures in their promotional material but not at the same time include standard warning information to accompany the data. This was needed to enable the intending purchaser to gain a full appreciation of the chances that their new vehicle's performance may not reflect that shown in the test and the main reason(s) for this. From

a consumer protection point of view it seemed essential to me that in the development of any new testing and reporting regime, the prospective purchaser must be better informed by company literature as to the purpose, usefulness and limits of the official data.

GOVERNMENT CAR AND DISPATCH AGENCY

86. In 2011-2012 I received one referral concerning a complaint that an Agency employee had been rude to someone working in another Government Department served by the Agency. I did not uphold the complaint. The GCDA has now been wound up as a separate body.

THE FUTURE

87. Since this report will be published well into the current year, 2013-2014, I offer some observations on the future. Now that two additional ICAs are in post, this provides greater resilience and capacity for handling fluctuations in rates of referral and where more complex or protracted cases require lengthy review. Timeliness of response should return to more acceptable standards, without the thoroughness or fairness of a response being compromised.

88. Moving from one to three ICAs introduces the risk of inconsistency in working methods and in decisions and outcomes. We are very conscious of the need to agree core principles and approaches to our work, capturing these where possible in revised operational guidelines agreed to and used by each of us, the Department and the Agencies.

89. The ICAs' work is likely to continue to be dominated by DVLA cases, together with DSA referrals. These work flows enable fairly regular feedback to the Department and the respective Agency on the lessons emerging from cases seen and decided: faster and more useful than during the annual reporting cycle. For the other Agencies, I suggest that the low totals warrant systematic feedback being given as now, i.e. only on an annual basis.

90. With three people undertaking the role of the ICA, it becomes more not less complex for members of the public or Agency customers to understand what we do and how we do it. There is now a strong case for the Department's web based information to provide explanatory information on the ICAs: who we are, what we do and how we do it. This is so even if there are good reasons to maintain the established referral route via a request to the Agency complained about and not by direct access. **I recommend this is taken forward as soon as possible.**

ACKNOWLEDGEMENT AND THANKS

91. I have received enormous help throughout the year from the staff in each Agency appointed to liaise with me and deal with referrals. I should like to thank them, and their colleagues for the ready assistance given when responding to my queries and requests for additional information and clarification.

Glossary

ADI	Approved Driving Instructor
CCRT	Customer Complaints Resolution Team (DVLA)
DfT	Department for Transport
DSA	Driving Standards Agency
DMG	Drivers Medical Group (DVLA)
DVLA	Driver and Vehicle Licensing Agency
GCDA	Government Car and Dispatch Agency
HA	Highways Agency
ICA	Independent Complaints Assessor
IVA	Individual Vehicle Approval
LLP	Late Licensing Penalty
MCA	Maritime and Coastguard Agency
OCS	Out of Court Settlement
RTA	Road Traffic Act (various dates)
SORN	Statutory Off Road Notification
VCA	Vehicle Certification Agency
VED	Vehicle Excise Duty
VIC	Vehicle Identity Check
VIN	Vehicle Identification Number
VRN	Vehicle Registration Number
VOSA	Vehicle and Operator Services Agency