

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

**Annual Report to the Department for Transport**

**2014–15**

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## **1: Introduction**

- 1.1 We are pleased to present our annual report for the year 2014–15. As well as detailing those complaints referred to us between 1 April 2014 and 31 March 2015, and their outcomes, the report includes comparative data from previous years.
- 1.2 As ICAs we operate remotely from the Department for Transport and the DfT bodies we oversee, and in general the two of us work independently of one another. However, for reasons of consistency and our own learning, we endeavour to share draft reports and other information as often as we can. Incoming complaints are allocated randomly, and we trust that the reader of this report will be unable to tell from the case summaries which one of the ICAs has been responsible for a particular review.
- 1.3 As has been the case for many years, the majority of our work concerns the Driver and Vehicle Licensing Agency. The DVLA is a volume business whose actions, inactions or decisions affect the vast majority of citizens at some stage. It is hardly surprising that such a business generates complaints on the part of its customers; what is perhaps more striking is that the number is so low compared to the many millions of transactions the Agency conducts each year.
- 1.4 A particular feature of DVLA complaints is the number that result from medical enquiries on the part of the Agency into fitness to drive.
- 1.5 The other parts of the DfT family generate far fewer complaints both in total, and as a proportion of those that we are asked to consider at the apex of the complaints process. A feature of the past year is that we received our first complaints concerning HS2 Ltd and decisions made centrally by the Department.
- 1.6 We attach great importance to our independence from the bodies (for want of a more suitable collective term, we refer to them all as “DfT bodies”) upon which we report. So do our complainants. But we do not regard independence as a synonym for isolation. We have continued to benefit from meetings and visits with the organisations within our remit, and from the day-to-day contact with their own complaint handlers. We readily acknowledge the support, counsel and kindness that we have received both from them and from our Departmental sponsor. We are particularly indebted to our liaison points within the DfT bodies for the excellent support and advice they offer.
- 1.7 In November 2014, we were the guests of the Highways England’s Red Claims team in Birmingham where we had a very productive discussion of their approach to claims of vehicle damage on trunk roads. These cases can be challenging from an ICA point of view as there are technical and legal considerations, as well as communications from the Agency’s contractors and their own claims departments to consider.

1.8 In December 2014, we had an equally useful visit to the DVLA where we benefited from meetings with the Compensation and Business Process Standards Team, the Head of Enforcement, the Head of Casework and Enforcement Group, the Cherished Transfers Team and the Data Sharing Team (who also cover cases where drivers complain that their entitlements are lost to the system).

### ***Jurisdiction***

1.9 During the period covered by this report, the ICAs' jurisdiction was extended to all of the DfT and its 21 agencies and other bodies<sup>1</sup>. In practice, the ICAs provided independent reviews of cases referred by:

1. Driver and Vehicle Licensing Agency (DVLA);
2. Driver and Vehicle Standards Agency (DVSA)<sup>2</sup>;
3. Highways England<sup>3</sup>;
4. Maritime and Coastguard Agency (MCA);
5. HS2 Ltd; and
6. Department for Transport, Central & Casework (DfT-C).

1.10 The ICAs did not receive complaints from the Vehicle Certification Agency (VCA), London & Continental Railways Ltd (L&CR) or any of the other 14 DfT bodies in our jurisdiction not listed above.

1.11 An ICA review constitutes the final stage of the Department's complaints procedure (and one that should usually be completed before the Parliamentary and Health Service Ombudsman (PHSO) will agree to consider a complaint). The ICA decides whether the DfT body in question has handled a complaint appropriately and whether its decision and/or the response to the grievance have been reasonable and justified.

1.12 The questions addressed in an ICA review are 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);

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<sup>1</sup> <https://www.gov.uk/government/organisations#department-for-transport>

<sup>2</sup> The Driving Standards Agency (DSA) and Vehicle and Operator Services Agency (VOSA) merged in November 2013 to form the Driver and Vehicle Standards Agency. We have continued to separate the statistics for the driving and vehicle standards sides of the business in this report to allow more ready comparisons with previous years.

<sup>3</sup> Until April 2015, known as the Highways Agency. We have used the name Highways England throughout this report.

- failure to give information;
  - mistaken application of policy or procedure;
  - administrative mistakes;
  - unreasonable delay; and
  - improper or unreasonable staff behaviour, e.g. rudeness.
- 1.13 Under our terms of reference, an ICA cannot evaluate legislative provisions or matters of Governmental, Departmental or Agency policy: and we should not uphold a complaint where the applicable policy has been followed. Nor may an ICA question technical decision-making by specialists involved in casework, for example DVLA clinicians making decisions on drivers' fitness to drive. However, as we said a year ago, it is not always easy to define what constitutes a 'policy'. It involves something much more structured than simple custom and practice.
- 1.14 In practice, moreover, all the bodies we oversee – but notably the DVLA and Highways England – have adopted a more nuanced approach to our remit. In individual complaint reviews, they have accepted that there are benefits in an ICA commenting on what by a strict definition might be considered as 'Agency policy'. Such an approach maximises the value of an ICA review and is consistent with the wider Departmental objective of learning lessons from complaints.

### ***Terms of Reference***

- 1.15 During the past year, what had previously been termed our Operational Guidance has been updated and is now (more appropriately) badged as our Terms of Reference.
- 1.16 We have appended the Terms of Reference and the supporting protocol and referral form at the end of this report.
- 1.17 Amongst other things, the document outlines our approach to the payment of compensation or the awarding of consolatory payments, issues that unsurprisingly can cause some challenge to DfT bodies that are properly mindful of the need for care in the use of public money. We have welcomed the draft of a policy document to cover compensation and consolatory payments across the Department and its constituent bodies.
- 1.18 In line with the Terms of Reference, this report will be published on the DfT website. More consistent information about the complaints process, and our role within it, now appears on GOV.UK and is readily accessible.
- 1.19 Reflecting good practice, an annual review of the Terms of Reference will be carried out from now on.

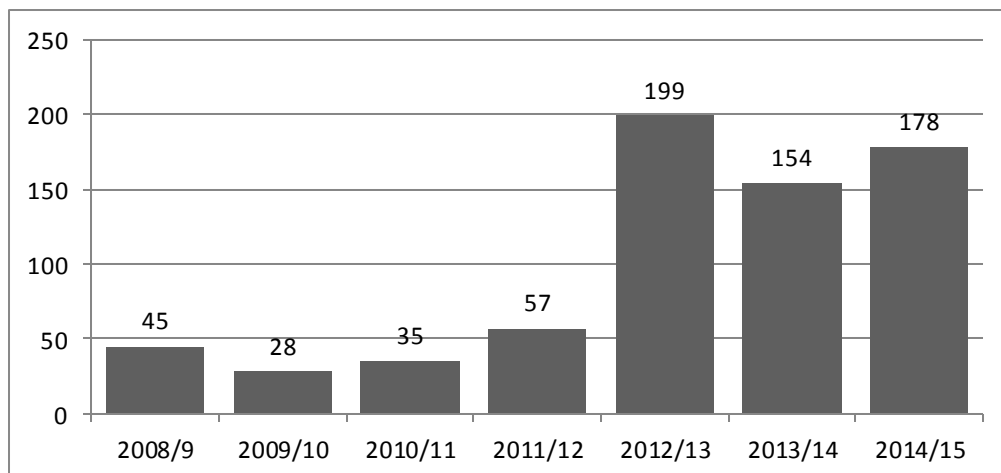
## Relations with the PHSO

- 1.20 Several of the complaints that we have reviewed (and those of our predecessor) have now progressed to the Parliamentary and Health Service Ombudsman. We have endeavoured to ensure that the Ombudsman's staff have an informed awareness of the role played by an ICA (and that the ambit of an ICA review is not to be compared with a PHSO investigation, not least in terms of the resources devoted to it).
- 1.21 In doing so, we have emphasised that as ICAs we remain faithful to the Ombudsman ideal of impartial adjudication and are not consumer-advocates except or unless we find evidence of maladministration.
- 1.22 We have been very pleased to note the progress being made towards the establishment of a formal protocol between the DfT and the Ombudsman to govern complaints that have already been subject to ICA review.

## 2: Workload

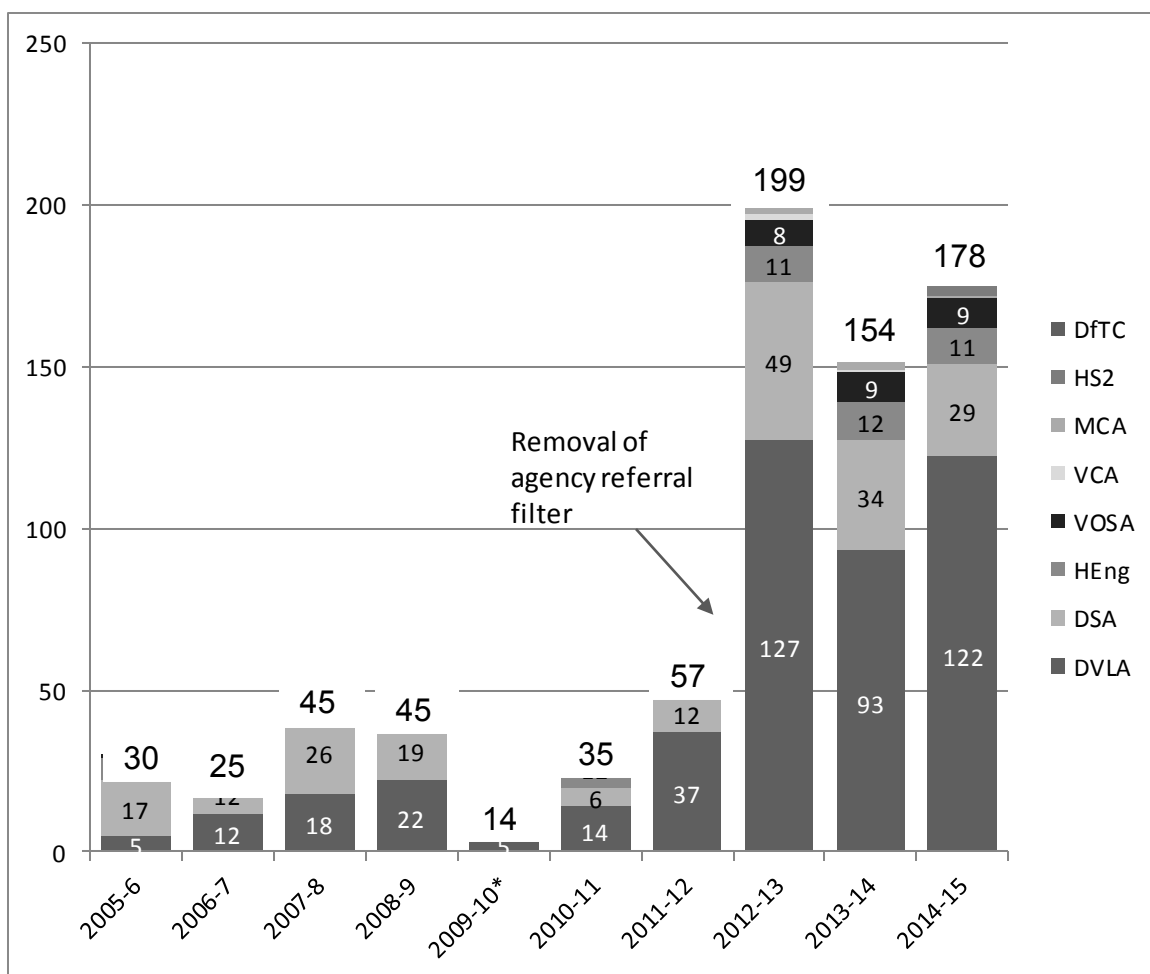
- 2.1 Figure 1 illustrates that the number of new cases was 16 per cent higher than in 2013–14. However, the year's total of 178 ICA referrals was below the 2012–13 spike of 199 (which followed the removal of an inappropriate filter process whereby the Agencies had to agree to a customer's request for an ICA referral).
- 2.2 The underlying trend since 2011–12 is 13-14 new cases per month.
- 2.3 Figure 2 shows that our workload remains to a significant extent a function of the number of referrals from the DVLA. This year, only six of the 178 new cases came from DfT bodies newly added to our jurisdiction.

**Figure 1: Total ICA referrals 2008–09 to 2014–5**



- 2.4 Figure 2 disaggregates all new cases referred to the ICAs over the past ten years. Complaints against the DfT bodies with the greatest number of customer transactions (the DVLA, and the driver standards arm of the DVSA (DSA)) represent by far the largest proportion of the ICA workload over that period.
- 2.5 The other Agencies are represented by a much smaller number of complaints. In 2013–14, Highways England was the third most represented (11 complaints), followed by DVSA/VOSA (9).
- 2.6 In 2014–15, complaints against the DVLA accounted for over 68 per cent of all ICA referrals compared with 60 per cent in the previous year. This represented the highest proportion of DVLA complaints ever handled by the ICA scheme, if not quite the highest number. In contrast, the proportion of complaints from the DVSA’s driver standards operations has declined to a new low of just over 16 per cent.

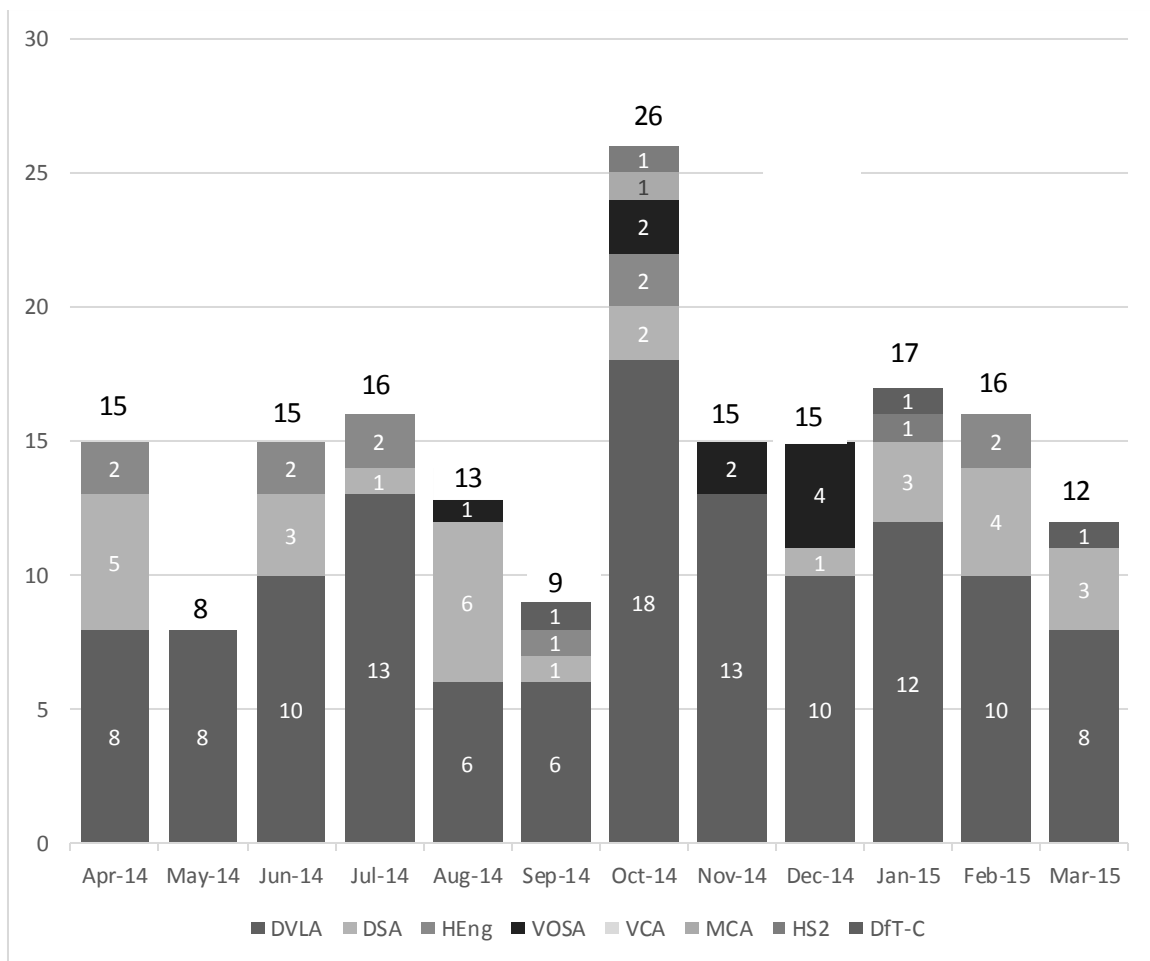
**Figure 2: Total ICA referrals April 2005–March 2015, by DfT body**



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

- 2.7 These annual figures can mask the significant month-by-month variations that often occur. Figure 3 shows that in October 2014 the number of ICA referrals was almost double the average for all other months of the year. (This was largely attributable to an increase in referrals from the DVLA.)
- 2.8 Such a blip represents a substantial operational challenge to the ICA system, since both of us only expect to work on DfT complaints for part of the week and there is little spare capacity.
- 2.9 Happily the trend since October has shown a steady reduction in complaints from the DVLA. However, our ability to meet demand is determined not only by the crude number of referrals but by the relative complexity of the new cases received. While we are proud of the fact that average case completion time (and hence the ultimate cost to the taxpayer) is considerably lower than it was some years ago, we are conscious that – in part at least – this reflects the fact that some of the simpler (and quicker) cases were previously filtered out by the Agencies and thus never entered an ICA’s inbox.

**Figure 3: All cases referred to the ICAs by month, 2014–2015**





## **Output**

- 2.10 Table 1 shows ICA performance in each quarter of 2014–15, compared with the previous year.
- 2.11 The table shows that we have cleared on average 45.5 cases per quarter (compared with 38.25 last year), comfortably keeping up with the incoming flow.
- 2.12 The table also shows an 11 per cent reduction in case completion time. (We do not have figures for before 2013–14, but doubt in any case whether they would be strictly comparable.) As a general rule, cases from those DfT bodies from whom we do not have regular referrals take considerably longer to complete. This is a reflection both of their inherent complexity, and doubtless a reflection of the learning curve that each of us faces when encountering a complaint on a subject about which we know little.

**Table 1: ICA throughput and performance 2013–14<sup>4</sup> and 2014–15**

	2013-2014			2014-2015		
	Case nos in	Cases out	Average compl. time (hours)*	Cases in	Cases out	Average compl. time (hours)*
<b>Q1</b>	34	13	06:59	38	47	05:19
<b>Q2</b>	37	38	07:40	39	42	05:25
<b>Q3</b>	33	46	06:04	56	45	06:44
<b>Q4</b>	50	56	05:50	45	49	06:08
<b>TOTAL</b>	<b>154</b>	<b>153</b>	<b>06:38</b>	<b>178</b>	<b>183</b>	<b>05:54</b>

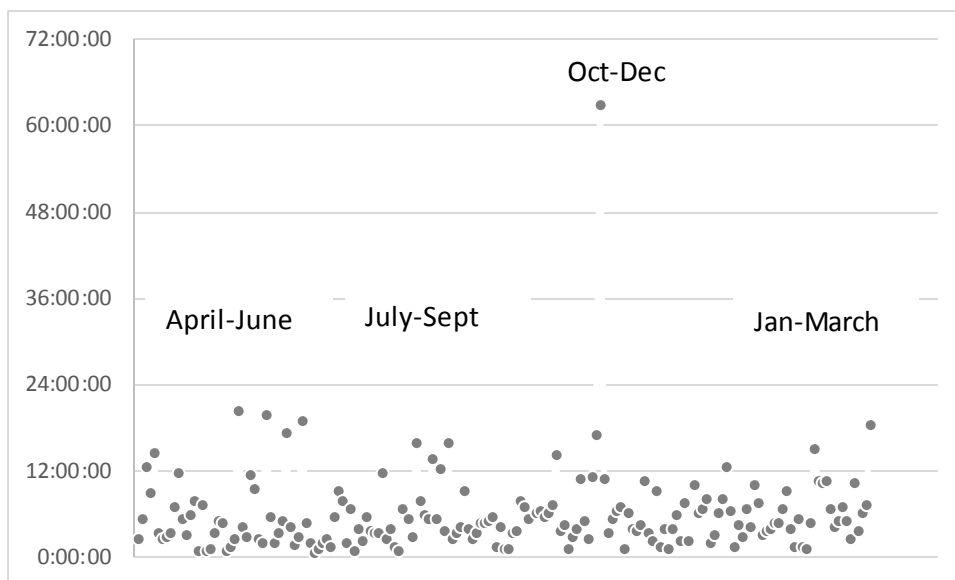
\* For cases received in that quarter

- 2.13 A total of 183 cases were closed during 2014–15.
- 2.14 Figure 4 plots the completion times (in hours on the vertical axis) for all of the cases closed in the year.
- 2.15 The outlier case (62 hours and 42 minutes) was unusually complex and, although it arrived in 2013–2014, we have included it in our case studies for this year as it was completed in October 2014 and could not be reported on in our previous annual report.
- 2.16 The second longest case to complete took 20 hours and 20 minutes.

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

2.17 Because the number of new bodies in jurisdiction has increased so significantly, the fact that novel cases take longer has implications for ICA output and productivity in 2015–16 and thereafter.

**Figure 4: All 183 cases completed 2014–2015 by time taken and quarter**



2.18 Figure 5 breaks down the 183 completed cases against the time taken and DfT body, illustrating the point made above that novel cases from infrequent referrers tend to take longer to complete. In line with previous years, ten of the 29 cases taking over ten hours to complete concerned the DVLA’s Drivers Medical Group.

2.19 The throughput times for ICA cases in the year varied between one and 80 working days with an average of 24 working days, compared to an average of 37 the previous year (with a range of between two and 175 working days).

2.20 This represents good service to complainants, and is a further pleasing indicator of our productivity.

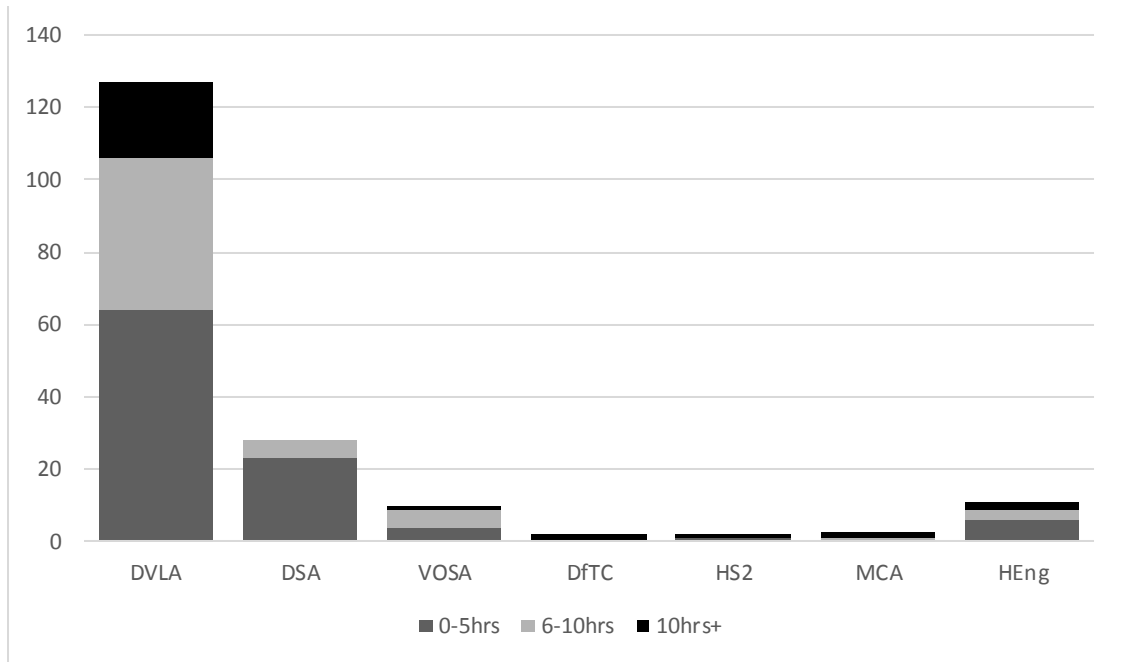
2.21 Over 95 per cent of cases were completed within our target of three months of referral. Over-runs have been wholly the result of a decision made to defer a case at the request of the complainant.

2.22 Figure 6 shows the proportion of 2014–15 cases where the ICA upheld the complaint (either in whole or in part) and/or recommended further action. The statistics cover the last five years. (The percentages for HS2 Ltd, DfT-C and the MCA are not presented as they are too low to be meaningful.)

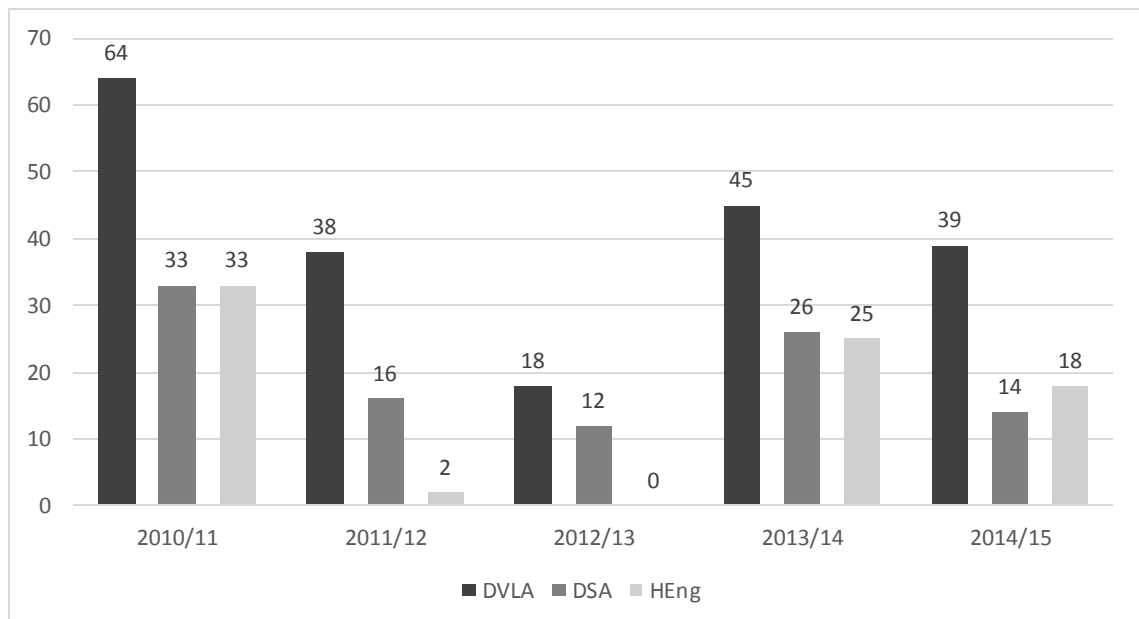
2.23 While we would counsel against any simple analysis of these figures (as experienced complaints handlers across a variety of public bodies, we are very

aware that the whole idea of ‘upholding’ a complaint is rarely straightforward), there are some intriguing findings. For example, the percentage of DSA (DVSA) cases upheld, or in which recommendations were made, has almost halved over the period. Likewise, there has been a reduction in the number of upheld complaints/recommendations in DVLA cases.

**Figure 5: Cases completed 2014–2015 by DfT body and time taken**



**Figure 6: Percentage of complaints from top three referring bodies that an ICA upheld (in whole or in part) and/or recommended further action**



- 2.24 Whatever the exact causes of the reduction in our criticisms of DVLA and DVSA administration and the resulting recommendations, these findings are certainly consistent with a view that these agencies have improved their own internal complaint handling – identifying and remedying problems before they escalate to an ICA review. Entirely separately, we have both had cause to commend examples of good case handling that our reviews have revealed during the year.
- 2.25 At the time of writing, one 2014/15 case remained open, the complainant having asked for his case to be deferred while he contested the Out of Court Settlement offered to him by the DVLA.

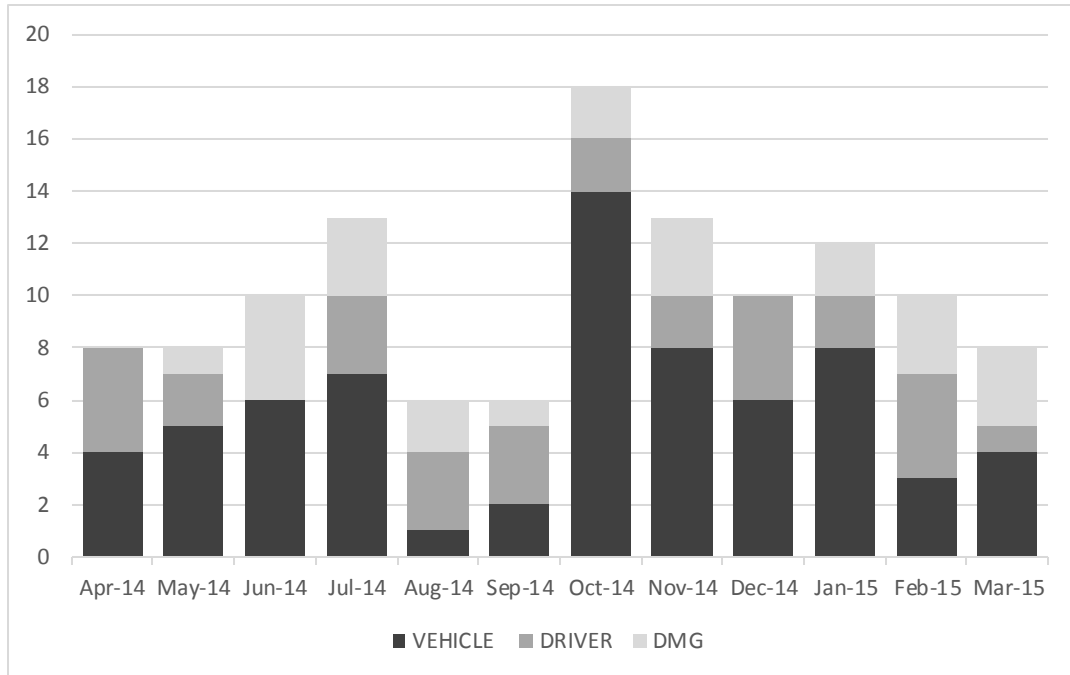
### **3: Driver and Vehicle Licensing Agency**

- 3.1 After a drop of 27 per cent between 2012–13 (127) and 2013–14 (93), DVLA referrals rose by 31 per cent to 122 in the year to 31 March 2015. The Agency remains the ICAs' main source of referrals (68 per cent of the total this year compared to 60 per cent last year and 63 per cent the year before).
- 3.2 As we showed in Figure 2 above, the month of October 2014 saw a spike on the vehicles side of the Agency's operations with 18 DVLA referrals received compared to six received in each of the two previous months (and the average for the year of 8.5 per month). Since then the numbers have steadied in the region of ten referrals per month.
- 3.3 A breakdown of all our incoming DVLA complaints by service area is shown in Figure 7.
- 3.4 Despite media reports that clampings have risen from 5,000 to 8,000 per month since the October 2014 changes to vehicle excise duty (VED)<sup>5</sup>, as ICAs we have not seen any increase in referrals about enforcement. In fact the complaints reaching us about clamping and Late Licensing Penalties dropped from eleven to four between the third and fourth quarters of 2014–15.
- 3.5 There has been no contrary trend evident to date in 2015–16.

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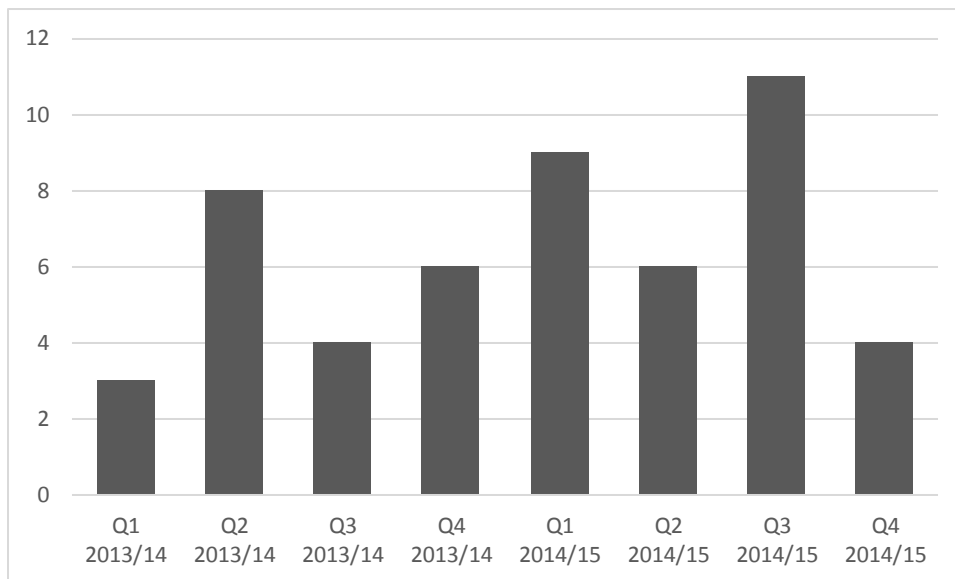
<sup>5</sup> For example, <http://www.theguardian.com/money/blog/2015/apr/11/dvla-clamping-clanger-car-tax-motorists>

**Figure 7: Incoming DVLA complaints by service area, 2014–15**



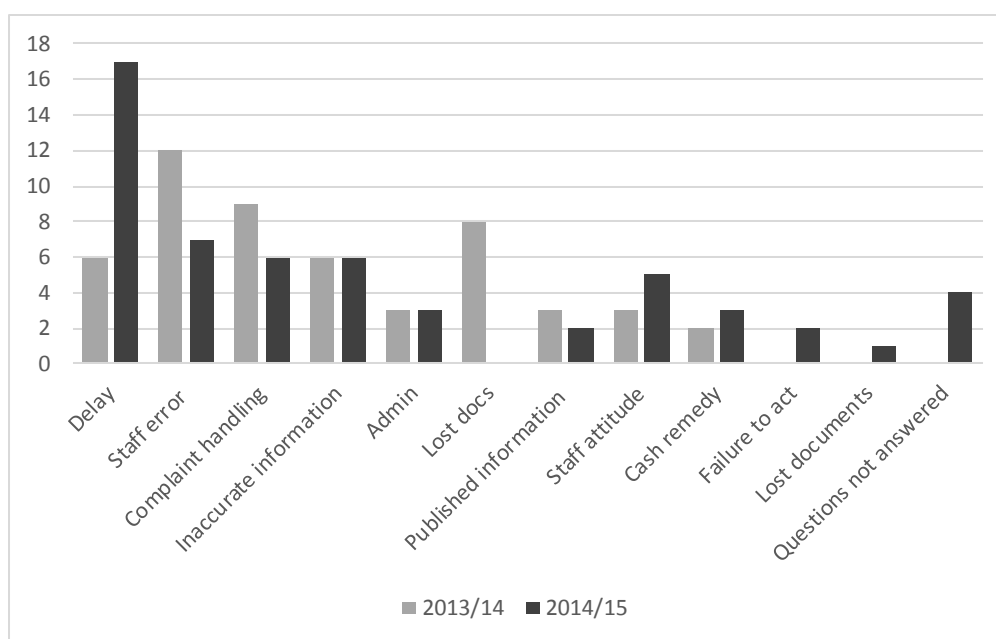
3.6 Figure 8 presents clamping and enforcement related referrals by quarter over the last two years. Again, no trend is readily discernible. And despite the bedding in of the DVLA’s enforcement procedures against people who have not insured their vehicles, in the year we received only three complaints about Continuous Insurance Enforcement.

**Figure 8: Referrals to the ICAs about dissatisfaction with clamping and/or vehicle licensing enforcement, 2013–14 and 2014–15**

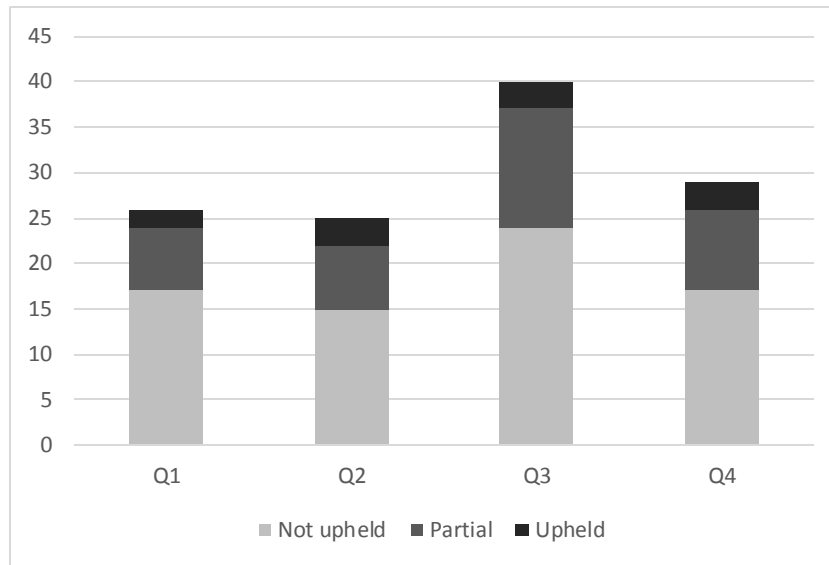


- 3.7 We are the third holders of the post of ICA to have recommended that the respective regulations setting out the duties of a registered keeper should be amended to state that their notification/declaration is not made until an acknowledgement of it is received. It remains a matter of regret that this has not been acted upon. **We repeat our previous recommendation.**
- 3.8 Our uphold rate in DVLA cases has remained at 40 per cent.
- 3.9 Figure 9 presents the main customer service issues referred to us in DVLA complaints and Figure 10 (overleaf) disaggregates the 122 DVLA complaints referred to the ICAs in the year against outcomes.
- 3.10 Fourteen out of the 17 complainants citing delay were complaining about the Agency's Drivers Medical Group, and delay came up in one form or another in almost all of the other ten Drivers Medical cases.

**Figure 9: Main service issues referred in DVLA complaints, 2013–14 and 2014–15**



**Figure 10: All DVLA cases referred to the ICAs 2014–15, by outcome**



3.11 Eighteen out of the 24 complaints referred to us about Drivers Medical were upheld to some extent. Although Drivers Medical cases comprise under 20 per cent of our DVLA caseload, they took nearly one-third of the time we devoted to DVLA casework in the year (on average requiring 8 hours and 17 minutes to complete compared to 5 hours 4 minutes for other DVLA cases).

3.12 Drivers Medical cases require additional ICA time because:

- They usually cover many months, sometimes years, of transactions and interactions
- They involve complex and changeable legal and clinical considerations
- They are often multifactorial, multi-disciplinary and multi-agency, typically involving the interaction of lay case handlers with internal and external experts and clinicians
- The content of cases (the loss of health, livelihood and mobility) is often understandably emotive and contentious.

3.13 In eight out of the 20 Drivers Medical cases where we made a recommendation, we proposed that a cash remedy should be paid. In five cases our main recommendation was that systems in the Drivers Medical Group should change, and in three it was that the information provided to customers should be improved. Of the 24 Drivers Medical cases we reviewed that arrived in the year, we understand that four, with three earlier cases, have progressed to the Parliamentary and Health Service Ombudsman where they are currently subject to a systemic investigation, the outcome of which we look forward to learning later in the current year.

- 3.14 We next present some case summaries that illustrate some of the themes of the year's DVLA postbag.

### ***Missing entitlements***

**Complaint:** Mr AB complained that his licence had wrongly omitted his entitlement to drive cars since the 1970s. He told the DVLA he had now reached an age when he wanted the details corrected.

**Agency action:** The Agency said they had no record of ever issuing Mr AB with a full car licence and it was now much too late. In correspondence they had offered also sorts of objections to the circumstantial evidence Mr AB had submitted.

**ICA outcome:** The ICA said he was faced with two versions of reality. Mr AB had said that his licence had come back in an incorrect state in 1978 after he had been banned from driving for a year. The DVLA simply said they had no record (a 'Computer says No' position). There was no doubt that Mr AB had passed his test in 1973, nor that he had been issued with a red book by his local authority. It was also accepted by the DVLA that some authorities had issued two red books - one for cars, one for motorcycles (it was agreed that Mr AB had a full motorcycle entitlement) - and that this had led to difficulties when licences were converted by the DVLA. However, in the absence of any record of their own, the DVLA would not budge. The ICA said he found the supporting evidence Mr AB had submitted to be convincing: when he was banned, the police had not charged him with driving while unlicensed, yet it seemed very unlikely that Mr AB had renewed a provisional licence each year since 1973 (as he would have had to have done in the absence of a full licence). Likewise, his entitlement to drive tractors had disappeared from his licence (the most likely explanation for which was that it had been subsumed within a full car licence). The ICA therefore recommended that Mr AB be issued with a full licence. The DVLA rejected the ICA's recommendation, and Mr AB then approached his MP. Following a further review, the DVLA reversed its previous decision and a licence was issued. The DVLA also introduced a new system to ensure senior oversight where the ICA upholds a complaint.

### ***Successful efforts by the DVLA to reunite a driver with his driving entitlement***

**Complaint:** Mr AB complained that the DVLA had refused to reissue him with a full driving licence despite the fact that he had provided proof of his entitlement in the form of his certificate of military service.

**Agency response:** The Agency initially searched for evidence on its database that Mr AB had held a full driving licence, but was unable to find it. It explained to him and his MP that the certificate of military service was insufficient evidence of Mr AB passing a full DVSA-style driving test.



**ICA outcome:** On receipt of the file the ICA requested further information from the DVLA. While providing this information, the Agency decided to conduct further checks and was able to identify that Mr AB's driver record had been accidentally merged with that of another driver with similar personal details. Mr AB's full entitlement was restored to him. In considering Mr AB's claim for compensation, the ICA noted that he had continued to drive at various stages over the 20 years in which he had been unable to prove his entitlement. In this time he had been prosecuted for drink-driving after which he had not reapplied for his licence. The ICA concluded that, even if Mr AB had not been lost to the DVLA's register, he would have had no legal entitlement to drive for the decade or so following his disqualification. The ICA also noted that Mr AB had made a single if determined effort to obtain a paper licence on one occasion over two decades and had been unsuccessful. However, the ICA also noted that mishandling a driver record was at the upper end of the scale of maladministration for an Agency whose main purpose is to maintain accurate driver and vehicle records. He therefore recommended that the DVLA should pay Mr AB a consolatory payment of £250 for the effort he had had to make to obtain his entitlement in his latter correspondence. The ICA also recommended that the searching method that had been successful in Mr AB's case should be made standard practice in DVLA entitlement searches so that other drivers with lost entitlements might also be assisted.

### ***Incorrect information given to someone whose car had been impounded***

**Complaint:** Mr and Mrs AB complained that, despite being told by the DVLA that the untaxed car they had bought at auction for their son would be unclamped free of charge, it was removed to a pound and then to an auction house for disposal.

**Agency response:** In successive responses to their complaint, the Agency stated that the car had been clamped and removed in line with its policy on continuous registration. The Agency was unable to locate a copy of the record of a telephone call Mrs AB had made where she had received the information from the DVLA that the car would be unclamped free of charge.

**ICA outcome:** During his initial enquiries the ICA was informed that the Agency, by searching in a different way for a copy of the call, had in fact discovered the record. The ICA listened to the recording and considered that the member of staff who had spoken to Mrs AB had been brusque and had responded in the affirmative to her question about whether the vehicle would be unclamped free of charge. Although the ICA noted that Mr and Mrs AB had been extremely optimistic to think that they could recover their car without charge, he felt that in their specific circumstances the Agency should return the car to them without requiring a fee. These circumstances included the fact that Mr and Mrs AB had attempted to obtain an MOT for the car immediately after buying it from an auction house, and it had been clamped after failing its MOT a

matter of days after its purchase. In considering the handling of their complaint, the ICA felt that the existence of a multi-tiered complaint process should have provided the Agency with opportunities to look in different ways for the audio of the call. He was critical of the DVLA for not locating a copy of the call record sooner but commended the member of staff who had found it. He was also critical of the Agency's complaints team for not ensuring that Mr and Mrs AB's case was reconsidered thoroughly through the prescribed policy for contesting enforcement action. He upheld the complaint that the Agency's complaint handling had been inadequate. The DVLA agreed to return the vehicle to Mr AB, subject to its satisfying the legal requirement not to be on a public road whilst untaxed or not subject to SORN.

### ***Complaint about revocation of licence on medical grounds***

**Complaint:** Mr AB complained about the decision of the DVLA to issue him a three year licence on medical grounds.

**Agency response:** The DVLA said it had followed its standard procedures: revocation, one year licence, three year licence, in respect of Mr AB's mental health problems.

**ICA outcome:** This was a case at the outer edge of the ICA's remit since there had been an opportunity for Mr AB to appeal to the magistrates' court and the case involved clinical decision making. However, Mr AB's health issue (a delusional disorder), while classified as a psychosis, was not mentioned expressly in the DVLA's *At a Glance* guide that sets out the medical criteria governing fitness to drive. The ICA found no maladministration in the DVLA following the guidelines in its Operating Instructions, but recommended that the relevant specialist advisory panel should consider the particular disorder with which Mr AB had been diagnosed.

### ***Very poor handling of a driver's appeal against a licence restriction***

**Complaint:** Mr AB complained that he had been subjected to unnecessary eye testing culminating in the issue of a one-year driving licence by the DVLA despite the lack of any defects in his peripheral vision. He also complained about the DVLA's handling of his correspondence, in particular that letters arrived without names or signatures on them and did not address his queries. He complained too about delays.

**Agency response:** The DVLA had explained from the outset that its involvement had been triggered by a report from the police that Mr AB might have had a visual deficit that had resulted in his collision with a lorry. Its medical group undertook a standard investigation culminating in a visual field test in which deficits in Mr AB's peripheral vision were identified. Mr AB challenged this and furnished his own visual field test, taken over three months later and meeting the DVLA's technical specifications, which showed that he

had no peripheral deficit. This was eventually reviewed by the DVLA but its licensing decision remained the same. Mr AB escalated his complaint to the DVLA's customer complaints resolution team, but was unable to discover why the restriction remained on his licence when the clinical basis of it had been countered with new evidence.

**ICA outcome:** The ICA was unable to criticise the DVLA's medical adviser's clinical judgement that had led to the initial decision that Mr AB's licence should be made subject to annual review. However, he was very critical of the Agency for its apparent dismissal of Mr AB's further evidence that his visual field was intact. The ICA noted that Mr AB had not been informed, at the time his licence restriction was imposed, of the medical basis for it. Nor had he been told at that stage that the Agency would consider new clinical information. The ICA expressed his disappointment that, even when the case was escalated to the customer complaints resolution team, the DVLA was unable to provide Mr AB with a plausible explanation for its licensing position. He was particularly critical of the statement the Agency made in one of its letters to Mr AB that his recent eye test was in effect being disregarded because no evidence had been provided that the original test was flawed. The ICA considered that this position was unfair, defensive and irrational, and refused to give weight to the most up to date clinical evidence. Following his accident, Mr AB had been referred to a fitness to drive assessment by the police. The ICA considered that, as this process had been triggered by the same incident and the same concerns about road safety as the DVLA enquiries, every opportunity for the outcome to feed into DVLA decision-making should have been taken. The ICA was critical of the DVLA for not responding to Mr AB's queries in this regard. The ICA upheld the complaint that the Agency had failed to meet the relevant standards in its communications with Mr AB. He recommended that all police-referred drivers should be asked by the DVLA to refer the outcome of any police driving assessment they undertook for consideration in DVLA fitness to drive enquiries. He also recommended that:

- The standard letter sent to drivers who are to have time limits placed on their licences should include the wording that, as an alternative to legal action, they may submit further evidence
- Drivers Medical Group (DMG) should review its policy of sending letters without names, signatures or relevance to the questions posed
- A senior DMG manager should answer Mr AB's question about why his own visual field test was insufficient to prompt a further medical investigation, and
- The chief executive of the DVLA should apologise to Mr AB for the poor administration highlighted in the review.

### ***Significant delays in medical enquiries into a professional driver's fitness***

**Complaint:** Mr AB complained that the medical standards against which the DVLA had revoked his vocational driving licence were flawed. Mr AB, who had never suffered from hypoglycaemia but was on insulin for hyperglycaemia, argued that the fitness standard was irrelevant to his condition and prejudicial to people suffering from his form of diabetes. He also complained that the basis of his revocation was not adequately explained to him and that the Agency's handling of his case and of his complaint was fraught with delays.

**Agency response:** The DVLA took no action initially in relation to Mr AB's and his GP's post-revocation correspondence stating that he met the fitness standards. It outlined its three-stage process for vocational drivers dependent on insulin that consists of a declaration by the driver, a medical questionnaire completed by their GP, and an examination by an independent consultant. Eventually, after Mr AB had complained to the chief executive, the Agency actioned his case as a complaint and started a new three-stage medical enquiry process. At this stage Mr AB had been unable to work on his group 2 licence for 11 months.

**ICA outcome:** During the review process, the ICA expressed his concern that Mr AB had been unable to work for such a long time on the basis of equivocal consultant advice about his compliance with the prescribed blood testing regime. In his dealings with the DVLA, and in his draft report, the ICA strongly recommended that the Agency take urgent steps to expedite the case. The ICA pointed to the fact that Mr AB had resorted to court action in the absence of any apparent progress in his dealings with the DVLA. Following this, the Agency's complaints team acted commendably quickly and informed Mr AB that his group 2 licence had been restored a few days after the ICA draft report had been issued. In the final report the ICA did not uphold the complaint that the fitness standard was inappropriate, or had been misapplied, as this was a matter of policy over which he had no jurisdiction. However, he had no hesitation in upholding the complaint that the DVLA's service standards had not been met. He recommended that the DVLA apologise for its delay and offer Mr AB £100 consolation in recognition of the stress he had undergone in trying to progress matters through the complaints process. Secondly, he said that the DVLA should set out clearly the clinical basis of its policy of requiring all insulin dependent diabetics to meet the same group 2 medical standard. Finally, in the event that Mr AB decided to seek compensation from the Agency, the ICA recommended that his case should be considered carefully alongside the ICA's calculation that delays amounting to a minimum of 57 working days had occurred in relicensing Mr AB. In his review the ICA pointed out that the Advisory Panel which set the fitness standards had stated that there was room for "common sense and clinical discretion" in their application. Happily, the ICA found that the Panel's advice was followed in the latter stages of the Agency's handling, but by this time Mr AB had been unable to work on his group 2 licence for almost a year.

### ***Complaint about the fairness of a driving assessment***

**Complaint:** Mr AB's ordinary driving licence had been revoked following a visual field test. He was subsequently permitted to take a practical driving assessment but was judged to be unsafe to drive. Mr AB alleged that the DVLA's Drivers Medical Group had failed to provide him with a reasonable service because of delay and a failure to respond appropriately to requests for information from other health professionals. He also suggested that later visual field tests implied that his licence should not have been revoked, and that the circumstances of the driving assessment were unfair.

**Agency response:** The DVLA had acknowledged an error in a letter Mr AB had received, but said that it had followed standard procedures.

**ICA outcome:** The ICA said that the time taken by the DVLA was evidence of maladministration, but not such that it met the threshold at which a consolatory payment was warranted. The Agency was now in the process of arranging a further visual field test for Mr AB, and the ICA judged this was the best he could achieve for Mr AB consistent with a remit that excludes consideration of clinical decision-making.

### ***A complaint from a person with no wish to drive***

**Complaint:** Ms AB wanted DVLA agreement that she was entitled to a Freedom Pass.

**Agency response:** Ms AB had been sent standard letters and questionnaires about her fitness to drive. When she declined to complete the forms, her licence was revoked.

**ICA outcome:** The ICA said this was a case of mutual misunderstanding. By failing to complete the forms, Ms AB now found her case closed until or unless she applied for another licence she did not want or need. (The ICA had discovered that Ms AB only had a provisional licence, did not own a car, and had no wish to drive.) But he was critical of the Agency's reliance on standard letters and failure to engage with the actual question Ms AB had asked.

### ***Revocation of licence - driver with Asperger's Syndrome***

**Complaint:** Mrs AB complained that her licence had been revoked. She said that she had Asperger's Syndrome but had been driving successfully for 25 years.

**Agency action:** The DVLA said that Mrs AB's licence had been revoked following receipt of information from her doctor. It was agreed that the doctor had made a mistake, and Mrs AB's licence had been restored within a few weeks.

**ICA outcome:** The ICA sympathised with Mrs AB. But the DVLA had acted properly in revoking her licence on the information provided to it. There was no case for compensation, or for saying that the form completed by the doctor was misleading.

However, the ICA was unhappy that the DVLA had characterised autism as a mental illness. The DVLA agreed to introduce new procedures when considering the cases of drivers on the autism spectrum.

***A false claim that maladministration by the DVLA meant that a number plate should be transferred from an ineligible vehicle***

**Complaint:** Mr AB complained that he had bought a historic tractor with a registration mark in his own initials on the basis of DVLA advice that he could transfer the registration to his car. The DVLA then refused to allow the transfer and, he argued, provided confusing and contradictory advice. Mr AB also complained that the DVLA's registration transfer form (V317) was confusing in this regard.

**Agency response:** The DVLA said that Mr AB had sought advice on moving the plate after he had bought the vehicle. However, it admitted that he had been given incorrect advice on more than one occasion and apologised. But the Agency was clear that the advice had no bearing on Mr AB's predicament. Because the tractor was of an age where it was ineligible to have an MOT, the registration could not be transferred. The DVLA defended the wording of the V317.

**ICA outcome:** The ICA listened to over an hour and a half of Mr AB's calls to the Agency and concluded that he had bought first and sought advice later. The ICA did not agree with Mr AB that the provision of incorrect advice later down the line bound the Agency to bend its rules for him. In his consideration of Mr AB's claim that Agency staff had acted unethically, the ICA noted that not all of the information Mr AB himself had provided had been accurate. He agreed with the DVLA that the wording on the V317 advisory notes made it clear that a plate transfer was only possible if the vehicle "has to have an MoT or GVT certificate". He did not uphold the complaint.

***A complaint that the DVLA did not provide adequate evidence to support its account of an auction where a number plate was sold for a significant sum***

**Complaint:** Mr AB bought a cherished number plate at auction for a significant sum and then discovered on the internet that it had apparently been sold at an earlier auction for just over a third of what he had paid. He complained that the DVLA failed to provide adequate evidence to support its account of the history and auctioning of the registration number. Mr AB asked for incontrovertible forensic evidence to support the DVLA's account of events, including its communications with the previous auction winner.

**Agency response:** The DVLA had provided exhaustive responses to questions from Mr AB and his lawyers about the auction process, and documentary evidence of its dealings with the winning bidder for the registration at the previous auction. (The previous auction winner had not paid the balance of the auction price so the plate was re-auctioned and Mr AB was the highest bidder.) It offered Mr AB a signed legal statement from the person Mr AB had bid against and provided a personal assurance from its chief executive that the auction process had been conducted properly.

**ICA outcome:** The ICA considered that for the body of evidence provided by the DVLA to be deemed insufficient, Mr AB would have to have good reason to doubt the account of events and evidence he had already been given. The ICA did not agree with Mr AB that his reasons for doubting the Agency's account were reasonable. He noted that exceptional steps had been taken by the Agency to offer assurance from the highest level. The ICA did not uphold the complaint.

### ***A complaint about keepership and personalised plates***

**Complaint:** Mr AB said that his new vehicle (to which a personalised plate had been transferred) had been wrongly registered with his wife as the first keeper. He wanted her name replaced with his.

**Agency response:** The DVLA had given a variety of explanations, but the key issue was that Mrs AB was the nominee on the V750 and therefore only she could be the registered keeper when entitlement to the plate was transferred.

**ICA outcome:** The ICA was critical of some of the information provided by the Agency in response to the complaint. However, as a matter of law the Agency had been entirely correct. But following the issuing of the ICA report, Mr AB asked if instead he could be the first keeper of an age related plate. The ICA went back to the DVLA and this was readily agreed. The Agency subsequently engaged with the original holder of the personalised plate to transfer the name of the nominee from Mrs AB to Mr AB enabling him then to re-register his new vehicle in his chosen plate and as the only keeper.

### ***Double trouble with a personalised plate***

**Complaint:** Mr AB had an entitlement to a personalised number that was withdrawn when – to the surprise of all – the DVLA discovered that the number had long been assigned to another vehicle. Mr AB had since purchased the right to the plate from the registered keeper of the other vehicle. However, he continued to seek compensation or other redress from the DVLA, arguing that the Agency had made a wrong commercial decision.

**Agency response:** This was a very complicated story, dating back several decades. The DVLA said that its investigations showed conclusively that there had been two plates with identical numbers in circulation, and that Mr AB – although entirely blameless – had not had a legal entitlement to the plate. It had offered him another personalised plate that he had declined.

**ICA outcome:** After a lengthy review, the ICA concluded that the DVLA had been right to say that the entitlement to the plate in question rested with the registered keeper of the other vehicle. Mr AB had been mistaken in characterising the DVLA's decisions as 'commercial'. Quite the reverse applied. Had the Agency taken a commercial decision and disadvantaged the true holder of the plate, it would have

been guilty of very serious maladministration. The ICA did not believe that Mr AB was entitled to financial compensation. However, notwithstanding that Mr AB had now purchased the right to the plate at the heart of this complaint, the ICA could see no reason why the offer of an equivalent plate from the DVLA's stock should not be honoured. The Agency could not simply waive its previous goodwill gesture. The ICA therefore recommended that the DVLA re-engage with Mr AB to determine if there was a further plate that he could be assigned (either to place on another vehicle or to hold on retention). This recommendation was rejected by the DVLA.

### ***Another complaint about the transfer of a cherished number***

**Complaint:** Mr AB complained about the loss of a cherished plate that he had purchased direct from the DVLA some years earlier. It was his intention that the plate should be transferred to another car, but in practice it passed to the new keeper of the vehicle.

**Agency response:** For its part, the DVLA said that the transfer or retention of a cherished number plate must be processed before a change of keepership.

**ICA outcome:** The ICA sympathised with Mr AB if he had made a private agreement with the dealer about the retention of the number plate and now felt cheated by the DVLA's systems. However, the DVLA had simply followed procedures that were tried and tested, and which were properly explained in its literature. For that reason, the ICA was unable to uphold the complaint or recommend that Mr AB be compensated. The ICA noted that the information on GOV.UK includes an explicit warning: "You must not sell or get rid of your vehicle until you receive a new registration certificate, as the new keeper will be entitled to keep the registration number if they want to." The ICA commended the bluntness of this warning, and the relatively plain English used, and recommended that the DVLA incorporate it into other documentation. He also recommended an investigation into a potentially fraudulent application to transfer the number plate.

### ***A keeper distressed by the crushing of her car by the DVLA and subsequent bailiff action against her***

**Complaint:** Mrs AB complained that, despite being subject to SORN, her car was clamped, impounded and crushed by the DVLA having been removed from the hospital where she worked while it was awaiting repairs. Mrs AB argued that the parking bay in which the vehicle had been left could not be a public highway. She complained that she had been given no notice that her car might be subject to enforcement action, and it had been a number of days before she realised it had been removed. In this time she had contacted the police who informed her that it was in the DVLA pound 40 miles away. She complained that the fees she needed to pay were excessive and unreasonable. She also complained that NSL (the DVLA's clamping contractor), and the Agency had been unhelpful and unreasonable in their communications. Mrs AB had lost her court case after she was prosecuted for not



paying the fine and, at the time of the ICA review, was subject to persistent bailiff activity with regard to the fine and costs as well as significant bailiff charges.

**Agency response:** The DVLA and NSL both provided details of the identification and enforcement action taken with regard to Mrs AB's car. The deadline for the collection of the car was moved back repeatedly to allow Mrs AB to conclude her appeal. The Agency did not find anything in Mrs AB's representations that represented mitigation or evidence that it had acted incorrectly or contrary to its standard policies. Mrs AB's car was therefore disposed of. Before this occurred the Agency had offered Mrs AB repeated opportunities to recover her vehicle. However, as it needed an MOT as well as tax, and was 40 miles away, this was not an easy undertaking. Mrs AB contested the basis of the Agency's enforcement action throughout, and refused to accept that she was in breach of the rules.

**ICA outcome:** The ICA agreed with the DVLA that it had followed its standard enforcement procedures, although he expressed reservations as to whether crushing Mrs AB's car and then pursuing her in court was proportionate. The ICA found that the Agency and its contractor had responded with commendable speed and thoroughness to Mrs AB's representations, as they needed to do given the tight deadlines for the removal and destruction of her vehicle. However, the ICA was critical of the DVLA for repeatedly stating on one hand that the matter was closed while on the other it pursued legal action against Mrs AB (who had not fully understood that she would be taken to court if she did not pay the fine on top of losing her vehicle). The ICA also felt that the Agency could have given Mrs AB more information about the ICA stage of the complaints process so that this could have been concluded much earlier. He recommended that the chief executive of the agency write to Mrs AB and apologise for the failings in communication that he had identified. However, he did not uphold the essence of Mrs AB's complaint that the Agency's actions were unlawful.

### ***Speedier processes necessary in Scotland?***

**Complaint:** Mr AB complained about the revocation of his grandson's licence, the time taken, and the level of customer service.

**Agency response:** The DVLA had acknowledged some delay.

**ICA outcome:** The ICA said that the DVLA had been within its published time limits but there had been unnecessary delays. Moreover, he noted that the statutory time limit for appeals through the courts against licence refusals or revocations was six months in England but just three weeks in Scotland. He therefore recommended that the DVLA consider if quicker procedures could be introduced for customers in Scotland because of the three-week time limit to appeal against a revocation in the Sheriff Court.

## ***An informal and restorative approach to complaint handling***

**Complaint:** Ms AB said that she had purchased six months VED (vehicle tax) believing any full month outstanding would be repaid. Instead, a 10 per cent reduction had been imposed.

**Agency response:** The DVLA said that 10 per cent had always been deducted from six month VEDs, but acknowledged that this information was no longer on GOV.UK.

**ICA outcome:** Ms AB was not entitled to the extra £9 she was claiming. But the maladministration represented by the failure to provide information was worth a small sum in consolation. The ICA did not issue a letter or report, but asked the DVLA to consider his proposal that Ms AB be paid £10 as a consolatory sum. This was agreed and the DVLA wrote to Ms AB accordingly.

### **4: Driver and Vehicle Standards Agency**

- 4.1 We are pleased to report that for the second year running case referrals to the ICA from the driving standards side of the Agency's operations have fallen. The reduction this year is of the order of 15 per cent (from 34 to 29).
- 4.2 We upheld five of those 29 cases either fully or in part, making two recommendations for cash remedy.
- 4.3 The number of ICA referrals from the Agency's vehicle standards operations remained at nine for the second year running. While the ICAs were critical of some aspects of Agency handling in two cases in particular, remedial action had occurred before the ICA referral had been made meaning that no case was upheld.
- 4.4 Contrary to what we find elsewhere in our jurisdiction, the DVSA occasionally refers complaints concerning commercial, personnel and disciplinary matters. These can therefore include complaints from Approved Driving Instructors (ADIs) as well as from their pupils.
- 4.5 However, most of the 29 driver standards complaints we received in the 12 months covered by this report fell into the established pattern. In other words, they concerned:
  - examiners' conduct in practical driving tests (14) – attitude was mentioned in seven of these and allegations of discrimination in two
  - driving theory tests (3)
  - loss of fees following late cancellation of driving tests (3).
- 4.6 Unfortunately, as we and our predecessor have commented in previous annual reports, the ICA review is rarely a good means whereby conflicting accounts of

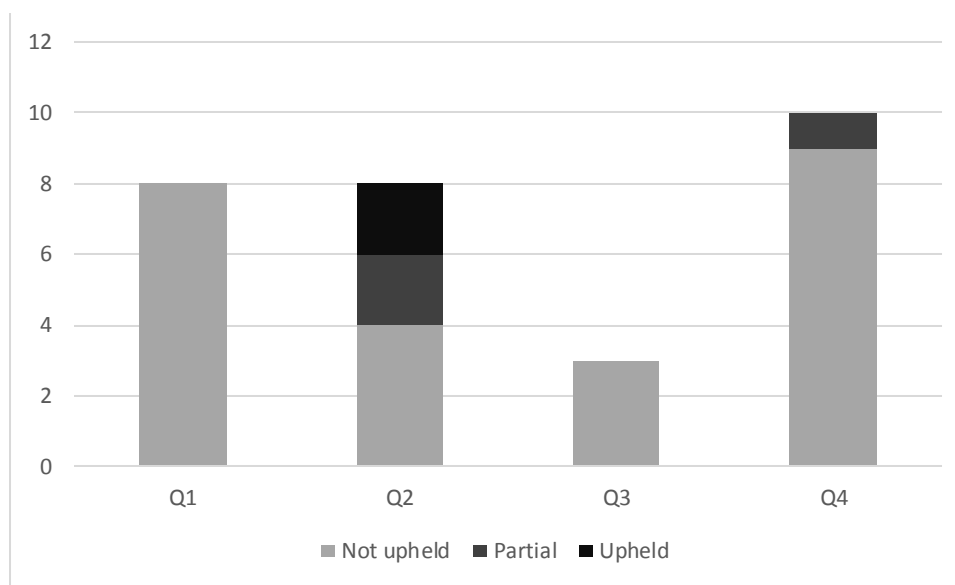
a practical driving test may be resolved and only two such complaints were upheld to any extent, both of which are summarised in this chapter.

4.7 Encouragingly, the number of complaints about the loss of fees after late cancellations of practical driving tests has dropped to three compared with eight in 2013–14, perhaps reflecting the increased discretion to accept mitigating circumstances that the Agency’s officers have been allowed.

4.8 Figure 11 presents the 29 incoming cases in the year concerning the driving standards operations in the DVSA, broken down by ICA outcome. In the six cases where the ICA made a recommendation, the recommendations were in the following areas:

- Reimbursement (2)
- Complaint handling (2)
- Staff training (1)
- CEO apology (1)

**Figure 11: Driving standards DVSA cases 2014–15, by ICA outcome**



4.9 Eight of the nine DVSA cases referred to us from its vehicle standards operations arrived in the third quarter of the year (small numbers are particularly subject to random fluctuations of this kind). We have noted that none were upheld. The complaints fell into the following categories:

- MOT enforcement and disciplinary (4)
- Maintenance inspection report (1)
- Fees for Individual Vehicle Approval (1)
- Vehicle Inspection Test cancelled (1)
- Staff attitude (1)

- Tachograph enforcement action (1)

4.10 Two of the four recommendations made in these cases concerned improving the information made available to customers. The third was for training for a staff member who had inflamed a complaint by including an unnecessary negative statement about the complainant's conduct in his response. And the fourth concerned the quality of service provided to customers requiring a vehicle identity check after the closure of the DVLA's local Vehicle Registration Offices.

4.11 DVSA cases included those we summarise below.

### ***Complaint by a driving instructor about a standards check test***

**Complaint:** Mr AB, a driving instructor, complained about the circumstances of his standards check test. He said he had been judged unfairly.

**Agency response:** The DVSA said that standards check tests were different from the previous check tests. They were content that the test had been conducted fairly.

**ICA outcome:** This was an unusually protracted DVSA review. The ICA spoke to Mr AB's pupil and she confirmed that the test had begun with the examiner wrongly accusing Mr AB of being late and that there was an unpleasant atmosphere. The ICA also discovered that the results of standards check tests showed a fall in the pass rate - mainly in relation to the issues where Mr AB was marked down. There was no evidence that the examiner was subject to more complaints, and overall there was no reason to choose Mr AB's account of how he performed over the examiner's contemporaneous record, although the unhappy start to the test could have given an impression of unfairness. However, it was surprising that in carrying out its review of the complaint the DVSA had not asked the examiner for her views. The ICA recommended that his report be shared with the examiner and her manager.

### ***A poor investigation into a test candidate's complaint***

**Complaint:** Mr AB said that when he arrived for his practical (minibus) test the cones had not been set out correctly.

**Agency response:** The DVSA said everything was as it should have been.

**ICA outcome:** The ICA could not be certain what happened on the day in question. However, in contrast to what the ICA normally found, the DVSA investigation on this occasion had not been a thorough one. Indeed, his inquiries showed that what the DVSA had presented as fact in successive responses to the complaint was no more than speculation. Moreover, contrary to the Agency's repeated assertions that Mr AB's test was the second of the

day, the ICA's investigation revealed that it was actually the first. This gave credence to Mr AB's claim that when he arrived the cones had not been set out at all. The ICA recommended an apology and reimbursement of the costs of the test and Mr AB's incidental expenses.

### ***A badly drafted and incomplete complaint response***

**Complaint:** Mrs AB complained that her 17 year old daughter's driving examiner had abandoned her in an unsafe location after her daughter, Ms B, had asked that her test should be discontinued after having her suspicion that she had failed confirmed by the examiner. Mrs AB attempted to raise the matter with the examiner at the test centre after collecting her daughter but could not find him. She spoke to him the next day by telephone and in her complaint accused him of being a compulsive liar for claiming that he had told Ms B that she would have to wait alone for her instructor to collect her. Mrs AB also criticised the examiner for refusing to ring the instructor, instead telling Ms B to do it herself.

**Agency response:** The Agency had taken a statement from the examiner and test centre manager and sent Mrs AB a response. Unfortunately, it referred to an incident involving a woman shouting in the car park on the afternoon of the test, and stated that the woman had been Mrs AB. In further communications with the DVSA, Mrs AB accused the test centre manager of being a liar. The DVSA then apologised for the error, but insisted that its examiner had acted appropriately.

**ICA outcome:** The ICA was critical of both the DVSA for accusing Mrs AB of aggressive behaviour and of Mrs AB for the tone and content of her complaint correspondence. He suggested that she too should consider apologising to the staff involved. He was also critical of the DVSA for not considering the location where Ms B had been left, as it was clear that it had been an inappropriate location - a narrow and busy street subject to parking restrictions.

### ***A mistaken allegation of impersonation***

**Complaint:** Ms AB had been refused her practical driving test on the grounds that she did not resemble the photo in her photocard licence.

**Agency response:** The DVSA said staff had simply followed the procedures to prevent impersonation.

**ICA outcome:** The ICA agreed that local staff had simply followed the rules and there could be no criticism of their actions. However, the ICA asked Ms AB to provide additional photographs and these proved beyond any doubt that she was indeed who she said she was and had simply changed her hairstyle over the previous few years. In short, no rules had been broken but justice had not been done. The ICA recommended the repayment of the test fee as a goodwill

gesture and for the DVSA to consider its procedures when impersonation was suspected. (The DVSA accepted the recommendations, albeit they queried why the ICA had sought additional photographic evidence from Ms AB, something they had not themselves chosen to do during three stages of internal 'investigation' of Ms AB's complaint.)

### ***Reluctance by the Agency to accept that a theory test candidate had been disadvantaged***

**Complaint:** Mr AB, whose first language was not English, complained that the Agency failed to act appropriately after his driving theory test multiple choice examination was stopped temporarily due to a software failure. During the test Mr AB's computer had registered a 'Java error', and he was assisted by two staff from the contractor, Pearson Vue, to start again. However, the staff did not provide any reassurance that Mr AB had not lost time or the opportunity to answer questions. Mr AB went on to fail the multiple choice test, which had been provided with a translation, and the hazard perception test that followed.

**Agency response:** The Agency eventually accepted that the test had been restarted and agreed to offer Mr AB a free retest. However, it would not agree to his request to have the retest in his first language because a national change in policy had come into effect shortly after he had sat the test which meant that only translations into Welsh were available.

**ICA outcome:** The ICA expressed disappointment with some aspects of the Agency's investigation. For example, Mr AB had initially been told that there had been no technical error and had been refused a refund even though the test had been restarted. The ICA was also concerned that little or no consideration had been given to the fact that a free retest in English would not put Mr AB back in the position he would have been in had the test equipment not malfunctioned. The ICA was critical of the Agency for not engaging with Mr AB's key point that his confidence in the test process had been damaged by the equipment failure which in turn had reduced his performance. The ICA recommended that the DVSA ensure that test centre staff provide clear assurances to candidates in the event of equipment failures. He upheld Mr AB's complaint and recommended that the DVSA's chief executive apologise to Mr AB for the poor handling of his test and complaint and arrange for him to sit the test with a translator. The ICA also recommended that the DVSA pay Mr AB £25 in recognition of the time and effort he had expended in pursuing this matter. Tragically, Mr AB's sister reported his death in a road traffic accident days after the review was completed.

### ***Recognition of drivers with special needs in driving theory test***

**Complaint:** Ms AB complained that her son's special needs as a dyslexic were not recognised in his driving theory test that he had failed five times.

**Agency action:** The Agency had set out the options available to Ms AB's son due to his dyslexia, and explained the reasons why the DVSA does not give the questions a candidate has got wrong.

**ICA outcome:** This was a case with a happy outcome. Ms AB's son had finally passed his theory test two days before a planned telephone conversation between the ICA and Ms AB. It was agreed that the ICA would simply compose a letter reflecting Ms AB's continuing concerns about provision for those with special needs. Her son had been allowed extra time during the test and this had made a huge difference. The ICA was also aware of the other adjustments made for candidates with dyslexia.

### ***An unjustified complaint about passenger safety during a vehicle spot check***

**Complaint:** Mr AB complained after a van in which he was travelling was issued with a prohibition notice by DVSA officers who were conducting inspections in an HGV area of a motorway services in a combined operation with the police and HMRC. Mr AB complained that his safety had not been assured as a pedestrian within the HGV area, that the DVSA vehicle was not displaying a vehicle excise exemption certificate, and that the DVSA's investigation into his subsequent complaint was biased and unfair.

**Agency response:** In its initial response the DVSA dismissed the complaint and commented that Mr AB had been found to be argumentative and disruptive by all of those involved in the inspection. In further correspondence the Agency provided more information about safety arrangements at the services area, and an explanation of why one of its members of staff had refused to identify himself. In its final response the Agency accepted that it had been unhelpful for its officer to have stated that all those present had found Mr AB to have been disruptive.

**ICA outcome:** The ICA examined the DVSA's file, a copy of a video recording made by Mr AB of some of his interactions with various officers of the DVSA and other agencies, and photographs of the site. He found no evidence that DVSA officers had acted in an unsafe way. The ICA considered that Mr AB's video demonstrated that he had at times been argumentative, and he provided Mr AB with photographic evidence that the DVSA vehicle had been displaying an excise exemption disc. He agreed with Mr AB that a pedestrian route from the HGV area away from the motorway services had existed. However, the ICA was not critical of the Agency's officers' advice that Mr AB should leave the area by the vehicle as this represented safe advice applicable to all motorway service areas. The ICA reminded Mr AB that he had been prevented from travelling in an overloaded vehicle with an inadequate tyre and that this confirmed that Agency staff had in fact acted to protect his safety. However, the ICA agreed with Mr AB that it had been inappropriate and unhelpful for the Agency to comment on others' opinions of him. He therefore recommended

that the chief executive of the DVSA write to Mr AB to retract its statement that all other parties had found him disruptive. He further recommended that the officer who had supplied the response be provided with support in his future complaint handling practice to avoid any repetition.

### ***An MOT testing station owner unhappy with inspections***

**Complaint:** Mr AB, the proprietor of an MOT testing station, complained that the Agency had repeatedly inspected his premises in a short period of time despite the fact that it was rated Green. The Agency's explanations had, he argued, been inconsistent and inaccurate.

**Agency response:** In its initial responses to Mr AB's questions, the DVSA provided limited information about the basis for its inspections and suggested that one visit might not have been specifically programmed. In further correspondence the Agency provided more detailed information about the dates and rationales for its inspections. In response to a Freedom of Information request by Mr AB, the DVSA had provided further limited details on the basis for its inspections, withholding some information because of public interest considerations.

**ICA outcome:** The ICA was critical of the DVSA's initial responses to Mr AB's questions, finding them partial, speculative and inconsistent. He criticised the Agency for not recognising this earlier and apologising accordingly. However, the ICA pointed out to Mr AB that not all inspections by the DVSA are triggered by intelligence arriving in the form of a complaint. There is a range of circumstances in which customer reports of anomalies in MOT testing may not be classified as complaints. The ICA did not uphold Mr AB's complaint because, in the course of the correspondence, the DVSA had responded appropriately to the request for information. He pointed out that Mr AB had been clearly signposted towards the Information Commissioner if he felt that the Agency had failed to discharge its duties appropriately under the Freedom of Information Act.

### ***Complaint about a Vehicle Examiner's report***

**Complaint:** Mr AB complained about the content of a maintenance report compiled by a Vehicle Examiner.

**Agency response:** There had been a long correspondence and a meeting with Mr AB. The Agency agreed that his was a non-standard operation (in effect he was a hobbyist) but the consequences in terms of record keeping of holding an Operator's licence still applied.

**ICA outcome:** The ICA was concerned that a standard inspection methodology could seem excessively bureaucratic for a hobbyist like Mr AB. Although he did not make a formal recommendation, he suggested that DVSA give further



thought to whether Vehicle Examiners needed advice on this matter. However, while identifying minor errors in the report, the ICA did not think Mr AB had been treated unreasonably. (One aspect of this review was that Mr AB had been required by the respective Traffic Commissioner to attend an educational seminar a year after the inspection. The Traffic Commissioners are not within the ICA remit.)

## **5: Highways England**

5.1 The ICAs received 11 complaints about Highways England in the year to 31 March 2015. These broke down as follows:

- Insufficient compensation or refusal to pay for vehicle damage caused by a road (5)
- Defective road markings (1)
- Removal of vehicle from highway (1)
- Unsafe road works (1)
- Upkeep of brook adjacent to motorway (1)
- Non-provision of noise insulation prior to roadworks (1)
- Noise during road works (1).

5.2 Complaints about Highways England, especially those that do not concern vehicle damage on trunk roads and motorways, may be technically and legally complex. This is especially true of land disputes.

5.3 A commendable feature of Highways England's complaints system is that it only includes two internal stages before referral to an ICA. (This is also the case for the MCA.) Also commendable is the personal involvement of the chief executive in much of the correspondence with customers.

5.4 During the year the ICAs partially upheld two Highways England cases. Illustrative summaries include:

### ***A complaint about a collision with a traffic cone on a windy night***

**Complaint:** Mr AB suffered a collision with a displaced cone on a motorway in adverse weather conditions. He complained that Highways England and its agents refused to accept responsibility for the collision. He was also concerned that the response to his report of the collision demonstrated a lack of concern for basic road safety and for Highways England's role in maintaining safe roads.

**Agency response:** Highways England examined the logs of its contractors' routine inspections for the period in question and established that the area had been subject to appropriate patrols. Debris had been removed and the cone itself, which had been placed to mark damage to the barrier in the central

reservation, was removed from the highway soon after the incident was reported. Highways England's agent did not accept liability for the damage to Mr AB's car, a position supported by Highways England itself.

**ICA outcome:** The ICA reviewed the logs, and these confirmed Highways England's account of its agent's routine management of the section of the motorway in question and its responses to reports of debris on the day of the collision. The ICA had some sympathy with Mr AB's position that the use of cones in windy conditions was inappropriate, but was unable to criticise Highways England for its refusal to accept liability given the many possible reasons why the cone had been displaced. He did not uphold the complaint.

***Unfair criticism of Highways England staff by a driver giving varying accounts of a collision with a pothole***

**Complaint:** Mr AB complained that Highways England had compensated him inadequately for over £800 worth of losses that occurred after he hit a pothole on a motorway.

**Agency response:** Highways England had investigated each of three different accounts of the collision provided by Mr AB over the course of six months of correspondence. When Mr AB complained that the case officer dealing with his claim was hindering him in his efforts to locate the scene of the collision, the case was escalated to a team leader. Her further investigation established that a pothole had existed on one of the locations at the time that Mr AB had stated. Highways England had initially offered Mr AB £242.40 which took into account the cost of a replacement tyre and a new wheel, bearing in mind wear and tear. The eventual payment of £118.40 was made for receipted losses only.

**ICA outcome:** The ICA found that Mr AB's version of the events of his collision varied at different stages and was at times implausible. He also considered that Mr AB's criticisms of the Highways England staff member handling his case were unfair and unwarranted. He noted that, despite the discrepancies in the details of the claim, Highways England had given Mr AB the benefit of the doubt and awarded him some compensation. The ICA found no merit in Mr AB's complaints of maladministration and unfair treatment and did not uphold the complaint.

***A complaint about noise levels***

**Complaint:** Mr AB complained about noise levels from a new road near his home. He also said that Highways England had treated him unreasonably.

**Agency action:** Highways England said noise levels were well below the level at which a formal noise survey or remedial works could be justified. They said issues about the road alignment had been considered at a public inquiry which was the appropriate time for Mr AB to have raised his concerns.

**ICA outcome:** This was a complicated matter. The ICA discovered that Highways England had engaged in a long correspondence with Mr AB, had arranged a meeting with a senior official at his house, and had met with Mr AB and his Member of Parliament. However, it was clear that there had been some failings: in particular, the recording of calls by the call centre had been very inaccurate. The ICA did not uphold Mr AB's complaint so far as noise levels were concerned, nor could he recommend a noise survey (thereby opening the floodgates to many similar claims) or recommend remedial works (likewise). However, Mr AB was due an apology and explanation from the chief executive.

***Thorough and sympathetic handling of queries about eligibility for noise insulation***

**Complaint:** Mr AB lived very close to a trunk road that had been subject to major widening works by Highways England. He complained that he had unreasonably been assessed as ineligible for the provision of noise insulation under the Noise Insulation Regulations 1975. Mr AB questioned the technical basis of the modelling undertaken by Highways England that had found him to fall below the threshold for insulation. He also criticised the Highways England for not responding to his questions in sufficient detail.

**Agency response:** During its correspondence with Mr AB, Highways England received from its contractors a breakdown of sound level projections for the 11 relevant properties in Mr AB's street. This exercise confirmed that the projections for noise increases attributable to the scheme had been correct and Mr AB was not eligible for insulation. The case was escalated to managers in Highways England and to a senior consultant employed by the contractors. Mr AB had been provided with a series of responses to his technical questions.

**ICA outcome:** The ICA noted that it was beyond the competence of the ICA scheme to question the technical aspects of Highways England's position. In his review of Mr AB's concerns, the ICA found that in most areas the responses had been of a reasonable standard. He also reminded Mr AB that he could apply for compensation under Part 1 of the Land Compensation Act 1973 in the near future (while a separate provision to the noise insulation scheme, Part 1 compensation does include noise nuisance). In some areas the ICA felt that Highways England's position could be clearer, and he provided Mr AB with further information referred to him by Highways England during his review. The ICA regarded this evidence and the information provided to Mr AB as a reasonable basis on which to base the decision about noise insulation. In particular, Mr AB's argument that the projections were founded on a 2006 baseline not relevant to the current situation were countered with robust evidence that the modelling had been checked against much more recent noise levels. The ICA concluded that, while Mr AB's concerns and questions were completely reasonable, he was unconvinced that they called the technical basis

of the Highways England's position into question. He did not uphold the complaint, but Highways England agreed to his suggestion of a meeting between Mr AB and one of its engineers to answer any outstanding questions. This option was referred to Mr AB for his consideration.

### ***Interesting complaints handling in a case about over-running roadworks***

**Complaint:** Ms AB complained about over-running roadworks, poor signage, poor information, and rude staff. She sought financial compensation for the inconvenience she had suffered.

**Agency response:** Highways England said the roadworks had over-run because of a staff fatality leading to a safety stand-down. It apologised for staff behaviour and acknowledged that signage had been poor. It had also said that the Highways England website could not be updated in time but it hoped to address this and other issues raised.

**ICA outcome:** The ICA said that the circumstances leading to the over-running of the roadworks could not have been predicted. Although it was apparent that the signage had not been as helpful as it should have been, and that information on the Highways England website had not been updated, he did not uphold Ms AB's claim for compensation. A particular feature of this complaint was that Ms AB had had to ask four times for an ICA review. Under normal circumstances, this would have given rise to considerable criticism, but in this instance the ICA found that it had reflected the repeated efforts of the Agency (including its chief executive) to resolve the grievance. The ICA wrote: "Complaints systems should be flexible: the aim is to resolve problems not to follow procedures by rote."

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

6.1 Only one MCA complaint was received during the year. We summarise it below after outlining the details of an exceptionally complex case that, although received the year before, was concluded during the 2014–2015 period covered by this report.

### ***A long running dispute over the MCA's input into the design of an innovative vessel***

**Complaint:** Mr AB, who had designed a new and innovative vessel, complained that the Agency, which had agreed to provide consultancy services concerning design and accreditation against the applicable standards, had been inconsistent, tardy, perverse and hostile in its dealings with him and his agents. Mr AB claimed that delays created by the agency's maladministration had cost him and his clients significant sums of money as the vessel had not

gone into production according to his original schedule and commercial commitments.

**Agency response:** The MCA disagreed with Mr AB about the causes of delays and disputes, pointing to instances where agreements had been reached about the specifications of the vessel only for Mr AB to come back asking for concessions. The Agency also said that Mr AB's agents had provided its officers with a series of highly technical questions with no notice over a holiday period, and it had responded as quickly as it could given the circumstances.

**ICA outcome:** During the review, Mr AB complained about aspects of the MCA's further work in relation to his vessel and the ICA extended his scope in order to address all outstanding concerns. The ICA did not uphold Mr AB's complaint that the MCA was responsible for his delays and losses. However, he did point to areas where communication could have been clearer about the requirement for compliance with the relevant standards. He also agreed with Mr AB that the Agency should have made alternative surveyors available to approve his vessel in anticipation of its first-line surveyor being unable to do so. However, the ICA suggested that Mr AB should communicate with the Agency in a more temperate way or delegate day-to-day dealings to a colleague. He also recommended that each party review his report and consider ways of improving working relationships. The ICA noted, for example, the absence of a clear project plan determining how the MCA was to work with Mr AB, and a lack of clarity as to what was required from, and expected of, each party at various stages in the process.

### ***A complaint about Britain's international obligations***

**Complaint:** Mr AB complained that the MCA had failed to enforce his rights under the Maritime Labour Convention Regulations and shown bias towards his former employers who had terminated his contract.

**Agency action:** The MCA had concluded that Mr AB's rights had not been infringed.

**ICA outcome:** The ICA concluded that neither of Mr AB's charges was made out. It was abundantly clear that the MCA had given careful consideration to whether the Regulations had been breached, and it was entitled – in the absence of legal judgement to the contrary – to interpret the Regulations within the prism of employment law in this country as a whole. Under domestic law, an employer is generally entitled to dispense with a worker's services during the first year if they judge their performance to be unsatisfactory. The ICA also could not see evidence of bias towards Mr AB's former employer. However, the ICA did have some general observations about the way in which the MCA has conducted its review into Mr AB's complaint. These observations derived from the fact that enforcement of the Regulations is a formal obligation entered into freely by Her Majesty's Government. For that reason, the ICA felt that any

investigation into an alleged breach should also be characterised by some degree of formality. For example, the investigation carried out by the MCA did not have terms of reference, nor was there a structured report at its conclusion. Contemporaneous file notes of conversations had also not been taken, the ICA noting that proper record-keeping is a characteristic of an official review. In short, the ICA concluded that there could have been greater formality in the investigation and more legal involvement. His review also drew attention to the absolute necessity of ensuring equality of arms between the complainant and his employer, and of providing clear and comprehensive reasons for the Agency's judgements. (The ICA's views were presented as observations rather than as findings leading to recommendations, as this was more in keeping with an ICA's limited authority and jurisdiction in respect to legal issues.)

## **7: HS2 Ltd**

- 7.1 The ICAs received three complaints about HS2 Ltd during this first year of the company's inclusion within the ICA scheme. None was upheld, but in one case the ICA asked that an apology be provided to the complainant and in another he suggested that a further explanation should be provided by a senior officer. All three cases are summarised below.

### ***A resident with unjustified complaints about the propriety of HS2 officers***

**Complaint:** Mr AB had made dozens of Freedom of Information Act (FOIA) enquiries of HS2 over an 18 month period. He complained that senior officers in HS2 had lied, failed to reply to correspondence, and presided over a dishonest organisation that misrepresented and dissembled, had no accountability procedures in respect of its senior officers, and did not understand the impact of HS2 on his town.

**Agency response:** HS2 Ltd endeavoured to respond to Mr AB's queries through its FOIA and complaints procedures.

**ICA outcome:** The ICA agreed with Mr AB that HS2 Ltd had misinformed him about its policy of not disclosing officer names in the sign off of FOIA responses. The ICA did not agree, however, that this was an example of lying or that it represented maladministration. The ICA recommended that HS2 Ltd simply apologise for its error. In his scrutiny of over 600 pages of correspondence, the ICA did not identify anything approaching maladministration. He did not uphold Mr AB's complaint. He noted that Mr AB's real complaint was the proposal that HS2 should be routed close to his home, and that this was an issue could not be resolved through complaints or FOIA procedures.

### ***A complaint that the Exceptional Hardship Scheme had been insufficiently publicised***

**Complaint:** Mr AB complained that the exceptional hardship scheme (EHS) for people affected by the proposed route for HS2 had been insufficiently advertised. He said he had sold his house at a considerably lower price than he would have achieved had the proposed route for HS2 not been close to his home. As a result of the lack of information about the EHS, he had not claimed redress through the scheme and was now ineligible.

**Agency response:** HS2 Ltd explained that the EHS scheme could not provide retrospective compensation. It had, however, been available to Mr AB prior to his property sale. HS2 Ltd outlined the sequence of events following the proposed route announcement including the consultation process for the EHS (which had been extended).

**ICA outcome:** The ICA noted that the EHS had been referred to in the Government document, *High-Speed Rail*, which set out firm proposals for HS2 in March 2010. He also found substantial evidence that Mr AB's district council had a strategy for informing local residents about the HS2 proposals and the EHS. The ICA concluded that it was more likely than not that sufficient information had been readily available about the EHS before and after details of its provisions had been finalised. He concluded that Mr AB had had a clear opportunity as an interested party to learn about the EHS and factor it into decisions he was making about disposing of his property. He did not uphold the complaint.

### ***Engagement with those affected by the route of HS2***

**Complaint:** Mr AB said that HS2 Ltd had failed to engage with him in a meaningful way to find a solution to the problems to his agricultural business posed by the high-speed line. He said he was concerned by the delay, and by the content of some of HS2 Ltd's correspondence.

**Agency response:** HS2 Ltd said it wanted to work with all those affected by its proposals. However, this was a major piece of infrastructure and some detailed matters would have to take second place at the current time.

**ICA outcome:** The ICA said he could understand Mr AB's frustration. To him this was not a trivial matter, but one concerned with the very survival of his business. The ICA found no maladministration and noted that HS2 Ltd had engaged repeatedly with Mr AB. However, a key relationship had broken down. To take the heat out of the situation, he recommended a phone call from the chief executive or senior colleague to explain the current state of play.

## 8: Department for Transport

- 8.1 Three complaints about the DfT itself were received in this first year of the inclusion of the Department's central and casework teams within the ICA scheme. The first related to the handling by the central team of complaints about the independence of the Independent Penalty Fares Appeal Service (IPFA). The second and third concerned the Newcastle-upon-Tyne-based DfT casework team's decision-making on behalf of the Secretary of State on applications for road closures: both of these casework complaints were upheld in part.

### ***A complaint about the independence of the Independent Penalty Fares Appeals Service***

**Complaint:** Mr AB had made three complaints against the Department: that the Independent Penalty Fares Appeals Service was not in fact truly independent; that the Department had failed to audit the penalty fares scheme effectively; and that the Department had allowed a train operator to lie to the organisation, Passenger Focus, by providing misleading photographs of its first class accommodation.

**DfT response:** There had been correspondence and emails dating over two years. The Department said that none of Mr AB's complaints were justified.

**ICA outcome:** The ICA considered the wealth of exchanges between Mr AB and the Department. He suggested that the DfT would have been within its rights to have concluded the correspondence earlier. However, a disturbing aspect of the affair was that some of the email exchanges between officials had referred to Mr AB in abusive terms (something the Department had itself identified and for which it had offered a full apology). This was a flagrant breach of the Civil Service Code, bringing discredit both upon their author and the Department as a whole. So far as IPFAS was concerned, the ICA said Mr AB had made the perfectly arguable point that, as IPFAS is managed by a train operating company, it is insufficiently independent. However, the Government was entitled to take the view that the present arrangements were effective in the absence of any evidence that appeals were not being determined fairly. The Government's approach to rail regulation and to revenue enforcement (and the degree to which day-to-day operations are monitored by the DfT) are matters of political choice. If Mr AB took a different view to the Government, the challenge should be via the democratic process not through a complaints system. Likewise, the degree of DfT oversight of IPFAS could fairly be described as light-touch, but it did not remotely constitute such a dereliction of duty that a finding of maladministration would be justified. However, the ICA sympathised with Mr AB's complaint in respect of the photographs – which had been taken into account by officials considering Mr AB's complaint, but which the ICA agreed were potentially misleading – although he was content that actions taken by the Department were sufficient in the circumstances.



### ***Incorrect basis for a discretionary decision on behalf of the Secretary of State***

**Complaint:** Mr AB complained that the Department had failed to investigate the grounds provided by a council for the extension of a Temporary Regulation Order (TRO) to close a footpath on the banks of a river for a two-year period.

**DfT response:** The Department, which had been supplied with erroneous information by the council in its application for the TRO, initially argued that the grounds provided by the council (coastal erosion) and the true grounds (landslip into a river) were sufficiently similar to justify the TRO. However, after being challenged by Mr AB, the DfT approached the council and established that an error had been made. In a confidential email that could not be provided to Mr AB, the council set out the work it was conducting in an attempt to resolve the problem of the footpath.

**ICA outcome:** The ICA agreed with Mr AB that the DfT had had a clear opportunity to identify that the basis of the TRO application was incorrect. It was clear that the footpath did not run along the coast and therefore coastal erosion could not be a ground for an extension of the TRO. Having examined all the related papers, the ICA agreed with the DfT that a TRO extension of two years was appropriate given the known complexities facing the council in remedying the difficulties associated with the footpath and others in the area. He did not therefore consider that the Department's handling represented maladministration. However, he was critical of the Department's reluctance to admit its error in correspondence with Mr AB. He recommended that the Department apologise to Mr AB and undertake to apply suitable vigilance to any further dealings with the council in relation to closure orders for the footpath.

### ***A complaint about the handling of objections to a Stopping Up Order***

**Complaint:** A developer complained that the DFT's casework team had mishandled objections to an application for a stopping up order (SUO) resulting in their incurring further costs. They also complained that the DFT had provided information to an objector to the SUO that, in effect, contradicted information it had given to them. This meant that the developer was shown up in the eyes of their local community as having potentially misled the community about the process for removing the objection.

**DfT response:** The DFT explained why it had accepted an objection one working day after the 28 day deadline had expired. Its decision had been based on the content of the objection rather than the fact that the objector claimed to be making a representation on behalf of a local community group. Over the following three months the DFT communicated regularly with the developer and the objector, while the developer attempted to resolve the

objections. During this process the developer asked whether the withdrawal of the objection by the community group would enable the SUO to be granted: they were told that it would. Following this, and with input and advice from the developer based on what the DfT had stated, the community group elected a new committee and withdrew the objections. However, the DfT then allowed individuals opposed to the SUO, who claimed that they had not objected singly because they were represented by the community group, to have their correspondence accepted as formal objections. The matter therefore proceeded to a public inquiry and the SUO was granted some nine months later.

**ICA outcome:** The ICA found little evidence that the DfT gave weight in the first instance to the fact that the objections were attached to a community group. His view was that the content of the objections was such that a public inquiry was likely from the outset. He generally endorsed the DfT's handling of the application, both its initial acceptance of the late objection and in the allowances it made for the resolution of those objections over the following three months. However, he judged that the public inquiry could have been set in motion a fortnight sooner as it was clear after three months that the objections were not going to be resolved. The ICA was critical of the DfT for suggesting that the objections could be withdrawn by the community group, and then deciding shortly afterwards that the objections could stand even if the community group withdrew them. This latter response to a query from the objector was not relayed to the developer at the time. The ICA concluded that the developer had not therefore been armed with the same information as the objector, as they should have been. But he did not agree with the developer that they had suffered significant financial losses as a result of DfT administration. The ICA attributed the developer's losses to the fact that an organised campaign against the SUO was in existence, and that significant objections had been made throughout the process. However, given the fact that DfT administration had exposed the developer to significant embarrassment in their local community, the ICA recommended that a consolatory payment of £250 should be made. He partially upheld the complaint.

## **9: Concluding remarks**

- 9.1 From a domestic point of view, this has been a very successful year for the ICA process. We have more than met the increased demands placed upon us, at the same time reducing the average cost of our reviews.
- 9.2 In consequence, we believe we have offered a reasonably quick, authoritative, and independent avenue of appeal for citizens aggrieved by the actions, inactions or decisions of the Department for Transport and its constituent bodies. Not all of our complainants have been content with our reviews, but both of us have taken great comfort from the positive comment we have received (not least when those comments have come from those whose complaints we have been unable to uphold).
- 9.3 Finally, we are confident that we have helped contribute to service improvement and customer-focus across the DfT bodies that we oversee. While it is inevitable that this report has concentrated upon those complaints where we have been critical of DfT bodies, we trust that we have also faithfully recorded the much good practice that we also encounter.
- 9.4 We look forward to contributing further in 2015–16 in our third year as the Department's ICAs.

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

**8 July 2015**

## Appendix

### TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS

#### 1. Introduction

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

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

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

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

#### 2. Referral and review process

(i) The scope of the ICA scheme is defined by an agreed protocol which is annexed to this guidance (the "protocol").

(ii) The DfT body will inform people of the option of requesting an ICA review through the general information it provides about its complaints procedure and in its final response to each complaint. The DfT body will ensure that the complainant is aware of the ICA jurisdiction and of the fact that the complainant must request a referral within 6 months of the agency's final response.

(iii) A complaint case will usually be referred to the ICAs when the complainant requests this after the DfT body's final response has been provided. However, in some circumstances the DfT body may decide to expedite the process. A standard referral form for DfT body use is annexed to this guidance (the "referral form"). From time to time, a DfT body may ask for an ICA review or for ICA advice where this has not been requested by the complainant. In cases where an ICA has offered advice prior to the conclusion of the DfT body's handling of a case or cases, the ICAs will ensure that every step is taken to ensure a fresh review should the case then progress to ICA stage.

The DfT body will aim to pass a completed referral form and timeline on the complaint, together with the case papers, to the ICA as soon as possible and no later than within 15 working days of being asked to refer a case to the ICA.

(iv) The ICA will acknowledge receipt of a referral to the DfT body and complainant within 5 working days.

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

Factors relevant to this determination include:

*Against a detailed review*

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

*For a detailed review*

- The complainant has, or may have, suffered significant injustice, loss or hardship due to the matters complained about
- The DfT body's handling of the complaint has been poor, for example it has failed to undertake a proportionate and reasonable investigation; and/or has failed to apply an appropriate remedy
- The DfT body has asked the ICA to review the case
- An ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

(vi) During the review the ICA may raise queries concerning the complaint history or the policy or legal background to the matter and the DfT body will endeavour to answer these to her/his satisfaction. The ICA will go on to review the complaint and set out his/her conclusion as to whether the DfT body has acted in a fair and unbiased manner and has followed its complaints procedures correctly. This is mainly done by considering documents and seeking answers to written questions. An ICA only interviews witnesses exceptionally where there is good cause and should discuss this beforehand with the DfT body (and the DfT if appropriate).

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

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

stage.

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

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

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

### **3. Remedies**

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

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

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

(iii) In suggesting any remedy, the ICA will have in mind the impact and seriousness of any poor service or maladministration on the complainant and the appropriate steps, if available, to restore the complainant to the position they would have been in had the poor service or maladministration not occurred. The ICA will also take into account any act or omission on the part of the complainant that might reasonably be regarded as contributing to the hardship or losses under consideration or exacerbating their effects.

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

issued, giving its reasons for not implementing the recommendation.

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

(vi) The DfT body should also send the relevant ICA a copy of any draft Ombudsman report which comments on that ICA's handling of a case and the final Ombudsman report into that case.

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

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

##### ***Your personal information***

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

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

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

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

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

(vi) After a period of fifteen months has expired since the conclusion of a review or the issue of the ICA's Annual Report including the case (whichever is the later) the ICA will arrange for the secure destruction of all relevant case documents they hold; and the Department will be responsible for the destruction of any documents stored centrally.

## 5. Reporting by ICAs

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

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

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

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

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

## 6. Target timescales

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

DfT body to provide ICA with completed referral and all supporting documents	15 working days of receipt of request for an ICA review
ICA to acknowledge referral to complainant and DfT body and to inform complainant and DfT body of proposed timescale for review	5 working days from receipt of completed referral
DfT body to answer queries raised by ICA	15 working days of receipt of query



DfT body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to DfT body and complainant	5 working days from response to draft report and within three calendar months of initial referral.

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

## 7. Diversity

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

## **ANNEX A (to Appendix): ICA PROTOCOL**

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

### **Stage 4<sup>6</sup>**

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

The ICA is:

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

The ICA looks at whether we have:

- handled your complaint appropriately
- given you a reasonable decision

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

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

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

The ICA will aim to review your case within 3 months. They'll tell you if they expect it to take longer.

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

The ICA can look at complaints about:

- bias or discrimination
- unfair treatment
- poor or misleading advice
- failure to give information\*
- mistakes
- unreasonable delays
- inappropriate staff behaviour

\* Apart from requests for information where the Freedom of Information Act, the Data Protection Act or the Environmental Information Regulations apply.

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<sup>6</sup> This is stage 3 in respect of complaints to Highways England and the MCA.

The ICA can't look at complaints about:

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

An ICA cannot usually look at any complaint that:

- has not completed all stages of our complaints process
- is more than 6 months old from the date of the final response from us

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

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

## ANNEX B: REFERRAL FORM FOR DFT BODY COMPLETION

### ICA review referral form

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Notes:

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

<b>1. DfT body &amp; contact details</b>	
<b>2. Name of complainant</b>	
<b>3. Address</b>	
<b>4. Email address and telephone if known</b>	
<b>5. Date complaint made and by what means</b>	
<b>6. Summary of complaint</b> (attach letter/email if appropriate)	
<b>7. Date of DfT body's initial response to complaint</b>	
<b>8. Summary of initial response</b> (attach letter/email if appropriate)	
<b>9. Date of DfT body's final response to complaint</b>	
<b>10. Summary of final response to complaint</b> (attach letter/email if appropriate)	

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

**Any other comments:**