Department for Transport

Independent Complaints Assessors

Annual Report, 2016-17

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To the Permanent Secretary of the Department for Transport, Ms Bernadette Kelly.

We are pleased to submit our Annual Report covering the period April 2016 to March 2017.

Stephen Shaw

Jonathan Wigmore

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Foreword

This report includes statistical information about our work as the Department for Transport's two Independent Complaints Assessors (ICAs) and case histories that illustrate the range of issues we cover.

An ICA review constitutes the final stage of the Department for Transport's complaints procedure. The ICA decides whether the DfT or one of its delivery bodies has handled a complaint appropriately, and whether its decisions and actions have been fair, reasonable and proportionate. In short, we assess whether there has been any maladministration.

We are contracted by the DfT to work wholly independently from it and its delivery bodies. We also undertake adjudication, review and investigation work for other organisations in our own capacities. More information about our approach and jurisdiction as ICAs is included in the next section, in our terms of reference (annexed to this report) and online.[1]

As in past years, the bulk of our work concerns the Driver and Vehicle Licensing Agency (DVLA). This is not surprising given the millions of transactions with customers for which the DVLA is responsible each year. Our workload represents but a tiny fraction of all those transactions (many of which can now be conducted electronically), and may be very unrepresentative of the mainstream customer experience. But complaints do help shine a light upon the inner workings of all organisations. There is no question in our mind that the DVLA has embraced a more open approach to its complaint-handling over the four years we have been in post.

We also welcome changes in the working practices of the DVLA's Drivers Medical Group. However, with an ageing population – an increasing proportion of whom wish to continue to drive – we anticipate that the number of medical enquiries for which the DVLA is responsible will grow year-on-year. It is therefore important, in our view, that improvements in the business processes supporting Fitness to Drive are future-proof.

The other delivery bodies (and the Department itself) generate a much smaller proportion of our caseload. But here too our work helps to identify problems and spread learning, as well as providing redress for individual complainants.

We welcome the new streamlined complaints process introduced by the DVLA and Highways England, and similar improvements on the part of HS2 Ltd. It is surprising that some parts of the DfT family (notably the Driver and Vehicle Standards Agency) retain a three-stage internal complaints process. Two stages should be sufficient.

For the first time this year, our jurisdiction has extended to the Civil Aviation Authority (which also operates a two-stage internal procedure).

[1] https://www.gov.uk/government/collections/independent-complaints-assessors-for-the-department-for-transport

We are all too aware that independent oversight of decision-making can be an uncomfortable experience both for individual members of staff and for delivery bodies as a whole. It is therefore all the more pleasing to record that our relationships with the organisations within our remit remain robust and mutually respectful. We are also grateful for the support offered to us centrally by the Department.

1: Our approach to cases

1.1 As we have done each year, we have reproduced our full terms of reference at the conclusion of this report. The terms of reference are reviewed annually, and the current iteration shows some changes from previous versions.

1.2 In short, an ICA review can look at complaints about:

- bias or discrimination;
- unfair treatment;
- poor or misleading advice (for example, inaccurate information);
- failure to give information;
- mistaken application of policy or procedure;
- administrative mistakes;
- unreasonable delay; and
- improper or unreasonable staff behaviour, e.g. rudeness.

1.3 We cannot look at complaints about:

- legislation
- government, departmental or agency 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
- personnel and disciplinary decisions or actions as an employer

Nor can we review a complaint if it is being, or has been, investigated by the Parliamentary and Health Service Ombudsman, or that:

- has not completed all stages of the DfT's or delivery body's complaints process
- is more than six months old from the date of the final response from the DfT or delivery body.

1.4 More details of the standards and benchmarks we apply were given in this annual report a year ago, and do not need to be repeated here.

1.5 We work from home on a part-time basis (approximately three days per week) and, for that reason and others, our reviews cannot sensibly be compared with the sort of investigation that can be mounted by the Parliamentary and Health Service Ombudsman (PHSO). Nonetheless, we have been pleased to note that the Ombudsman has endorsed the view taken by the ICA in almost all of our cases that have proceeded to the PHSO. We continue to believe that a formal memorandum of understanding with the PHSO would be beneficial.

1.6 The average ICA review (including all the associated administration) takes just a few hours, and we believe we offer a highly cost-effective service both for complainants and the bodies we oversee. However, we are not equipped to

monitor compliance with our recommendations, and we discourage contact from complainants once a review is complete. If a complainant remains dissatisfied, their course of action is to seek a PHSO review – the terms of which may include the actions, inactions or decisions of the ICA.

1.7 We work independently of each other, but do endeavour to share draft reports and other information whenever we can. We operate a cab-rank principle in terms of the allocation of incoming complaints, unless there is a compelling reason to do otherwise.

1.8 Complainants are now offered the opportunity of communicating with us by text and voicemail. We may also speak directly with them by telephone, although we are concerned that some of our correspondents' expectations of the level of contact they can enjoy may increase the cost of ICA reviews unnecessarily.

1.9 Our incoming cases grew by over 30 per cent comparing 2016-17 with a year before. The majority of our work (almost 70 per cent in 2016-17) concerns the Driver and Vehicle Licensing Agency. The number of DVLA cases in our caseload has doubled since 2013-14, when access to an ICA review was opened up to all complainants who requested it from the DfT delivery body concerned.

1.10 The remaining 30 per cent of cases in 2016-17 were generated from the Driver and Vehicle Standards Agency (DVSA), Highways England (the number of referrals from which appears to be on a sharply upward trajectory), HS2 Ltd, the Department of Transport itself, the Civil Aviation Authority (CAA) and the Maritime and Coastguard Agency (MCA). Although there are more than twenty DfT bodies within our jurisdiction, in practice we hear from only a minority of them.

1.11 Some of our reviews generate long formal reports; others can be closed with a short letter. Our workload is a function both of the number of referrals overall and the complexity of each case. In general, complaints from those delivery bodies with whom we have little contact (and therefore little bedrock of expertise) take longer than those from the DVLA and DVSA.

1.12 In consequence of the rising workload, we now have three designated 'substitutes' who can be contracted to carry out ICA reviews. However, all reports to complainants are overseen by us and are in our name.

2: Overview of our year's work

Volumes

2.1 Table 1 shows the number of incoming cases over the four years we have been in post.

Table 1: All incoming cases, 2013-2017

DfT / DfT delivery body (DB)	2013/14	2014/15	2015/16	2016/17
DVLA (Driver & Vehicle Licensing Agency)	93	122	169	188
DVSA (Driver & Vehicle Standards Agency)	43	38	28	39
H Eng (Highways England)	12	11	6	24
HS2 Ltd (High Speed Two Limited)	-	3	1	8
DfT (Department for Transport)	-	3	0	5
CAA (Civil Aviation Authority)	-	-	-	4
MCA (Maritime & Coastguard Agency)	5	1	4	3
VCA (Vehicle Certification Agency)	1	0	0	0
Totals	**154**	**178**	**208**	**271**

2.2 The overall trend since we took up our posts in June 2013 shows a significant increase in referrals. In 2014-15 there was a rise of 16 per cent, followed by a further increase of 17 per cent in 2015-16. Last year, we experienced a more than 30 per cent increase, where the underlying upward trend was buoyed by an exceptionally busy second quarter.

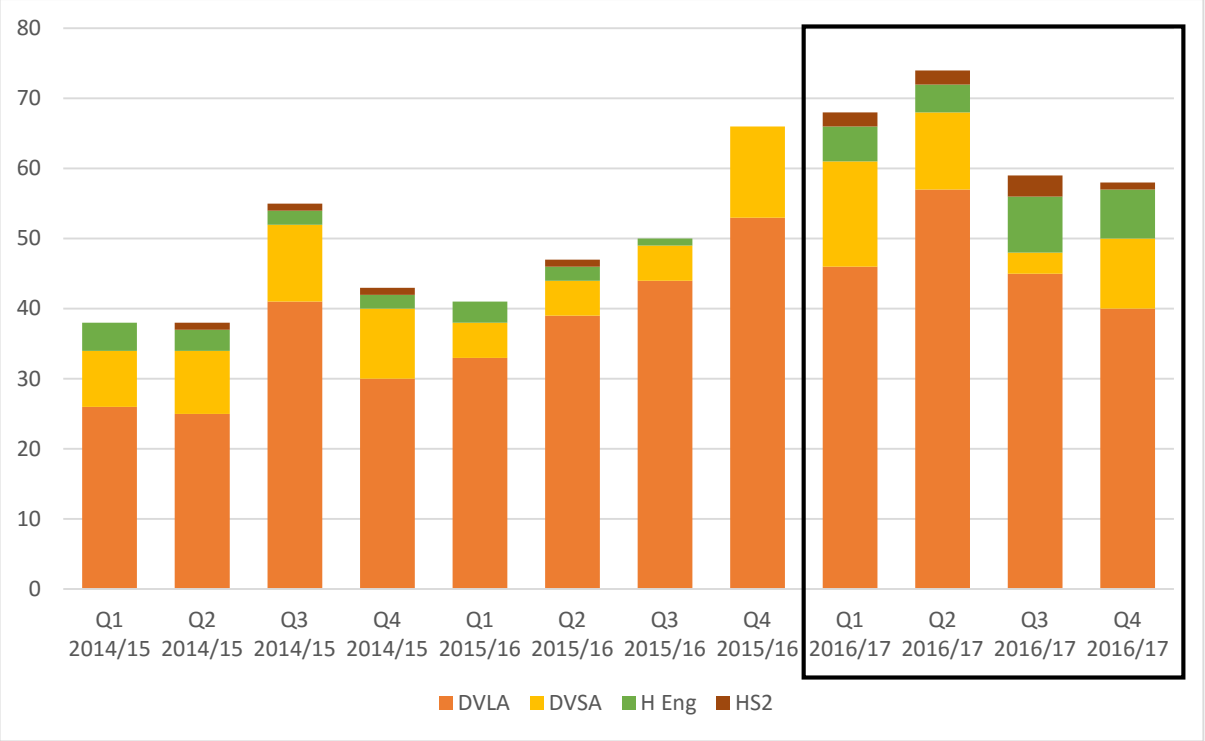
2.3 Early indications are that the volumes will continue to grow (albeit more modestly) during 2017-18.

2.4 As in previous years, most of our referrals (69 per cent) have come from the Driver and Vehicle Licensing Agency. However, while the overall number of DVLA cases grew once more, the proportion of DVLA cases in our total postbag showed a reduction from 81 per cent in 2015-16.

2.5 Figure 1 shows incoming cases from the four most prolific referrers - the DVLA, the DVSA, Highways England and HS2 Ltd - by quarter since 2014-15. DVLA referrals rose by 11 per cent in 2016-17 and referrals from the DVSA by 39 per cent (after a significant fall the year previously). While still representing a relatively minor proportion of cases overall, the six-fold increase in Highways England referrals this year is worthy of note.

2.6 Highways England cases also tend to be more complex, often focussing on road improvement schemes. Under its revised complaints policy, we no longer receive complaints about claims against Highways England for financial redress as a consequence of faulty road maintenance etc.

Figure 1: Incoming cases by quarter, top four referrers, 2014-2017



2.7 Figure 2 provides a monthly breakdown of all complaints referred to the ICAs during 2016-17. Amongst other things, it illustrates the unusually busy summer months that culminated in 27 new referrals in August 2016, by far the busiest month since we were appointed.

2.8 Monthly variations on this scale present evident problems of workload management, although the appointment of 'substitutes' (see above, paragraph 1.11) is designed to provide mitigation.

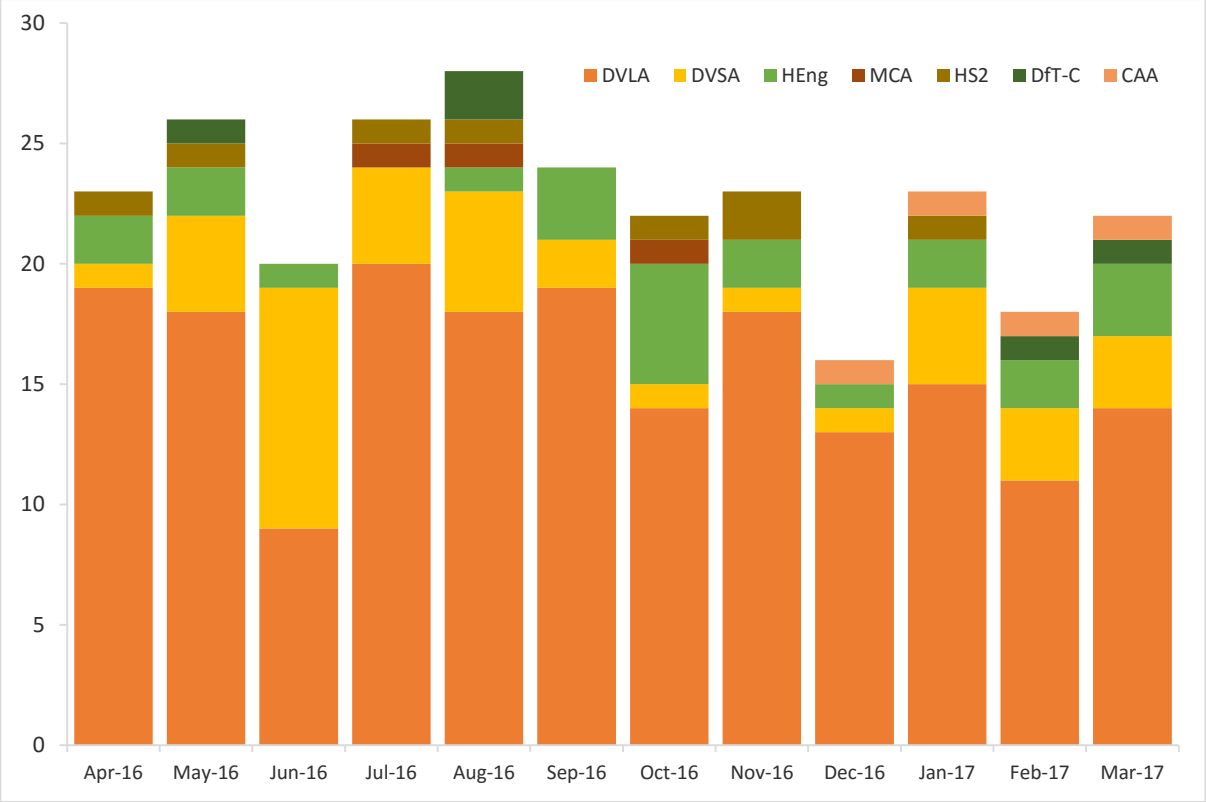
Our work

2.9 Figure 3 illustrates the time we spent on casework and the proportion of time we allocated to cases received from each delivery body. Although, as noted, the DVLA provided almost 70 per cent of the cases we received in the year, those cases occupied only 57 per cent of our caseworking time.

2.10 In contrast, the eight HS2 Ltd cases we received represented just 3 per cent of all incoming work, but no less than 11 per cent of our time. As with Highways England, complaints concerning HS2 Ltd are complex and tend to have generated a great deal of paperwork even before they have reached our desks.

2.11 It is expected by HS2 Ltd that the volume of complaints will rise significantly once the project moves into the construction phase.

Figure 2: Monthly intake of referrals to the ICAs, 2016-17

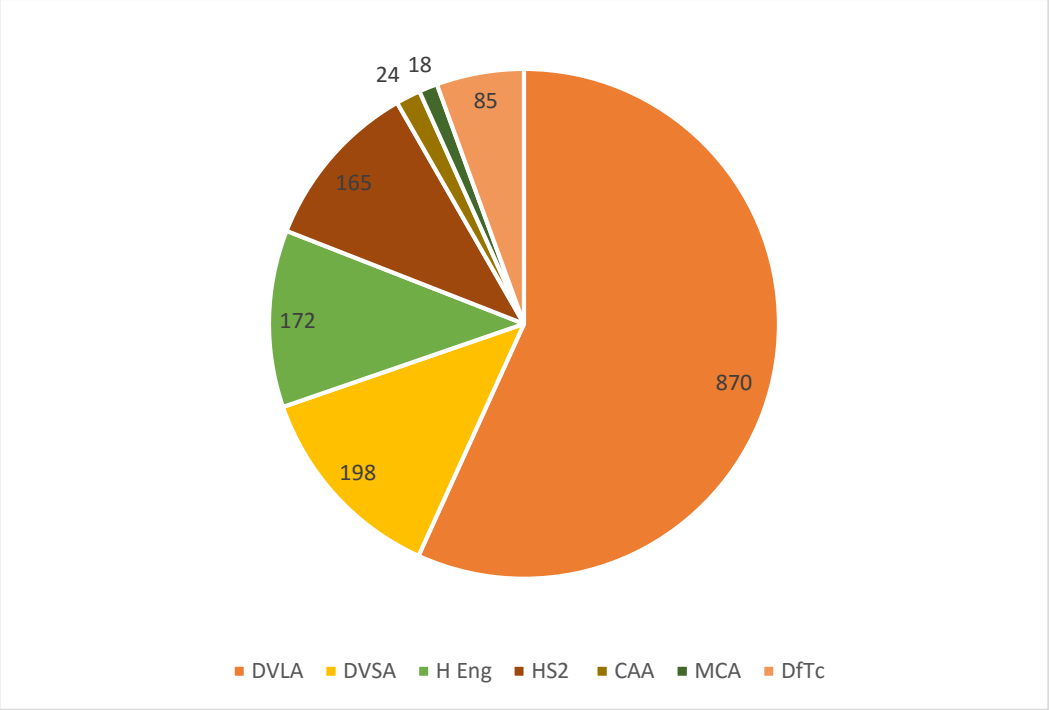


Complex casework

2.12 Of the 271 cases received in 2016-17, 26 took longer than ten hours to complete. Of these, 11 were DVLA cases, seven of which involved the Drivers Medical Group. Five were HS2 Ltd cases (out a total of eight received in the year), all but one of which related to property valuation and sale to the Secretary of State. One of those valuation-related cases was exceptional in aggregating 13 sub-complaints presented by the complainant over a six-month period (we have provided a summary of this case in the HS2 Ltd section of this report.)

2.13 Six of the cases taking us more than ten hours were from Highways England (including two about road works and three about the Dart Charge). There were three DVSA cases in this category, two of which were grievances brought by Approved Driving Instructors. Finally, there was a DfTc case where we were asked, exceptionally, to conduct an investigation for the Department's Passenger Services Division outside of our terms of reference that included interviews and a site visit.

Figure 3: ICA time spent on cases 2016-17 (hours)



Time taken to complete cases and time elapsed from referral to completion

2.14 Table 2 illustrates total time and average time per case spent undertaking casework for each delivery body.

Table 2: Total time spent on casework and average time spent per case, for cases received in 2016-17

	DVLA	DVSA	H Eng	HS2	CAA	MCA	DfTc
Total (hrs)	870	198	172	165	24	18	85
Av. h:m (per case)	04:42	05:05	07:10	23:35[2]	05:53	05:57	04:32[3]

2.15 Excluding the two exceptional cases we referred to earlier, the average case completion time across all delivery bodies for cases received in the year was 5 hours 30 minutes (compared to 4 hours 49 minutes in the previous year). This reflects the increased variety of the caseload, and new areas of complexity, that we will illustrate in more detail in later sections.

[2] As we noted above, a single HS2 Ltd case logged on our system covered 13 linked complaints separately numbered and presented by the complainants. Adjusting for this, the average time per HS2 Ltd case was 8 hours 20 minutes. Excluding those linked cases altogether, the remaining seven HS2 Ltd cases logged on our system averaged 13 hours 44 minutes per case.

[3] DfTc's statistics are skewed by the single case that fell outside the ICA criteria referred to in paragraph 2.13. We have removed it from the average as it is not comparable in scope or content to an ICA review conducted within our terms of reference.

2.16 More pleasingly, the average time spent per case dropped slightly in the largest area of our jurisdiction. Average DVLA case completion time was 4 hours 42 minutes compared to 4 hours 50 minutes in 2015-16.

2.17 Last year we reported that the average time from referral to completion was just under 24 working days. It is of some concern that this year that figure rose to 38.6 working days.

2.18 We attribute this increase to the challenges of matching a 30 per cent increase in the number of incoming cases, including more novel and complex cases, with existing capacity given our non-DfT commitments. The percentage of cases we have upheld has also increased. (Happily, average completion time has since dropped by 26 per cent comparing the last quarter 2016-17 with quarter one of 2017-18.)

2.19 A total of 43 cases (13.5 per cent of the total) took under two hours to complete, six of which occupied an hour or less. In the main, these were DVLA referrals involving enforcement where our jurisdiction precludes us from making a critical finding against the Agency for following its standard policies in applying the law.

Outcomes

2.20 Table 3 compares the outcome of all completed cases referred during 2016-17 with the previous year.

Table 3: Outcome of cases referred in 2015-16 and 2016-17

	Upheld		**Partial uphold**		**Not upheld**		**Completed**	
	2015/16	2016/17	2015/16	2016/17	2015/16	2016/17	2015/16	2016/17
DVLA	20 12%	**25** 13.5%	49 29%	**61** 33%	98 58%	**99** 53.5%	167	**185**
DVSA	3 11%	**4** 12.8%	2 7%	**10** 25.6%	23 85%	**25** 64%	28	**39**
H Eng	4	**5**	2	**13**	0	**6**	6	**24**
HS2 Ltd	0	-	0	**1**	1	**6**	1	**7**
CAA	-	**0**	-	**0**	-	**4**	-	**4**
MCA	0	-	1	**2**	3	**1**	4	**3**
DfTc	0	**0**	0	**3**	0	**2**	0	**5**
TOTAL	27 13%	**34** **12.7%**	54 26.2%	**90** **33.7%**	125 60.6%	**143** **53.7%**	206	**267**[4]

2.21 It is conventional amongst Ombudsmen and other complaint handlers to aggregate cases that have been fully or partially upheld to give an overall 'uphold rate'. Although we are sceptical of the extent to which this figure is meaningful between

[4] When we completed the statistics for this report in August 2017, three DVLA cases and one HS2 Ltd case remained open.

organisations, it is of interest that the percentage of cases partly or fully upheld in 2016-17 rose to 46 per cent from 39 per cent in 2015-16. We provide a more detailed breakdown of outcomes in the following Casework sections of this report.

3: DVLA Casework

3.1 Table 4 and Figure 4 compare DVLA complaint areas in 2016-17 with the two previous years. The most significant change has been the 57 per cent increase in Drivers Medical Group referrals since last year, an area of DVLA casework that is now the single largest source of ICA referrals.

3.2 The second largest category is the enforcement of vehicle licensing law, including the clamping, impounding and potential sale or destruction of vehicles.

Table 4: DVLA complaints

Business area	2014/15		2015/16		2016/17	
	Number	**%**	**Number**	**%**	**Number**	**%**
Drivers Medical Group	28	23%	35	21%	55	29%
Vehicle licensing penalties (including clamping and impounding)	31	25%	52	31%	50	26.5%
VED, rebates and administration	14	11%	20	12%	22	12%
Driver licensing	17	14%	17	10%	17	9%
Vehicle registration	11	9%	14	8%	8	4%
Cherished plates and number transfer	11	9%	12	7%	7	4%
Disclosure of keeper information.	3	2%	8	5%	6	3%
Continuous insurance enforcement	3	2%	7	4%	2	1%
Lost entitlements (C1/D1 and 'lost in system')	Not counted				6	3%
Other	4	0.80%	4	2%	15	8%
Total	**122**		**169**		**188**	

3.3 Figure 5 illustrates our main recommendation areas in DVLA cases over the last three years.

3.4 In Drivers Medical Group cases our main recommendations were:

- Consolatory payment 16
- Compensation 3
- Consolatory and compensation 3
- Change systems 4
- Change information provided 3

Figure 4: DVLA complaints to ICAs by business area, 2014-2017

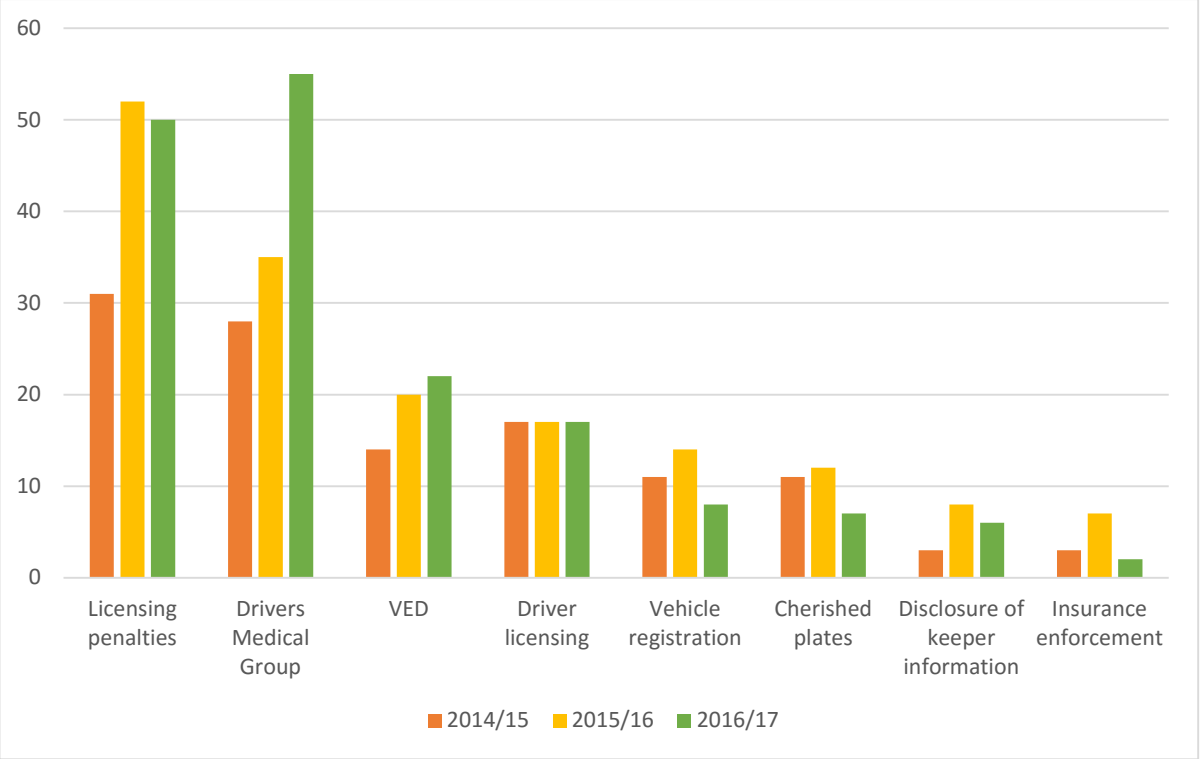
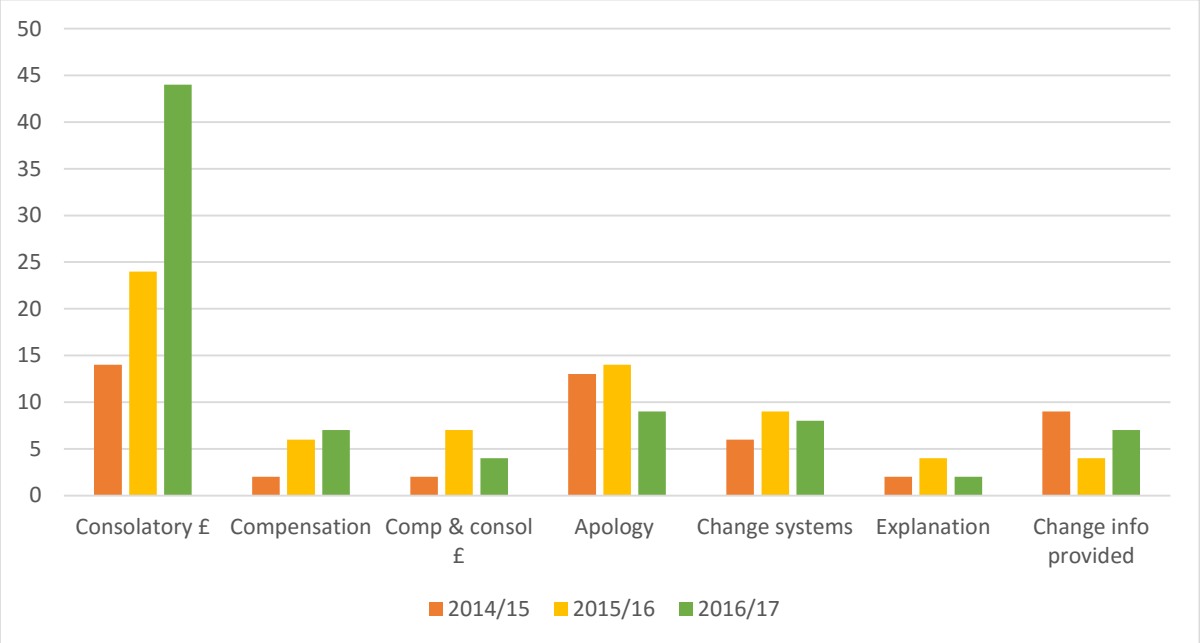


Figure 5: DVLA, main ICA recommendation areas, 2014-17



3.5 In Table 5 and Figure 6 we compare the time we have spent on the main casework areas in our 2016-17 postbag with the position a year earlier. These graphics illustrate the significant representation of enforcement and Drivers Medical casework.

3.6 Work on Driver Medical Group cases represented 44 per cent of all the time we expended on DVLA casework (383 of 870 hours overall), and one-quarter of all our caseworking time across all bodies in jurisdiction. In 62 per cent of Drivers Medical cases we upheld the complaint in whole or in part (34 out of 55 cases) and made recommendations in 60 per cent of cases (33 out of 55 cases).

Table 5: Average time/case devoted in main DVLA casework areas, 2015-17

Business area	**Average time per case** (hours: minutes)	
	2015/16	**2016/17**
Data disclosure	9:10	4:48
Medical	7:09	6:57
Licensing (vehicles)	5:23	7:54
Private plates	4:23	5:10
Enforcement	3:53	3:18
Licensing (drivers)	3:49	3:30
Tax	2:52	4:29

3.7 Considerable effort has been made by the DVLA to improve the service provided by Drivers Medical Group, as well as the handling of complaints about the Group. This included the recruitment of more staff (including nurses), the development of specialisms within the Group, the involvement of the Senior Medical Adviser in escalated cases, and changes to the management of casework. Within the broader digital strategy, systems supporting the work of the Drivers Medical Group, and processes for customers, are also improving. We have commented on the benefits of these approaches in many of the cases we have reviewed. Driving this are positive changes in the culture of the organisation. In our tenure as ICAs, there has been a sea change exemplified by the DVLA's openness to ICA comments and recommendations in this area of its work.

3.8 At the same time, it cannot be denied that many of our previous criticisms of the Drivers Medical Group have been echoed in our casework this year. Those criticisms have included:

- A lack of clear information for drivers and their clinicians about the evidence the DVLA will regard as sufficient to re-open the case of a driver whose entitlement has been revoked
- A lack of clear service standards and targets, particularly for more complex cases

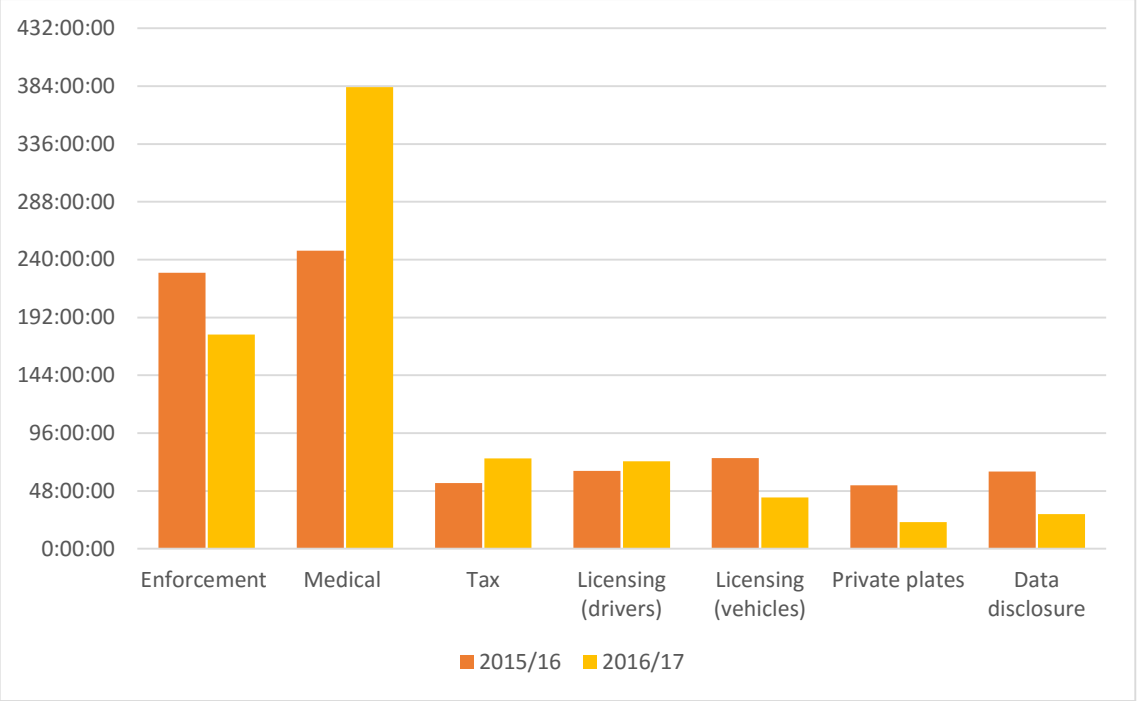
- Delays while cases wait for review by a DVLA doctor, especially in the process of re-opening and reviewing a case after revocation; and particularly when expert panellists are involved in casework
- A lack of clarity for customers who wish to complain about the conduct of a DVLA-commissioned medical or vision test, or driving assessment
- A lack of access for customers, by telephone particularly, to DVLA staff who understand the Agency's decision-making and can tell them what is happening in their cases
- Priority not always being applied to cases when it should have been
- At times, repetitive evidence-gathering processes
- Poorly explained decisions, for example in the area of short term licensing.

3.9 We balance these observations with a recognition that our high uphold rate in Drivers Medical cases relates to the nature of its work as well as to the performance of the Group. This work involves multiple interactions with drivers, many unwelcome, with different DVLA departments and external clinicians, often spanning many weeks and months. The subject matter is often highly sensitive and technical and the outcome may be life-changing for the driver and their dependants. Complaints about the Group at our stage are usually multi-headed, encompassing delay, decision-making and complaint handling, meaning that it is more likely than not that some aspect will be upheld. And we acknowledge that we see a very small fraction of the many complex cases completed by the Group each year that do not attract any complaints.

3.10 In October 2016, the then Parliamentary and Health Service Ombudsman (PHSO) published her report into Drivers Medical. In it she summarised eight PHSO investigations, repeating many of the criticisms made by the ICAs during the preceding three years. In addition, the Ombudsman was critical of policy and clinical judgements that are outside of our jurisdiction. She put forward a range of systemic and individual remedies, some of which we strongly endorse - particularly those referring to the Regulators' Code. At this stage, it is too early for us to comment in detail on the effectiveness of the DVLA's response to the report. In the latter months of the reporting year we were pleased to see evidence of more effective internal challenge and remedy within the Drivers Medical cases that were referred to us.

3.11 There will clearly be increased pressure on the Drivers Medical Group given the context of its work: an ageing but active population with greater morbidity in some areas, for example diabetes. As ICAs, we have over the last four years received and upheld increasing numbers of Drivers Medical cases. The strenuous efforts of the DVLA's management to improve Drivers Medical should, we suggest, continue to give full weight to the learning from independent reviews and investigations of customer complaints. Further, our considered view is that the DVLA's own change programme should look beyond refining and reinforcing its existing business systems. Reforms must ensure that Drivers Medical is fully responsive to changing case volumes, customer needs and expectations. And new ways of working in the Group must, in our view, be fully future-proof.

Figure 6: Total time devoted to main DVLA casework areas (hours), 2015-17



3.12 In table 6 we chart the rate at which complaints have been upheld in the five busiest areas of the DVLA as far as ICA referrals are concerned. Overall, some 46 per cent were upheld in whole or in part – more or less exactly the same percentage as the other delivery bodies.

Table 6: Uphold rates for ICA referrals in five busiest DVLA areas, 2014-17

Business area	2014/15		2015/16		2016/17	
	Number	Upheld to some extent	Number	Upheld to some extent	Number completed	Upheld to some extent
Medical	28	50%	35	51%	55	62%
Enforcement	34	23%	59	15%	52	38%
VED	14	36%	20	35%	22	41%
Registration (d)	17	24%	17	41%	17	47%
Licensing (v)	11	45%	14	36%	8	63%

3.13 We were particularly pleased to be invited by the DVLA to contribute to training for its staff on complaints handling. This provided an opportunity to share the learning from our reviews, and is something other DfT delivery bodies might consider. It was characteristic of the DVLA's commitment to improving the customer experience that the chief executive himself attended and participated in the event.

Cases

(i): Drivers Medical Group

A vocational driver whose revocation was wrongly upheld after he appealed

Complaint: Mr AB, a lorry driver, complained that the DVLA had refused to restore his driving licence thereby depriving him of his living. Mr AB had had a one-off episode of depression that triggered an episode of heavy alcohol use and an overdose. DVLA medical enquiries began. Mr AB's GP, in error, answered 'Yes' to the DVLA question: *"In the past 12 months has the patient demonstrated persistent alcohol misuse (including recurrent binge drinking)?"* As a result, both of Mr AB's licences were revoked for persistent alcohol misuse. He was told he would have to be free from persistent alcohol misuse for 12 months, and be able to prove it, before he would be able to drive for a living again.

Agency response: Over the following months Mr AB insisted that his misuse of alcohol had not been persistent. His GP repeatedly wrote to the DVLA explaining that he had ticked the 'Yes' box in error. The GP also provided medical records going back several years, none of which contained any reference to alcohol misuse. Despite this, the DVLA doctor reiterated that the revocation should stand and insisted that Mr AB's use of alcohol had represented persistent misuse. Despite the lack of evidence, the position remained unchanged and Mr AB lost his job. The GP was told that he needed to provide solid proof that Mr AB had not been abusing alcohol the previous summer before his revocation could be reconsidered.

ICA outcome: In his draft report, the ICA highlighted that the requirement to prove that Mr AB had not been misusing alcohol the previous summer was in practice an impossible one to meet. The ICA expressed surprise that a single tick in a box next to the word 'persistent', even if rescinded by its author, was deemed sufficient to justify revocation in the absence of any other evidence. The ICA could not think of any other scenario in public administration where so flimsy a piece of evidence could result in the loss of a person's livelihood. The ICA highlighted the lack of clarity in DVLA guidance as to what persistent alcohol misuse represented. In its response to the draft ICA report the DVLA accepted that it should have restored Mr AB's licence after his GP had written to clarify that he had made an error in completing the form. The DVLA also contacted the chair of the relevant Honorary Medical Advisory Panel to seek their views on clarifying the definition of persistent alcohol misuse. The ICA recommended that the DVLA should make a consolatory payment of £500 in recognition of its poor service. He also said that Mr AB should consider making a claim for lost earnings given the Agency's acceptance that it should have re-licensed him as soon as his GP had provided additional evidence. This had resulted in five workless months and the loss of Mr AB's job.

Licence revoked without sufficient enquiries

Complaint: Mrs AB complained about the circumstances leading to the revocation of her licence. She had been involved in a minor road accident and a police notification to the DVLA had said she had suffered a black-out. However, Mrs AB said this was not the

case and that she had simply swerved to avoid an animal in the road. She was supported by her GP and by the hospital records.

Agency response: The DVLA had acknowledged delay in restoring Mrs AB's licence and offered a consolatory payment of £150. But it had also said that the revocation itself was "correct".

ICA outcome: The ICA said that the DVLA could not show why immediate revocation of Mrs AB's licence was necessary in the interests of road safety. Had enquiries been made of the hospital and the GP before a decision, it was clear that the licence would not have been revoked. Moreover, information provided by the police that reflected comments by the paramedic who attended was (a) incorrect and (b) irrelevant to whether Mrs AB had blacked out. The ICA upheld the complaint, increased the consolatory sum to £300, and asked the DVLA to contact Mrs AB with a view to settling a compensation claim for taxi fares she had incurred for three months as a disabled person.

Failure to consider compensation remedied informally

Complaint: Mr AB complained about the length of time it took the DVLA to process his driving application following disqualification for drink-driving.

Agency response: The DVLA apologised for the delay.

ICA outcome: The ICA identified that the DVLA had not considered any consolation or compensation. This was despite the fact that he found a total of eight months (in separate blocks of two months and six months) where no progress had been made at all. The ICA judged that the proper thing was for the DVLA to write to Mr AB inviting him to set out his losses and then to formally consider compensation. This informal way of resolving the problem was agreed.

Lack of urgency following revocation

Complaint: Mr AB complained about the revocation of his licence. He said the DVLA had wrongly diagnosed him with epilepsy and had falsified medical records.

Agency response: The DVLA said it had made no diagnoses but had simply acted on the basis of records supplied by Mr AB's own doctors. It denied any falsification.

ICA outcome: The ICA estimated that at least four and a half months could have been saved had the Agency taken other decisions or acted more speedily on the information it had to hand. This had caused Mr AB distress and inconvenience. He recommended a consolatory payment of £500. He further said that, if Mr AB had clear evidence he had lost work as a consequence of the DVLA's delays, he should provide to the DVLA for its consideration. It was also clear that Mr AB's diagnosis did not fit readily within the DVLA's existing guidance in *Assessing fitness to drive*, and he recommended that this be considered (at the next Panel meeting) to see if the guidance needed to be revised. The ICA found no evidence of falsified records.

Failure to alert driver to time limits for appealing against licensing decisions

Complaint: Mr AB complained about the basis of the licensing decisions taken in his case and challenged the information provided to the DVLA by his medical practitioners.

Agency response: The DVLA had apologised for the time taken to complete its medical enquiries. It also acknowledged to errors in letters sent to Mr AB that failed to acknowledge that the time limit for an appeal against revocation/restriction of his licences had passed.

ICA outcome: The ICA sympathised with Mr AB in that he had been successful in reducing his alcohol consumption, and there was no direct evidence that his problem drinking had been any threat to public safety on the road. He had not been involved in any accidents, or stopped by the police for drink driving, or advised not to drive by family or employer. But the ICA could not challenge the standards of fitness to drive developed by the DVLA, nor could he identify any maladministration on the part of the Agency when applying those standards following a GP report. The periods of delay were not such that the ICA felt the threshold for a consolatory payment was reached, but he recommended that a reminder be issued to Drivers Medical Group staff about the time limits that apply to appeals against licensing decisions through the courts.

Action against a driver who disclosed daily cannabis use

Complaint: Mr AB was involved in a road traffic accident and the police discovered cannabis in his possession. According to Mr AB, he was pressurised into disclosing a daily cannabis habit to mitigate a likely drug driving conviction. The police referred Mr AB's account of daily cannabis use to the DVLA, and a medical adviser immediately revoked his driving licence without making any enquiries. Mr AB complained about delays in the reinstatement of his licence after the six-month period of revocation provided in the rules was over.

Agency response: The DVLA reiterated that the revocation had been made in line with policy. It apologised for the delays that had resulted in Mr AB waiting a further three months beyond the point at which he could have been relicensed.

ICA outcome: The ICA was critical of the DVLA for not following its policy to make medical enquiries before reaching a licensing decision in a case where an admission of persistent drug misuse was being investigated. He noted that when Mr AB had re-applied, his GP's completion of the prescribed questionnaire had been dismissed in favour of the original police notification that he was a persistent drug user. The ICA was critical of the DVLA for not running its enquiries concurrently. This created a further delay. Nor could the ICA discern why the DVLA had issued a limited one-year driving licence to Mr AB after a drug screen and medical assessment had supported his assertion that he was not a persistent drug misuser. In addition, Mr AB's blood test showed that he had been under the limit to trigger a drug driving prosecution when he had had the original accident. The ICA recommended that Mr AB should be allowed to claim compensation for being unable to work for a two-month period as a result of poor

administration by the DVLA. He also recommended that the DVLA should write to Mr AB to explain why he was only being licensed for a year, given the significant evidence gathered by the DVLA to support his argument that he was not a persistent drug misuser.

Sensitive and fair handling of a complaint about entitlements being restored

Complaint: Mr AB's complaints spanned nine years of contact with the DVLA. He had been in hospital under the Mental Health Act ten years earlier. Medical enquiries followed and six months later Mr AB's licence was revoked. The following year, a new consultant provided a different diagnosis (paranoid personality disorder) and support for his re-application. Over the following five years, after frequent reviews and further medical enquiries had established that Mr AB was no longer taking street drugs, he was re-licensed. Mr AB alleged that decision-making had been inconsistent and that the impact of the revocation had caused more harm to his mental health than any so-called 'illness'. His entitlement had remained revoked for years despite clear screens for drugs. Having lost his business and been forced to work in menial occupations and to claim benefits, Mr AB said that he was at a lower ebb than ever. He criticised the DVLA for giving him his licences back. He stated that the information provided by doctors in support of his application had been unreliable, and he made frequent reports to the DVLA of deteriorations in his mental health.

Agency response: The DVLA reviewed Mr AB's case and concluded that it had handled successive reports of his mental state and drug use appropriately, given the policies in place at the time. Eventually it was decided to treat Mr AB's repeated statements that he should not have been licensed as, in effect, a notification of a medical condition and to recommence enquiries. When Mr AB did not return a completed medical questionnaire, his licence was revoked and it was not restored for a further six months.

ICA outcome: The ICA established that the original revocation was clearly in line with DVLA policy at the time. The DVLA could not be held responsible for the changes in diagnostic formulations on the part of treating clinicians. It had to work with what patients' own practitioners said. The ICA noted that Mr AB's second psychiatrist had linked his manic episode with drug abuse, and he considered that the exact diagnosis in the circumstances of this case had little if any impact on the decision to revoke. The ICA concluded that the DVLA had handled Mr AB's concerns thoughtfully and reasonably, and had not shown the vindictive inclination that Mr AB felt had been in play. Mr AB had been in effect reporting deteriorating mental health for two years by the time the questionnaire was sent to him and medical enquiries were re-opened. The ICA could not criticise the DVLA for following up on those reports and he did not agree with Mr AB that he was being in effect punished for complaining. He did not uphold the complaint.

Delay in a Drivers Medical case #1

Complaint: Mr AB complained that that his medical case "was not dealt with in the manner one would expect from the DVLA". His complaint had significant clinical aspects at the edge of the ICA's remit.

Agency response: The DVLA said that the information collated by the DVLA showed that Mr AB did not meet the minimum standards of fitness to drive.

ICA outcome: The ICA said that he could not comment on clinical decision-making but, given that medical examinations are at public expense, the Agency did need to ensure it did not request such examinations unnecessarily. The ICA partially upheld the complaint in that there had been three short periods of delay that together contributed three months where no progress was made. He recommended a consolatory payment of £100.

Delay in a Drivers Medical case #2

Complaint: Mr AB, who has type 2 diabetes, complained about his lost entitlement to drive small lorries/minibuses. He also complained that he had been issued with a series of short period licences.

Agency response: The DVLA had apologised for the time taken to complete its medical enquiries.

ICA outcome: The ICA was limited in what he could say about the licensing decisions and the medical grounds on which they were based. And he did not uphold Mr AB's complaint in respect of his lost implied entitlements. However, he was very concerned by the delays evident in the handling of Mr AB's licence applications and recommended a consolatory payment of £500 in consequence.

Delay in a Drivers Medical case #3

Complaint: Mr AB complained about the time taken by the DVLA to complete its enquiries into his fitness to drive. He also complained about the way he had been spoken to by a DVLA adviser.

Agency response: The DVLA had acknowledged an initial delay in reviewing his application (albeit advice of his continued right to drive under s.88 of the Road Traffic Act had been offered).

ICA outcome: The ICA noted that the DVLA had allowed ten weeks to be lost at the outset when no actions were taken whatsoever. While it could not be blamed for other delays (involving consultants), and while he could say nothing about whether the DMG's enquiries were necessary, he recommended a consolatory payment of £100. As there was no longer a recording of the call in which Mr AB said he had been spoken to rudely, the ICA could reach no independent judgement on the matter. He endorsed a decision of the chief executive that complaints should not receive successive answers from the same member of staff.

Delay in a Drivers Medical case #4

Complaint: Ms AB asked for compensation given the time taken by the DVLA to determine her fitness to drive.

Agency response: The DVLA had acknowledged an initial delay of six weeks between its receipt of medical information and the review of that information by a Medical Adviser.

ICA outcome: The ICA noted the delay that the DVLA had itself accepted, and some other administrative errors. However, while he partly upheld the complaint, he did not think the DVLA could be held responsible for the time taken by Ms AB's consultant to reply. And when all the information was to hand, the Agency issued Ms AB with her licence within three days. In these circumstances, the ICA judged that the threshold for a consolatory payment was not met.

Delay in Drivers Medical case #5

Complaint: Mr AB, a lorry driver, developed insulin-dependent diabetes and notified the DVLA without delay. Medical enquiries commenced, and his entitlement was revoked because he could not demonstrate three clear months of blood testing to the required standard. He complained that despite his many efforts at expediting the DVLA's investigation, it took six and a half months to re-license him with his lorry driving entitlement. Mr AB complained of delays, and said that he had needed to escalate his complaint to the Road Haulage Association in order to obtain a licensing decision.

Agency response: The DVLA eventually prioritised Mr AB's case and, shortly after the intervention by the Road Haulage Association and by a senior director in the DfT, re-instated Mr AB's Group 2 licence. While it apologised for the time it had taken, the DVLA declined to pay compensation as its decision had been made within 90 working days.

ICA outcome: The ICA noted that the three-stage DVLA medical enquiry process for vocational drivers diagnosed with insulin-dependent diabetes was a requirement of the relevant Honorary Medical Advisory Panel. The necessity of reviewing the evidence obtained at each stage before proceeding to the next meant that it was bound to take longer than three months for a driver to be licensed. In Mr AB's case, the ICA noted that there had been delays in stages one and two of the DVLA's process. This was despite the fact that Mr AB had flagged his need to work (and this should have been evident anyway from the fact that it was a Group 2 licence). The ICA concluded that DVLA enquiries had overrun by a month and he recommended that the DVLA should compensate Mr AB for lost earnings on production of the requisite evidence. The ICA was critical of the DVLA for using its completion target (90 per cent of cases involving medical enquiries within 90 working days) as a rationale for not offering Mr AB compensation. He noted that it was not a meaningful target for individual customers; it allowed the DVLA to overrun the 90 working days in 10 per cent of cases anyway. He also stated that, for vocational drivers, an investigation process approaching four and a half months in duration was out of step with the Department for Transport's overarching aim of keeping industry moving. He upheld the complaint.

Delay in Drivers Medical case #6

Complaint: Mrs AB tried to renew her driving licence under the rules for elderly drivers. As the DVLA would admit during the complaint, significant delays arose in its investigations between July 2015 and the decision to grant a three-year licence on 1 June 2016. Mrs AB argued that her case was not complex and she found the DVLA's account of its administration and improvements unconvincing in most regards.

Agency response: The DVLA's complaints team apologised sincerely for the delay in medical enquiries, and explained that pressure of work had been a factor. One hundred extra staff were being appointed to improve the service. The DVLA repeatedly referred Mrs AB to the fact that under s. 88 of the Road Traffic Act she had been in a position to consider whether she could drive during its enquiries. After the complaint had highlighted the delays, the DVLA expedited Mrs AB's case and re-licensed her, but during the enquiry process she had made the decision not to drive any more.

ICA outcome: The ICA was very critical indeed of the 10 months that had it taken the DVLA to re-license Mrs AB. While he thought that it was sensible for a non-medical member of staff to screen applications like Mrs AB's, this should not result in a doubly long wait for drivers who then need a qualified doctor to review their case. The ICA felt that the DVLA had relied too much on Mrs AB's theoretical ability to drive under s. 88. In reality, her own GP was unsure about her fitness to drive and she herself was unwilling to do so until the DVLA had made its decision. The ICA concluded that Mrs AB's case had stalled at every possible stage, and had only ever moved in response to contact that she had made. He concluded that the chief executive should apologise and a consolatory payment of £500 should be made. The ICA also made a series of recommendations aimed at maximising learning from the case.

A vocational driver seeks to regain his ordinary licence

Complaint: Mr AB complained that the DVLA had revoked his ordinary car licence based on medical investigations into his ability to meet the higher medical standards for driving lorries. He further complained about the explanations he had been given by the Agency both in correspondence and by phone, and about the processes involved in his current application for C1/D1 entitlements.

Agency response: The DVLA said that its decisions had been correct.

ICA outcome: As with so many Drivers Medical cases, this complaint was at the fringes of the ICA jurisdiction. However, the ICA observed that while the decision to revoke Mr AB's ordinary driving licence was not maladministrative, it was for consideration whether it needed to have been made in such haste. The ICA said the wording in the guidance, *Assessing fitness to drive*, relating to Group 1 and 2 entitlements in respect of diabetes was ambiguous, and he recommended that consideration be given to its amendment. He also said that the process Mr AB had gone through had become very protracted. He partly upheld the complaint, and said that the most appropriate redress would be if the DVLA now treated Mr AB's application as an absolute priority.

Poor communication of a decision that removed a driver's livelihood

Complaint: Mr AB, a professional driver, had received treatment for atrial fibrillation (irregular and abnormal heart rhythm) and investigations for pre-syncopal symptoms (feeling cold, clammy and sick with symptoms gradually improving over a 10 to 15 minute period of lying down). He was hospitalised after the onset of possible pre-syncopal symptoms while he was driving, although Mr AB was able to bring the vehicle to a halt safely and did not lose consciousness. He complained that his ordinary and vocational licences were wrongly revoked. He argued that the DVLA misunderstood his actual medical condition. He emphasised that he had never lost consciousness during the event. He was also unhappy about the conflicting information he felt he had been given on the telephone by the DVLA about when he could reapply for his licence. He relied on his Group 2 licence to work and it remained revoked. His ordinary driving licence was restored.

Agency response: After correspondence with the DVLA, a DVLA doctor wrote to Mr AB explaining that he could not drive on his vocational entitlement for 10 years. However, his appeal that he had not lost consciousness was not directly dealt with in this and later correspondence. Eventually, the DVLA explained to Mr AB's MP that it regarded pre-syncope as the same as syncope for the purposes of fitness to drive. This information was repeated in later correspondence, although the DVLA did not explain the policy requirement that a risk of recurrence of under 2 per cent was required.

ICA outcome: The ICA considered that Mr AB's revocation had been applied in line with the published rules on fitness to drive. However, he was critical of the DVLA's communications. Mr AB's consultant's queries had not been answered. This resulted in the hospital cardiology team repeatedly telling him that he was fit to drive. The DVLA did not spell out that Mr AB remaining conscious throughout the episode was not relevant. He was also given incorrect information about when he could re-apply for his ordinary driving licence. In the general confusion, this was issued two months prematurely. The ICA upheld the complaint that the DVLA had communicated its decision-making poorly. He recommended that its position on pre-syncope should be set out in the next edition of its published guidance. He also recommended that Drivers Medical Group should review its systems for responding to clinicians who make written queries of it. The ICA considered that Mr AB's ability to appeal against the decision was considerably reduced by the fact that he did not understand its basis. Finally, the ICA recommended that the DVLA should apologise unconditionally to Mr AB for the errors that he had identified. He recommended that the DVLA should pay him £300 in recognition of its poor service.

A complaint about clinical judgement

Complaint: Mr AB complained about delay and maladministration on the part of the Drivers Medical Group. He said that he had been subject to perverse judgements by the medical advisers.

Agency response: The DVLA said there had been no periods of unacceptable delay in reviewing Mr AB's case or in taking decisions and actions.

ICA outcome: The ICA said that, notwithstanding Mr AB's references to delay and maladministration, these all derived from the clinical judgements of the medical advisers that were outside his jurisdiction (e.g. whether Mr AB met the 'exceptional case' criteria, interpretation of the Goldmann perimetry test results, etc). The ICA felt that these matters were outside his remit, and decided that he should not delay Mr AB's possible referral of the matter to the PHSO. (Both ICAs have taken this approach in similar cases.)

The 'exceptional case' criteria

Complaint: Mr AB complained that, despite a supporting letter from his GP, the DVLA would not allow him to undergo a driving assessment under its 'exceptional case' criteria applicable to drivers with visual field loss that would usually be debarring.

Agency response: The DVLA said that in addition to the clinical evidence of full functional adaptation, it needed evidence that Mr AB was no longer registered as partially sighted.

ICA outcome: This was yet another case at the fringes of the ICA's jurisdiction. But he used his report to clarify for Mr AB where he had now reached. The ICA was able to show that the Secretary of State's Honorary Advisory Panel had said that registration as sight impaired (partially sighted) was not compatible with holding a driving licence. In other words, the DVLA was not acting maladministratively in following the clinical advice of its specialist medical advisory panel. It was for Mr AB to determine if his continued registration as partially sighted should continue (a decision that would likely have implications for his welfare benefits), and the ICA was neither qualified nor authorised to offer him any advice.

Lack of clarity about evidence that a driver met an 'exceptionality' requirement

Complaint: Mr AB, aged 70, complained that the DVLA had refused to issue him with a driving licence when he applied despite the lack of any evidence that he was unsafe. He had suffered a minor stroke 20 years earlier and, unbeknownst to him, had lost an area of his left visual field. The DVLA failed to provide him with clear information about how to demonstrate that he met the exceptional requirement of 'full functional adaptation' to visual field loss. He also complained of delays and poor customer service. Eventually, he privately obtained an occupational therapy assessment that confirmed his full functional adaptation. However, he then discovered there was an additional hurdle, in the form of an investigation into a potential heart defect, before he could undertake a driving assessment.

Agency response: The DVLA initially repeated the requirement for full functional adaptation without providing any guidance to Mr AB, or his GP, about what that the requested 'medical evidence' could consist of. Eventually, a DVLA doctor wrote to Mr AB explaining how, in general terms, he might obtain the evidence.

ICA outcome: The ICA agreed with Mr AB that the DVLA's responses in the six months following his revocation had been very poor indeed. The 'exceptionality' requirements

had been in place for long enough for the DVLA to have a far better system for advising drivers of the necessary evidence. He was very critical of the DVLA's initial complaint handling. Mr AB's case had been progressed very slowly and through the wrong channel before a DVLA new team dealing with exceptional visual cases became involved. Given the poor service that Mr AB had received, the ICA recommended that the DVLA should make him an ex gratia payment of £350. He also recommended that the DVLA should improve the information it provides to drivers and their clinicians about how to provide evidence against the exceptionality requirements, in particular full functional adaptation.

A driver arrested after the DVLA revoked his licence without telling him

Complaint: Mr AB was undergoing medical enquiries into his fitness to drive. The DVLA did not receive a questionnaire from him and therefore revoked his driving entitlement on the grounds that he had declined to co-operate. In line with its standard procedures at the time, it did not inform Mr AB of this decision. Six months later Mr AB was stopped by the police for driving without a licence and incurred several hundred pounds worth of fees in recovering his vehicle and defending himself in court.

Agency response: The DVLA declined to pay Mr AB any compensation, arguing that he had been warned that his licence would be revoked if he did not return the requisite document. However, it changed its systems so that all drivers whose entitlement is revoked for non-compliance are informed of that fact.

ICA outcome: The ICA considered that Mr AB might have done more to follow up the outcome of medical enquiries. By the same token that he expected the DVLA to tell him that his licence had been revoked, he might have expected the DVLA to say that he was fit to drive. In the absence of any information, the ICA thought that Mr AB had been naive to continue driving, particularly as he knew that an earlier attempt at getting a completed questionnaire to Swansea had been unsuccessful. The ICA balanced his comments with the observation that the removal of a driving entitlement is one of the most significant powers available to the DVLA. In every other scenario where an entitlement is revoked, careful and fair consideration of the circumstances, and clear communication of the outcome, are built into the process. The ICA regarded the provision of information to drivers about their status on the register as one of the cardinal purposes of the DVLA. He was therefore very critical of the Agency for not telling Mr AB that his entitlement had been revoked. He welcomed the DVLA's decision to ensure that, in future, drivers are given this information. Bearing in mind Mr AB's own culpability for the police action, the ICA recommended that the DVLA should pay him the sum of £300 in recognition of its poor service; a decision that he accepted.

Significant delays in obtaining Panellist review of a revocation decision

Complaint: Mr AB, a heavy goods vehicle driver, had his entitlement withdrawn on the grounds that he did not meet the relevant standard in his visual field on the right-hand side. He appealed, and over a year and a half later the DVLA continued to review Mr AB's unusual case. No pathology had been identified to explain his field loss, and DVLA doctors tried to involve expert panellists. Mr AB complained of the considerable delays

that occurred in this process, and contrasted the DVLA's refusal to license him with his own consultant ophthalmologist's view that he could drive safely for a living.

Agency response: The DVLA apologised for an earlier error in re-licensing Mr AB and for the delays that had occurred in his case. At the time that the ICA review was concluded, the DVLA was still consulting with its panellists and others to establish if further testing might enable the Agency to make a new decision about re-licensing Mr AB.

ICA outcome: The ICA welcomed the DVLA's decision to involve its panel experts, noting that the sole purpose of this was to see whether an alternative approach to testing might enable Mr AB to drive for a living. However, he concluded that it could not be right that Mr AB had needed to wait seven months before seeing a panellist (one panellist stopped seeing DVLA referrals and another retired during the referral process). The ICA found that Mr AB's case had not been tracked and hastened sufficiently at this stage. He recommended that the DVLA review the way that cases are handled when panellists are involved. He suggested that DVLA doctors should be given more administrative support to ensure that cases do not stall. Overall, given his repeated failure to demonstrate the necessary visual field for lorry driving, the ICA could not uphold Mr AB's complaint that the DVLA's decision making had been perverse. However, the ICA was sympathetic to Mr AB's complaint that he had been waiting two years to learn the outcome of his appeal.

Non-vocational use of a Group 2 licence

Complaint: Ms AB complained about the time taken to consider her application for a Group 2 licence following an injury to her head.

Agency response: The DVLA had said that medical inquiries were necessary.

ICA outcome: The ICA found that there had been significant delays - including on the part of a panel member, for which he said the DVLA had to take responsibility. He recommended £500 in consolation. This review was also interesting as Ms AB was not a vocational driver, but simply used a horse-box for short journeys at weekends. The ICA felt that this might represent a lower risk, although he also quoted the DVLA's view that those who drive Group 2 vehicles only occasionally may lack the necessary confidence and experience to do so.

Tuition before taking a driving assessment

Complaint: Mr AB complained about the revocation of his licence. His complaint focused on the information he had, or had not, been given about additional tuition before completing a second driving assessment.

Agency response: The DVLA accepted that no written information about additional tuition had been provided before the second driving assessment.

ICA outcome: The ICA said that more could have been done to customise the DVLA's standard letters so that Mr AB was clear that he needed to undergo a longer period of

tuition. It was also unfortunate that the medical adviser's note referred to the length of time between the two assessments, rather than the reason (that Mr AB could have at least ten hours in a car alongside a driving instructor). He recommended that new advice be offered to members of the DVLA's Drivers Medical Group. He also suggested that, with Mr AB's consent, his report be shared with the driving centre that carried out the assessments, and that Mr AB receive a modest consolatory sum in respect of service failures.

The need to explain fully the reasons for a licence revocation

Complaint: Mr AB complained (i) that he had entered into a contract for a mobility car on the basis of DVLA advice but his licence had later been revoked; (ii) that the epilepsy regulations had been applied in his case but he did not suffer from epilepsy; and (iii) that a request for information about the DVLA's decision-making had not been actioned in a timely fashion. He sought compensation in respect of issue (i).

Agency response: The DVLA said that the advice given to Mr AB had been correct - that at the time he phoned he was entitled to drive, assuming his doctors were content. Any decision to invest in a vehicle was Mr AB's alone. It also offered explanations for its decision-making.

ICA outcome: As in many medical cases, the ICA could say little about the clinical decision-making. And he agreed with the DVLA that the decision to go ahead with the purchase of a mobility vehicle was Mr AB's alone. However, he found the explanations Mr AB had been given for the revocation of his licence (and the issuing of a five year one) had not been very clear. He recommended that the Senior Medical Adviser should write again to Mr AB to explain the position in more detail. He further recommended a re-organisation of the guidance in *Assessing fitness to drive*. He also found, as Mr AB had said, that there had been a delay in providing the information he had asked for.

Assisting customers who are challenging a licence revocation

Complaint: Mr AB complained that his licence had been revoked on grounds of drug use. He felt this was unfair and that the process for regaining his licence had been unclear.

Agency response: The DVLA said it had followed it standard approach when notified by the police of persistent drug use.

ICA outcome: The ICA said that the revocation on medical grounds was not something he could comment upon. However, he noted that persistent use was not the same as frequent use. The ICA confirmed that standard procedures had been followed, but acknowledged that Mr AB had been uncertain as to the best way to mount an effective challenge. He recommended that the DVLA consider a Plain English leaflet setting out the formal and informal way licence revocations could be challenged and the likely timescales.

(ii) Enforcement

Insufficient remedy for a direct debit cancellation leading to a clamping

Complaint: Mrs AB complained that her car was clamped after a glitch in DVLA systems cancelled the direct debit for her vehicle excise duty (VED). To her credit, she had detected that something was awry, discovered that the VED had been cancelled and had re-established the direct debit. However, her luck ran out later that day when a council clamper caught her in town, and it took considerable haggling between the services before it was established that she was covered and her car could be released. This was embarrassing and inconvenient. In her dealings with the DVLA she was infuriated by the suggestions that she was simply seeking compensation, and she also highlighted other areas of poor service. Although she received a personal apology from the chief executive and a £50 consolatory payment, she asked for an independent review of the whole saga.

Agency response: Mrs AB received an apology from the chief executive for the fact that the DVLA had messed her around and had not admitted its mistake sooner. A full explanation was provided about the difficulties that staff had experienced in dealing with the complex technical issue at the heart of Mrs AB's complaint.

ICA outcome: The ICA was critical of the DVLA's direct debit team's initial refusal to consider a consolatory payment, highlighting the unwelcome public humiliation of being clamped and the associated delays and inconvenience. He pointed to other opportunities to resolve matters that had not been taken and recommended that the consolatory payment sum should be increased from £50 to £250. The ICA applauded the full and frank account of what had gone wrong that had been contained in the chief executive's response. However, he upheld the complaint that the DVLA's overall response to Mrs AB's experience had been insufficient. With her consent, the ICA recorded an interview with Mrs AB, excerpts of which were played to DVLA staff at a training event held later that year.

A failure to make inquiries in a clamping case

Complaint: Mr AB complained that NSL had wrongly clamped his vehicles. He said he was a motor trader and the vehicles were in a private parking area.

Agency response: The DVLA said the vehicles were clamped on the public highway and that they were correctly clamped.

ICA outcome: The ICA asked for photographs showing the vehicles on the public highway. He discovered that, contrary to what the DVLA had said, the vehicles were in fact in a cafe car park. It turned out that the DVLA had made no contact with its wheel-clamping contractor, NSL, and had simply made assumptions about the vehicles. Thereafter the complaint handling had turned out to be less than impressive too. The ICA recommended an apology and a consolatory payment of £25 for the complaint handling. In respect of the clamping, he said the ball was now in the complainant's court.

If he could show that he was a motor trader and that the cafe car park is or was part of his business premises, then a further review of the enforcement action should take place.

Muddled records in a clamping case

Complaint: Mr AB complained about the clamping of his vehicle. He said he had not received a V11 reminder.

Agency response: The DVLA said that the enforcement action had been correct and it had given Mr AB details of when and where the clamping occurred and the firm involved.

ICA outcome: The ICA agreed that the enforcement action had been correct. But he found that the information the DVLA had provided to Mr AB was extremely inaccurate. This involved the wrong date, the wrong contractor, and the wrong council. This information had been repeated without being checked. He recommended a consolatory payment, an apology, and for the DVLA to review how two records had become so confused.

The value of badge videos in a clamping case

Complaint: Mr AB complained that his vehicle had been improperly clamped while on the public road. He said that staff of the DVLA's contractor, NSL, had blocked his drive with their van as he was trying to move the vehicle on his drive. The vehicle had been disposed of and he asked for compensation.

Agency response: The DVLA said the vehicle was on the road with a SORN in place and the clamp had therefore been correctly applied.

ICA outcome: The ICA was able to view the badge videos recorded by NSL staff. These did not support Mr AB's account of events. However, one member of staff had told Mr AB that his was a targeted enforcement when this was not actually the case. That aside, the behaviour of the NSL staff seemed appropriate and courteous (if courteously firm), and the ICA could find no reason to uphold the complaint as the vehicle was clearly on the road. Nor did he think that compensation was in order since there is no suggestion that an appeal against enforcement action has any effect on the disposal action that may lawfully be taken.

Good use of discretion in a clamping case

Complaint: Mr AB complained about the enforcement action taken in respect of his vehicle. He accepted that it had been correctly clamped, but said that he was abroad at the time and did not see the INF32 information leaflet left on the vehicle. Moreover, he had paid the tax the next day and spoken to the pound. He said it was unfair that the £160 surety had not been repaid.

Agency response: The DVLA had cited the VED (Immobilisation etc) Regulations 1997 as amended, and said they had no discretion. An entitlement to a refund only lasted 15 days.

ICA outcome: The ICA reviewed the Regulations and noted that, while an entitlement to a refund expired after 15 days, there was nothing to stop the DVLA exercising discretion in exceptional circumstances. Very pleasingly, this was agreed and a refund of £160 was made.

Putting a value on a vehicle wrongly disposed at auction

Complaint: Mrs AB complained that the DVLA had wrongly disposed of her vehicle. She said that she had written to SORN the vehicle and had later taxed it.

Agency response: The DVLA had acknowledged errors on its part. It had no record of the SORN, but it had used the cheque Mrs AB intended to tax the vehicle to pay the Late Licensing Penalty and arrears of tax. A further £93 had just disappeared. The DVLA had offered £1,000 in compensation as Mrs AB's vehicle had been sold at auction.

ICA outcome: The ICA was principally asked to consider if the amount of compensation offered was sufficient. The ICA said there had been faults on both sides and it was difficult to place a value on the vehicle. Similar models appeared to sell for considerably more than £1,000, but the valuation had been just £110 and it had sold at auction for less than £150. The ICA concluded that the DVLA could reasonably have offered any sum between £500 and £1,500, and that therefore the offer of £1,000 could not be considered as maladministrative.

Enforcement following a common misapprehension about notifying change of address

Complaint: Ms AB complained that her personal assistant's notification of her change of address for her driver's record did not result in an update being made to the record for her vehicle. As a result, correspondence relating to the expiry of tax, the imposition of a parking penalty, and penalties issued by the DVLA, were not referred to her for some months. When Ms AB became aware of the extent of the enforcement action taken against her, all of the charges had escalated and her opportunity to appeal had passed. She faced fines approaching £500. Ms AB emailed the chief executive of the DVLA who replied immediately requesting details before responding substantively to her complaint.

Agency response: In its response, the DVLA explained that its driver and vehicle registers were kept separately. A change to one would not trigger a change to another. Because it had not received a notification in relation to the vehicle, the previous keeper address had remained on its register, and it had been to that address that all correspondence relating to the car had been directed. The DVLA explained why and how it had enforced against the breaches in the legislation it had identified. It also noted that Ms AB had updated her driver record some three months after she had moved house. This had been undertaken electronically.

ICA outcome: The ICA agreed with the DVLA that the root cause of the problem had been Ms AB's lack of notification of her new address with regard to her vehicle. The ICA pointed Ms AB to the advice on the logbook and online that vehicle keepers must use the

logbook to update the address. He sympathised with Ms AB, who was clearly not a deliberate tax evader, but he did not judge that there had been a failure in service such that the Agency should repay her any of her costs.

A woman with autism subject to enforcement who alleged discrimination

Complaint: Ms AB complained that the DVLA was in breach of its duties under the Equality Act 2010 by failing to make reasonable adjustments given her diagnosis of autism. In September 2015, a marker on her vehicle record had blocked the DVLA from sending her a V11 reminder to tax letter. Her tax ran out that month and on 30 November 2015 a late licensing penalty (LLP) was issued. She promptly taxed her car and paid the LLP. She disputed the DVLA's view that autism is not sufficient mitigation for the offence it had identified. She complained about the wording of responses to her and other aspects of the DVLA's complaint handling.

Agency response: The DVLA's Enforcement Centre asked for proof of Ms AB's disability, but on receipt of a GP letter decided that Asperger's Syndrome was not sufficient mitigation for the offence identified. The Agency did not deal with the complaint of discrimination other than by stating in broad terms that it did not discriminate. Eventually, after six months of correspondence, the DVLA waived the £40 LLP but would not refund the £20 Ms AB had spent obtaining a GP letter or make a consolatory payment.

ICA outcome: The lack of a V11 reminder was the product of a glitch in the DVLA's systems that had since been fixed. The ICA found that enforcement centre staff lacked clear guidelines on how to consider medical mitigation, and he did not consider that sufficient attention had been paid to the published information on autism (in particular, that provided by other Government departments and agencies involving in assessing people's disabilities). This includes that autistic people may become extremely anxious because of unexpected events or changes in routine, and generally find such changes difficult to handle. Despite superficial competence, they may struggle to understand information, and experience enforcement procedures as more traumatic than non-autistic people. The ICA thought it correct that the DVLA adopted a case-by-case approach to medical mitigation in enforcement cases; he also thought that staff needed clear guidance and support. He was critical of the DVLA for asking for proof and then dismissing it. He noted that the DVLA might have asked Ms AB for information about any disability benefit she was receiving and given more weight to the available information about Asperger's Syndrome. He concluded that the DVLA should have reconsidered the enforcement at a far earlier stage. The ICA upheld the complaint that insufficient regard was given to Ms AB's disability. The ICA thought the request for medical evidence was pointless when that evidence could not affect the position, and he therefore recommended that the £20 Ms AB paid for the GP report be refunded. He also recommended that the DVLA make Ms AB a consolatory payment of £80 in recognition of the poor service he had identified. Finally, the ICA recommended that the DVLA's enforcement centre staff should be given support and guidance in reaching decisions about mitigation where people with disabilities are concerned. With her consent, the ICA recorded an interview with Ms AB that was used as part of the training the ICAs provided to DVLA staff in late 2016.

Poor initial handling of an error by a customer trying to tax a late parent's car

Complaint: Mr AB inherited a car from his father who had recently died. He attempted to tax it but encountered difficulties with the electronic vehicle licensing (EVL) system. As a result, his car remained untaxed and he was issued with a Late Licensing Penalty. Mr AB complained that he had received no notification of the failure of his transaction at the time and that the DVLA should have prompted him to tax.

Agency response: The DVLA explained the basis of its continuous enforcement regime and responded to the points that Mr AB made. The DVLA initially declined to reimburse the LLP as it was sure it had been correctly applied.

ICA outcome: The ICA noted that the DVLA had applied its enforcement policy consistently. However, he was sympathetic to Mr AB's case. Mr AB had clearly attempted to tax in good faith and, perhaps unfamiliar with the online interface, had assumed that the transaction had completed, and that if it had not completed he would be notified. As the DVLA conceded, Mr AB did not receive the last chance to tax letter (V211) and therefore assumed his car was covered. The ICA found the explanations offered by the DVLA to be confusing and poorly constructed. Mr AB was told that he had received reminders when he had not. He was told that he had taxed when he had not. He was told that the transaction had failed because he had entered the wrong bank account details, when the actual problem had been a time-out. SORN was repeatedly invoked when it had no relevance to his case at all. This was poor service. The ICA recommended that, given these errors, the genuine attempt to tax, and the sad context, Mr AB should receive a consolatory payment equivalent to the £40 he had paid to settle the LLP. After reflecting further on the events of this case after the ICA review, the DVLA decided to make an additional payment of £25 to Mr AB to reflect its regret that its handling had not met the standards it set itself.

An EVL problem peculiar to Northern Ireland

Complaint: Mr AB complained that he had been unable to tax his vehicle electronically using EVL. He had then applied by post, trusting that everything would be sorted while he was on holiday. However, he had then been sent a last chance letter. He accused the DVLA of gross maladministration in introducing a system that was not fit for purpose.

Agency response: The DVLA said the problem Mr AB had encountered was peculiar to Northern Ireland. In the rest of the country a requirement to provide evidence of insurance cover no longer applied, but these regulations had not been introduced by the Northern Ireland devolved administration. In consequence, when VED and insurance expired at or around the same time, and the insurance company had not updated the Motor Insurance Bureau (MIB) database, then the transaction could fail. They said this was the responsibility of the insurance trade/Stormont.

ICA outcome: The ICA discovered that the glitch surrounding EVL in Northern Ireland was exactly as the DVLA had said. He recommended that action be taken to alert drivers in Northern Ireland to this potential problem. He also identified maladministration

on the part of the DfT and DVLA in handling Mr AB's complaint, in that there had been delays in handling postal applications and Mr AB had been given different reasons for why his postal application had been returned. He also felt it was unacceptable for Mr AB to be sent (an automatically generated) last chance letter - which is in strong terms - when Mr AB's postal application had not been processed because of delays at the DVLA itself. He recommended a consolatory sum of £100 in consequence of these various flaws.

Very poor handling of misdirected insurance enforcement caused by the insurer

Complaint: Mr AB's insurers made an error resulting in his car being shown as uninsured on the motor insurance bureau database. The DVLA sent Mr AB a warning letter and he raised the matter with his insurers. Before Mr AB's response to the warning letter had been received, the DVLA imposed a fixed penalty notice. Over the course of five months, Mr AB corresponded with the DVLA's enforcement centre (EC) in an effort to get the fixed penalty notice removed. In this correspondence, the EC claimed that Mr AB's insurers had stated that he was not insured. Mr AB complained of delay, poor complaint handling, and that his question about the basis of the statement that he was not insured was never answered.

Agency response: The DVLA's responses tended to recite the statutory basis of continuous insurance enforcement (CIE). The DVLA did not at any stage answer the question about why it had claimed that Mr AB's insurer had said that he was not insured, even after it had compensated him for its error.

ICA outcome: The ICA agreed with Mr AB that the process of undoing the enforcement had taken far too long. He also expressed concern that none of the EC correspondence had been made available to the complaints team or himself, and he recommended that in future this correspondence should be provided in full. The ICA did not uphold the complaint that the EC refused to communicate with Mr AB on the telephone, as it was DVLA policy to communicate about enforcement in writing only. However, the ICA expressed his disappointment that Mr AB's question about the statement supposedly made by his insurance company was not replied to after he had posed it on seven occasions. This failing reflected poorly on the EC itself and the complaints team, whose role included holding their colleagues to account. The ICA recommended that Mr AB should receive a personal apology from the chief executive and £100 in recognition of the failings he had identified in his review.

Six opportunities missed to avoid pointlessly taking a driver to court

Complaint: Mrs AB complained that despite notifying the DVLA of the export of her car on two occasions, she was taken to court for not insuring it. All enforcement correspondence and activity was misdirected to her old address. She was convicted in her absence and, on returning to the UK several months later, learned that bailiffs were demanding over £600 from the people living in the property where the car was still registered. Despite further representations, Mrs AB had to take her case back to court to get the fine quashed. She listed a string of clear opportunities that the DVLA had to avoid or avert the ordeal of the court case.

Agency response: The DVLA initially held the line that Mrs AB had the opportunity to avert the enforcement. In further correspondence, after she had won in court, the Agency accepted that it should have ended the enforcement action when it received the letter notifying it of the permanent export of the car. After further escalation within the DVLA, a £300 consolatory payment was offered to reflect the poor administration.

ICA outcome: The ICA was particularly disappointed by the DVLA's complaints team's response, which appeared to have been drafted on the basis that no apology or admission could be made in the run up to the court date. The ICA noted also the peremptory advice to contact the court about the aggressive bailiff action, and recommended that in future the DVLA should ensure that complaints about bailiffs are handled in line with the published government advice. The ICA established that six clear opportunities to avert or cancel the enforcement activity had been presented, up to and including on the day of the prosecution when the DVLA's lawyer insisted on pushing for a conviction despite knowing Mrs AB had notified export months before. Referring to the DfT *Charter – Principles for Remedying Complaints*, the ICA concluded that Mrs AB had suffered from gross inconvenience, gross embarrassment and severe distress despite taking all reasonable steps to avert and mitigate enforcement action. He recommended that the DVLA should increase its offer of a consolatory payment from £300 to £500 and that the DVLA's chief executive should apologise.

(iii): Other cases

Conversion of a historic car to an established design

Complaint: Mr AB complained that the DVLA's refusal to re-register his Reliant Kitten to a Reliant Tempest was out of kilter with the rules and other DVLA registration decisions. He felt that the requirement for his vehicle to have individual vehicle approval (IVA) was unfair, and that the information and expert advice he had furnished was sufficient for the DVLA's Kits & Rebuilds section to change its position. Supported by his MP, he also complained that information had been withheld by the DVLA unreasonably and his case had been reviewed by the same officer rather than escalated.

Agency response: The DVLA looked into Mr AB's argument that the changes he proposed to undertake to his chassis should not affect the identity of his vehicle such that IVA would be required. It concluded that, in all likelihood, should the conversion be undertaken IVA would be necessary. The Agency also liaised with the DVSA during the complaint and re-affirmed its original position. During the complaint Mr AB furnished extensive evidence, including a report from a former DVLA vehicle inspector who had undertaken examinations of Reliant Kittens that had been converted to Tempests. These conversions had been allowed to retain their original registration on the basis that the modifications were insufficient to call into question the identity of the vehicle. The case was escalated to the head of vehicle policy, but the decision remained that IVA and a Q-plate would be necessary.

ICA outcome: The ICA noted that the DVLA had quite reasonably referred Mr AB to the fact that he had not made any substantive changes to his Reliant Kitten. His complaint

therefore concerned a theoretical policy-based requirement. Nonetheless, the ICA was sure that the advice that Mr AB had been given by the DVLA closely mirrored the process it would follow in its substantive assessment of his case. The ICA placed much weight on the evidence provided by Mr AB from the DVLA's former vehicle inspector. He noted that the DVLA had not contradicted Mr AB's position that his proposed changes were exactly the same as those in the past where IVA had not been deemed necessary. Mr AB maintained throughout his complaint that no Kitten to Tempest conversion had ever been subject to IVA. Given this, and the ICA's reservations about the way that advice had been obtained from the DVSA, he recommended that a new decision should be made about whether the vehicle should be subject to IVA. Although he did not agree that the case had not been escalated appropriately, he did uphold the complaint on the basis that Mr AB's evidence and arguments had not been given sufficient attention in the DVLA's responses. After carrying out the review requested by the ICA, the DVLA reaffirmed its position that IVA would be required.

The computer says no on VDL service

Complaint: Mr AB complained that details on the online View Driving Licence (VDL) service gave the false impression that he was a new driver. He also said he had a complaint regarding his Certificate of Professional Competence (CPC) qualification.

Agency response: The DVLA had acknowledged there was a problem. Only Mr AB's most recent manual car test showed, not his automatic car and bus entitlements dating back 15 and 20 years respectively. A note on the DVLA file read: "This is a known issue and an unintended consequence of abolishing the counterpart ..." The Agency had provided Mr AB with a copy of his full driver record and suggested that this could be shown to his insurance company/car hire firms etc.

ICA outcome: The ICA said he could not deal with the CPC issue as it had not gone through the DVSA complaints process. However, he felt that more could have been done by the DVLA to pursue this matter with colleagues in another part of the DfT family. He drew attention to the relevant Ombudsman principle that complaints engaging more than one government body should be addressed in a joined-up fashion, and recommended that, with Mr AB's permission, a copy of his report be shared by the DVLA with the DVSA to progress the matter. On the issue of the VDL service, the ICA upheld the complaint. Although a driving licence is not a record of a driver's history, in an increasingly digital age and since the abolition of the paper counterpart, the VDL service is being treated as such by insurance companies and others. But the ICA said it would be a counsel of perfection to expect that administrative reforms (like abolishing the paper licence) would never have unintended consequences, and he felt the DVLA had tried to get around the glitch by providing Mr AB with letters of explanation and the copy of his driver record. However, the ICA said he hoped that an electronic fix could be achieved soon. He recommended that the DVLA provide Mr AB with a letter endorsing the dates for Mr AB's driving entitlements that the ICA had included in his report.

Incorrect information about a driving licence on VDL

Complaint: Mr AB complained that information on the online View Driving Licence (VDL) system about his driving licence was incorrect. He further said that it had remained uncorrected for over 14 months.

Agency response: The DVLA accepted that the information was wrong and had apologised. It had provided alternative means for Mr AB or an employer or car rental company to check his details, and said work to achieve a fix had been prioritised but it could not provide a timescale.

ICA outcome: The ICA upheld the complaint but said he could not directly provide a technological fix. Nor did he think the DVLA had acted maladministratively. It was trying to fix the online system, but as yet had not identified the cause of the problem (which affected other drivers in addition to Mr AB). The ICA recommended that a copy of his report be shared with the chief executive so that the leadership of the Agency remained sighted on the problem and work to provide a remedy.

A problem with the DVLA vehicles database

Complaint: Mr AB complained that the DVLA vehicles database (which in turn informs the Police National Computer) wrongly showed that the MOT on some of his company's vehicles had expired. In consequence, his drivers had been stopped by the police and (on one occasion) a Fixed Penalty Notice (FPN) had been imposed. However, it was also a matter of record that the DVSA had confirmed that the vehicles in question did not need any sort of annual test or MOT.

Agency response: The DVLA said it acknowledged there was a problem but had been unable to reach a solution with the DVSA.

ICA outcome: The ICA asked the DVLA to work constructively for a solution. However, it had become clear that system changes would be necessary to avoid the problem recurring. The ICA shared a letter from the DVSA that he hoped would assist if Mr AB's vehicles were stopped again. This made clear that the vehicles in question were exempt from goods vehicle testing. But the ICA said he could not sensibly insist that the system changes were made as it was for the DVLA to decide its spending priorities. Nonetheless, he asked for a copy of his letter to be shared with the chief executive, and recommended that, as a goodwill gesture, the DVLA make a consolatory payment of £80 (equivalent to the FPN). He upheld the complaint on the basis that one part of the DfT had information on its database that another part (the DVSA) had shown was not correct.

Delay in updating vehicle record leads to injustice for customer

Complaint: Mr AB complained that inaccurate information had been supplied under a Keeper at Date of Event (KADOE) contract. This had the effect that he was pursued by a local authority for a traffic violation that occurred after he had disposed of the vehicle.

Agency response: The DVLA said that it had supplied information that it believed was correct at the time it supplied it. The Agency said that all those who received DVLA information were warned that the accuracy of the information could not be guaranteed. It added that Mr AB's problems resulted from the events happening in close proximity to one another.

ICA outcome: The ICA agreed that the problems resulted from the fact that the vehicle formerly owned by Mr AB was involved in a traffic violation so soon after he had disposed of it. There was no maladministration in the DVLA providing the information on its register at the time. However, all his sympathies were with Mr AB, and he was not satisfied that the standard disclaimer made clear that there was a two-week period between a customer disposing of a vehicle and the DVLA record being updated. Nor was he satisfied that the Agency's complaint handling was designed to putting matters right (as opposed to demonstrating that the Agency had done nothing wrong.)

Data sharing by the DVLA

Complaint: Mr AB complained that the DVLA was not meeting the terms of the Road Vehicles (Registration and Licensing) Regulations paragraph 27(1) (e) when it provides keepership details to those with a 'reasonable cause'.

Agency response: The DVLA said that the Information Commissioner's Office agreed that its practices were consistent with its legal obligations.

ICA outcome: The ICA said he could not offer an authoritative legal judgment, but he could identify no maladministration on the part of the DVLA. The 'business as usual' correspondence and complaint handling had also been courteous, informative and prompt. It was Mr AB's privilege to take a different view of the law, but the ICA had no grounds to uphold his complaint.

Positive outcome for owners of vehicles in the historic tax class

Complaint: Mr AB complained that he had not been paid a refund when his vehicle entered the historic tax class upon reaching 40 years. He said he had not known about the relevant legislation and had therefore not made an application at the time.

Agency response: The DVLA said that there was a statutory time limit for the payment of VED refunds. It also said that its vehicle database did not automatically change the taxation class of vehicles, and that it was the keeper's responsibility to ensure a vehicle was correctly taxed (an argument normally advanced for non-payment, but also applying to over-payments). It said that the historic vehicle exemption was on Gov.uk and in the DVLA's own leaflet available online.

ICA outcome: The ICA said that he could discern no maladministration in the DVLA's approach. However, on consideration of his draft report, the DVLA agreed to see if it was possible to assess the number of other vehicles that may be eligible for the historic tax class and how best to inform customers of the rolling entitlement going forward. It also agreed to make Mr AB a goodwill payment equivalent to the tax he had paid. The

ICA recorded the case as a partial uphold to reflect this outcome. The DVLA's earlier actions had not been maladministrative, but the review had had a very positive impact for Mr AB and for keepers of historic vehicles as a whole.

A less happy story regarding the historic tax class

Complaint: Mr and Mrs AB complained that the DVLA had wrongly told them their vehicle was entitled to the historic tax class. In addition, emails had not been answered. Worst of all, the licensing casework team had changed the tax class to SORN without giving Mr and Mrs AB the opportunity to re-tax or take the vehicle off the road.

Agency response: The DVLA said that Mr and Mrs AB had received poor service and made a total offer of compensation and consolation of £360.

ICA outcome: The ICA said he had rarely come across such a succession of errors. However, the DVLA's offer was proportionate and in line with wider administrative practice. He made two recommendations designed to ensure that no other customers could be treated in the same way.

You cannot transfer a number plate from a vehicle with no engine

Complaint: Mr AB complained about a decision by the DVLA not to process an application to retain a number plate. He was also unhappy that his vehicle was subject to an inspection.

Agency response: The DVLA said that it could only process applications for vehicles capable of mechanical propulsion.

ICA outcome: The ICA quoted the relevant regulation, and said he could not uphold Mr AB's complaint given that the statutory position was clear. However, he was not persuaded that the DVLA's publicly available information was sufficiently detailed. He recommended that the information on Gov.uk and on the DVLA's information leaflets be expanded to make clear that vehicles from which a registration mark can be transferred or retained must be capable of mechanical propulsion.

A report from a member of the public regarding unlicensed vehicles

Complaint: Mr AB complained that the DVLA had failed to respond to notifications from him and his neighbours about an unlicensed vehicle that was being driven.

Agency response: The DVLA had said that, following reports to its hotline, NSL had been asked to target Mr AB's area. The car in question had been located on the second occasion and clamped. Tax had now been paid.

ICA outcome: The ICA said that the DVLA had acted speedily in response to the notifications to its hotline. There had been no maladministration, given that the Agency did not and could not operate a call-off system for all notifications. The Agency was also

constrained in what it could tell Mr AB about other enforcement action that had been taken.

Brexit means … no change

Complaint: Mr AB complained about a refund of VED and HGV levy. He said the DVLA's calculation was incorrect, and that in any case the levy was an EU initiative that should no longer apply following the Brexit vote.

Agency response: The DVLA said its calculation was correct.

ICA outcome: The ICA said that the levy had been implemented by an Act of the UK Parliament (the HGV Road User Levy Act 2013) and would remain in force until or unless it was repealed. The Act sets out in section 7 how rebates are calculated, and the DVLA's arithmetic had been correct. However, the ICA noted that while information about levy refunds was readily available online, the standard messages Mr AB received from the DVLA only referred to VED. The contact centre has also misinformed Mr AB. The ICA made two recommendations: an apology for the incorrect advice from the contact centre, and the DVLA to consider if the publicly available information about refunds of the levy is sufficiently clear.

The DVLA's practice of retaining phone recordings for 90 days

Complaint: Ms AB complained about penalties imposed for failing to tax her vehicle or declare SORN. She further said that she had been given incomplete advice by the DVLA call centre. Ms AB had criticised the DVLA's 90-day retention policy for phone recordings.

Agency response: The DVLA said that a LLP and Out of Court Settlement (OCS) had been correctly imposed. But it agreed that Ms AB had not been told about all the enforcement action to which she was subject, and had made an ex gratia payment of £25.

ICA outcome: The ICA identified no maladministration beyond the incomplete advice offered by the call centre for which an apology and redress had been offered. While there was no magic about the figure of £25, it was not unreasonable or disproportionate. Ms AB had made an innocent mistake after moving home, but there were no grounds for the penalties to be waived. There was also no magic about the Agency's practice of retaining phone recordings for 90 days, but the ICA thought it was a reasonable compromise between the potential value of the recordings and the requirement under the Data Protection Act not to retain personal data unnecessarily.

Changing a name on a driving licence

Complaint: Mr AB complained about the name on his driving licence and what he said was the DVLA's failure to explain the correct process for changing it. He sought compensation of half the cost of a new passport.

Agency response: The DVLA said that once HM Passport Office had carried out the appropriate checks it was happy to issue the licence in Mr AB's preferred name.

ICA outcome: Unfortunately, there had been a mistake on Mr AB's birth certificate - the document he had supplied to the DVLA when first applying for a licence. Although the ICA could not be certain what Mr AB had been told in a series of telephone conversations over the years, he was content that the DVLA's approach was consonant with wider Government initiatives to prevent identity theft and fraud. Once Mr AB had advised a new passport number, the DVLA had acted in exemplary fashion to ensure his new licence was issued in his correct and preferred name. There was no case for saying the Agency had acted maladministratively or for recommending that it pay half the costs of Mr AB's new passport (despite his arguing that he did not need a passport as he did not travel abroad).

Poor customer service when applying to change a name on a driving licence

Complaint: Mr AB complained that when he submitted an application to change his name on his driving licence he was given poor customer service.

Agency response: The DVLA had accepted that poor service had been offered, and had been unable to trace a number of Mr AB's calls. It acknowledged that a manager had been discourteous and had terminated a call prematurely. The Agency had offered £20 towards the cost of the calls.

ICA outcome: The ICA discovered there had been a further failure when the cheque for £20 was sent in the very name that Mr AB had changed by deed poll and had wanted on his licence. He felt that the succession of failures merited a consolatory payment of £25 in addition to the £20 already provided for the calls.

The VED requirements when transferring a cherished plate

Complaint: Mr AB complained that, despite selling his vehicle in December, he had only received a refund of VED for February.

Agency response: The DVLA said that Mr AB had also arranged the transfer of his personalised number plate. To do so, both donor and recipient vehicles had to be taxed. Moreover, if Mr AB had not remained the keeper the cherished transfer would not have gone through.

ICA outcome: The ICA agreed that Mr AB had remained the registered keeper in January and was therefore only due one month's refund. Mr AB had indeed paid two months VED in January while only owning one vehicle, but had he not been responsible for doing so he might well have lost the right to display the cherished plate.

Mandatory penalties can have unjust consequences

Complaint: Mr AB complained that the DVLA had revoked his licence after he received six penalty points for driving without insurance. He said there were mitigating

circumstances. He was a young man - earning a living as a pizza deliveryman - and a diligent police officer had identified that he did not have business use on his insurance.

Agency response: The DVLA said that under the terms of the Road Traffic (New Drivers) Act 1995, it had no choice but to revoke the licence and require Mr AB to take his theory and practical tests again.

ICA outcome: The ICA agreed that the DVLA had acted correctly. There was no discretion under the law, and therefore no maladministration. All that said, the ICA had great sympathy for Mr AB. He had probably broken the law inadvertently, and the court had likely not realised the consequence of the six points, since they had not disqualified him and other parts of the sentence were more lenient than the relevant sentencing guideline would anticipate.

A complaint about lost entitlements

Complaint: Mr AB complained that the DVLA had lost his motorcycle entitlement. He said he had passed a test in 1968.

Agency response: The DVLA had carried out its usual very thorough searches. It was clear that the Agency had never recorded a motorcycle entitlement for Mr AB.

ICA outcome: The ICA said that evidence that Mr AB had taken a test in 1968 (for what and with what outcome was not known), together with a photocopy of a red licence with a label in his late mother's handwriting indicating it was for a motorcycle, suggested on the balance of probabilities that he had indeed passed his test. He therefore asked the DVLA to look once more at the matter. Unfortunately for Mr AB, having done so, the DVLA judged that in the absence of a receipted red book showing the entitlement there was nothing they could do. This was not maladministrative, and there was no more the ICA could usefully contribute.

Not relying on customers to make their own enquiries

Complaint: Mr AB complained about the loss of his implied C1/D1 entitlements. He also said that the DVLA had wrongly issued him with a provisional licence.

Agency response: The DVLA had explained that Mr AB had lost his implied entitlements as he had been issued with a one-year licence. This had been the case since the rules changed nearly 20 years ago. It said that it had issued a provisional licence as its records showed Mr AB had been Disqualified ‘til Test Pass (DTTP). However, it had subsequently emerged that this was a mistake on the part of the court. The Agency accepted that when the marker was removed, it had still mistakenly issued Mr AB with a provisional licence and apologised.

ICA outcome: There was not a lot the ICA could add to the Agency's explanations. The DVLA could not be blamed for accepting an automatic update of the record from the court, and the rules on C1/D1 entitlements were clear (Mr AB had been issued with a one-year licence for medical enquiries into his alcohol use). The apology for the clerk's

mistake in issuing a second provisional licence was sufficient redress as Mr AB had not suffered any detriment in consequence. The only thing the ICA felt had not been best practice was the DVLA's reliance on Mr AB to make his own inquiries of the court regarding the DTTP. Had the DVLA been more proactive on the customer's behalf, the court's error might have been identified earlier.

An alleged failure with direct debit payments

Complaint: Mr AB complained that the DVLA's direct debit system had failed and that, as a consequence, he received a Late Licensing Penalty and a subsequent Out of Court Settlement when his vehicle was spotted being driven while untaxed.

Agency response: The DVLA had explained that it had received a notification from its direct debit contractor that Mr AB had cancelled the direct debit himself.

ICA outcome: The ICA said the DVLA could not absolve itself of responsibility if there were flaws in its contractors' systems, but it clearly had to operate on the basis of what its contractor told it. More to the point, the contractor (Target Group) had a record of an email to Mr AB telling him the direct debit had been cancelled, and the Agency itself had sent a letter. Mr AB had thus had two opportunities of correcting the mistake (if that is what it was) but did not take them. He also did nothing after the LLP was issued. Given that Continuous Registration operates on strict liability, there were plainly no grounds to uphold Mr AB's complaint.

Problems trying to tax a car

Complaint: Mr AB complained that he had been unable to tax his car online because the DVLA's electronic system rejected his American Express transaction. After two attempts, he telephoned the DVLA, but a further effort by a member of staff in the contact centre was also unsuccessful. More attempts were made over the next few days, with Mr AB clocking up two hours of telephone time to different DVLA officers. He was infuriated by the delay and that the Agency was unable to provide him with direct contact numbers and details for named managers. Another attempted payment was unsuccessful because the DVLA's internet failed during the call. Later that day the staff involved completed the transaction without Mr AB's involvement using the audio of the call. He complained that this was a breach of the Data Protection Act.

Agency response: Soon after he made contact, the DVLA allocated a manager to Mr AB's case and a single contact centre member of staff as his point of liaison. This meant that Mr AB had a named point of contact who was able to provide continuity of service. That staff member also had access to technical information about the transaction that she was able to relay to Mr AB. The Agency referred the Data Protection breach to its Information Assurance Group, who conducted an investigation and established that there had been a breach of policy.

ICA outcome: The ICA listened to the two hours of calls and considered that Mr AB's criticisms of individual staff were in the main unfair. They were not able to summon immediate technical assistance as he had hoped, but they had assisted him as best they

could. The ICA considered that the staff members who had been involved in successfully taxing the vehicle had acted in good faith. He felt that the complaints team and the Information Assurance Group should have been involved sooner. Given that a breach of policy had occurred in conducting the transaction without Mr AB's involvement, the ICA recommended that a consolatory sum of £270 should be made to Mr AB. He also recommended that the DVLA's contact centre should look at its processes for working with customers who require multiple contacts in relation to a single transaction. He considered that its systems were not set up to support continuity of contact, but in some circumstances this provision would be of benefit to customers. It was likely that the earlier transactions had failed because the customer had not realised that the card verification value (or CVV number) was located on the front of this type of card. The DVLA undertook to update its published advice accordingly.

Fraudulent transfer of the right to display a number plate

Complaint: Mr AB complained that the DVLA had not informed him promptly that the plate he had purchased from a third party had been obtained by that third party fraudulently. The assignment of the plate to Mr AB was reversed.

Agency response: The DVLA said that all its actions had been in line with the legal position that registration numbers are the property of the Secretary of State. It said the matter was actually a civil dispute between Mr AB and the third party.

ICA outcome: The ICA found that there had been maladministration on the part of the former DVLA Local Office involved, and an instruction to reverse the assignment had not been acted upon. As a consequence, the chances of Mr AB locating the fraudster and obtaining a refund of his money were much reduced. The DVLA had written to the fraudster but the ICA said that a system that relied upon a fraudster to contact his victims was rather odd to say the least. The ICA recommended a consolatory payment of £1,000 (judging this to be what the PHSO would recommend), contingent on Mr AB providing confirmation of the purchase and his bank confirming that they would have paid no refund at the time the matter came to Mr AB's attention.

A misplaced complaint about nitrogen oxide/dioxide emissions

Complaint: The context of Mr AB's complaint was that, six months after he had purchased a 2-litre diesel car manufactured by the VAG group, the story broke that the VAG group had fitted software to the vehicle meaning that the nitrogen oxide and nitrogen dioxide (NOx) emissions on testing registered at lower levels than on the road. Mr AB complained that the DVLA, as the registrar for all vehicles on UK roads, had a duty to ensure that the correct NOx data was recorded on the V5C. He argued that the DVLA should, in effect, order the VAG group to re-engineer their cars so that the low NOx emission level recorded in tests was replicated in normal day-to-day use.

Agency response: The DVLA stated that its policy was that amendments to vehicle details on the V5C had to be made by the manufacturer through a Certificate of Conformity (CoC). In later correspondence, the DVLA's policy team reassured Mr AB

that he could sign and submit the V5C lawfully with the existing NOx data on it should he wish to dispose of the vehicle. He was also referred to the Department for Transport.

ICA outcome: While sympathetic to the points that Mr AB was making, the ICA noted that the VAG group had been held to account in relation to the 'emissions scandal' by the Secretary of State for Transport and the Select Committee for Transport (whose interrogation of the leadership of the UK arm of the Group could be found online). The ICA did not detect anything in the legislation governing the activities of the DVLA that gave it the jurisdiction (that Mr AB felt it should have) in effect to regulate vehicle emissions. He considered that, for the DVLA to start doing so, a significant change in policy would need to occur. If Mr AB wished this to happen he needed to pursue the matter by political means as it was beyond the remit of the ICA scheme to recommend such changes. The ICA did not uphold the complaint that the DVLA had failed in any of its functions.

An unexpected discovery of a revoked entitlement

Complaint: Mr AB complained that he had been stopped by the police on a random check in his work van and, on checking the drivers' register, it was discovered that his driving licence had been revoked. This revocation related to a conviction in 2013 that had been quashed on appeal. Although the DVLA had been informed that the conviction had been quashed, it did not reverse the revocation.

Agency response: The DVLA worked quickly, having been contacted by Mr AB, in order to restore his licence. However, he lost three and a half days' work. The DVLA agreed to pay the cost of his court fees and his lost earnings and related expenses. Mr AB was dissatisfied and pressed the Agency for £5,000 compensation. The DVLA offered him £100.

ICA outcome: The ICA established that Mr AB had been sent two letters after his original conviction. The first had asked him to return his licence without delay or face revocation. The second had informed him that, as he had not returned his licence, his entitlement would be revoked. Mr AB did not reply to either letter and therefore the revocation had occurred. The ICA concluded that, although the DVLA had erred in not restoring his licence on notification from the court, Mr AB bore some of the responsibility for failing to provide his licence after the conviction. He therefore agreed with the DVLA that the £100 consolatory payment was sufficient.

Tax cover removed without warning or reason

Complaint: Mr AB complained that an error by the DVLA resulted in the tax cover on his car being removed for no good reason and without him being informed. When the car broke down while he attended a wedding many miles from home, the RAC would not tow it because it was not recorded as taxed on the DVLA register. Mr AB had to hire a vehicle to take his family home; this included his 80-year-old mother in law. The DVLA accepted responsibility for removing the tax, but Mr AB regarded its offer of £370.81 compensation as completely inadequate (he claimed £3,035.00) given that he was unable to recover the vehicle and had to take time off work.

Agency response: The DVLA accepted responsibility for its part in the events and offered a consolatory payment of £200 along with reimbursement of Mr AB's taxi fares, car hire and petrol. The DVLA refused Mr AB's claim for three days' hire of the car since the car could have been hired for a day and this was all that was needed to drive his family home. It also refused £800 for the loss of the vehicle since it did not consider the Agency responsible; it was Mr AB who had decided to scrap it.

ICA outcome: The ICA agreed that the DVLA was not responsible for Mr AB's decision to scrap his car or for the fact that it had suffered a mechanical failure. He agreed with the DVLA that it was not liable for three days' car hire or the loss of the vehicle. And he agreed that the sum of £200 was reasonable remedy for the poor administration the Agency had admitted. He did not uphold the complaint. The DVLA later reflected that it should double its offer of a consolatory sum given the inconvenience caused to Mr AB and his family.

4. DVSA casework

4.1 Table 7 illustrates the DVSA cases received this year compared to the preceding two years.

4.2 A majority (56 per cent) of our DVSA caseload consisted of complaints about the conduct of practical driving tests. This was a significant increase – we received almost as many complaints in this category as in the previous two years combined. In the main, candidates contested examiner decision-making in the recording of the serious and dangerous faults that had informed the decision not to pass them. In a minority of cases, candidates complained about examiners' attitude and professional conduct.

4.3 As we have noted in previous reports, we are constrained to a significant extent in our ability to reach fair findings of fact in the absence of objective evidence about judgement and conduct. We did not uphold over three-quarters of these cases, principally because we were unable to choose between one party's account of events over the other's. Our focus has been of necessity on a matter of secondary concern to most complainants: the thoroughness of the DVSA's own complaint investigation.

4.4 On a more positive note, the number of complaints about late cancellation refunds has dwindled considerably.

4.5 Just five cases (13 per cent) concerned the DVSA's vehicle standards role, formerly within the jurisdiction of the Vehicle and Operator Services Agency (VOSA). Among the eight cases falling into the category 'Other' were:

- Four complaints brought by Approved Driving Instructors (ADIs), three of which concerned the impact of the cancellation and redeployment of motorcycle tests;
- Three complaints related to certification; and
- One complaint about the revocation of a pass following a fraud investigation.

Table 7: DVSA cases, 2014-15 to 2016-17

Business area	**2014/15**		**2015/16**		**2016/17**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Practical driving test – examiner conduct	14	37%	9	32%	22	56%
Practical driving test – refunds	5	13%	4	14%	1	2.5%
Driving theory test	3	8%	4	14%	1	2.5%
Vehicle examiner conduct	1	3%	2	7%	0	2.5%
Practical driving test – administration	0	-	1	3.5%	2	5%
Vehicle enforcement	4	3%	1	3.5%	4	10%
Approved driving instructor registration	2	5%	0	-	1	2.5%
Other	9	24%	7	25%	8	20%
Total	**38**		**28**		**39**	

4.6 Table 8 illustrates the outcomes of DVSA cases referred to us in the year.

Table 8: DVSA case outcomes, 2016-17

Business area	Not upheld	Partially upheld	Fully upheld
Practical driving test – examiner conduct	17	3	2
Practical driving test – refunds	1	0	0
Driving theory test	0	1	0
Practical driving test – administration	1	0	1
Vehicle enforcement	3	1	0
Approved driving instructor registration	1	0	0
ADI grievance	0	3	1
Other	2	2	0
Total	**25**	**10**	**4**

4.7 We did not uphold any part of the complaint in 64 per cent of DVSA referrals. In 26 per cent of cases we upheld partially and we fully upheld 10 per cent. In consequence, we upheld 36 per cent of DVSA cases to some extent, a figure that is lower than the DfT average (46 per cent) for the year. However, we upheld over half of the cases that did not turn on examiner judgement.

4.8 Our recommendations to the DVSA fell into the following categories:

- Consolatory payment (6)
- Apology (3)
- Consolatory payment and compensation (2)
- Change systems (2)
- Compensation (1)
- Change information provided to customers (1)

4.9 Average ICA case completion time in DVSA cases was 5 hours and 5 minutes (compared with 4 hours 24 minutes last year) reflecting the impact of three exceptionally complex cases that exceeded 10 hours, two of which were brought by approved driving instructors (ADIs). We report on two of those cases, and others of interest, in the next section.

Cases

(i) Complex casework

A dispute about the right of an ADI to contest the outcome of a standards check in court

Complaint: Mr AB, an ADI, underwent a routine standards check conducted by the DVSA that he passed with a B grade. Mr AB complained at length about the conduct of the test including: the suggestion that he had over-instructed his pupil;

unfair and unfounded criticisms of instructions he gave to his pupil; that the test was too short (45 minutes at the most as opposed to an hour); and unfair and incorrect marks about the timing of his instructions. Mr AB asked that his grade should be changed to an A. He contested every response by the DVSA and asked for advice on legal action, subsequently taking his case to court on the DVSA informing him that the Magistrates' Court had jurisdiction to hear his case.

Agency response: The DVSA maintained after repeated investigations that the standards test had been conducted correctly and within an appropriate timeframe. It told Mr AB that, if he decided to take legal action in the same way that a person could appeal against the conduct of a standard driving test, he might consider taking legal advice first.

Court action: Mr AB asked his local Magistrates' Court to issue a summons to the DVSA under section 133 of the Road Traffic Act 1988 (s.133 RTA 1988) and it did so. The basis of his claim was his contention that the standards check had not been properly conducted, resulting in an incorrect grading. The DVSA told Mr AB that the court could not overturn or alter the test result and, as no test fee had been levied, could not order a refund either. There was no point, therefore, in court action. The DVSA made a similar representation to the court. After a hearing date had been fixed, the DVSA argued to the court that the Magistrates' Court did not have jurisdiction to deal with Mr AB's complaint. The essence of this argument was that s.133 RTA 1988 limited the power of the court to refund a fee paid for an examination. As no fee had been paid, the DVSA argued in a representation it described as the "knockout blow", that the court had no jurisdiction. The DVSA also expressed concern that court action could open the floodgates to pointless and resource-consuming legal action. In addition, the DVSA argued strongly against Mr AB's criticism of the conduct of the test and cautioned him that costs could be in the region of £8,000. Mr AB decided to withdraw his appeal in light of the cost estimate.

When the withdrawal of the summons was considered by the Magistrates Court, the court agreed with the DVSA's argument that it had no jurisdiction to deal with the appeal as it could not order that a fee be repaid. Mr AB complained that the DVSA had intended to punish him as an example to other ADIs who might consider appealing. He said it had been the DVSA that had advised him that he had a right of redress in court only to argue the opposite when the matter approached court.

ICA outcome: The ICA considered first whether his terms of reference permitted consideration of the matter given the lateness of the referral and the nature of the complaints. In considering the case for review, he also considered that the wording of his terms of reference precluding any matter where *'only a court, tribunal or other body can decide the outcome'* did not prevent him from reviewing this case as there was scope for an ICA review to consider some aspects of the standards check. He decided that a review was justified given the issues of principle and policy that were raised, and the factors that led to the court hearing not being effective. The ICA, who was advised by a previous ICA who is a lawyer, expressed the view that the Magistrates' Court did have jurisdiction under s.133 RTA 1988 to determine

whether a standards check had been properly conducted. In his view, an ADI could therefore approach a Magistrates' Court to rule on the question of whether a test was properly conducted and he concluded that the DVSA should inform ADIs of their right to do so. The ICA therefore felt that the court had been wrong to tell Mr AB that it had no jurisdiction.

In looking at the complaints about the test, the ICA upheld Mr AB's complaint (supported by his pupil's evidence) that the test had taken under the prescribed hour. He recommended that the DVSA should apologise for abbreviating the test; however, on the evidence to hand, he could not conclude that the length of the test had affected the outcome. He could not, therefore, comment on the overall B grade. He also recommended that the DVSA should be clear about how long the test should be, and put in place measures to ensure that the start and end times are recorded contemporaneously.

The ICA expressed surprise that the DVSA had allowed its lawyers to argue that the court's jurisdiction was somehow linked to the power to order that a fee is refunded. He did not uphold the complaint that Mr AB had been misadvised of his right to appeal to the Magistrates' Court. However, he criticised the DVSA for approving submissions to the court that ran contrary to earlier correct advice to Mr AB that the Magistrates' Court had jurisdiction. Having encouraged Mr AB to appeal in the first place, the ICA judged that it was wrong for the DVSA to claim that this avenue did not exist.

The ICA was told by the DVSA that it had not encountered any other Magistrates' Court which had decided that its s.133 jurisdiction depended on the payment of a fee. The ICA therefore expressed surprise that the DVSA's official guidance had been altered, and reference to the appeal right omitted, on the strength of this single case that had not even progressed to a full hearing. Since the DVSA had now accepted that this was an erroneous view, he recommended that the Agency amend the official published guidance (ADI1) as soon as possible to reflect this position. He partially upheld the complaint.

A complaint that an MOT pass was issued falsely by a garage that had damaged a vehicle

Complaint: Mr AB complained that the DVSA had failed to take appropriate steps after he reported that a garage had falsely issued him with an MOT pass certificate for the motorhome in which he was living and travelling around the UK. Mr AB alleged that the garage had damaged his suspension and brakes to the extent that his vehicle should not have passed the MOT. Mr AB blamed the garage for the fact he was later caught speeding, and for damage to his vehicle that occurred over the following months that he attributed to the 'bodged' repair work. Mr AB argued that he was entitled to a free MOT from the DVSA, and he lambasted the Agency in increasingly heated correspondence about its refusal to fund an MOT.

Agency response: The Agency's vehicle examination team declined to inspect the motorhome in the weeks following Mr AB's report. Mr AB was told that the faults

would not amount to test fails, and that the Agency was unsure if they had been in situ at the time of the test. It also denied that it offered a free re-test service, suggesting that Mr AB had done work on the vehicle after the test.

ICA outcome: The ICA noted that the published guidelines on 'inverted appeals' (i.e. appeals against test passes) were absolutely clear that a vehicle would be re-checked by the DVSA where its keeper alleged an inappropriate test pass had been issued. There was nothing in this published guidance or on the relevant form that stated that vehicle inspectors would conduct a pre-assessment to establish whether a re-check was worthwhile. The ICA therefore concluded that Mr AB was correct to expect a re-check, and he recommended that the DVSA revisit its published guidance to ensure clarity about the process in future. The ICA also upheld the complaint that Mr AB had not received clear rationales for the DVSA's decision-making during his correspondence with the Agency. In particular, the Agency had stated that he had undertaken work on the motorhome after the test when he had clearly stated the opposite throughout his correspondence. The ICA recommended that Mr AB should have the cost of an MOT paid to him - plus a consolatory payment of £100 given the effort he had invested in the complaints process. The ICA was, however, critical of the tone and content of much of Mr AB's correspondence. The ICA emphasised in his conclusions that the DVSA's interest in reports of inappropriate MOT outcomes was purely regulatory, and that Mr AB needed to address his complaints about workmanship elsewhere.

(ii) Motorcycle complaints

Cancellation of motorcycle tests (#1)

Complaint: Mr AB, who runs a motorcycle training company, complained that he had wrongly been sent a warning notice about the number of tests cancelled at short notice. He also said that DVSA staff had wrongly interpreted what was said in the Trainer Booking Agreement.

Agency response: The DVSA had accepted that there had been confusion and apologised for any inconvenience. But it had declined to meet any of Mr AB's costs.

ICA outcome: The ICA said that monitoring the number of cancellations was self-evidently a sensible thing for the Agency to do. Reducing the number of avoidable cancellations is clearly in everyone's interests. However, he had concerns about the way the monitoring had operated. First, while the standard notice sent to Mr AB did invite representations, these were predicated on the DVSA's monitoring having been accurate ("We should be grateful if you could tell us why your business cancelled 20% or more of test bookings …"). The notice did not admit that the Agency could be in error, as had proved to be the case with Mr AB. Indeed, given that the process is completed manually and takes no account of buy-backs, the potential for DVSA error is systemic. Second, the ICA found it very difficult to understand the Agency's calculations, and he was uncertain whether published guidance was correct or not. The ICA said it was evident that the Agency needed

to clarify with the training schools (and perhaps with its own staff) exactly what are the rules governing the triggering of a warning notice. The ICA made four recommendations (including an ex gratia payment to Mr AB) and suggested that his findings were shared with those in the Agency charged with reviewing the trainer booking scheme and monitoring arrangements.

Cancellation of motorcycle tests (#2)

Complaint: Mr AB is the owner and principal instructor of a motorcycle training school. He complained about the unavailability of the motorcycle manoeuvring area (MMA) at the local multi-purpose test centre (MPTC) as a result of moss on the track, and the unavailability of examiners. He said he had lost trade as a consequence.

Agency response: The DVSA made a without prejudice offer of £2,500.

ICA outcome: The ICA conducted a detailed review. He could not judge the technical aspects of the complaint (how often the MMA should be inspected and treated, for example), but closing the MMA because moss rendered it unsafe could not be considered maladministrative. Nor could the staff shortages have been predicted and measures had been taken to mitigate them. However, the ICA could not discern much logic in the sums offered successively to Mr AB. The ICA recommended that Mr AB be invited to provide further evidence of the tests cancelled so that the DVSA could judge if the sum offered should be amended. He also recommended that the DVSA develop a reimbursement policy to cover the unavailability of test centres.

Cancellation of motorcycle tests case (#3)

Complaint: Mr AB, who trains motorcyclists, complained that an unfair change in the DVSA's provision of motorcycle tests resulted in a reduction of test slots to the remote island area where his business is based. He complained that all of his tests in December 2015 and January 2016 had been cancelled, effectively shutting him down. Alternative slots in that time were, he argued, unfairly allocated. He argued that the DVSA's alternative arrangements (in particular re-allocations to a different centre) were inadequate. He also complained that his correspondence and questions had not been responded to in a convincing or timely way by the DVSA. He sought full compensation for his losses.

Agency response: The DVSA responded to Mr AB's initial complaint by deploying a new examiner. However, that examiner's availability unexpectedly ended, resulting in a string of cancellations and reallocations of test slots to the mainland. The test slots that were made available were not always bookable through the DVSA's system.

ICA outcome: The ICA noted that the problem of examiner availability had been multi-factorial; individual employee availability, seasonal variation, recruitment problems, industrial action and a national increase in demand had each contributed.

The ICA understood why the DVSA had re-allocated tests to an area where the lower transport overheads would make more slots available. However, he accepted that training schools reliant on test centres serving remote areas were particularly vulnerable to reductions in examiner availability. He commented that a consistent failure to provide sufficient examiners could be regarded as maladministrative if the situation was endemic, and the Agency had taken no actions to mitigate the problems caused.

However, the ICA found that the measures taken by the DVSA were reasonable. These included, in the short term, staff redeployment and the re-scheduling of tests to alternative centres. And in the medium/long term, examiner recruitment and training had been stepped up. The ICA did express concern about the robustness of the contingency plans put in place by the Agency. It had seemed that booking arrangements into the available slots had been ad hoc and lacked transparency. He upheld Mr AB's complaint partially - to the extent that the Agency had made insufficient arrangements to manage the allocation crisis. But he did not regard the differential impact of examiner shortage on remote training centres as something that it fell to the DVSA to correct. He recommended that arrangements should be reviewed with the aim of better addressing business-specific needs, improving transparency and demonstrating fairness. Given the difficulties Mr AB had faced as a result of deficiencies in the DVSA's communications and arrangements for reallocated tests, the ICA recommended that a sum of £500 should be paid to him.

The right to ride large motorcycles

Complaint: Mr AB complained in regard to motorcycle tests he took in November 2009 and February 2010. Mr AB had understood that the certificates he gained on passing those tests enabled his licence to be automatically upgraded to an unrestricted bike licence after two years.

Agency response: The DVSA said that the bike on which Mr AB had taken both tests was a category A1 bike; only if a candidate passed their tests on a category A2 bike would the restriction be automatically lifted.

ICA outcome: The ICA had great sympathy for the position in which Mr AB had found himself. He had been given partial or misleading information by a number of parties. However, the ICA had obtained the Certificate of Conformity (CoC) from elsewhere in the DfT and this showed categorically that Mr AB was not entitled to ride large motorcycles and, if he wished to do so, he would have to take another test. The ICA made two recommendations: a consolatory payment of £100 in recognition of the fact that one of the DVSA examiners had completed the pass certificate incorrectly; and the DVSA to establish new procedures such that the Agency rather than a complainant would be expected to obtain the relevant CoC.

(iii) Driving test complaints

A candidate fearing a fourth driving test with the same examiner

Complaint: Mrs AB complained that her son had the same practical driving test examiner on three consecutive occasions when he had failed his test. Her son felt disadvantaged and treated unfairly to the extent that he cancelled his fourth test. Mrs AB was also concerned that the outcome of her son's third test was wrong as the examiner had over-reacted. Mrs AB sought a refund of the third test fee and a guarantee that her son would be allocated a different examiner next time. She also wanted to know that the system ensuring the random allocation of examiners would be reviewed.

Agency response: The DVSA explained that its allocation system is random and is kept that way to preserve its integrity. The allocation of the same examiner to Master AB's tests on three occasions was completely coincidental. In the last test, he had started to steer too early in the reverse parking manoeuvre, risking hitting a parked car.

ICA outcome: The ICA had no reason to doubt the Agency's account that Mrs AB's son received a randomly allocated examiner on each occasion; in the small test centre concerned, it just happened to be the same examiner. The ICA accepted the DVSA's explanation that the practicalities of guaranteeing a different examiner to candidates are insurmountable. As there had been no failure of service by the DVSA in relation to examiner allocation, the ICA did not make a recommendation. He asked that, if Mrs AB's son were allocated to the same examiner again, the DVSA should assure him prior to the test that his past performances and his complaint would have no bearing on his assessment on the day. The ICA was unable to adjudicate over the dispute over the third test. He did not uphold the complaint.

Inappropriate disclosure by an examiner of a candidate's past test performance

Complaint: Mr AB complained that a driving examiner assigned to two driving tests he had failed had disclosed information about his failing tests to their son. The son, who knew Mr AB socially, passed this information to others causing embarrassment to Mr AB.

Agency response: The DVSA did not make a clear admission in the first instance, stating that if the disclosure had been made it would not have been more than once. In response to further complaints and questions, the DVSA re-investigated and told Mr AB that no details had been provided but that the examiner was sorry for the upset caused. The DVSA refused to reveal details of any disciplinary action taken. The complainant argued that his confidence levels had been affected by the disclosures, and increased anxiety had undermined his performance in tests.

ICA outcome: The ICA criticised the DVSA for its hedged account of its examiner's conduct, and for never clearly and unconditionally apologising for the obvious breach of policy. The ICA found that the DVSA's responses had been biased against Mr AB, with much weight being been afforded to the examiner's past high standards and little credence given to the impact on Mr AB himself. He did, however, conclude that proportionate action had been taken, and he endorsed the DVSA's position that it could not disclose that action for employee confidentiality reasons. Mr AB should not have had to push his case to ICA stage before he received a clear apology and acknowledgement that his complaint was justified. The ICA recommended that Mr AB should receive an unconditional apology and a payment of £250 to reflect the DVSA's regret at the embarrassment caused by the disclosure of information.

Conduct of a driving test examiner

Complaint: Mr AB complained about the outcome of a practical driving test. He said that the examiner had touched equipment in the vehicle and that this had set the tone for the test as a whole.

Agency response: The DVSA had accepted that the examiner had touched the equipment and should not have done, but said this had not affected the resulted - Mr AB had committed serious faults.

ICA outcome: The ICA discovered there was no written rule that the examiner had breached, but that examiners were instructed during their training not to touch anything in the test vehicle without permission - unless this was for reasons of personal safety etc. At the ICA's invitation, the DVSA agreed to refund the test fee.

Alleged racial discrimination in practical driving tests

Complaint: Ms AB complained about the outcome of two practical tests. She also alleged racial discrimination.

Agency response: The DVSA had conducted its standard procedures for such complaints. It had declined to offer a refund or free re-test.

ICA outcome: The ICA noted that there had been good customer service on the part of the DVSA in approaching the candidate's instructor on her behalf as she had no credit on her phone. He also said there was nothing that suggested the tests had been unfair - the contemporaneous DL25s (driving test report forms) reflected what the Agency had subsequently told Ms AB. The ICA noted that the DVSA had not responded specifically to Ms AB's allegations of racial discrimination, and he assumed the Agency had treated them as remarks made in the heat of the moment. However, the ICA said it was arguable that all such allegations should be properly recorded and investigated, and he invited the DVSA to consider whether its current approach was in line with best practice.

Improving the monitoring of equality objectives

Complaint: Mr AB complained about the outcome of his wife's practical driving test. He alleged that her failure to pass was the result of improper discrimination by the examiner.

Agency response: The DVSA had conducted a standard review (albeit without involving the area office manager). It said that there was no evidence of discrimination and stood by the result.

ICA outcome: The ICA was faced with the familiar dilemma of not being in a position to know what happened in the car on the day in question. He could not uphold the complaint. However, the ICA again encouraged the DVSA to increase the proportion of candidates who declare ethnicity so that the published figures (which consistently show a lower pass rate for BAME candidates) can become more meaningful.

HGV practical tests

Complaint: Mr AB complained about the outcome of two practical tests for a category C (HGV) licence.

Agency response: The DVSA said it believed the tests had been conducted properly, and had conducted its normal inquiries.

ICA outcome: The ICA could say little or nothing about the markings given by the two instructors. But while there had been some good practice by the Agency (offering a meeting with the local driving test manager (LDTM) and speaking with Mr AB by phone), the ICA also identified that some correspondence had been overlooked or not actioned. He recommended an apology for those flaws and for any outstanding issues to be rectified.

Vocational driver training

Complaint: Mr AB, a professional driver, complained that his training provider had not updated records of his CPC (Certificate of Professional Competence) training onto the official database. He said the DVSA needed to 'regulate' the training providers with far more scrutiny.

Agency response: The DVSA said that, without sight of the certificate, it was unable to update the training hours Mr AB said he had undertaken.

ICA outcome: The ICA asked for inquiries to be made of the employer and training provider. These showed no evidence of Mr AB's attendance at CPC training. The ICA concluded, on the balance of probabilities, that no such training had been undertaken and did not uphold the complaint. However, he felt that, had the DVSA undertaken its own inquiries, the complaint could have been answered more robustly at an earlier stage. Instead, each of its responses in effect repeated what

had been said before. Each defended the Agency's position; none engaged with Mr AB's argument that the DVSA itself had responsibilities.

A complaint that the practical test route was unfair

Complaint: Mr AB, an ADI, complained that part of the route used for a practical driving test was unfair. In the earlier stages of his complaint he had asked for a refund of his pupil's fee. In the latter stages, he complained about a failure to apologise for having been given incorrect information about the removal of a one-way sign.

Agency response: The DVSA said that the route was fair, and that part of the purpose a test was to see how a driver coped with changes in circumstances.

ICA outcome: The ICA partly upheld the complaint in respect of the failure to apologise promptly for the incorrect information Mr AB had been given (it had been given in good faith, but was untrue). He did not uphold the complaint in respect of the route used on the day in question.

Well-handled re-deployment of tests to a refurbished centre

Complaint: Miss AB complained that the DVSA had failed to provide enough information to candidates and instructors about the date at which its test centre 'A' would re-open. In addition, Miss AB complained that the measures put in place to re-deploy tests to and from centre 'B' during the refurbishment had created unfairness to her. This unfairness had consisted of a limit on test appointments. This meant that when she attempted to change her test date the soonest alternative offered was four months hence. She proceeded with the booked test despite not feeling ready to pass it.

Agency response: The DVSA responded with increasing detail at each of the three stages of its complaints procedure. Comments were obtained from the deployment manager in Newcastle as well as the local driving test manager who had overseen operations at a local level. The DVSA concluded that its communications in relation to re-deployment had been of a reasonable standard. The DVSA explained in detail why it had limited tests in the period where deployment back to centre A was expected and apologised for the inconvenience.

ICA outcome: The ICA found that the main discrepancy highlighted by Miss AB in the DVSA's explanation of its communications had arisen from a typographical error rather than the DVSA's story changing. If anything, the ICA felt that the DVSA's explanations had underplayed the amount of work its local test centre manager had done to publicise the move back to centre A. The ICA did not agree with Miss AB that it fell to the DVSA to remedy any additional stress or challenge to candidates created by a change in the expected or preferred venue of the driving test. Its overall approach was based on the principle that drivers were being tested for their ability to cope in varied and unpredictable conditions. The corollary was that the location of the test centre was not a factor the Agency could regard as relevant.

The ICA did not uphold the complaint, and did not judge that the DVSA should reimburse Miss AB's test fees or change its policy for managing the redeployment of tests.

Delay in refunding the cost of a cancelled driving test

Complaint: Ms AB complained that it took the DVSA over five months to refund her son's driving test after it was cancelled because the examiner was ill. A goodwill cheque for £20 had then been sent in the wrong name.

Agency response: The DVSA had apologised. The number of refunds had mushroomed following industrial action by examiners that resulted in many more cancelled tests.

ICA outcome: The ICA said he could sympathise with the Agency, but having to wait five months for a refund was simply unacceptable. He felt the goodwill gesture was not generous, but not so low that he could properly recommend it be increased. He recommended an apology from the chief executive plus a review into the affair to ensure customers were treated consistently and that the DVSA had the resilience should further industrial action have similar effects.

DVSA's right to protect its staff from abuse

Complaint: Ms AB complained that the DVSA had said that her future practical driving tests would be observed by a senior examiner and that, in consequence, she could not use the online booking system.

Agency response: The DVSA said that Ms AB had sworn at the examiner, and been asked to desist by her own instructor. It said it had a duty to protect its staff against abuse.

ICA outcome: The ICA said he could identify no maladministration on the part of the DVSA. Ms AB had provided various accounts of her actions, but now said she had been depressed, had apologised, and that there would be no recurrence. The ICA took the view that, notwithstanding what Ms AB now said, the Agency was entitled to protect its staff against the possibility of abuse. This was inconvenient for Ms AB but was the direct consequence of her own actions, however much she might now regret them.

'Coaching' by an instructor during a practical test

Complaint: Mr AB complained about the circumstances leading to the early cessation of his practical driving test. The examiner had ended the test on the grounds that Mr AB was being 'coached' by his instructor who was sitting in the back of the car.

Agency response: The DVSA had carried out its normal enquiries of the LDTM. It said it had been presented with two different accounts of the same events, but was content the examiner had been right to stop the test when he did.

ICA outcome: The ICA had some sympathy for Mr AB in that he appeared to be being disadvantaged as a consequence of the actions of his instructor. However, there was no way the ICA could choose between the conflicting accounts, and it was not maladministrative of the DVSA to say that the test fee was forfeited and not to offer a refund or free re-test.

5. Highways England casework

5.1 The total of 24 Highways England cases we received in the year, although only 9 per cent of our cases overall, represents a significant upturn. Some of this increase is in all likelihood attributable to improvements in the way Highways England now records complaints under its new procedure.

5.2 However, 18 cases were upheld to some extent (75 per cent), and a higher proportion (21 per cent) were fully upheld than was the case for any other delivery body.

5.3 The subject matter of Highways England complaints was as follows:

- Dart Charge (7)
- Traffic management (5)
- Land disputes (3)
- Statutory vehicle removal (2)
- Vehicle damage caused by road conditions (2)
- Damage caused by road works (1)
- Unsafe road works (1)
- Other (3)

We would add that complaint handling came up as a secondary area of concern in many of the cases we reviewed.

5.4 The average completion time for Highways England cases was seven hours and ten minutes, almost an hour and a half longer than the average for the other delivery bodies. This relates to the fact that Highways England cases are very varied in content, and more likely to turn on technical matters, than is the case for most other DfT delivery bodies.

5.5 We benefited during the year from a meeting held with those officials responsible for the Dart Charge. An important outcome from our involvement in Dart Charge complaints is that Highways England now accepts that there are occasions, consistent with HM Treasury advice, when customers are entitled to receive a consolatory payment. Some of the case studies we present below preceded this change of position.

5.6 As noted above, the company has revised and simplified its complaints procedure. The involvement of the company's many contractors and those responsible for operations in complaints is often exemplary. The company may care to consider if there should be a closer fit between its Customer Contact Centre and the central complaints function.

5.7 We now set out the details of some of our Highways England casework.

(i) Dart Charge

A car mistaken for a lorry

Complaint: Mrs AB complained about the enforcement action taken by Dart Charge. She said that she had reported that her car had been mistaken for a Romanian lorry, but still the penalty charge notices (PCNs) were issued and other enforcement action taken. Eventually she instructed lawyers, but despite acknowledging its mistakes, Highways England declined to pay any compensation, citing the Treasury document: *Managing Public Money*.

Company response: Highways England accepted mistakes had been made, but continued to assert it would not compensate Mrs AB.

ICA outcome: The ICA said this was some of the most serious maladministration he had ever come across. Mrs AB had been sent over 50 PCNs, plus 19 Penalty Charge Certificates, and six forms TE3 (Order for recovery of unpaid penalty charge). All this enforcement action was in error. He upheld the complaint in the strongest terms, recommending apologies and the payment of £600 in compensation and £100 as a consolatory sum.

Remedy and reimbursement refused for a customer wrongly ticketed by Dart Charge

Complaint: Mrs AB complained that, after being wrongly ticketed by Dart Charge, it took Highways England months to respond to her appeal; at which point it refused to reimburse her costs. She also complained of rude service from a contractor working for Dart Charge, and delays and unsatisfactory responses in the complaints correspondence.

Company response: Highways England accepted that the PCN had been incorrectly issued, and that the customer service representative who had spoken to Mrs AB had been rude. It referred the matter to its contractor to put right. Highways England refused to reimburse Mrs AB's costs or to make any payment by way of consolation, once more citing *Managing Public Money*.

ICA outcome: The ICA noted that none of the published information made clear the legal provision that Highways England had to respond to a representation against a PCN within 56 days. He regarded much of Mrs AB's complaint as arising from her understandable anxiety about the status of her representations. During this period she had a potentially escalating fine hanging over her. The ICA upheld the complaint that Highways England should have reimbursed Mrs AB's postage costs in appealing against the PCN. He also pointed Highways England to the provisions of *Managing Public Money* that clearly allow for consolatory payments to be made. He found that the poor administration in this case was sufficient to justify a £50 consolatory payment to Mrs AB. The ICA did not, however, uphold the complaint that Highways England had been tardy in its responses. He recommended that information about the statutory 56-day timescale for responses to representations

should be written into the PCN documentation, and made available online, so that customers would be aware of where their case sat. He also recommended that the process for appealing against a Dart Charge PCN be made clearer on the Gov.uk website, as his own experience of testing it had been less than satisfactory.

Remedy for aggressive and misdirected enforcement action

Complaint: Mr AB complained that Highways England refused to make a consolatory payment in recognition of the distress and inconvenience caused to him and his wife when an enforcement agent threatened him aggressively about a Dart Charge fine. He said the whole enforcement case against him was misdirected, due to an error by Dart Charge that was not identified and rectified until he complained. He asked for £500 to reflect the very unpleasant experience he and his wife suffered as a result.

Company response: Highways England apologised for the error that had resulted in a removal notice being served by the company's enforcement agents. The company outlined the steps that had been taken to prevent a recurrence. Mr AB's concerns about the enforcement agent were to be passed on to his company. Highways England accepted that its service had fallen below the required standard, but stated its position at the time that, as a wholly Government-owned company, it did not routinely make financial remedies. It maintained this position in its second stage correspondence.

ICA outcome: The ICA was satisfied that steps had been taken to remedy the fault that had led to Mr AB being pursued in error for a substantial fine. In addition, Highways England had done what it could to ensure that the enforcement company took action to prevent a repetition of the inappropriate and aggressive treatment he described. The ICA disagreed, however, with Highways England's position that it could not pay a consolatory sum, and recommended that the guidance for its staff handling complaints be amended to bring it into line with other DfT delivery bodies and national guidance. The ICA was pleased to be informed that the enforcement company had made Mr AB a payment of £500 in recognition of its agent's poor behaviour.

Sympathetic handling of enforcement triggered by an error by a third-party operator

Complaint: Mr AB paid for two Dart Charge crossings in a Payzone outlet. Due to an error by the Payzone operator, the registration of his vehicle was not entered correctly into the system. Seven weeks after he had made the crossing, Mr AB was issued with a PCN that he immediately contested. After further correspondence from Mr AB over the following two months, Dart Charge confirmed that it was cancelling the PCN. The correspondence from Dart Charge contained numerous typographical errors and did not refer to the complaint from Mr AB. Over the following year, Mr AB insisted that references to his breaking the rules were insulting and incorrect. He also complained that the collection of charges was inefficient, and of other discrepancies in the administration of the scheme. He

sought financial compensation for the stress of his dealings with Dart Charge and Highways England.

Company response: After a shaky start, Highways England addressed Mr AB's queries in a courteous and helpful manner. The company held the line that the originating error had resided with Payzone. It said it was not therefore the responsibility of Highways England, whose systems had correctly identified that crossings had occurred that could not be matched to payments and then cancelled the enforcement on realising that Mr AB had paid.

ICA outcome: The ICA did not agree with Mr AB that Payzone was an extension of Dart Charge and should be regarded as indivisible from the company. He did not hold Highways England responsible for the distress Mr AB suffered, or for the inconvenience arising from the extended correspondence that he had initiated and maintained. He agreed with Mr AB that the following measures should be taken forward by Dart Charge:

- The time between the crossing and ticketing should be reduced to a matter of days rather than weeks;
- The time between the serving of a representation and a written response by Dart Charge confirming its cancellation should be reduced to a few weeks, at most;
- The PCN itself should clearly explain the legal provision that the absence of a response from Dart Charge within 56 days of the receipt of a representation means that the representation is deemed as accepted (and the PCN cannot be enforced).

The ICA was pleased to note the steps that Highways England had taken to improve the quality of communication with its customers.

Finally, the ICA was concerned that the file he received from Highways England did not contain many key parts of the correspondence. His request to Highways England for the full file had been fruitless and had necessitated Mr AB sending him his original papers. He recommended that Highways England take the necessary steps to ensure that – should any other Dart Charge customer have their case referred – the ICAs receive the full Dart Charge file, including the PCN, all the customer's correspondence, and responses from each part of the company (and if applicable, its contractor) to the complaint.

A dispute about bailiff involvement in expensive escalated enforcement

Complaint: Mr AB complained after a car registered to his wife accrued escalated Dart Charge enforcement charges in excess of £1,000 for nine crossings. His son, who was dyslexic, had been unaware that a charge was due. The car was registered to a previous address and it was not until the new residents contacted Mr AB that he realised what had happened. His son's fiancée, Ms CD, settled eight of the nine charges but could not pay the ninth as it had been referred to bailiffs. Mr AB argued that she had been denied an opportunity to settle the ninth before the bailiff visited

his former home. He therefore requested a refund of the bailiff's costs. He also complained that the bailiff had been intimidating and inappropriate with the occupants of his former address. Under duress, his wife had settled the final crossing charge by telephone; this had come to £450. Mr AB accused the Dart Charge officer who had dealt with his son's fiancée of lying about why he would not provide details of how to pay the ninth charge.

Company response: Dart Charge set out the basis of its enforcement regime and provided Mr AB with details of each crossing that had been paid. It did not, however, assure him about the payment that Mrs AB had made to the bailiffs until its second stage response. It explained that payment for the ninth crossing fine could not be accepted by Dart Charge because it had been escalated to bailiffs. It told Mr AB that it had no concerns about the bailiff's attendance.

ICA outcome: The ICA pressed Dart Charge for details of why it was relaxed about the bailiff complaint. Eventually, Highways England provided the ICA with an account of the visit and stated that it had been uneventful. Through the ICA, Highways England set out the regime it applies to its contract with the bailiffs to ensure that they work ethically and appropriately, within their framework. The ICA recommended that in future Highways England provide details about the outcome of enquiries of bailiffs triggered by complaints, and also tell customers of the assurance framework that applied. The ICA noted that the enforcement regime was predicated on keepers maintaining up-to-date address details on the DVLA's register. The fact that the car register was out-of-date was the root cause of the escalation. Also, the policy of Dart Charge referring debts to bailiffs (and then declining to accept settlement) was something that the ICA could not criticise. The ICA noted that the bailiffs would have checked the DVLA vehicle register before conducting the home visit that occurred two weeks after Ms CD had paid eight of the fines. Even at that late stage, there had been an opportunity for the address to be updated on the DVLA register so that the enforcement was directed correctly.

The ICA agreed with Dart Charge that it should have systems in place to inform customers which of its three bailiff firms their case had been referred to. He also felt that the second Dart Charge officer that had dealt with Mr AB's son's fiancée could have been more helpful. The ICA did not conclude that Dart Charge had lied in its handling of this matter, but he was critical of the way the complaint had been handled. He recommended that a consolatory repayment of £100 should be made to Mr AB to reflect this.

(ii) Other Highways England cases

Thorough and customer-focused responses to a person's claim for a fence

Complaint: Mr AB complained that Highways England had failed to provide a fence of sufficient quality between his home and the nearby highway. He pointed to legal documents that showed that the company had a responsibility to erect a fence on the site. He argued that the company should depart from its standard policy of not taking on responsibility for boundary fencing.

Company response: Highways England referred Mr AB's concerns to its service provider for the area, and its legal team, for investigation and advice. A site visit was undertaken and land registry maps and conveyancing documents were scrutinised in detail. Highways England told Mr AB that boundary fences were generally not its responsibility. However, it did establish through investigation that it was historically responsible for the maintenance of a fence in the area. The problem was that the location of the fence would be irrelevant to Mr AB's request, given the position of the highway and Mr AB's home. It would have done nothing to mitigate noise or the risks that he had highlighted in his complaint. Highways England's legal advice was that there was no purpose in erecting such a fence.

ICA outcome: The ICA examined the complete Highways England file along with documents provided by Mr AB's MP's office, totalling well over 300 pages. He also examined the site using Google Earth as recommended by Mr AB. He found nothing in the file or in the correspondence to call into question the position provided to Mr AB by Highways England. The duty to erect a fence on the part of the Secretary of State for Transport was, as Highways England had established, irrelevant to Mr AB's circumstances. The ICA saw much to praise in the way that staff had kept in touch with Mr AB, and had liaised closely with other providers and within the company to answer questions. While there were a few aspects of the handling of the complaint that could have been better, the ICA did not judge these significant. He did not uphold any part of the complaint.

Disruption caused by major road works

Complaint: Ms AB complained that about poor health, loss of sleep and distress caused by the noise and other disruption from major road works being carried out close to her home.

Company response: Highways England had acknowledged that there had been noise and disruption, but had explained the mitigation measures it had taken. It said there was no right to compensation in these circumstances.

ICA outcome: The ICA upheld the complaint about noise, since it was manifest that Ms AB had suffered distress and lack of sleep. However, he did not believe the company had acted maladministratively. The company had the power and responsibility to maintain the highway, and was right to say there was no statutory entitlement to compensation. It was also not maladministrative to conclude that a non-statutory scheme would not be a good or appropriate use of public money. The ICA found there had been some delay in responding to Ms AB's emails, but other aspects of its complaints handling (in particular, offers of face to face meetings) had been good and deserved credit. Despite the ICA upholding the complaint, he did not feel he could offer further redress beyond the findings of his report.

A tree blows down …

Complaint: Ms AB complained about damage to her property when a tree was blown down from an adjoining wood. She had encountered considerable difficulty ascertaining who owned the wood and was therefore responsible for the damage.

Company response: Highways England had apologised for the delay in resolving the matter and for the initially misleading information Ms AB had been given.

ICA outcome: The ICA upheld the complaint in full. Although some of the handling had been good, there had also been delay and misinformation. In addition, Ms AB's request for an ICA referral had been mishandled and was maladministrative.

An unexpectedly steep charge for the statutory removal of a horse carrier

Complaint: Mr AB had been driving a horse carrier back to England after a period of military service in Germany. In the vehicle were three horses as well as Mr AB, his son, and his dog. His wife was driving ahead. Mr AB complained that, after a breakdown which involved the loss of nuts securing one of his wheels, he had been advised by Highways England traffic officers attending the scene that the statutory recovery of his vehicle from the hard shoulder of the motorway would cost in the region of £150-£450. In the event, he was shocked to be billed over £3,000, although this amount was reduced to just over £2,000 when Highways England intervened and pointed out to the recovery agency that the vehicle was unladen at the towing stage.

Company response: The company's investigation included communication with the traffic officers who had attended the scene. They were clear that they had not quoted a price range for statutory removal. It was explained that statutory removal fees were set in legal regulations and the correct sum had been charged.

ICA outcome: The ICA considered that the company's investigation had been inadequate given the vague account from the traffic officers of what had been said at the scene. Given the extent of the unexpected charge applied to Mr AB, the ICA felt that a detailed account should have been taken. He therefore interviewed one of the traffic officers by telephone. Given this and the other evidence, the ICA was unable to reach a firm conclusion about what had been said at the roadside. On the one hand, it was clear that the tariff of charges that was known to the traffic officers could not encompass a charge as low as the £150 cited by the complainant. On the other, the ICA accepted that Mr AB had cancelled his original plan for his wife to summon a recovery service on the basis that statutory recovery would not be excessively expensive. The ICA was critical of the company for not addressing Mr AB's complaint that the damage to his vehicle did not meet the category of 'substantial' that triggered the very high charge levied on him. However, the traffic officer confirmed that his evaluation of the severity of the damage was the same as that of the recovery company. The ICA did not therefore find that Mr AB had suffered hardship as a result of the inadequacies in the handling of his complaint. He did

recommend, however, that Highways England should take steps to improve its evidence gathering during complaint investigations.

Poor handling following a complaint about Smart Motorways

Complaint: Mr AB complained about the way a speed restriction governed by the Motorway Incident Detection and Automatic Signalling (MIDAS) system had changed very rapidly. His complaint also raised questions about Highways England's complaint management.

Company response: Highways England had explained that the speed restrictions were in consequence of two road traffic accidents further ahead on the motorway.

ICA outcome: The ICA said that the MIDAS system and the extent to which it assists or imperils road safety were not within his jurisdiction. Nor could he offer a technical assessment of how MIDAS works in practice. However, he was able to look at Highways England's complaint handling, which he found had been sloppy at times and which might point to a training need. Responses had been outside time targets and had not consistently addressed the points that Mr AB had raised. The customer contact centre could probably have dealt with the matter without the need for any correspondence. The ICA recommended an apology to Mr AB and that a copy of his report be shared with the chief executive for his consideration.

Speed limits on Smart Motorways

Complaint: Mr AB complained about the speed limits imposed on a stretch of Smart Motorway. He said there was no apparent reason for them.

Highways England response: Highways England had provided details of how Smart Motorways operate and explained the incidents that had given rise to the speed restrictions.

ICA outcome: The ICA said he could not sensibly comment on the MIDAS system, or on issues relating to data protection. However, he praised Highways England's attempts to resolve the matter informally, but was concerned by other aspects of the complaint handling: a delay and a failure to escalate, and the giving of incomplete information.

A customer infuriated in the first instance by traffic management and latterly by complaint handling

Complaint: Mr AB initially complained that traffic management on the southbound M1 during Smart Motorway works was adding delay and risk to his regular journey. Mr AB made a series of telephone calls to Highways England over a four-month period in which he reported traffic management measures that he said bore no relation to road conditions or road works. These included lane closures, irrational and hazardous speed limits, entry slip road closure and poor signage. Mr AB also complained that the standard wording of the ICAs' acknowledgement letter had

provided him with no opportunity to make telephone contact with us. He regarded this as contrary to the Department for Transport's anticipatory duties under the Equality Act.

Company response: Highways England arranged for one of its contractors to telephone Mr AB and the case was closed on the basis that the call had resolved his complaint. However, Mr AB was expecting a written response. In a series of calls that became increasingly heated, Mr AB raised new complaints about inadequate traffic management and about the failure of Highways England to investigate his concerns properly and respond to him. After the case was referred to the ICAs, he attempted to make contact but was unable to do so because no telephone number was provided. Mr AB complained that Highways England had failed to inform the ICAs of the fact that he suffered from a disability that meant he could not type on a keyboard and relied on telephone contact.

ICA outcome: During a telephone call with Mr AB, the ICA established the parameters of the complaint. In his review, the ICA noted that the duty logs tallied with Highways England's position that the measures had been implemented within the prescribed timeframe in advance of road works. Having listened to all the telephone calls available, the ICA concluded that Highways England's records were reasonable. He found, however, that the company's complaint responses were too high-level and general, and too often repeated a policy position rather than engaging with the specific complaints that Mr AB was making. The ICA recommended that Highways England improve the information it gives to complainants and the visibility of complaints in its systems. He also recommended that Highways England ensure that, when complainants have asked for evidence to support the company's position, that evidence is provided along clear explanations.

As a result of the complaint, Highways England started to provide full complaints files to the ICAs at the stage of referral. This meant that ICA acknowledgements could always take on board complainants' needs and preferences in terms of the mode of communication. The ICA apologised for the difficulties that Mr AB had faced in making contact with him. As a result of his case, the ICAs were issued with telephones by the Department for Transport for text and voicemail contact, and the numbers were clearly provided on all correspondence. In addition, the ICA referral form was adapted to allow referring bodies to set out any special needs or preferences in terms of communication on the part of complainants. Given the failings in the administration of his case, the ICA recommended that Highways England should make a payment of £50 to Mr AB to reflect his criticisms of the company's handling.

An accident caused by flood-water on the carriageway

Complaint: Mr AB complained of uninsured losses he suffered when his vehicle was involved in an accident after hitting flood-water on the carriageway. He said that Highways England's contractors had failed to clear blocked drains. There had been a lack of maintenance that Highways England had failed to monitor properly.

Highways England response: Highways England had sought detailed information from its contractor. It had rejected Mr AB's claim for compensation.

ICA outcome: the ICA said he could not sensibly adjudicate on what had caused the flooding. He had no specialist knowledge and was coming at matters two years after the incident. He said a very thorough review had been conducted by the Claims Officer who deserved credit for her endeavours. Aside from one minor error, there had been no maladministration.

Traffic metering on the approach to the Dartford Tunnel

Complaint: Mr AB complained of poor traffic management in and approaching the Dartford Tunnel, including the unnecessary imposition of traffic light controls on the tunnel approach despite the lack of congestion. Mr AB provided the ICA with a series of dashcam videos illustrating his points that traffic management in the run up to the tunnel did not correlate with conditions in and on the other side.

Agency response: In the local resolution of the complaint, Highways England gave a high-level account of its monitoring of tunnel traffic and resultant 'metering' in the tunnel approach.

ICA outcome: The ICA judged that Highways England's responses were not sufficiently specific to Mr AB's concerns given his early offer of copies of his dashcam footage. The ICA referred the footage to Highways England and incorporated its further comments on each video into his own review. Although the ICA upheld the complaint that Highways England's responses had been insufficient, he did not uphold the overall grievance that its traffic management had created unnecessary delay. He noted that the free flow of traffic through, in and out of the tunnel - that Mr AB regarded as evidence of unnecessary metering - was actually a sign that metering was working well. Highways England's aim was to avoid any congestion within the tunnel, and on most of the occasions highlighted by Mr AB it had been successful.

6. Other DfT and delivery body casework

(i): HS2 Ltd

6.1 We received eight HS2 Ltd referrals this year, one of which, as we have noted, contained 13 sub-complaints. While these eight represent a doubling of all the complaints previously received about HS2 Ltd, the number remains low. However, although representing only 3 per cent of our total referral numbers, the seven cases completed at the time of drafting this report had occupied 11 per cent of our caseworking time.

6.2 There are several reasons for this. First, HS2 Ltd's engagement with people affected by the proposed route of the railway has in some cases spanned many years. Second, property-related transactions are of necessity protracted and there are more opportunities for disputes to arise. Third, such transactions are highly significant for customers given the financial implications, the loss of amenity, and the impact on families, businesses, and the wider community.

6.3 We should emphasise that, under our terms of reference, complaints about professional judgement (for example, property valuations under the Exceptional Hardship Scheme) do not come within our remit. Likewise, we are not an avenue of appeal against decisions made by expert Panels or other tribunals.

6.4 During the year, we enjoyed a most useful meeting with HS2 Ltd and its Residents Commissioner and Construction Commissioner to ensure clarity of role and relative responsibilities.

An unjustified claim for legal expenses accrued during property sale

Complaint: Mr AB complained that HS2 Ltd had unreasonably refused to pay the additional solicitors' fees that arose from its lawyers repeatedly seeking clarification about the land he was selling to the Government through the phase 2 Exceptional Hardship Scheme (EHS). The protracted pre-conveyancing process originated in the fact that two titles existed to Mr AB's land. He argued that HS2 Ltd's lawyers had extended the process of conveyancing through incompetence, and that he should not have to pay the associated costs. He also complained that HS2 Ltd had lied and misrepresented aspects of the land acquisition process, and avoided the essence of his complaint that his costs had been excessive as a result of poor administration. He felt that HS2 Ltd had been inconsistent in its actions and explanations, and asked that the company should pay £888 in recognition of its poor handling of the sale.

Company response: Following Mr AB's complaint HS2 Ltd undertook an investigation, obtaining comments from its lawyers and from the officers involved in overseeing the operation of the EHS. The conclusion was that an offer had been made to pay the legal costs associated with the two titles relating to Mr AB's land. Mr AB argued that HS2 Ltd's agreement to pay the cost of the reversion of the titles into one amounted to a departure from the policy of not funding conveyancing fees

for the vendor. From this, he argued that more of his legal fees should be paid - in recognition that HS2 Ltd's lawyers had misunderstood and mishandled the complexities of the transaction. HS2 Ltd and its lawyers rebutted these complaints and provided further explanations for their handling of the process. Their view was that the root cause of the difficulty was that the plans provided by Mr AB and his lawyer were not sufficient to base the transaction upon. In order to speed the process up at one point, HS2 had paid for plans to be drawn up itself.

ICA outcome: The ICA emphasised that he was not a conveyancing expert, and was not qualified to comment on the merits of the underlying dispute about whether Mr AB's plans were sufficient. The ICA did not find that HS2 Ltd had been particularly inconsistent. Such departures as had occurred from the policy of not paying legal fees to the vendor had been based on the principle of expediting the transaction to everybody's advantage, and to limit the drain on the public purse. This was a completely different use of money than that requested by Mr AB (which amounted to compensation for maladministration). The ICA did not find evidence of maladministration, and such lapses as he did identify in HS2's handling were of no consequence in terms of the outcome. Concluding, the ICA found that HS2 Ltd had conducted a reasonable investigation and that the outcome was congruent with the evidence he had seen. It did not support Mr AB's complaint about lies and maladministration. The ICA did not therefore uphold the complaint.

The Need to Sell (NTS) scheme

Complaint: Mr AB complained that HS2 Ltd had failed to act properly in respect of an offer made and then withdrawn under the Government's Need to Sell scheme. He said that contradictions in the scheme had not been explained, the grounds for withdrawing the Government's offer had not been justified, the decision-making was arbitrary and unaccountable, and there had been unfairness and injustice.

HS2 Ltd response: There had been extensive correspondence. HS2 Ltd acknowledged that it had not had a "settled course of action" to follow, but said the withdrawal of the offer was in line with the guidance on the scheme.

ICA outcome: This was another case at the margins of the ICA's jurisdiction. He did not feel he could operate as an appellate body against NTS decisions, and much of the detail represented Government policy outside his remit. However, the ICA was able carefully to review what had happened in this particular case and made two recommendations to HS2 Ltd - one a detail regarding the complaints system, the other a more significant issue: to consider how best applicants under the NTS could be fully informed of the consequences of continuing to market their property once an offer had been made under the scheme.

Linked complaints about the process for valuing a property under statutory blight provisions

Complaint: Mr and Mrs AB live in a hamlet that is on the proposed route for Phase 1 of the new high-speed railway. They also run a business there. They have two

teenage children. Their own and their neighbours' dissatisfaction with HS2 Ltd's community engagement between 2013 and 2014 was the subject of an Ombudsman investigation that upheld most of their complaints. This triggered further enquiries by the Public Administration and Constitutional Affairs Committee and by Mr Ian Bynoe, a former DfT ICA.

In this case the ICA reviewed the ABs' 2016 complaint that HS2 Ltd was departing from the rules provided in the Compensation Code for compulsory purchase in its handling of their property claim. By way of background, prior to having their blight notice accepted by the Secretary of State in 2015, the ABs had entered into a contract with HS2 Ltd to sell their home. The contract could, if the ABs wished, remain conditional until there was no doubt that HS2 would go ahead. That stage, after Royal Assent, was then expected to be towards the end of 2016. At that point, the ABs would receive 90 per cent of their compensation claims. The contract then enabled the ABs to remain in their home for a further year or so while they built a new property to live and work in. While it could offer no concrete guarantees, HS2 Ltd agreed to defer the completion date if it was able to do so. In 2016, having agreed a value for their land compensation claim of £800,000, the ABs initially complained of delays in having the valuation approved by the Company's Land and Property Panel. They expressed concerns that they were being victimised due to their leading role in publicising poor practice by HS2 Ltd. As the correspondence developed, they added twelve more complaints about inconsistency, the status of their disturbance claim, communications from the agents and many other matters. Their overriding concern arose from HS2 Ltd's attempts to explain what it described as the provisional status of its valuation. The ABs pointed out repeatedly that, under the Compensation Code, the valuation date for their property claim would be the earliest of (a) the date when HS2 Ltd took possession of the land or (b) the date when the assessment was made. They argued that the existing valuation had to be the earlier of the two dates and should therefore stand until completion.

Company response: HS2 Ltd addressed the ABs' concerns over a six-month correspondence, much of which resembled deadlock. At an early stage it agreed that the person conducting the review recommended by the Ombudsman should be wholly independent of HS2 Ltd (Mr Bynoe was therefore appointed). Eventually HS2 Ltd agreed to guarantee to pay the sum agreed in its earlier valuation, despite its reservations that the value of the property could increase over the following year. It offered the ABs opportunities to meet its staff to resolve the points of dispute, but Mr AB felt that this would be futile, as previous meetings with HS2 Ltd had proved to be. HS2 Ltd tried to assure Mr and Mrs AB that staff involved in their earlier complaint were not involved in decision-making about their claims.

ICA outcome: The ICA was not competent to assess the extent to which HS2 Ltd's responses accorded with established conveyancing practice in the context of blight. But he found that opportunities to address complaint responses specifically to the ABs' exceptional circumstances were not taken. In particular, the ICA considered that face-to-face resolution early in the life of the complaint would have offered the best opportunity to resolve matters, rather than linear and sequential exchanges through complaint correspondence. The ICA also found that matters that should, in

the first instance at least, have been referred back to the professionals acting for the parties, instead entered a complaints process that was ill-suited to provide resolution. The ICA upheld the complaint that HS2 Ltd's responses to the ABs' questions and complaints about the application of the Compensation Code had not met the necessary standard of clarity. The ICA also noted examples of good practice, and he did not uphold the complaint that HS2 Ltd's response to the ABs' concerns about victimisation was inadequate. He found that at times the ABs' valid points were not well served by the aggressive and personalised content of some of their letters and emails.

The ICA recommended that HS2 Ltd should:

- Make a consolatory payment of £500 to reflect the fact that it could have fixed the land compensation value at a much earlier stage than it did. The ICA acknowledged that this had caused Mr and Mrs AB considerable anxiety and effort;
- Review the support and guidance it provides to staff who meet with complainants;
- Ensure its Land and Property Panel has its role and terms of reference published; and
- Consider concrete steps to divert conveyancing disputes away from the complaints process; the ICA suggested that it amend its policy accordingly.

The ICA balanced his criticisms with a recognition that HS2 Ltd, in line with the Compensation Code, was paying for professional representation for the ABs at every stage of the conveyancing process. He welcomed its consideration of alternative dispute resolution as a vehicle for resolving disputes that otherwise might progress to tribunal stage. The ICA wished the ABs every success in their undertaking to build a new home and premises to work in following the granting of planning permission in August 2016.

Efforts to involve the Residents Commissioner in a complaint

Complaint: Mr and Mrs AB's first complaint to the ICAs is detailed above. Mr Ian Bynoe audited the measures that HS2 Ltd had introduced to improve its engagement in the areas where the Ombudsman had criticised. These measures included the creation of the post of Residents Commissioner to police the Residents' Charter that focuses primarily on the discretionary compensation schemes administered by HS2 Ltd. Mr Bynoe made recommendations for an increased focus by the Residents Commissioner on complaints.

By the summer of 2016, Mr and Mrs AB had been in dispute with HS2 Ltd for several months about the timing of the valuation of their property that was being bought through statutory blight provisions. They contacted the Residents Commissioner to ask for her involvement in what they felt was a systematic manipulation of valuation dates by HS2 Ltd, in their view calculated to reduce property compensation following the Brexit referendum. The Residents Commissioner suggested that mediation might be of assistance and provided

details of a company specialising in resolving property disputes. She declined to meet Mr and Mrs AB or to involve herself in the complaint. Mr and Mrs AB went on to complain that the Residents Commissioner's response to their approaches had been inappropriate, delayed, misconstrued and indicated a bias in favour of HS2 Ltd. In addition, Mr and Mrs AB criticised the construction of the Residents Commissioner role, characterising it as no more than a 'fig leaf'.

Company response: In her initial response, the Residents Commissioner set out her role and expressed extreme concern about the volume of correspondence between Mr and Mrs AB and HS2 Ltd. She suggested that professional mediation could assist and provided the name of a specialist company. She explained that she could not become involved herself. Further correspondence occurred in which the Residents Commissioner pointed out that the Lands Tribunal offered redress in disputes about blight valuation.

ICA outcome: The ICA agreed with the Residents Commissioner that the Residents' Charter that defined her role did not allow her to become involved in casework. His view was that any involvement would only add to Mr and Mrs AB's frustration as it could offer no substantive perspective or adjudication on their ongoing dispute. The ICA also noted that all of the matters referred to the Residents Commissioner by Mr and Mrs AB had been referred to him in an earlier complaint and that he had provided an independent review. The ICA established that Mr and Mrs AB's complaint about widespread manipulation of valuation dates had not been put forward by any other residents. He also noted that the Residents Commissioner herself had no concerns about HS2's Ltd's stance within the ABs' complaint. He did not see, therefore, that there was any ground on which the Residents Commissioner should have picked up Mr and Mrs AB's concerns through her strategic oversight role. He did not uphold any of the complaints.

He noted that HS2 Ltd had not provided a clear statement about the limits on the Residents Commissioner's involvement in complaints when Mr and Mrs AB had first attempted to draw her in. He also noted that Mr AB was correct that no complaints procedure existed for the Residents Commissioner. He therefore recommended that a complaints procedure to cover the Residents Commissioner and the Construction Commissioner roles should be finalised and published following HS2 Ltd's review of its own complaints procedures. He also recommended that HS2 Ltd should ensure that referrals of complaints to the Residents Commissioner were identified and responded to quickly to avoid the kind of escalation that had occurred in this case.

A complaint about the Exceptional Hardship Scheme

Complaint: Mr AB complained that Mr CD had been treated unfairly under HS2 Ltd's Exceptional Hardship Scheme (EHS). He said Mr CD had been forced to sell his property at a blighted price and sought £133,000 in compensation. He also said that Mr CD had been discriminated against because his medical condition was progressive.

Company response: HS2 Ltd said that Mr CD had made two applications under the EHS but had been unsuccessful. The Secretary of State had decided that retrospective compensation could not be paid except in exceptional circumstances, and had further decided that Mr CD's case was not exceptional.

ICA outcome: The ICA said this was a complaint at the margins of his jurisdiction. The terms of the EHS were a matter of Government policy and he could not comment on the recommendations of EHS Panels and/or decisions taken by the Secretary of State. Minor shortcomings aside, he could discern no maladministration in HS2 Ltd's handling of this matter. His lay opinion was also that there had been no improper discrimination against Mr CD.

A complex dispute arising from a purchase through the Exceptional Hardship Scheme

Complaint: In 1997, Mr and Mrs AB bought and moved into a residential property in Cheshire. This was near to underground cavities created by mineral extraction that were of interest to developers wishing to utilise them for the storage of gas. In 2007, they granted one such developer (X Ltd) a renewable and exclusive option to purchase the property for a clearly enhanced price, calculated according to a fixed formula. The property was subject to this option when in January 2013 the provisional line of route for HS2 Phase 2 was published and showed it as required for the line. In November 2014, Mr and Mrs AB applied to HS2 Ltd to sell the property to the DfT under the Exceptional Hardship Scheme. Although they had not been able to market the property, due to the option agreement, it was clearly 'hard to sell'. The EHS Panel accepted the property into the scheme in March 2015 and valuers were appointed to produce an offer price. The first two valuers produced widely varying values, so a third value was obtained and an offer to buy for £1.33m was made in May 2015; the average of the two nearest valuations. They also happened to be the two lower values. This offer price was not acceptable to Mr and Mrs AB. In June 2015, Mr AB's brother wrote at length to the CEO of HS2 Ltd setting out their reasons for believing that the company had attempted to defraud them, and that the valuations were negligently undertaken since the price offered should have reflected that obtainable by Mr and Mrs AB under the formula found in the current option agreement. They also claimed that they should be compensated for the monthly payment of £1,000 payable under the option agreement that X Ltd had discontinued as soon as the line of route was published. HS2 Ltd's CEO asked the company's lawyers to review how the EHS application had been handled. Company staff also met Mr and Mrs AB to discuss their position and how a sale might be progressed. The case review observed that procedures had been reasonably and properly followed, but that the novel features of the title would require a bespoke approach. The company's staff, in communication with DfT and Treasury officials, advanced the development of this customised approach to reflect the need to compensate Mr and Mrs AB if it could be shown (i) that the option would have been exercised were it not for HS2 and, separately, (ii) if the property was later not required for the railway and was sold by the DfT to X Ltd at an enhanced value under the option agreement. It was also agreed that monthly payments would be made to them by HS2 Ltd, backdated to the date they were

discontinued. Mr and Mrs AB continued to dispute the valuations obtained by the company. In response, its Commercial Director was assigned the lead role in negotiations; she arranged fresh valuations and a fresh offer price obtained in accordance with a protocol agreed with Mr and Mrs AB. As a result, detailed Heads of Terms were offered to Mr and Mrs AB and, in time, accepted by them, together with a new offer price of £1.77m. Towards the end of the process, Mr and Mrs AB made a series of complaints to staff dealing with the case and remained dissatisfied with the company's initial response to these. As a result, its CEO tasked a senior Board Director to review its handling and the conduct of the company and its staff towards Mr and Mrs AB and those acting for them. She reported in November 2016, copying her report Mr and Mrs AB. The CEO wrote to Mr and Mrs AB accepting her findings and recommendations on 24 November 2016. In November 2016, the DfT announced the preferred route for HS2 Phase 2B. Mr and Mrs AB's property was no longer directly affected by the railway line, and the land was no longer required for it. Nevertheless, the transaction went ahead in December 2016 in accordance with the negotiated contract terms and at the agreed price.

Company response: The company judged that established EHS procedures had been properly applied, but that the atypical nature of the case warranted an earlier application of the special approach required when dealing with such titles. Appropriate recommendations were made to encourage this. In particular, there was no evidence of excessive or unwarranted delay in progressing the application to sell. The bespoke nature of the necessary contract for sale had caused regrettable but necessary consideration and this had, exceptionally, added to the time needed to finalise the matter. The company found no evidence of any attempt to defraud Mr and Mrs AB, or of any improper interference in the valuation process, nor inappropriate conduct such as bullying. Mr and Mrs AB's complaint that the 'conduct of the parties' agreement, setting out how the second valuations were to be conducted, may have been technically breached when a valuer was contacted by phone because their email was unavailable. However, this was merely to perform a necessary administrative step and caused no substantive harm. The company accepted that some its communications with Mr and Mrs AB, though not disrespectful, were defensive in style and could have been more supportive. Appropriate recommendations were made to improve this aspect of practice. Mr and Mrs AB had specifically complained about the company's insistence that there be included in the contract for sale a 'compensation limit date' which they disputed. The company accepted that the rationale and process for choosing the date had not been clearly documented and communicated, but said that the date was a reasonable one in the circumstances. The company accepted the ten recommendations made by the Board Director in her review. These were designed to improve standards of communication with affected owners; early and appropriate consideration of an "atypical property"; response to complaints including the provision of a case review stage, where an initial response was not accepted; and the provision to company staff of expert assistance to help them deal more effectively with complex/exceptional cases.

ICA outcome: The ICA noted that, following a high level internal review, a detailed response had been given to each of the allegations made by Mr and Mrs AB, and

ten recommendations proposed and accepted. The ICA had requested but received no response from Mr and Mrs AB as to their observations on the review findings and recommendations. The ICA agreed with each of the main conclusions of the internal review and with the company's response. The ICA fully supported the ten recommendations to be implemented following the review. In addition, he recommended:

(1) that the changes be followed by the company's Director of Land and Property and progress reported to the Residents Commissioner and to the Chief Executive; and

(2) that the text of the company's promotional literature for the discretionary purchase schemes be reviewed, and consideration given to adding guidance that encourages the provision of information/representations by the owners of atypical properties to help the company identify these and recognise the need for a bespoke approach to their valuation and acquisition.

(ii): CAA

6.5 We received four complaints in this first year of the ICA involvement with the Civil Aviation Authority, none of which we upheld. They concerned:

- Fitness to fly, policy and application (2)
- ATOL (1)
- Airport standards (1)

A complaint arising from correspondence about medical standards for stunt pilots

Complaint: Mr AB complained that the CAA had failed to answer his complaint that the imposition of enhanced medical fitness requirements for the pilots of low powered aircraft at air shows was disproportionate and introduced without sufficient evidence. Mr AB also complained that it had been inappropriate for the chief medical officer of the CAA to decline to respond to his email to her challenging the position.

Authority response: The CAA set out the context of its decision: its review of safety measures following the Shoreham air disaster in 2015. It stated that only a very small number of stunt pilots would be affected as most were accredited to the highest standard anyway. The decision had been made on the basis of clinical judgement rather than an evidence base. The CAA declined to correspond further with Mr AB after it had exhausted its two-stage complaints procedure.

ICA outcome: The ICA noted that 2015 had been a pivotal year for the aviation regulatory sector after the Germanwings disaster followed by Shoreham. Although he noted the regulatory requirement that measures should be evidence based, he considered that the small number of pilots affected by the change meant that a significant evidence base would not be proportionate in this instance. He also

judged that the CAA was entitled to take a cautious approach rather than wait for a disaster to occur from which the evidence to implement a change would flow. The ICA judged that everything that could be said about the change in policy had been set out by the CAA. He did not therefore uphold either of the complaints.

Delays in assessing fitness to fly

Complaint: Mr AB complained about the decision-making of the CAA in respect of his fitness to fly. He said there had been delay that added to his stress and anguish following the death of his daughter. He also said that the CAA should have consulted his AME (aeromedical examiner) before insisting on a further psychiatric review.

Authority response: The CAA said that delays had been caused by the Germanwings tragedy and the increased number of self-referrals for mental ill-health. It had explained why Mr AB's concerns about electromagnetic radiation (EMR) had caused concern as to his mental wellbeing.

ICA outcome: The ICA sympathised with Mr AB over the delay. But he said that the increased volume of work following Germanwings was understandable and did not constitute maladministration. Indeed, it was to the CAA's credit that the delays had now been overcome. He said it might be good practice if CAA-appointed psychiatrists or medical advisors were to consult the AMEs, but a failure to do so also did not constitute maladministration. However, the drafting of the chief medical officer's letter regarding EMR was potentially misleading, and he recommended that the CAA consider if its complaints procedure needed amending to take account of clinical complaints that have already been reviewed by the chief medical officer.

A complaint that a holiday sold by an agent that stopped trading was not covered by ATOL

Complaint: Mr AB and his wife, who live in Australia, had booked a tour of South Africa, Victoria Falls and Mauritius from a UK based travel agent. Unfortunately, the agent ceased trading shortly after their arrival in South Africa and they lost the holiday. They complained that the CAA and its agent refused to reimburse their costs through the ATOL scheme, even though they had been issued with an ATOL certificate by the agent.

Authority response: The CAA explained that the travel was unlicensed from the point of view of the ATOL rules because embarkation had occurred outside of the UK and the holiday had been purchased outside the UK. The CAA declined to pay Mr AB’s losses as to do so would have been a breach of the scheme rules.

ICA outcome: The ICA reviewed the claim alongside the rules of the ATOL scheme. While he sympathised greatly with the position that Mr AB and his wife were in, he saw no scope given the rules governing ATOL for the CAA to reimburse them. He did not uphold the complaint.

A complaint regarding the CAA's role and powers

Complaint: Ms AB complained that her elderly mother had not been provided with a wheelchair by either the airline or airport. She said the CAA had failed to ensure that they had met their obligations under the European Regulation that provides rights for passengers with disabilities and reduced mobility.

Authority response: The CAA said that it was a regulator and did not have the legal power to instruct airlines or airports as to how they should make redress in individual cases.

ICA outcome: The ICA said the CAA had been right to say it could not instruct the airline or airport what to do. However, he said that the section on the CAA website relating to the work of its Passenger Advice and Complaints Team (PACT) could be usefully re-worded to make clear that the CAA itself is not an investigator of individual complaints, and that the principal use made of complaints data is as an aid to the CAA's regulatory functions.

(iii): Maritime and Coastguard Agency

6.6 This year we received three MCA referrals, two of which we upheld to a limited extent. The third we did not uphold at all. Two concerned sailor certification and one related to the Agency's role in overseeing the seaworthiness of vessels.

A tragic loss at sea

Complaint: Mrs AB's young son had died at sea on a fishing vessel that sank with all hands on deck. She complained that the MCA had failed in its duty of ensuring the seaworthiness of the vessel.

Agency response: The MCA said that the principal responsibility rested with the owner and operator not the MCA. It said that its procedures had improved since the loss of the vessel concerned.

ICA outcome: The ICA said this unspeakably sad matter was at the fringes of his competence and jurisdiction. He could not sensibly assess the inspections of the vessel concerned, or the changes in policy since introduced. However, the ICA judged that some aspects of the MCA's complaint handling had been poor. Details of escalation had not been given, and staff seemed unfamiliar with the complaints process. In addition, there had been a decision not to offer an ICA referral that was out of step with practice elsewhere in the DfT or good practice generally.

A customer-centred conclusion to a complaint about certification

Complaint: Mr AB is a UK-registered seafarer living abroad and serving on an ultra-deep water drillship. He complained that the MCA refused to recognise the five-yearly revalidation certification he supplied and, unreasonably, unfairly and irrationally, required proof of attendance at an approved Electronic Chart Display

and Information Systems (ECDIS) course (Mr AB had obtained ECDIS-certification, but it turned out the training centre was not MCA-approved.) Mr AB argued that the ECDIS course he had completed abroad met the necessary standard and had been approved by that country's maritime authorities. The limitation imposed by the MCA meant that his Certificate of Competence (CoC) was not valid for ECDIS-equipped vessels after 1 January 2017. He also complained of poor administration by the MCA and of inequity because a non-UK registered seaman could, with a CoC issued by a registered administration, be certified for ECDIS on UK vessels if they had attended the same course as him.

Agency response: The MCA apologised for not responding to some of Mr AB's correspondence. It reiterated the basis of its position, and the fact that the need to be trained in ECDIS in a MCA-approved centre was emphasised in all of the relevant literature.

ICA outcome: The ICA was limited in his ability to comment given the fact that MCA-accreditation of ECDIS was clearly highlighted as policy in the extensive suite of guidance documents. He could not ask the MCA to step outside of clearly established and well-publicised policies. However, he did recommend that the MCA should look into why some correspondence was not answered and ensure that in future such lapses did not recur. He also asked the MCA to comment on Mr AB's recent observation that another seafarer had been accredited for ECDIS despite completing the same course in the same country. The Agency responded that this had originated in an MCA error resulting in a one-off lifting of the requirement. Exceptionally, the MCA then agreed to lift the requirement in Mr AB's case.

Mistakes in the administration of a Certificate of Competency

Complaint: Mrs AB complained that the issue and dispatch of her daughter's application for a Certificate of Competency had been subject to unreasonable delays. The MCA had in this time provided very poor customer service. Despite assurances to the contrary, the Agency failed to dispatch the Certificate of Competency within the required 14-day timeframe and, when this was brought to its attention, had then sent it to an incorrect address. This caused further delays and inconvenience, and Mrs AB found that the staff she spoke to on the telephone did not seem to wish to apologise or assist her. She alleged that her daughter had lost 33 days of potential working time.

Agency response: The chief executive of the MCA offered his unreserved apologies for the catalogue of errors that had affected the Agency's handling of the case. He offered a £20 consolatory payment. Mrs AB rejected this response, describing it as showing "not one grain of empathy" and conveying a belated mixture of apathy and unashamed incompetence. She described an "apathetic, incompetent, cavalier entrenched culture within the MCA certification department".

ICA outcome: The ICA upheld the complaint that delays had occurred and that the customer service could have been better. He also noted, however, that Mrs AB's

correspondence had been unfair in its criticisms of the Agency. Mrs AB's daughter's experience was contrary to the high standards usually achieved in the certification department. He recommended a consolatory payment of £50 should be paid along with compensation for a delay he calculated as amounting to nine days, providing the necessary evidence of losses was provided.

(iv): DfTc

6.7 We received five complaints this year about DfTc (the Department's central functions) compared to three in 2015-16.

6.8 Three arose from correspondence between members of the public and the Department about policy-related matters. One related to comments reported in the media that were attributed to a senior civil servant within the Department. The fifth case we reviewed was an exceptional complaint that fell outside of our usual terms of reference, brought by a candidate for a post within the Department's Passenger Services Division. Three of the five cases were upheld to some extent.

Poor communications with a job applicant leading to an unfounded claim of discrimination

Complaint: Ms AB complained that she had been the victim of disability discrimination during the process of applying for a job within the DfT. She was convinced that she had, in effect, been offered a job in the form of a meeting with senior staff to discuss terms and conditions. She linked the cancellation of the meeting, and the belated email telling her she had not been successful, with her request for an adaptation for a disability.

DfT response: The DfT conducted its own investigation and concluded that, although poor communication had occurred, there was no evidence of discrimination. A fulsome apology was offered to Ms AB.

ICA outcome: The ICA was asked by the DfT to meet Ms AB and conduct interviews with its staff in order to establish if there were any grounds for the complaint, and whether the relevant rules had been followed. The ICA worked within specific terms of reference agreed with the DfT and the complainant. He interviewed the complainant face to face and seven DfT staff by telephone. The ICA found that the root cause of the poor service that Ms AB had experienced had been poor communication within and between the recruitment and business arms of the DfT. The part of the business to which Ms AB had been applying had decided to cancel the campaign, and recruit from within Whitehall to what it regarded as a mainly policy-orientated civil service job. Meanwhile, the recruitment function had galloped ahead, inviting Ms AB for a second interview ostensibly to finalise her pay and conditions. Several opportunities to inform Ms AB that the campaign was over were missed and she was, as a non-civil servant, unable to re-apply. The ICA concluded that there had been departures from the Civil Service Commission Recruitment Principles as well as basic standards of candidate management. He found no evidence of disability discrimination. He made recommendations about

improving communication and clarity about the recruitment rules within the relevant part of the DfT and asked that Ms AB should receive an apology.

The meaning of 'minor modification' under the Railways Act

Complaint: Mr AB complained that the Department had erred in deeming that the extensive building works at a station in the Midlands were a 'minor modification' under the Railways Act 2005 and therefore only limited consultation was required. He asked for the Department's Determination to be withdrawn and for a full consultation to be conducted retrospectively.

DfT response: The Department said it had been correct in its interpretation of the law. Moreover, public money would not be well spent on a retrospective consultation when it was clear that the new station enjoyed widespread local support.

ICA outcome: The ICA said that he could not make definitive legal judgments and, in effect, Mr AB's complaint was about whether the DfT had correctly interpreted the law. However, he was content that the decision was in line with the relevant guidance, the Department had sought its own legal advice, and no one affected had sought Judicial Review. The ICA also praised the quality of the responses Mr AB received to his correspondence ("a model of how public officials should engage with an aggrieved citizen"). The ICA said that while the works at the station could hardly be described as minor changes (to all intents and purposes, it is a new station that has been moved further south), that was not the point. He did not believe he had evidence beyond Mr AB's own arguments that the Department had acted unlawfully.

Concern about the safety implications of tinted glass in cars

Complaint: Mr AB, an automotive safety engineer, had been in correspondence with successive Ministers for several years about the negative impact on road safety of tinted side and rear vehicle windows. His argument was that the tinting of rear and side windows reduced the ability of vehicles behind to detect hazards in good time. In the course of this correspondence, DfT officials set out the Department's position that changes to legislation were not necessary nor part of DfT policy. Mr AB complained that a DfT officer had misrepresented the position when he referred to DfT 'policy' on the matter; Mr AB established through a Freedom of Information request that no policy document actually existed.

DfT response: The DfT stated that the officer involved had legitimately referred to policy in the broad sense. It did not uphold the complaint.

ICA outcome: The ICA looked at dictionary definitions of 'policy' and noted that they did not prescribe that a written document needed to be in place. Definitions generally referred to a set of ideas, or a course or principle of action, adopted or proposed by an organisation or individual. In referring to previous explanations of the Department's approach as 'policy', the ICA considered that the DfT had not

intended to mislead. The ICA also considered that it was very unlikely that an officer would act in that way as they would have nothing to gain by doing so. The ICA noted some minor deficiencies in the Department's handling of the complaint but he did not uphold the complaint.

Appendix

TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS (as revised on 12 July 2017)

1. Introduction

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

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

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

This guidance sets out the operational expectations for the ICA function 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 delivery bodies and the ICAs.

2. Referral and review process

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

(ii) The delivery 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 delivery body will ensure that the complainant is aware of the ICA jurisdiction and of the fact that the complainant must request a referral within six months of the delivery body's final response.

(iii) A complaint will usually be referred to the ICAs when the complainant requests this after the delivery body's final response has been provided. However, in some circumstances the delivery body may decide to expedite the process. A standard referral form for delivery body use is annexed to this guidance (the "referral form"). From time to time, a delivery 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 delivery 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 delivery 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. The delivery body will ensure that at the referral stage the ICA is aware of any disability, and/or

communication preference or requirement, on the part of the complainant.

(iv) The ICA will acknowledge receipt of a referral to the delivery body and complainant within five working days, unless the circumstances are such that an acknowledgement is not required. The ICA will provide the complainant with a contact telephone number as well as with email and terrestrial addresses.

(v) The ICA will decide the extent to which any part of a complaint within the ICA jurisdiction should be reviewed after taking into consideration the information and documents supplied by the delivery 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 delivery 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 delivery 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 delivery 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 delivery 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 delivery body will endeavour to answer these to her/his satisfaction. The delivery body will ensure the ICA has unfettered access to the relevant documents. This includes material and information entrusted to the delivery body by other organisations, provided this is solely for the purpose of reviews within the ICA's Terms of Reference.

(vii) The ICA will go on to review the complaint and set out his/her conclusion as to whether the delivery 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 delivery body (and the DfT if appropriate).

(viii) 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.

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

(x) The review will include 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.

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

3. Remedies

(i) The ICA is at liberty to recommend that the delivery 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 delivery body's mistake or failure.

(ii) When making a recommendation for any financial payment, the ICA will have regard to the delivery 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) At the draft review issue stage, every effort will be made by the delivery body to reach an agreement with the ICA about the findings and recommendations that will be reported to the complainant in the final review. Where a delivery 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 delivery 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 that the delivery body responds to an ICA report by writing to the complainant setting out its response to the report and to any recommendations, it must send a copy of its letter to the ICA.

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

4. Confidentiality/information handling

(i) The delivery 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 delivery body, your personal information will be used by that delivery 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 delivery body or the Department for Transport look after personal information can be found in the Department's information charter (available on the delivery website).

(ii) The delivery body will provide the ICA with all documents and information that it holds relevant to each complaint so that an effective review can take place. In order to conduct a review the ICA may occasionally require access to material that is sensitive; for example, because it is confidential, legally privileged or commercially sensitive. Where the delivery 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 delivery body or Department for Transport (central department) without the prior consent of the delivery body.

(iii) All documents and information provided to an ICA must be handled in keeping with the Department's and delivery 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 delivery 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 delivery body shall be copied to the Department, if requested. It is not issued on a confidential basis.

(vi) After a period of 15 months has 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; 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 on complaints handled in the previous year ending 31 March. The report will include:

- how many complaints 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 delivery bodies
- what recommendations and suggestions, if any, the ICAs have for the improvement and better performance of the delivery bodies' complaints procedures and their role
- any other matter which the ICAs consider should be brought to the attention of the Department.

(ii) Each delivery 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 delivery bodies in draft form before submission to the DfT.

6. Target timescales

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

Delivery 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 delivery body and to inform complainant and delivery body of proposed timescale for review	5 working days from receipt of completed referral
Delivery body to answer queries raised by ICA	15 working days of receipt of query
Delivery body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to delivery 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 delivery bodies and DfT, in advance if possible and practicable.

7. Equality

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 delivery body considers the complainant has any protected characteristic that may require the ICA to adjust their approach to handling the case then it will report this to the ICA.

ANNEX A: ICA PROTOCOL

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

Stage 4[1]

You can ask us to pass your complaint to the Independent Complaints Assessor (ICA) if you've been through stage 3[2] and aren't happy with the response.

The ICA is:

- independent of DfT and [insert name of delivery 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 these to the ICA within 15 working days of you asking us to pass your complaint to them.

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

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

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

The ICA can look at complaints about:

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

The ICA cannot make determinations on:

- government, departmental or delivery body policy

[1] This is stage 3 in respect of complaints to the DVLA, Highways England and the MCA.
[2] Stage 2 in the case of the DVLA, Highways England and the MCA.

- matters where only a court, tribunal or other body can decide the outcome
- decisions taken by independent boards or panels, for example: applications under the HS2 Need to Sell scheme
- decisions taken by, or with delegated authority from, the Secretary of State
- 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.

In addition, an ICA cannot usually look at any complaint that:

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

If your complaint falls within either of these categories please explain why you believe it should be reviewed on an exceptional basis by an ICA. The delivery 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 DELIVERY BODY COMPLETION [from 12/7/17]

ICA review referral form

A timeline of all correspondence/actions should be attached to this form.

1. Delivery body & contact details of officer preparing the file	
2. Name of complainant	
3. Address	
4. Email address and telephone if known	
5. Has the complainant indicated a requirement or preference for communications? (e.g. are they unable to write?) If so, what?	
6. Has the complainant identified as having a protected characteristic under EA 2010? If yes, please state what.	
7. Date complaint made and by what means	
8. Summary of complaint (attach letter/email if appropriate)	
9. Date of delivery body's initial response to complaint	
10. Summary of initial response (attach letter/email if appropriate)	
11. Date of delivery body's final response to complaint	

12. Summary of final response to complaint (attach letter/email if appropriate)	
13. What redress, if any, has been offered to the complainant (eg apology, reimbursement of expenses, ex gratia payment)?	
14. If no redress/failure identified, which rules/policies have been followed correctly?	
15. Date of request for ICA review (attach letter/email if appropriate)	
16. Does the delivery body know if a complaint has been made to the PHSO?	
17. Is the complainant's request for ICA review late? If so, does the delivery body think the ICA should waive the time bar?	
18. 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: