Department for Transport

Independent Complaints Assessors

Annual Report, 2017-18

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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 2017 to March 2018.

Stephen Shaw

Jonathan Wigmore

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Foreword

The most successful organisations, whether in the public or private sectors, are those that devote most time to learning from when things go wrong. Sensitive and effective complaint handling, and what is often referred to as 'learning the lessons', are at the heart of good customer service and efficient public administration.

In the vast majority of cases, grievances can and should be resolved within the body complained about and at the lowest level possible. But when that is not possible, there must be clear escalation procedures leading ultimately to a review that is wholly independent.

As the two Independent Complaints Assessors (ICAs) contracted by the Department for Transport (DfT), this is the service that we offer to the customers of more than 20 DfT delivery bodies. This report outlines how we have gone about our duties during 2017-18.

The report includes both statistical information about our input and output, and many case histories demonstrating the wide range of issues that we cover.

It is worth emphasising, however, both the extent and the limitations upon our jurisdiction. We cover issues that include concerns about vehicle clamping, the right to display an age-related registration, unhappy experiences on driving tests, the impact upon residents of noise from road works, the property schemes operated by HS2 Ltd, and the certification entitlements of seafarers, to take just six examples. But we cannot substitute our views for those of road transport professionals employed by Highways England or the doctors employed by the DVLA. Nor can we overturn the outcome of a driving test, or a decision to restrict the terms of a driving licence, or the decision of an HS2 Ltd property panel. Our role is to determine if 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 other words, our criterion for upholding a complaint is whether there has been any maladministration, not necessarily whether we (or the complainant) believe that the underlying policy itself was reasonable.

Although we try to temper customer expectations of the ICA role, it is apparent that some complainants do anticipate that we can overturn decisions when that is simply not within our remit.

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.

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
- the DfT's or one of its delivery bodies' compliance with legislation relating to data processing.

The majority of our reviews follow the actions, alleged inactions, or decisions of the Driver and Vehicle Licensing Agency (DVLA). But as we have said before, the number of DVLA complaints referred to us is but a tiny fraction of the many millions of transactions undertaken by the DVLA each year.

The other DfT delivery bodies (we refer to them as DBs henceforth) we received complaints about during 2017-2018 were:

- The Driver and Vehicle Standards Agency (DVSA)
- Highways England (HE)
- High Speed Two Ltd (HS2 Ltd)
- Civil Aviation Authority (CAA).

We also received a trickle of complaints about the Department for Transport's central functions (DfTc).

We attend quarterly Complaint Handlers' Business Improvement Groups organised by the DfT. These meetings enable us, and DB staff working in the complaints field, to discuss recent developments and good practice and to challenge each other. We welcome the fact that they are also attended by Parliamentary and Health Service Ombudsman staff and draw from the Cross Government Complaints Forum. We have found these meetings extremely valuable for discussing approaches to contentious and complex casework and identifying solutions to commonly experienced problems. They are also a source of support to complaint handlers whose unique roles within DBs are best understood by others in similar positions.

In our view, the ability of complaints handlers to influence service delivery is critical in determining the effectiveness of any complaints system. We are pleased to be part of a process that we see as an important contribution by the parent department to empowering complaints handlers and improving DB performance.

1: Overview of our year's work

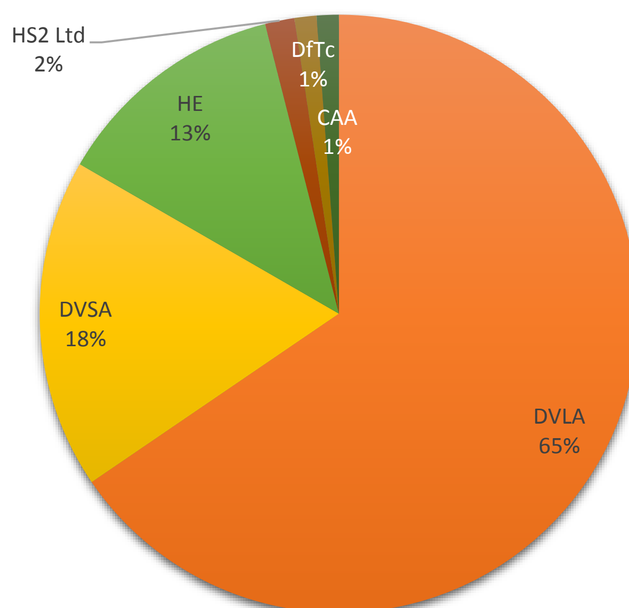
Volumes

1.1 Table 1 and Figure 1 show this year's 252 ICA cases. Table 1 also presents the totals for the previous four years that we have acted as ICAs.

Table 1: All incoming cases, 2013-2018

DELIVERY BODY	2013/14	2014/15	2015/16	2016/17	2017/18
DVLA	93	122	169	188	165
DVSA	43	38	28	39	45
HE	12	11	6	24	32
HS2 Ltd	-	3	1	8	4
DfTc	-	3	0	5	3
CAA	-	-	-	4	3
MCA[1]	5	1	4	3	0
VCA[2]	1	0	0	0	0
Totals	**154**	**178**	**208**	**271**	**252**

Figure 1: 252 cases received 2017/18, by delivery body



1.2 We are pleased to report a 7 per cent reduction in referrals overall compared with 2016-17. However, as illustrated in Figure 2, the encouraging downward trend between October and February was bucked by our busiest month ever, March 2018, when we received 31 new cases. The numbers have continued to increase from April 2018 and, at time of writing, it seems probable that 2018-19 will be by some distance the busiest year since the ICA scheme was first introduced.

[1] Maritime and Coastguard Agency.
[2] Vehicle Certification Agency.

1.3 In 2017-18, 65 per cent of our referrals came from the DVLA. This represented a fall in the proportion of DVLA cases in our postbag – reflecting the agency's success in settling complaints internally as well as increased numbers from the DVSA and HE. Figure 3 presents the number of cases from these three delivery bodies who together accounted for 96 per cent of our cases this year.

1.4 Some 68 per cent of our casework time was spent on DVLA cases. They averaged five hours and 24 minutes to complete. Around half of our DVLA casework hours were spent on medical cases (in consequence, these represented just over a third of our total casework hours). In 2017-18, Highways England cases had the longest average completion time (6 hours 28 minutes per case). This reflects the fact that certain complainants had long-standing relationships with HE that involved many transactions with the company and its contractors. DVSA cases took us, on average, three hours and 26 minutes to complete. The time spent on casework per delivery body is represented in Figure 4.

Figure 2: Monthly intake of referrals to the ICAs, 2017-18

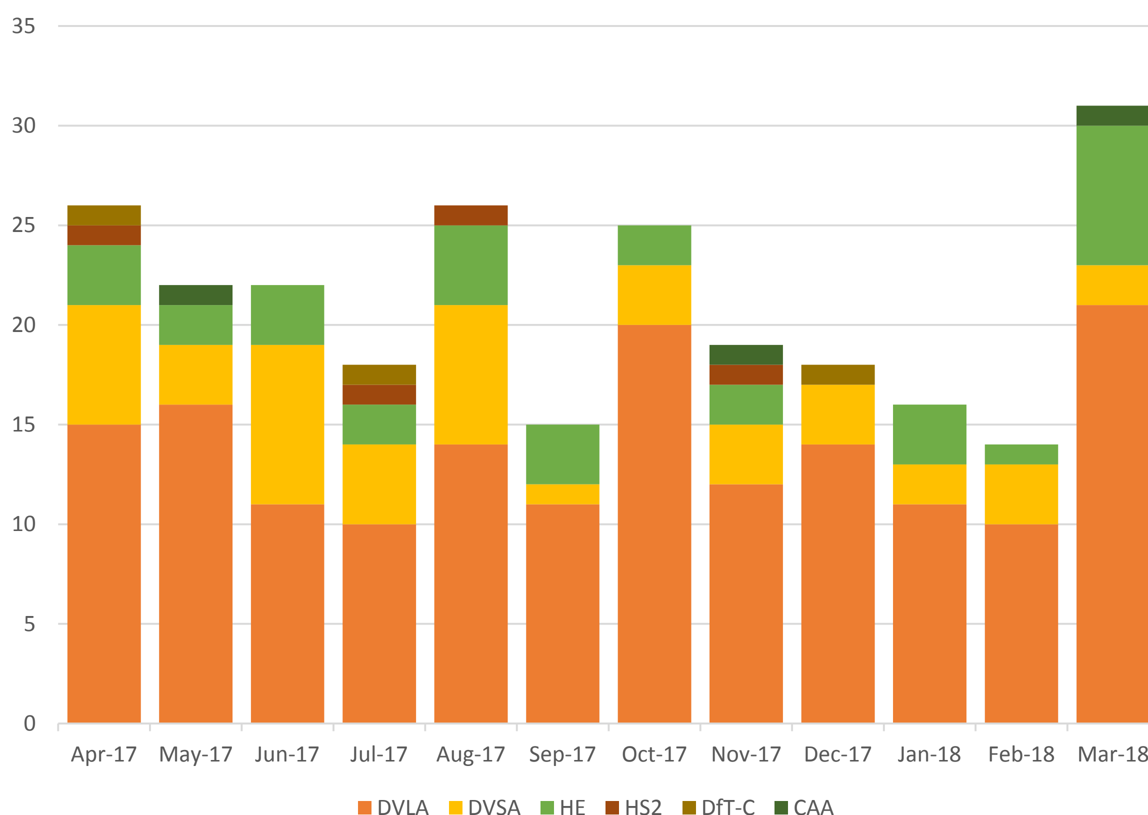


Figure 3: Incoming cases by quarter, top three referrers, 2015-2018

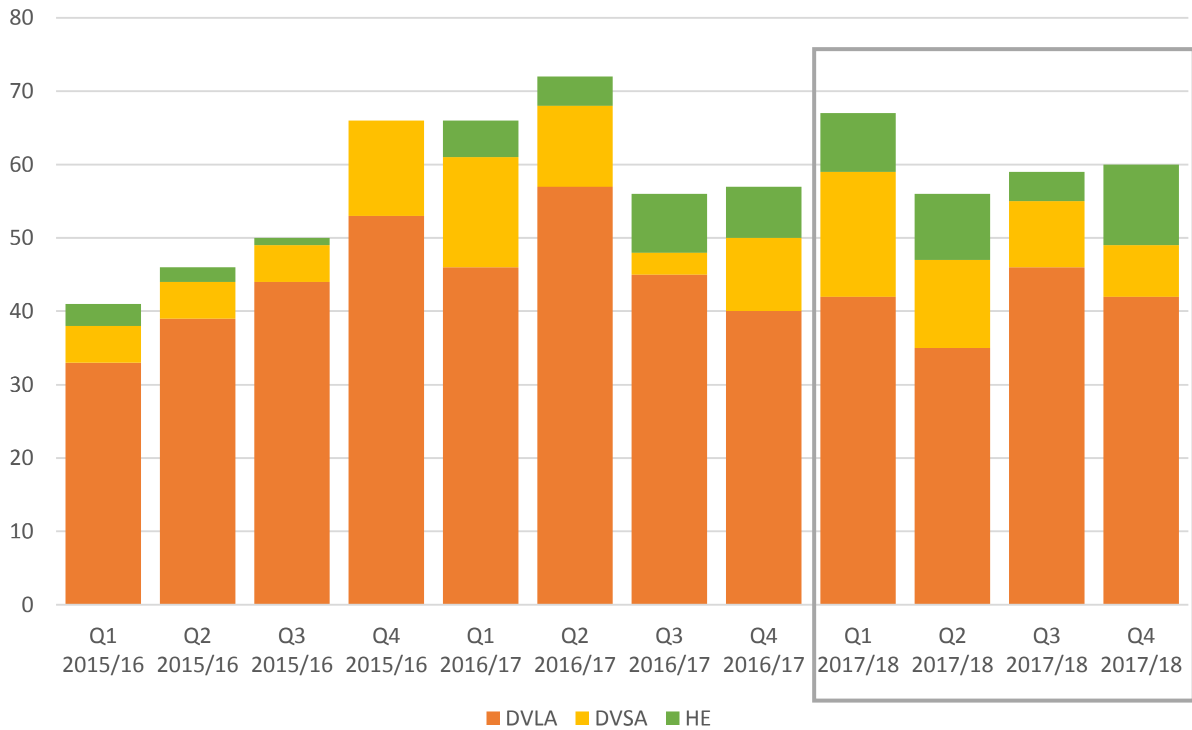
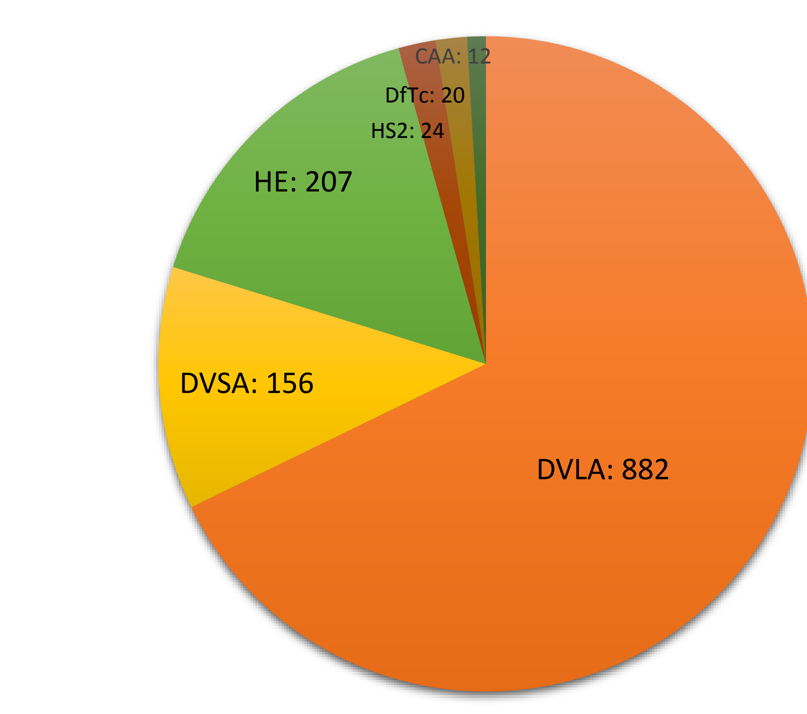


Figure 4: ICA time spent on cases by delivery body, 2017-18 (hours)



1.5 Since June 2016, we have had the assistance of substitute ICAs who have analysed case documents, liaised with complainants and delivery bodies, and advised us on our findings and recommendations. During the year we have continued to benefit from the skills and expertise of these colleagues.

Our work

1.6 We completed 247 cases in the year, with 33 working days elapsing on average between the referral and dispatch of our final review. This represented a reduction from 2016-17 (38 working days). The overall average time spent per case completed in the year was five hours and 14 minutes, a slight reduction on last year's figure.

1.7 A total of 26 cases were complex and took us 10 hours or more to complete – the same number as last year. The two longest cases were both HE referrals, the longest of which involved arrangements for the purchase of a home potentially affected by a major development. The second longest to complete involved HE's oversight of a contract that included the control of a noxious weed in an area of its network in the South-West of England. In both cases it was necessary to speak to complainants and others at length by telephone.

1.8 Ten of these complex cases related to the DVLA's Drivers Medical Group which remains our single largest casework area. Other long-running cases necessitated assistance from our substitute ICAs.

1.9 Figure 5 represents each case referred over the year with a dot. The outlying cases in terms of completion time were when it was necessary, or the complainant's choice, for us to defer a review.

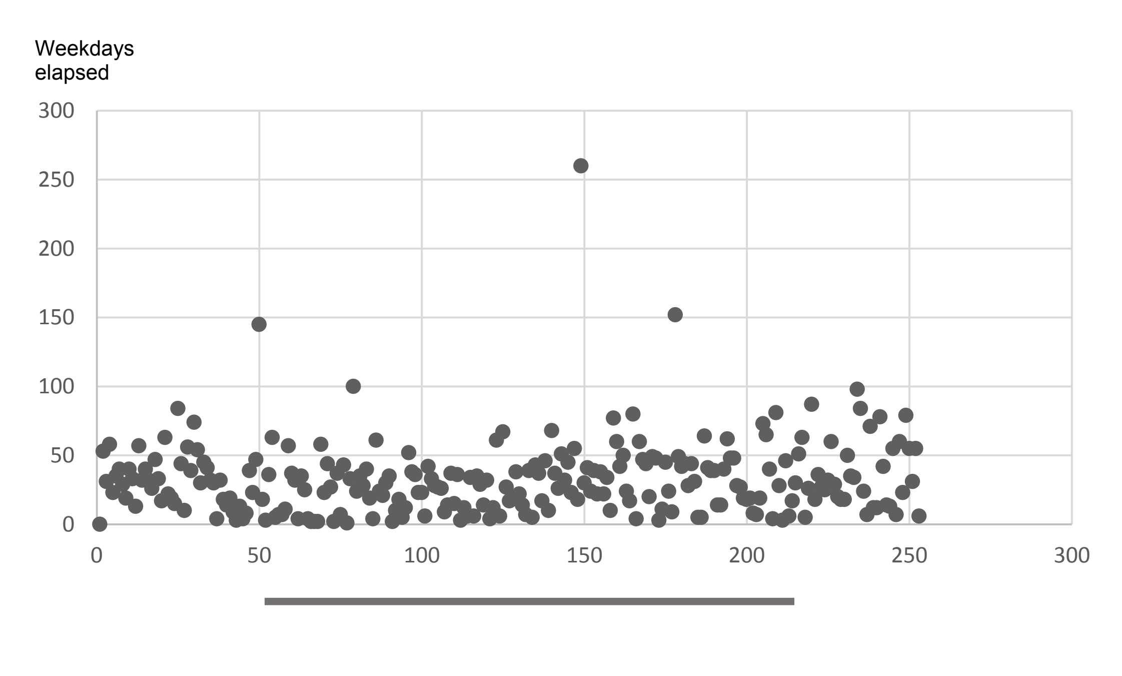
1.10 There are many factors that affect the time it takes us to complete a review. Case complexity and volumes are naturally the main factors. Novel cases will also usually take longer. The need to speak to complainants and to revert to the DB repeatedly will also add time. We also balance the needs of our DfT caseloads with other roles and work.

1.11 It should also be acknowledged that the service we now offer to complainants to contact us by phone, text or voicemail has added to the time spent on some cases. A minority of complainants do expect an almost daily update on their case. Indeed, while entirely understandable, most complainants do not appreciate that we are contracted in a part-time capacity, work from our own home-offices, and have no administrative back-up whatsoever.

1.12 Our average case completion times for each DB for 2017-18 cases are presented below (with last year's figures in brackets):

- DVLA: 35 working days (37)
- DVSA: 21 working days (36)
- HE: 38 working days (25)
- HS2 Ltd: 19 working days (63)
- DfTc: 29 working days (24)
- CAA: 25 working days (26).

Figure 5: Completion times (working days) of all cases received in the year



Outcomes

1.13 In our view, the shorthand adopted by most organisations whereby complaint outcomes are categorised as being upheld fully, partially, or not upheld, does not reflect the complexity of many of the cases we review. We recognise that it can also be mystifying to customers. However, despite our misgivings, in the absence of a more granular outcome measure, we will continue to aggregate case outcomes using these metrics.

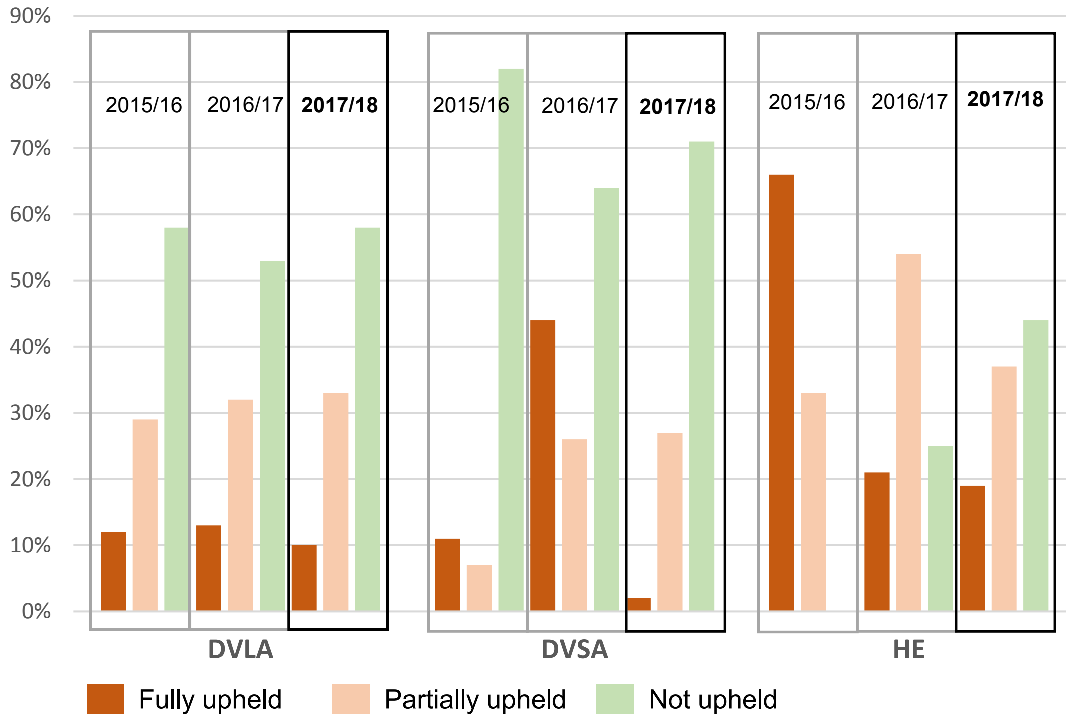
1.14 Of the 252 cases referred to us in 2017-18, we:

- Fully upheld 23 (9%)
- Partially upheld 82 (33%)
- Did not uphold 145 (58%)

1.15 Aggregating the full and partial upholds (as is the usual convention), we upheld 42 per cent of the cases referred to us compared to 46 per cent last year and 39 per cent in 2015-16.

1.16 Figure 6 illustrates the outcomes from our reviews relating to the three DBs who have referred the most cases to us over the last three years.

Figure 6: Outcomes of cases sent to us by DVLA, DVSA and HE, 2015-2018



1.17 In summary, the outcomes of the 252 cases referred to us in 2017-18 were:

- **DVLA**: 70 (42%) upheld to some extent, 95 not upheld (58%)
- **DVSA**: 13 (29%) upheld to some extent, 32 not upheld (71%)
- **HE**: 18 (56%) upheld to some extent, 14 not upheld (44%)
- **HS2 Ltd**: 1 upheld to some extent, 3 not upheld
- **DfTc**: 3 upheld to some extent
- **CAA**: 3 not upheld.

1.18 According to research by the Institute of Customer Service (ICS), transport is the bottom-rated sector in the UK in terms of customer satisfaction. It was also the sector where satisfaction levels dropped the most between July 2017 and July 2018.[3] We see parallels in our own casework with many of the priorities for improvement identified by the ICS, in particular the top rated "Make it easier to contact the right person to help me". Priorities for improvement identified by the ICS survey of the least satisfied customers also resonated in our casework. They included "knowledgeable, friendly and helpful employees", "speed of resolution", as well as reliability and quality of products.

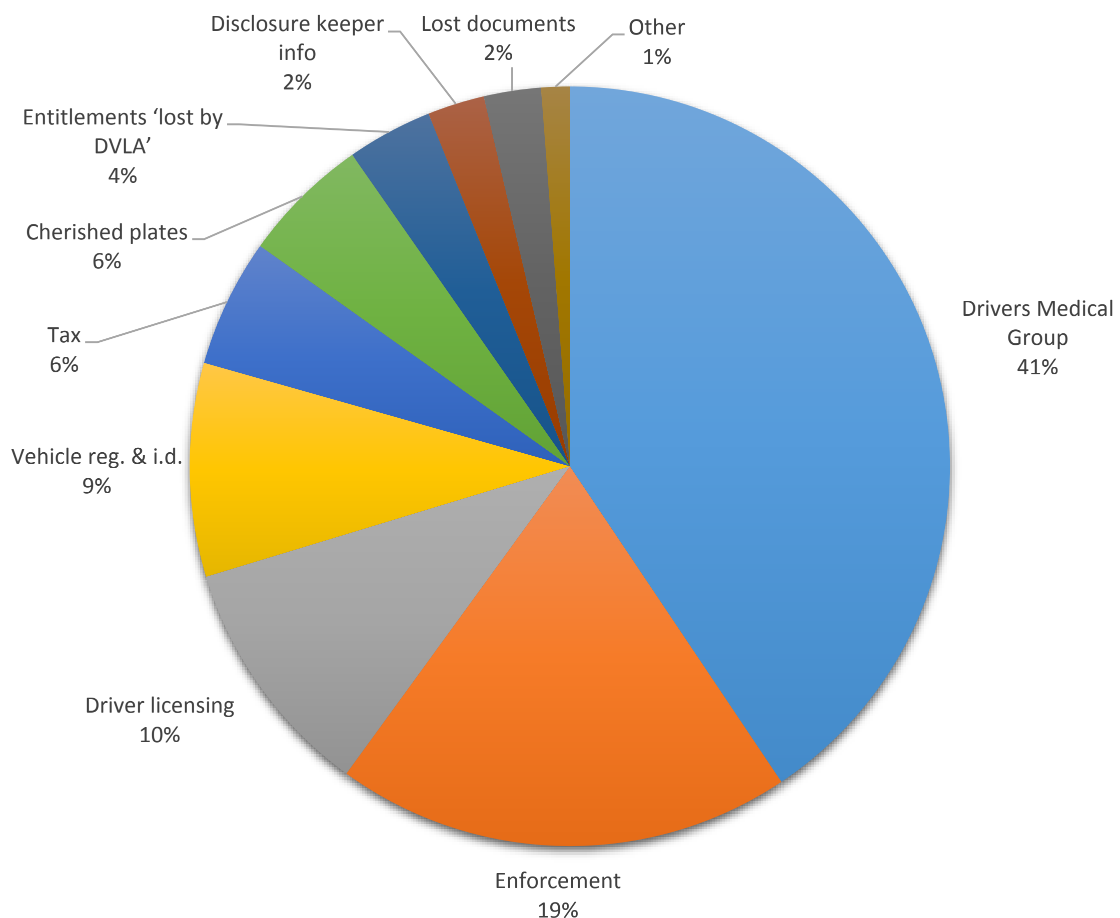
1.19 More detail on DB performance follows in the next sections starting with the main subscriber to the ICA scheme, the DVLA.

[3] UK Customer Satisfaction Index, *The state of customer satisfaction in the UK, July 2018*, based on a survey of 10,000 consumers.

2: DVLA Casework

2.1 Table 4 and Figures 7 and 8 set out the 165 DVLA ICA referrals received in the year against the main business areas where the complaint originated. In Table 4 we have indicated marked increases and decreases compared to last year using the red-amber-green colour code.

Figure 7: DVLA cases received 2017/18 by subject



2.2 No less than 41 per cent of the DVLA cases referred to us related to customers' experience of its Drivers Medical Group (DMG). With an ageing population, the majority of whom wish to continue to drive, it is difficult to believe that the number of complaints that derive from the DVLA's statutory responsibility to investigate medical fitness to drive will decline. Over a third of our total DfT casework time was spent on complaints about DMG.

2.3 Indeed, the statistics we have presented illustrate the steady upward trend in DMG casework that has continued into 2018-19. In our last annual report, we highlighted both areas of concern and of improvement in this part of the DVLA's business. This year we upheld, to some extent, just under 54 per cent of DMG cases (compared with last year's figure of 62 per cent), a marked improvement.

Table 4: DVLA complaints 2017/18 compared to two previous years

Business area	2015/16		2016/17		2017/18	
	Number	%	Number	%	Number	%
Drivers Medical Group	35	21%	56	30%	**67**	**41%**
Enforcement	59	35%	52	27%	**32**	**19%**
Driver licensing	17	10%	17	9%	**17**	**10%**
Vehicle registration & identity	14	8%	8	4%	**15**	**9%**
Tax	20	12%	23	12%	**9**	**5.5%**
Cherished plates	12	7%	7	4%	**9**	**5.5%**
Entitlements 'lost by DVLA'	Not counted		7	3%	**6**	**3.5%**
Disclosure of keeper info	8	5%	6	3%	**4**	**2.5%**
Lost documents	0	0%	2	1%	**4**	**2.5%**
Other	4	2%	10	8%	**2**	**1%**
Total	**169**		**188**		**165**	

2.4 Since we last reported we have seen a reduction in waiting times for medical review following the agency's increased recruitment of clinicians (both doctors and nurses). We have also seen better explanations of decision-making at both the DMG initial stage and at steps 1 and 2 of the complaints procedure. In contrast with earlier years, it is now a rarity for us to discover injustice and poor administration that has not been identified at earlier stages by the DVLA itself. The DVLA is also more willing to offer consolatory payments at steps 1 and 2 which in part explains the reduction in our recommendations in this area (see Figure 9 below).

2.5 Despite these and other improvements, customers have continued to come to us with complaints covering issues that have become very familiar. In particular that:

- The level and form of evidence required to inform or change a DVLA licensing decision remains unclear
- (In line with the ICS research we have quoted), it is difficult to get hold of a knowledgeable member of staff who can explain what the DVLA is doing in a medical enquiry and what it requires
- Arrangements for complaining about third-party service providers involved in DVLA investigations are not transparent
- The policy and legal basis of decision-making is opaque, particularly where short period licensing is concerned
- Some aspects of DMG working are not clearly spelt out in the information available to customers (for example, the availability of provisional disability assessment licences to cover practice prior to the driving assessment; and procedures for reopening a case after revocation).

2.6 In DMG cases, our 34 main recommendations were very similar to last year's 35 despite the 19.6 per cent increase in these referrals:

- Consolatory payment 22
- Compensation payment 1
- Consolatory and compensation payment 4
- Change systems 3
- Apology 3
- Training 1.

2.7 Enforcement cases (untaxed vehicles, SORNed vehicles not kept off-road, wheel-clamping) represented almost one-in-five of the DVLA cases, although this was a significant reduction on the two previous years. We had seen an increase in such cases in recent years – in part reflecting the abolition of the tax disc, in part reflecting enhanced enforcement activity by the DVLA and its wheel-clamping contractor and partners.

2.8 Paradoxically, we have also received complaints that enforcement is not sufficiently robust in response to notifications from members of the public about untaxed cars in their neighbourhood. While sympathising with those views, we accept that the DVLA cannot operate a 'call-out' service for enforcement and must use its resources in a more targeted fashion.

2.9 The administration of vehicle excise duty also causes anxiety for customers. A particular concern has involved direct debits for road tax continuing even after a vehicle has been sold and is being taxed by its new keeper. The DVLA declines such requests for refunds of overpaid tax, telling customers that they should have ensured that their notification of disposal had been received by the agency.[4] Such a notification will cancel the direct debit. In response, customers point out that other Government tax-collecting bodies will repay overpayments or offset them against future payments.

2.10 Vehicle identity cases – and the use of Q plates to demonstrate some doubt over a vehicle's history – have also featured in our reviews. Customers importing vehicles with salvage title from abroad can face particular difficulties in demonstrating their vehicle is legitimate, as definitions of terms like 'salvaged' and 'built up' differ between jurisdictions abroad. Here the DVLA's registration decisions are informed by a concern to protect consumers. On the other hand, customers have argued that an overly cautious one-size-fits-all approach has been applied rather than a full case-specific analysis. People have complained to us that this has resulted in unfairness to them as well as running contrary to the over-arching principle of maintaining an accurate register.

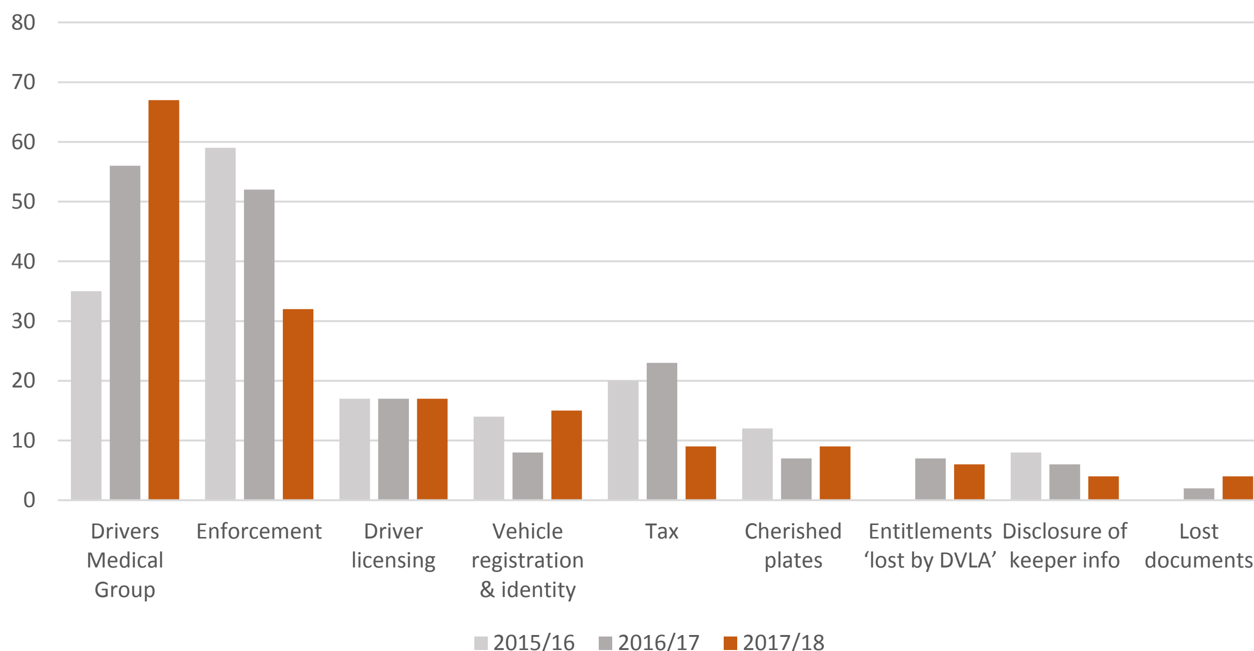
2.11 Some of the trickiest cases for an ICA are those involving complaints that the DVLA has 'lost' evidence of a driver's entitlements. This affects in particular those who first passed their driving or motorcycle tests before the establishment of the DVLA when it was common practice amongst many local authorities to issue separate 'red books' covering cars and motorbikes. We have seen for ourselves the detailed

[4] The DVLA advises keepers that they should make contact if they have not received an acknowledgement within four weeks of notifying the agency that they are no longer the keeper of a vehicle.

searches that the DVLA carries out upon its historic records when faced with complaints of lost entitlements, and it is rare that we are able to locate information that the DVLA has missed.

2.12 Complaints about the disclosure of data from the DVLA registers to third parties (usually parking companies) have fallen. Those concerning the retention or transfer of cherished plates (a matter of huge emotional and financial importance to those who own personalised number plates) remain at a pleasingly low level.

Figure 8: DVLA complaints 2017/18 compared to two previous years

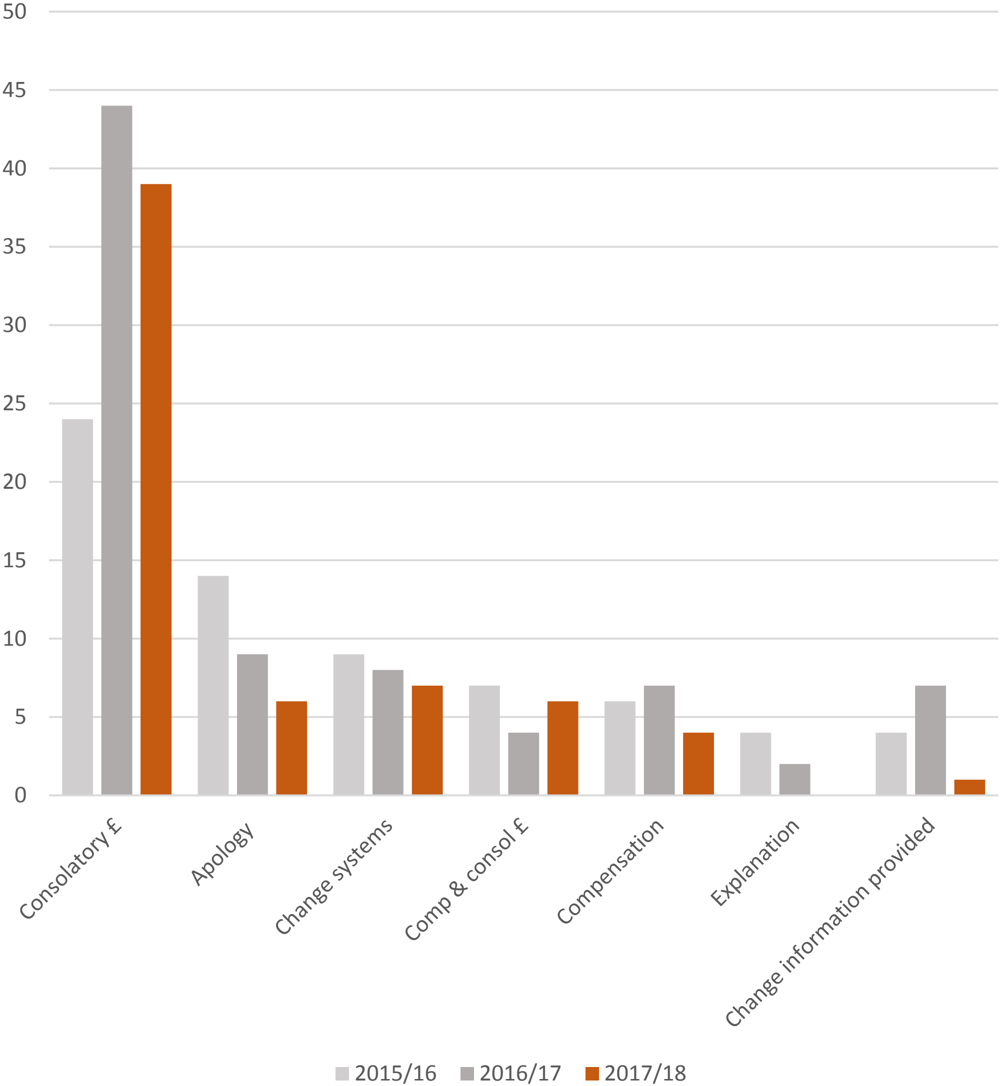


2.13 We made recommendations in 68 DVLA cases (41 per cent). In Figure 9 we set out our main recommendation areas alongside those of the previous two years.

2.14 Some caution is required in interpreting the data in Figure 9 as we will frequently make more than one recommendation where we have upheld a complaint.

2.15 It will be seen that we have made many recommendations for the making of a consolatory payment when an apology is not sufficient. However, we are constrained by the terms of HM Treasury guidance to payments of no more than £500. This sum has not changed for some years, and would benefit from being re-visited. We are also conscious that the Parliamentary and Health Service Ombudsman (PHSO) is not similarly constrained in terms of their awards for consolatory payments, and this may create an incentive for complainants to continue to escalate their grievance beyond the ICA stage. Throughout our term in office we have sought a more collaborative relationship between the PHSO and departmental ICAs and other complaint handlers, based on comity and mutual understanding. We are pleased that the PHSO is now routinely represented at meetings of the DfT's Complaint Handlers Improvement Group, which we also attend, and look forward to building upon this in the future.

Figure 9: ICA recommendations in DVLA cases 2017/18, compared to two previous years

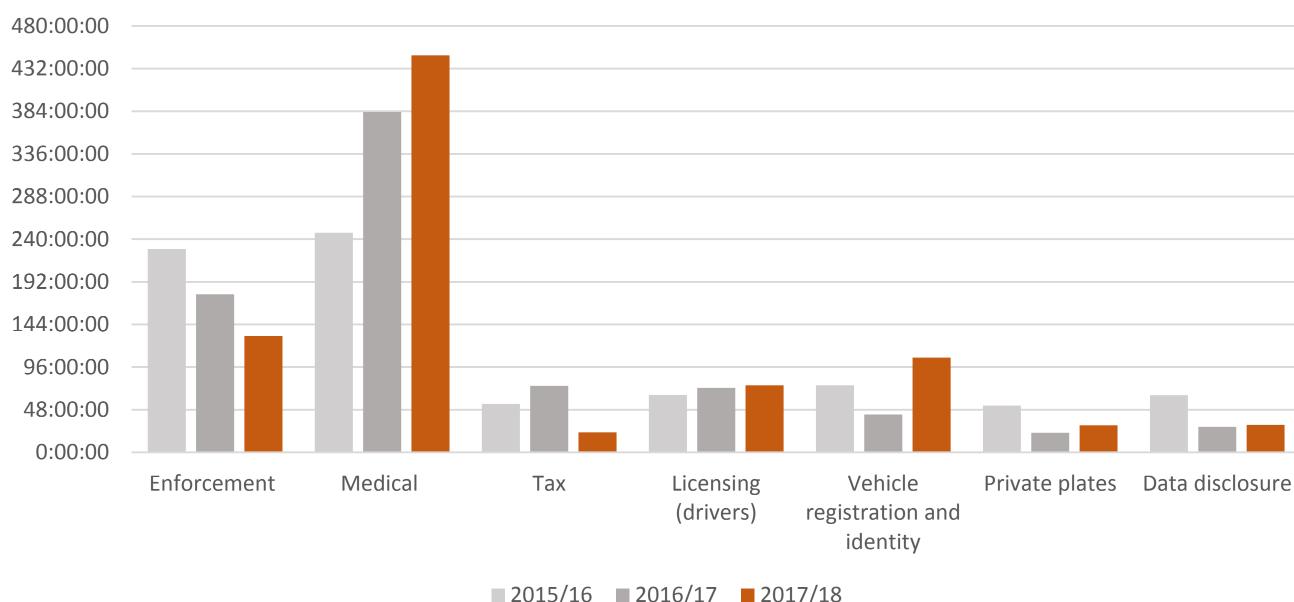


2.16 In Table 5 and Figure 10 we compare the time we have spent on the main casework areas in our 2017-18 postbag with the position in the previous two years.

Table 5: Average time spent per DVLA case in main casework areas, 2015-2018

Business area	Average time per case (hours: minutes)		
	2015/16	**2016/17**	**2017/18**
Data disclosure	9:10	4:48	7:44
Vehicle registration & identity	5:23	7:54	7:07
Medical	7:09	6:57	6:52
Licensing (drivers)	3:49	3:30	4:26
Enforcement	3:53	3:18	4:06
Cherished plates	4:23	5:10	3:22
Tax	2:52	4:29	2:29

Figure 10: Hours spent on main DVLA casework areas, 2015-2018



2.17 In Table 6 we chart the rate at which complaints have been upheld in the five busiest areas of the DVLA since 2015-16. Overall in 2017-18, some 42 per cent of DVLA complaints referred for ICA review were upheld in whole or in part – slightly above the aggregate percentage of cases referred by the other DBs (40.2%).

2.18 Our knowledge of DVLA functions is greatly strengthened by the annual visits we make to Swansea to speak with colleagues in both the business areas and the complaints team.

2.19 However, we have concerns about the way the business areas handle complaint correspondence before it becomes a formal complaint. This correspondence is dealt with informally outside of the agency's formal two-stage complaints process. The two-stage complaints procedure only kicks in after the business area has had an opportunity (sometimes more than one opportunity) to resolve the problem. We are fully on board with the principle that the initial effort to resolve the problem

should be made by the department where it originated. However, it needs to be clear when correspondence is classed as a formal complaint and when it is not. At least one complainant has expressed his confusion at having only completed stage 2 prior to the time of the ICA referral when three or four responses had already been received from the DVLA.

2.20 Transparency is one of the PHSO's *Principles of Good Administration*, and ensuring that the complaints procedure is simple and clear, involving as few steps as possible, is one of the PHSO's *Principles of Good Complaint Handling*. It is questionable how far the DVLA's current arrangements may be said to adhere to those principles.

Table 6: Uphold rates for ICA referrals in five busiest DVLA areas, 2015-18

Business area	2015/16		2016/17		2017/18	
	Cases	Upheld to some extent	Cases	Upheld to some extent	Cases	Upheld to some extent
Medical	35	51%	56	62%	**67**	**54%**
Enforcement	59	15%	52	38%	**32**	**22%**
Licensing (d)	17	41%	17	47%	**17**	**41%**
Registration & vehicle identity	14	36%	8	63%	**15**	**60%**
Tax	20	35%	22	41%	**9**	**50%**

CASES

(i): DRIVERS MEDICAL GROUP

Medical enquiries conducted sequentially and causing delay

Complaint: Mrs AB complained of delay in relation to medical enquiries into her fitness to drive.
Agency response: The DVLA had apologised for some failures on its part.
ICA outcome: The ICA found that medical enquiries had been conducted sequentially and not in parallel. In consequence, there was an unreasonable delay of four and a half months in the DVLA making a decision. He recommended a consolatory payment of £250.

Delay in supplying consultant's report on which a revocation was based

Complaint: Mr AB complained that questions he had asked about the revocation of his licence on medical grounds had not been answered and relevant documents had not been supplied.
Agency response: The DVLA had said that in its view all the points raised by Mr AB had been answered.
ICA outcome: The ICA said he could not address the clinical aspects of the matter, but he agreed with Mr AB that the DVLA's correspondence had not been fully satisfactory. Moreover, Mr AB had not received a copy of the consultant's report on which the

revocation was based for a full six months. This amounted to maladministration and the ICA recommended an apology and a small consolatory payment of £100.

The DVLA refuses to accept that it kept a bus driver out of work for over two months

Complaint: Mr AB, a bus driver, complained that DVLA delayed acting on information that the medical diagnosis that had led to the revocation of his licence for 12 months was incorrect and that his licence could be reinstated as a result. That was despite the fact that DVLA had signed to show that that the information he had sent in the form of an alternative diagnosis from a doctor had been received.

Mr AB resubmitted an application for his licence seven months into the 12 month period he could not drive. The DVLA made enquiries of the relevant locum doctor but did not specify the hospital department in its letters and so they were returned unanswered. This inconclusive process continued until the 12 month period was up. Nobody in the DVLA appeared to notice this, however, and further enquiries were made of the doctor who eventually responded inconclusively and did not provide a definitive diagnosis. The ICA alerted the DVLA to the fact that regardless of Mr AB's diagnosis the rules allowed for relicensing after the 12 month period had expired and Mr AB was relicensed shortly after this intervention. However, he complained that he had lost his job and had suffered considerable stress and financial hardship as a result of the DVLA's inefficiency.

Agency response: The DVLA paid Mr AB £75 to reflect its regret that it had lost the document that he had sent. Mr AB's case remained on priority for much of the time but unfortunately the significance of the 12 month anniversary of the original event was missed. At ICA stage, the DVLA declined the recommendation that it should invite an application for compensation from Mr AB for the two and a half month period when he could not work due to its poor administration.

ICA outcome: The ICA was critical of the DVLA for addressing correspondence to a doctor without specifying the medical department. It was obvious that this poor practice had delayed the conclusion of the case and locked the agency into what would eventually become a pointless process of clarifying a diagnosis which was no longer determinative of licensing. The ICA remained of the view that the DVLA should invite a compensation claim for the period when Mr AB could not work. He also recommended that Mr AB should receive a £500 consolatory payment to reflect the DVLA's regret at its poor handling of his case. He further recommended that the DVLA should ensure that letters written to hospital doctors included the address of the Department. He upheld the complaint, and it was under PHSO investigation as this report was being written.

The relicensing of a vocational driver delayed by a year through poor administration

Complaint: Mr AB, a lorry driver, complained that having notified DVLA that his neurosurgeon had told him he was fit to drive (following a head injury) that DVLA began medical enquiries and revoked both of his driving entitlements. He was concerned that the revocation notice was sent to his home address while he was working abroad and this meant that he had driven unlawfully for several days without his knowledge. Mr AB also complained that DVLA had delayed reinstating his group 2 entitlement and of delays, perverse and unintelligible decision-making, and a lack of clarity and consistency in the DVLA's communications. He has given up lorry driving.

Agency response: The DVLA told Mr AB in the standard revocation correspondence that he could not be relicensed on his vocational entitlement until his seizure risk was 2 per cent or less. While Mr AB appealed, he did not obtain the necessary evidence from the neurosurgeon to support his appeal. The DVLA repeated standard advice to Mr AB that he should approach his general practitioner for advice on his seizure risk; however, his GP was not willing to provide an opinion. Mr AB's subsequent attempts at reapplying for his vocational licence were rejected because no new medical evidence was provided. Eventually, over two years after the revocation, the DVLA agreed to reopen his case and seek evidence from his neurosurgeon. Delays set in, however, because the neurosurgeon was unwell and then unwilling to offer an opinion. The DVLA therefore approached a member of its advisory panel and Mr AB was subsequently licensed after further delays.
ICA outcome: The revocation had been inevitable given the confirmed serious head injury. The ICA set out that the role of the DVLA's doctors was to apply the medical standards and Mr AB's neurosurgeon's advice that he was fit to drive needed to be assessed to the 2 per cent seizure risk standard. The ICA noted that Mr AB had had an opportunity to approach his neurosurgeon for an opinion on this and had not taken it. He therefore had to accept some responsibility for the delay in obtaining specialist advice. The ICA was very critical of the DVLA for referring Mr AB to his GP for this advice. This added delay and frustration. He also felt that the DVLA should have reached the decision to approach Mr AB's neurosurgeon much sooner than it did, given the clear and significant implications for Mr AB of his loss of livelihood. The ICA also considered that the DVLA should look again at its systems for notifying drivers of revocations. If it has mobile phone numbers and email addresses, it should consider using them to ensure that drivers are aware of significant decisions like revocations at the earliest possible juncture. The ICA was also critical of other aspects of DVLA administration. He recommended that the DVLA should make a consolatory payment of £500 to Mr AB, and should consider any application he made for compensation sympathetically (given the ICA's view that a year had been added to the process by the DVLA's poor communications about its appeal requirements). He also asked the DVLA to look again at the information it provides to drivers revoked on the head injury standard, so that they are completely clear as to where acceptable evidence could come from. He partially upheld the complaint.

A medical case at the fringes of the ICA's jurisdiction

Complaint: Mr AB complained that his application to renew his ordinary driving licence had been refused. He said he was a very fit man and asymptomatic.
Agency response: The DVLA said it had followed clinical advice in respect of Mr AB's acknowledged arrhythmia.
ICA outcome: The ICA found that there had been serious delays in the consideration of Mr AB's application, and he recommended an apology and a consolatory payment. Furthermore, while the ICA could not comment directly on the clinical decision-making, it was clear that Mr AB's case was a very unusual one. The fact that Mr AB had been asymptomatic for nine years raised questions whether his annualised risk of suffering an incapacitating event had been correctly assessed as 20 per cent. The ICA recommended that the senior medical adviser should personally consider whether a further application should be invited. (This was accepted and Mr AB was subsequently invited to submit a further licence application.)

The effect of proprietary hemp oil on tests for cannabis use

Complaint: Mr AB complained that his licence had been revoked on grounds of cannabis use, when he had actually used hemp oil, a proprietary product freely available. He also complained that the DVLA did not ask for him to attend the drug-related medical examination at the same time as one for alcohol abuse.
Agency response: The DVLA said the laboratory where Mr AB's sample had been tested had told them that the results could not be caused by a proprietary product. However, the DVLA apologised for not organising the two tests at the same time.
ICA outcome: The ICA said he could not comment on clinical decision-making or claim an expertise he did not possess, although his own investigations suggested it was highly unlikely that consuming hemp oil could result in a failed drug test. However, he was concerned that the drug and alcohol tests were not arranged at the same time and recommended that advice be offered to members of the Drivers Medical team. He was also concerned that the View Driving Licence (VDL) system does not allow for an update if medical enquiries are ongoing, and this could disadvantage drivers given the use of VDL by hire companies and others. He recommended that the chief executive review if VDL could better reflect the position of drivers like Mr AB.

A customer infuriated by the role of a third party in DVLA licensing decisions

Complaint: Mr AB, complained that the DVLA had decided to revoke his licence on the basis of third party information, which contradicted the information provided by his own GP. He further complained that this revocation flew in the face of the clinical opinion of his GPs, was based on a malicious report, and was made contrary to DVLA policy within which his condition was not even a notifiable condition.

Following the provision of further medical information the DVLA undertook further medical enquiries, including testing for drug and alcohol abuse. Mr AB complained that this was disproportionate and stigmatising and pressed the DVLA for details of how the decision had been made, in particular the identity and comments made by the informant.
Agency response: The DVLA doctor who made the licensing decision reviewed it soon after the consultant report arrived and judged that further investigation was necessary. He obtained copies of clinic letters relating to Mr AB's mental health treatment. One of these referred to drug and alcohol misuse and it was therefore decided that this should be investigated. When this came back all clear, Mr AB was relicensed after a review by the DVLA's senior doctor
ICA outcome: The ICA concluded that the DVLA's administration of Mr AB's case had been good. The challenge to the revocation decision had been processed in a timely way. The most contentious parts from Mr AB's point of view related to clinical decision-making over which the ICA had no jurisdiction. The ICA was satisfied that Mr AB's condition was covered under DVLA's guidance and so medical enquiries were appropriate. In the light of the fact that any history of drug and alcohol abuse contraindicated licensing, the ICA could see why the decision to progress to drug and alcohol testing had been made. On balance, he did not uphold the complaint.

Delays in completing medical enquiries

Complaint: Mr AB complained about the time taken to complete its medical investigations into his fitness to drive, and the consequent delay in him being issued with a vocational licence.

Agency response: The DVLA had relied upon what it described (inaccurately) as "the Secretary of State's 85% of case in 90 days target" and had advised Mr AB about his entitlement to drive under s.88 of the Road Traffic Act.
ICA outcome: The ICA said that it was clear that Mr AB's application for a Group 2 licence had not even been looked at for three months, and a further month was then wasted when the DVLA wrote to a consultant but misspelled his name. The 90 day target was not an excuse for poor administration. He said the DVLA should apologise and make Mr AB a consolatory payment of £250.

Medical enquiries completed speedily

Complaint: Mr AB complained about the time taken by the DVLA to process his application for a Group 2 licence. He asked for compensation totalling £27,000.
Agency response: The DVLA said there had been no delay.
ICA outcome: The ICA found that there had been no maladministration. The DVLA had received an application in mid-September. It had written to Mr AB's doctor ten days later. Four days after receiving the doctor's reply, the Agency had asked Mr AB if his vehicle needed special controls (a question arising out of one of the doctor's answers). When Mr AB replied that he did not need special controls, the licence was issued immediately.

Agency provides sufficient redress in medical case

Complaint: Mr AB complained about the revocation of his licence on medical grounds, how the standards of medical fitness are interpreted, the responses sent to his correspondence, and that letters had been sent to a former address.
Agency response: The DVLA had apologised for sending correspondence to a former address and that incorrect information had been added to Mr AB's file by a telephone adviser. The agency had paid Mr AB £400 - £350 for a private psychiatric examination he had arranged and £50 in consolation.
ICA outcome: The ICA said there had been some mis-handling of Mr AB's correspondence and a significant mis-recording of what he had told a telephone adviser. However, the DVLA had provided answers to Mr AB's many questions and observations. The ICA partially upheld the complaint but made no recommendation for further redress. The consolatory sum was not generous, but not so low as to be unreasonable.

An honest disclosure by a driver to his GP about his drinking leads to unexpected revocation

Complaint: During medical enquiries relating to another condition DVLA noted that Mr AB had reported a weekly alcohol consumption of a level that met the definition of alcohol misuse. DVLA revoked his entitlement on that basis and Mr AB complained about the evidential basis of the decision, arguing that he had disclosed a limited period of heavy drinking that was not typical and which he fully understood was excessive. He argued that the revocation was draconian and its impact had been heightened by the DVLA's poor communication and lack of transparency.
Agency response: The DVLA set out the fitness to drive framework and explained the basis of its decisions. Mr AB's case was afforded priority status and, after he had completed the three stage medical enquiry process, he was relicensed after six months of controlled drinking had been clinically corroborated.
ICA outcome: The ICA set out the legal and procedural basis of the Drivers Medical investigation process in detail. His overarching conclusion was that this process had

been adhered to. It was not in his gift as ICA to question DVLA policy or to criticise the agency for following it. The ICA thought that the decision to refer Mr AB's case for further enquiries after the disclosure about his alcohol consumption had been defensible. He empathised with Mr AB's difficulties in understanding how his own evidence about his drinking could be instrumental in the revocation of his entitlement, while at the same time it could not secure the reversing of that decision. Again, this related to DVLA policy which the ICA thought reasonable given the propensity to underreport alcohol problems to the medical profession. The ICA made some critical comments about the complaint correspondence and handling. He recommended that: first stage Drivers Medical complaint responses should clearly flag the next stage in the event that the complainant wishes to progress their case; Drivers Medical should review its complaint escalation process; Drivers Medical should ensure that its complaint correspondence integrates with case progression so that the driver knows what to expect next in the live process, as well as receiving a response to their concerns about past handling decision-making; the DVLA should apologise for the failings highlighted. He partially upheld the complaint.

Delay on the part of a DVLA Advisory Panel member

Complaint: Mrs AB complained about the time taken to assess her application for a provisional licence to enable her to take a driving assessment. Her GP had supported her in the view that she was now fit to drive.
Agency response: The DVLA had said that it was still awaiting a report from a member of the Secretary of State's Honorary Advisory Panel.
ICA outcome: The ICA said Mrs AB had been waiting far too long (in excess of nine months) for a decision. While any referral to Panel members would mean a period of waiting, the DVLA had to take responsibility for any delays on the part of Panel members that affect the agency's customers. He said the DVLA should take urgent steps to enable a decision to be made, and recommended an apology and a consolatory payment (calculated at five months delay at £50 per month).

Exemplary handling of the case of driver contesting a 2007 revocation

Complaint: Mr AB complained that his licence had been revoked incorrectly under the Road Traffic (New Drivers) Act 1995 some 10 years previously. He denied the original motoring offence attributed to him, and he also denied reapplying for a provisional licence shortly after the revocation. He complained too of rudeness and unhelpful behaviour by DVLA staff.
Agency response: The DVLA conducted extensive investigations in its own departments as well as with the police and the Magistrates' Court. It established that all records of the conviction had been destroyed in line with data protection guidelines after six years. However, it did have a record of the original notification of the offence. The DVLA did not feel there was sufficient evidence to remove the debarring conviction.
ICA outcome: The ICA noted the extensive investigations undertaken by the DVLA, and commended the officer in the complaints team who had liaised extensively with Mr AB throughout the process. The ICA asked Mr AB if he had any further evidence to put forward, given the fact that the 2009 reapplication for his entitlement appeared to bear the same signature as legitimate documentation from him, had the same address and referred to the same conviction. Taking everything into account, the ICA did not see that the DVLA had acted unreasonably in deciding that there was insufficient evidence to call into question the original allocation of the six points to Mr AB's record that had resulted in the loss of his entitlement.

The extent of the DVLA's medical reviews

Complaint: Mr AB complained about the revocation of his licence on medical grounds following a third party notification.
Agency response: The DVLA said that it was required under the Road Traffic Act to conduct medical inquiries.
ICA outcome: The ICA said he could not comment on the revocation (although in his lay view it was a marginal decision), or on the clinical decision-making. But he observed that Mr AB had been allowed three driving assessments and multiple reviews – including by three DVLA doctors. He could not recall a case that had been subject to such a level of scrutiny. A couple of administrative errors and a period of delay in 2014 (when Mr AB was still able to drive) aside, he felt the DVLA had conducted itself fairly and properly, and was not able to uphold the complaint.

A well-handled complaint about Specsavers and DVLA administration

Complaint: Ms AB's licence was revoked on the ground that her visual field was insufficient. Shortly after learning of the revocation, she complained about the DVLA-appointed opticians, Specsavers, whose visual field test had informed the decision. She had severe reservations about the conduct of the test and the testing environment. Further hospital tests followed and, eventually, her entitlement was restored for a year.
Agency response: The DVLA responded to Ms AB's complaints about delays and provided the evidence that had informed its decision-making. It offered her a consolatory payment of £200 in recognition of delays in its handling of her case, a sum that Ms AB eventually accepted after further communications with the agency and Specsavers. There was nothing written into the 2014 contract with Specsavers relating to the standard of the company's complaint handling. As a result of a previous ICA recommendation, however, every new contract made by the DVLA with its service providers now incorporates complaint-handling requirements. The vision contract was being re-tendered in 2018 and it contains requirements for complaint-handling that have been shared with the ICAs.
ICA outcome: The ICA explained that Specsavers was not in his jurisdiction, and therefore he was limited in the extent to which he could resolve Ms AB's outstanding complaints about the way the company had tested her visual field. On one hand, he found her account that the testing environment reduced her performance on the day very persuasive indeed. Her version of events was also corroborated by the fact that the Specsavers results were not replicated three months later in hospital tests. On the other hand, the ICA's experience of complaints involving visual field testing is that people may perform differently on different occasions – even when there are no significant differences between the testing environments. The ICA balanced his criticism of DVLA handling by acknowledging that the DVLA referred Ms AB's results to a doctor who promptly arranged retesting following her initial complaint. The agency also chased Specsavers a year later when a response to Ms AB's complaint had not been posted. The ICA's view was that the Specsavers responses were sufficient to satisfy the DVLA that its contractor had undertaken an adequate investigation and had taken on board the points Ms AB had made. He concluded that the DVLA had provided adequate remedy for its own failings in the handling of Ms AB's case. He did not therefore uphold the complaint.

Another complaint about a Specsavers test

Complaint: Mr AB complained about the decision of the DVLA to refuse his application for a driving licence on the grounds of clarity of vision.. He said that the results undertaken by his own optometrists were different from those recorded by Specsavers. He also criticised delays in the decision-making.
Agency response: The DVLA said that its actions followed from the outcome of the Specsavers tests.
ICA outcome: The ICA said the policy of the DVLA to base its decisions upon 'independent' testing carried out by a single national contractor was not maladministrative, not least in the interests of consistency. If the outcome of those tests was below the standards set in the guidance, *Assessing fitness to d*rive, he could not see how a licence could properly be issued or that the DVLA had discretion to make an alternative decision. However, noting that the only tests showing Mr AB's visual acuity was below the standard were the two carried out by Specsavers, the ICA recommended that the DVLA review if there was any evidence of a disproportionate number of failed visual acuity tests at the Specsavers branch in question. The ICA also noted that three months had been lost when the Specsavers branch wrongly informed the DVLA of Mr AB's non-attendance. Although he had received an apology, the ICA also recommended £75 as a consolatory payment.

A complaint about driving assessments

Complaint: Mrs AB complained in relation to the loss of her licence on medical grounds. She had been granted three driving assessments, but the results of all three had been disappointing.
Agency response: The DVLA said that it could not consider a further licence application from Mrs AB without fresh supporting evidence from her clinicians.
ICA outcome: The ICA noted that as the outcome of Mrs AB’s driving assessments showed weaknesses in vehicle control he could not uphold Mrs AB's complaint that the refusals of her licence applications were wrong. However, he was critical of the terms of one of the Provisional Driving Assessment Licences (PDALs) offered to Mrs AB that was for one day only and therefore prevented her from practising her skills in advance. He also identified significant delays (during some of which Mrs AB was covered to drive by s.88 of the Road Traffic Act) that he said amounted to maladministration, hence the recommendation of a consolatory payment.

DVLA doctors demonstrate tenacity in pursuit of a change to a medical standard

Complaint: Mr AB complained that about the decision to revoke his licence on medical grounds, and sought compensation for the legal costs he incurred. He said advances in medical treatment of his condition had not been recognised by the standards in *Assessing fitness to drive*.
Agency response: The DVLA said that it had correctly applied the standards in place at the time. It said its medical advisers had been very supportive of Mr AB and his case had been referred to the Neurology Panel. The Panel had decided they needed further information before coming to a decision. Once the Panel chairman had considered the position afresh, Mr AB's licence was reissued. The agency had acknowledged some maladministration.
ICA outcome: The ICA said he had been impressed by the tenacity shown by DVLA doctors in pursuit of a change in the relevant standard. However, this case illustrated the

need for the DVLA to show agility when medical advances call into question the existing standards. In light of a number of examples of poor administration and delay, the ICA concluded that a consolatory payment was due, although the DVLA had no responsibility for Mr AB's legal costs.

Three Drivers Medical cases where the ICA recommended a high consolatory payment (£500)

1: Contradictory application of the fitness standards and severe panel referral delay

Complaint: In the first case, the complainant Ms AB had stopped driving and surrendered her licence after the diagnosis of a rare condition. She made an excellent recovery from her condition. She complained that DVLA said that she would not be able to drive for two years rather than one because of the way her condition had been treated. Ms AB contested this, arguing that the outcome of her treatment rather than the way she had been treated was critical. She pointed out that she had recovered and should, therefore, be allowed to drive after a year.
Agency response: A review by the senior medical adviser led to the DVLA reaching a different position, namely that because the usual standard for her condition could not apply, Ms AB could not currently be relicensed in any circumstance given the wording of the fitness standards. Her case was referred to a panellist and, seven months later when the ICA completed his review, Ms AB and the DVLA still awaited his opinion.
ICA outcome: The ICA was critical of the lack of clear references to the fitness standards in the DVLA's letters to Ms AB. He also felt that, with hindsight, senior review should have occurred at the licensing decision stage. He upheld the complaint that the fitness standards had been misapplied. He was also highly critical of the use of the DVLA's panel system for advice on individual cases. As in other cases reviewed by the ICAs, the referral did not appear to import any duty of care; the ICA was disappointed but not surprised that attempts to hasten an outcome by the DVLA and Ms AB herself had been apparently ignored. The ICA recommended that the DVLA systems for panel referral forewarn customers of the likelihood of delay and ensure that they are updated during the process. The ICA was very critical of the fact that it was only at his review stage that the DVLA's position on licensing emerged clearly. Ms AB had been devastated to learn that the two-year period she had originally been told not to drive had been based on an incorrect reading of the standards. Given this, and the poor customer service over the protracted panel referral process, the ICA recommended that Ms AB receive an apology from the chief executive and a consolatory payment of £500.

2: The mishandling of a visual field test for a disabled driver

Complaint: Due to a number of conditions Mrs AB suffers from it is painful for her to use her fingers on standard visual field testing equipment. She also wears spectacles and these are prone to mist up, particularly in stressful situations. Mrs AB's main complaint was that despite going to some lengths to arrange a hands-free visual field test, the actual procedure she underwent required her to press a button. On top of that, the orthoptist who undertook the test was rude and unsympathetic. Mrs AB's spectacles misted up and she failed the test. The next day she explained to the DVLA what had happened but her entitlement was revoked anyway. She also complained that her complaint was mishandled and delays set in. Eventually, after passing a driving assessment, she was relicensed for a period of a year.

Agency response: The DVLA initially made arrangements for Mrs AB to undergo the testing at a different centre where a Goldmann visual field testing machine was available. After Mrs AB reported the difficulties she had experienced in the test, the DVLA eventually referred the complaint to the orthoptist involved, but took no action when she did not respond. Within this process, Mrs AB's own complaint was missed and nothing happened for several months. Eventually, Mrs AB was granted a provisional licence after providing further evidence that her visual field was intact.
ICA outcome: The ICA commended the DVLA's initial responses to Mrs AB's concerns. However, he judged that her report of the way that the test had been conducted should have triggered a retest before a licensing decision was made. The ICA was also critical of the DVLA for not pursuing the orthoptist in a more determined way for a response to the complaint. The ICA upheld the complaint that the conduct of the visual field test led to unreliable results that prevented Mrs AB from driving; and that her complaint was poorly handled. He recommended that Mrs AB should receive a consolatory payment of £500 in recognition of the distress and inconvenience the whole episode had caused. He also recommended that the DVLA review its processes for dealing with complaints about tests that it commissions. His recommendations included:
- Where adherence to the DVLA's own testing protocols is not confirmed and is relevant to the outcome, a retest should be arranged;
- Complaints about the attitude of clinicians and other parties conducting tests on behalf of the DVLA should also be recognised as relevant to the clinical outcome of those tests.

3: Inflexibility on the part of an individual DVLA doctor created avoidable delay and conflict with a driver attempting to establish her fitness to drive some years after a severe accident

Complaint: Ms AB informed the DVLA that she had not driven for three and a half years because of the impact on her health as a result of a road traffic accident. Ms AB undertook a driving assessment at the request of the DVLA. Although she passed the cognitive elements, the assessors judged that she was not fit to drive. Over the following 18 months Ms AB complained about the conduct of the assessment.
Agency response: The DVLA was initially very flexible with Ms AB, allowing her some time to prepare for an assessment while she was still entitled to drive on her original licence. Given the outcome of the assessment, the DVLA revoked Ms AB's licence and after various communications from her doctors, provided her with a provisional licence that covered her for a driving assessment only. The DVLA doctor who made this decision refused to change his mind or seek a second opinion and a deadlock developed over many months where Ms AB, her elected representative and her own doctors petitioned the agency to change its position. Eventually the matter was referred to another DVLA doctor who immediately overturned the decision, and allowed Ms AB a provisional disability assessment licence that permitted her to practise in advance of the test.
ICA outcome: At the ICA stage the DVLA's senior medical adviser offered his own view that his colleague had been unnecessarily harsh in refusing Ms AB the opportunity of practice sessions before the assessment; this had undoubtedly added delay to the agency's handling of the case. The ICA agreed. He praised the DVLA for its initial, flexible, handling. He could not see that the DVLA had any choice but to revoke Ms AB's licence given the outcome of the assessment. However, he was very critical of the agency for its rude and incomplete responses to Ms AB's clinicians' letters in support of her reapplication. The ICA was also critical of the refusal of a licence that would enable Ms AB to practise in advance of the assessment, particularly given her five-year layoff

from driving. Inflexibility on the part of the DVLA doctor and other administrative failings created at least 12 months of delay that could have been avoided. The ICA could not conclude that Ms AB been prevented from driving in this time as she had not been assessed as fit to drive. However, he recommended that a consolatory payment of £500 should be made to her. He also recommended that complaints about the conduct of driving assessments should be handled differently so that drivers are informed of their right to complain directly to the centre. He further recommended that clearer guidance should be given to drivers and their clinicians about the evidence that the DVLA regarded as sufficient for a case to be reopened. Finally, he recommended that the senior medical adviser should look again at how second opinions are commissioned within the agency when the fixed view of a DVLA doctor is challenged.

A complaint following a third party notification

Complaint: Mr AB complained about the decision of the DVLA to investigate his fitness to drive following a third party notification. He said his medical conditions were not covered by *Assessing fitness to drive*. He also said he was the victim of harassment.
Agency response: The DVLA said that its actions were mandated in law. It agreed that Mr AB's conditions were not ones it would normally investigate, but it still needed a response from Mr AB's doctor.
ICA outcome: The ICA said the requirement to undergo a medical investigation was not contingent upon the medical conditions as declared by the driver himself. The ICA had also made inquiries as to why the GP had not returned the questionnaire. It turned out this was because Mr AB had failed to make an appointment and the GP therefore felt unable to complete the form. The ICA said he could not formally advise Mr AB but he suggested that Mr AB discuss the findings of his report with his family.

A complaint regarding cough syncope

Complaint: Mr AB complained about the revocation of his driving application on grounds of cough syncope. He said that a can of juice had gone down the wrong way and he had choked, losing consciousness very briefly.
Agency response: The DVLA it had followed the standards in *Assessing fitness to drive*.
ICA outcome: The ICA said he was limited by his terms of reference in terms of the DVLA's clinical decision-making and the licence revocation. He noted that cough syncope was generally associated with COPD rather than something as everyday as choking on a drink. He had therefore intended to recommend a review of the relevant standard, but had learned that the Neurology Panel had just had a presentation on cough syncope and new standards had been introduced and would be published shortly.

Evidence as to whether a seizure was provoked by hyperthermia

Complaint: Mr AB complained in relation to the revocation of his ordinary and vocational licences after suffering a seizure at work. He said the seizure was provoked by wearing Personal Protective Equipment (PPE) on the hottest day of the year.
Agency response: The DVLA had said that insufficient evidence had been provided to show that the seizure was provoked.
ICA outcome: The ICA said that he had to be careful not to go beyond his terms of reference. However, even at the time of the revocation the DVLA was in possession of two pieces of information showing that Mr AB's seizure was secondary to hyperthermia. The initial decision to treat Mr AB's seizure as unprovoked could at best be described as

a marginal one. It was also very disappointing that it had been left to Mr AB to secure the further evidence required. The failure to contact Mr AB's surgeons could be deemed as maladministrative. Further maladministration was shown by the failure to progress Mr AB's case despite it being on the highest priority. The ICA calculated that Mr AB had been without his vocational licence for six or seven months longer that need have been the case. He recommended a consolatory payment and that the DVLA should invite Mr AB to submit a claim for compensation for lost earnings.

Delays in processing a vocational licence application

Complaint: Mr AB, a vocational driver aged over 65, complained about the DVLA's handling of his licence application and its decision not to award compensation but to offer a consolatory payment of £300 for poor service.
Agency response: The DVLA said that Mr AB had always been entitled to drive under s.88 of the Road Traffic Act and that the agency could not pay compensation for potential loss of income.
ICA outcome: The ICA said that there had been a wholly unacceptable delay between March and October before Mr AB's application had been accepted. However, he had been repeatedly told that, assuming his doctor's assent, he retained the right to drive. Given that he had not provided any receipts, nor completed the relevant form, the DVLA's decision not to pay compensation was entirely reasonable. The consolatory sum of £300 was also not unreasonable in the circumstances.

A complaint of discrimination against those with diabetes

Complaint: Mr AB complained in relation to the revocation of his licence on medical grounds. He said his licence should have been restored after he submitted satisfactory eye tests and should not have been required to undergo a driving assessment. He wanted the costs of tuition refunded, and said he had been discriminated against as a diabetic.
Agency response: The DVLA said that Mr AB's test results had not met the required standards. However, Mr AB could apply under the exceptional case criteria. After two assessments, Mr AB had regained his licence.
ICA outcome: The ICA said he could identify no maladministration on the part of the DVLA. Its policies had been followed, and correct information had been provided to Mr AB in a timely way. He also felt that Mr AB had been treated fairly and without bias. There was no evidence of discrimination in relation to Mr AB's diabetes, and it was in line with DVLA policy that the costs of tuition would not be met from public funds.

Delays in handling medical enquiries

Complaint: Mr AB complained in relation to the revocation of his licence on medical grounds. He said there had been unreasonable delays, it was difficult to speak to anyone with knowledge of his case, and the DVLA had not provided appropriate advice and support.
Agency response: The DVLA said that it needed to obtain the relevant evidence to ensure the medical standards of fitness to drive were being met.
ICA outcome: The ICA said that there were several periods of delay that could be counted as unreasonable - totalling five months in all. He recommended a consolatory payment and that the DVLA should consider including more information about the 'exceptional case' criteria in its revocation letters.

‘Woeful lack of grip’ in handling application for first provisional licence

Complaint: Mr AB complained about the time to taken to process his first application for a provisional driving licence. He also criticised DVLA decision making in respect of the examinations and tests he had been asked to undergo.
Agency response: The DVLA had apologised for the time taken to complete its medical enquiries.
ICA outcome: The ICA found that more than two years had passed since Mr AB had first applied for a licence (so long, in fact, that he had had to submit two separate applications). Although his clinical issues were complex, and the DVLA had not always been helped by the inaction of outside consultants, it was wholly unacceptable that Mr AB had already waited more than 28 months for a first provisional licence. The ICA described a "woeful lack of grip" over more than two years. He recommended a consolatory payment to cover the delays that could be placed at the DVLA's door, and that the agency's senior doctor should personally review progress on the application on no less than a monthly basis.

Limit on the length of licences for those suffering from diabetes treated by medication

Complaint: Ms AB complained about the restriction to three years of licences for those suffering from diabetes treated by medication.
Agency response: The DVLA said that a restriction of no more than five years was the result of an EU directive. However, it had asked the relevant Honorary Medical Advisory Panel to conduct a review to see whether the tighter limit applied in this country was justified.
ICA outcome: The ICA said that this was a policy issue and therefore outside his remit. However, in any event he could achieve no more than Ms AB had achieved off her own bat. He was content that the DVLA had been open in its correspondence with Ms AB, and judged that he could not take the complaint any further.

A complaint of peremptory revocation by a driver who crashed her car during a hypoglycaemic episode

Complaint: Ms AB complained that her driving licence was harshly revoked after a single episode of hypoglycaemia whilst driving, when the rules relating to diabetes clearly stated that a single episode was permissible. She argued that she had informed the DVLA of her diabetes at the time that she first applied for a licence, and it was therefore the agency’s fault that no record of her medical condition existed. She argued that the DVLA’s harsh and unreasonable handling of her case had cost her hundreds of pounds in additional transport costs.
Agency response: The DVLA restored Ms AB’s licence two months after the revocation, keeping her case under priority during this time.
ICA outcome: The ICA considered that the revocation decision in all likelihood drew from all of the parts of the published diabetes standard, not just that relating to the number of hypoglycaemic episodes. The other parts covered awareness of hypoglycaemia. The DVLA could not be sure of Ms AB’s awareness given the fact that her condition had not been known to the agency. As soon as more information became available, the agency changed its position. Given the severity of the circumstances (loss of control of the vehicle) the ICA did not judge that the DVLA’s caution was

unreasonable. While he made some minor criticisms of DVLA correspondence, his overview was that there were insufficient grounds on which to uphold the complaint.

DVLA and DVSA: Poor coordination in a medical complaint

Complaint: Ms AB complained that the DVLA did not make sufficient medical enquiries before removing her entitlement to drive after a third party report of unsafe driving. Ms AB had been referred for a DVSA driving appraisal and she contested the outcome (an overall C grade), which was the basis of the DVLA's revocation decision. She felt that the examiner did not give sufficient regard to her driving habits, including her use of cameras for observations, and that the overall grade did not reflect the quality of her performance. She also complained about the way that her concerns had been handled by both agencies.
Agencies' responses: The DVSA referred Ms AB's initial complaint about the appraisal to the DVLA. After further contact from Ms AB, the DVLA responded to the complaint. Given the assessment of the examiner, its medical team judged that Ms AB could benefit from further tuition, and to that end the DVLA provided her with a provisional disability assessment licence.
ICA outcome: The ICA was critical of the DVSA and the DVLA for the lack of coordination during the early consideration of the complaint. The ICA reminded both agencies of the Ombudsman principle that public bodies should ensure a co-ordinated approach. During his review he obtained comments himself from the driving examiner who had undertaken the appraisal. He was unable to reach firm findings about whether Ms AB's criticisms were justified. However, he noted that the examiner's concerns about Ms AB's safety went considerably further than Ms AB's own analysis of the drive and criticisms of the outcome. In this regard, further comments from the examiner were also obtained by the DVLA during the ICA review that confirmed the extent of the examiner's concerns about Ms AB's safety. The ICA was critical of the DVSA in particular for not answering the complaint about the appraisal and he recommended that the DVSA should apologise and ensure that future complaints about driving appraisals are handled in line with its standard complaints procedure. The ICA found that the DVLA's responses were late and lacked coordination. He recommended that the Drivers Medical Group should develop a clear protocol for complaints about the conduct of driving appraisals that involved the DVSA. He also asked that the DVLA apologise to Ms AB and make her a consolatory payment of £50. However, he balanced his criticisms with praise for the sympathetic and clear way in which Ms AB's later queries had been handled by the DVLA's complaints team.

Poor note keeping and delays contributing to a woman losing her job

Complaint: Mrs AB complained that the DVLA had unreasonably refused to restore her driving licence after six months off driving. She felt that she had furnished clear, consultant level medical evidence that her seizure risk was normal. She argued that the delay in relicensing had cost her the opportunity of resuming her employment. It had been impossible to find a job that fitted in with her availability given her duties as a carer to her disabled daughter.
Agency response: The DVLA stated that there had been evidence in Mrs AB's consultant letter that she had an enhanced seizure risk. After her consultant had opined to the contrary, the DVLA made more enquiries of him only to receive the same letter back. It then made further enquiries of Mrs AB's GP before deciding to relicense.

ICA outcome: The ICA judged that the initial decision by the DVLA to instigate further enquiries, just before the six month period off driving had concluded, was reasonable. At this stage the DVLA doctor had the consultant's initial opinion that Mrs AB had enhanced seizure risk. A week or two later the DVLA received an opinion from that consultant that her seizure risk, on reflection, was normal and that she should be relicensed. The ICA judged that at this stage the DVLA should have relicensed Mrs AB. The fact that it did not cost her the opportunity to resume her job and created considerable distress and inconvenience. The ICA recommended that Mrs AB should be invited to submit a compensation claim for the month during which she should have been allowed to drive. He also recommended that the DVLA pay £300 by way of a consolatory sum. The ICA noted that the DVLA had told Mrs AB that it would make a decision within 10 working days, only to submit her case for further investigation. She had interpreted this letter as meaning that the decision would be a licensing decision. This had compounded her difficulties with her employer. The ICA recommended that the standard wording should be reviewed in light of Mrs AB's experience. He also recommended that the rationales for medical decision-making by DVLA doctors should be made much clearer as the doctor in Mrs AB's case had not recorded the reasons for his decisions. This had made it very difficult for DVLA officers to explain the decision to Mrs AB.

Confusing explanations of a short period licence for a former drink driver

Complaint: Mr AB complained that, having reapplied for his entitlement after disqualification for drink-driving, the DVLA repeatedly and unreasonably issued short period licences to him, starting with a 12 month licence followed by a three year licence. He also complained that he had lost his implied entitlements and DVLA had failed to provide adequate justification for the limitations applied to his licence. He characterised the DVLA's approach as punitive.
Agency response: The DVLA provided various explanations for the imposition of a 12 month, and then a three-year, restriction or Mr AB's licence over the two years that he contested it. At various points, Mr AB was told that relicensing following alcohol dependence always followed a one-year/three-year sequence after which a 'til 70 licence might be allowed. But he was also told that his diagnosis of a medical condition had been a factor. The agency set out the legal basis of its inability to restore his implied entitlements without Mr AB satisfying the higher medical standards for licensing.
ICA outcome: The ICA found very little published information anywhere relating to the DVLA's decision-making for issuing limited period licences. He highlighted the contradictory information that Mr AB had been given. Eventually, the ICA was told that the usual approach of the agency where a detoxification had been followed by abstinence within the previous three years, was for a one-year short period licence to be first issued followed by a three-year restricted licence, subject to all health standards being met. Applying this approach to Mr AB's case, the two licensing decisions made sense to the ICA. However, he contrasted this explanation with those provided to Mr AB during the duration of his complaint. While the ICA could not find that the DVLA had departed from the relevant rules, he was very critical of its inability to explain them. He recommended that the DVLA should publish information about the rationales for short period licensing in its guide to the medical standards of fitness to drive, and should also ensure that drivers are alerted to the likelihood of future restrictions whenever possible. He also recommended that the DVLA should apologise to Mr AB for its confusing communications and offer a consolatory sum of £50.

(ii): VEHICLE REGISTRATION AND IDENTITY

A close shave with Q plate allocation for a keeper of a 1960s motorbike

Complaint: Mr AB complained that the DVLA had unreasonably refused to re-register a historic motorbike on its original plate after he had lost the logbook in a fire on his property. He was initially told that he would have to stamp on a DVLA vehicle identification number and re-register the bike under a Q plate. After communications spanning three years, the DVLA relented and accepted on the basis of owners' club evidence that his bike should be given the status of restored classic.
Agency response: The DVLA's casework team initially decided that because another vehicle had been registered to the plate eight years previously, Mr AB's bike was eligible only for a Q plate. After he contested this with the support of his MP, the DVLA relented and obtained owners' club reports for both bikes. Things plodded along with long intervals between actions. Eventually, after Mr AB had obtained further owners' club certification showing that a key component of his bike had been made in 1961, he was told that his bike was eligible for an age related registration.
ICA outcome: Mr AB had been completely unaware of the re-registration of the bike, and on learning of it assumed that it had followed a burglary. Nor had he received the standard letter confirming disposal of the vehicle. The ICA was critical of the DVLA for its stop/start handling of the correspondence and inconclusive responses to the evidence it obtained. He recommended that the casework team should improve its case tracking systems to prevent this from happening again. Given the irregularities in the identity of Mr AB's vehicle, including a question mark about the provenance of the chassis, the ICA was content that the reconstructed classics option had been made open to him.

An original plate for a historic vehicle

Complaint: Mr AB complained about the refusal of the DVLA to register his historic vehicle under its original registration number.
Agency response: The DVLA said that Mr AB had not shown a conclusive link between the chassis number and the original registration number, and the evidence he had produced was 'circumstantial'.
ICA outcome: The ICA said the weight of circumstantial evidence (including information the DVLA had not previously had an opportunity of considering) was such that there could be no reasonable doubt that the vehicle should be registered under its original number. The DVLA accepted this recommendation.

The strange case of a transposed chassis number

Complaint: Mr AB had bought a historic vehicle as a restoration project. He then noticed that the chassis number was different from that on the registration document. He complained that the DVLA then withdrew his entitlement to the registration and gave him a new age-related registration number.
Agency response: The DVLA said that its records showed clearly that it had correctly taken the chassis number from the local authority logbook when first registering the vehicle in 1976. However, it acknowledged that it had not noticed that a different chassis number was given in 1982 when there was the first change of keeper. Successive keepers until Mr AB had not notified the discrepancy. It said its policy was to issue an alternative registration number in such circumstances.
ICA outcome: The ICA said this was a strange affair and the reason for the discrepancy remained a mystery. None of the possible explanations was particularly likely (the local

authority transposing two chassis numbers on consecutive registrations, replacement of the chassis or plate in the first 15 years of the vehicle's life, cloning). But in the absence of any evidence, it was not maladministrative for the DVLA to say that Mr AB's entitlement to the original registration was not confirmed. On the other hand, the agency's own speculation that there might be second vehicle with the same registration and the original chassis number that had somehow not come to DVLA attention since 1976 was also not very plausible.

A complaint about the chassis number on a classic car

Complaint: Mr AB had purchased a classic vehicle. He said the DVLA had made a mistake when registering the vehicle as the chassis number on the DVLA records did not match the information on the car.
Agency response: The DVLA said that Mr AB should re-register the vehicle with an age-related plate, as the current number had no links to the chassis number provided.
ICA outcome: The ICA said that he had personally inspected the original council logbook issued in 1964. The chassis number was not that on Mr AB's vehicle. There was no evidence therefore of an error by the DVLA. The ICA speculated that the engine might have been changed in the 1970s, and that no one had updated the DVLA record. However, he emphasised that he had no evidence one way or the other. The ICA did not doubt that the chassis in Mr AB's car was itself a vintage one, but he could find no link between it and the registration currently showing. For that reason, he could not see that Mr AB had any entitlement to the current registration.

(iii): DATA DISCLOSURE, OR WITHHOLDING, BY THE DVLA

A customer infuriated by the DVLA's involvement in the issuing of a penalty charge notice for a 15 second stop in a layby

Complaint: Mr AB's complaint arose from an incident when he stopped briefly in a layby on an industrial estate. While he paused to turn his car around, his registration number was taken by a mobile ANPR van and a penalty charge notice (PCN) for £100 duly followed. Mr AB complained to the DVLA that reasonable cause for the disclosure of his data to the private "parking" company (PPC) had not been demonstrated. He pointed out that the PPC had cited "breach of terms and conditions of a private car park" in its data access request (which had been fully automated and conducted through the DVLA's electronic portal). However, he had never stopped in a private car park and could not, he said, be said to have entered into a contract by driving past signage at 30 miles an hour. Mr AB also argued that the Accredited Trade Association (ATA) of which the PPC was a member was a "thinly veiled sham". Even though he had clearly been denied a grace period and had been prey to "predatory practices", both of which were contrary to the ATA's code of conduct, the parking company had been allowed to enforce the charge. Over several months of correspondence, Mr AB amplified his grievance that the parking enforcement framework was being abused and that the DVLA was complicit in that abuse.
Agency response: The DVLA responded initially through its Central Casework Group, explaining that reasonable cause had been carefully checked and that all PPCs had to be a member of an ATA. As the correspondence progressed, the DVLA explained that it did not consider stopping a vehicle in an unauthorised area to be so different from parking in an unauthorised area as far as reasonable cause was concerned. Stopping necessitated "investigation" for which data release under reasonable cause was justified.

The DVLA went on to outline the nature of the PPC data release regime which was based on self-regulation. The options of seeking independent review and/or making a representation to the landowner were suggested. The agency's audit measures in place relating to its data release were outlined.
ICA outcome: The ICA agreed with Mr AB that a clear distinction should be drawn between stopping and parking. The ICA judged that stopping would usually be an activity directly related to directing or controlling a vehicle. It would normally be transient, with the driver remaining in the car and the engine switched on. There would often be a safety-related rationale for stopping, for example to check a map or satnav. Parking on the other hand would usually relate to an activity unrelated to directing and controlling a car (for example leisure or shopping activities). The ICA's personal view was that the private parking framework built around the Protection of Freedoms Act 2012, which enabled the DVLA to provide keeper data, was stretched to breaking point by treating the stopping of a vehicle for 15 seconds as reasonable cause for data release. However, he did not feel that this could be a matter on which he could make a determination. In his review of the DVLA's administration of Mr AB's case, the ICA concluded that the agency's initial correspondence had been of low quality, containing significant errors and not addressing Mr AB's key points. As the correspondence escalated to the Data Sharing and Complaints Teams, the quality improved. However, the ICA still felt that the agency had said very little about the basis of its assurance that self-regulation was functioning effectively. He also noted that there had been delays and that Mr AB had needed to keep chasing his case. The ICA partially upheld the complaint. He recommended that the DVLA apologise to Mr AB for the administrative failings he had highlighted, and take action to ensure that there was no repetition. He also recommended that the DVLA's Data Sharing and Complaints Teams take steps to embed the Ombudsman's Principles relating to "Being open and accountable" into their responses to complaints about PPC and/or ATA misconduct, in particular: "Public bodies should be open […] when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions."

Change in the rules regarding information about previous keepers

Complaint: Mr AB is the owner and keeper of a classic vehicle. He complained about the refusal of the DVLA to provide him with a full history of the vehicle so that he could approach previous keepers for the vehicle's service history.
Agency response: The DVLA said that Mr AB's application did not meet the 'reasonable cause' criterion. It acknowledged that there had been a refinement of its previous procedure and that the information on Gov.uk had not been updated in good time. However, it said that its interpretation of the data protection legislation no longer allowed it to release information about previous keepers.
ICA outcome: The ICA said that the window in which these matters took place was very short. But there had been no improper delay in the DVLA processing Mr AB's application, and it was not maladministrative to have determined that the new approach should apply to all requests processed from a single date. However, the failure to warn customers in advance or to ensure that Gov.uk was updated did amount to maladministration. The DVLA had agreed that it would approach previous keepers to see if they were willing for Mr AB to approach them, and the ICA hoped this would be an acceptable compromise and successful in enabling Mr AB to reconstruct his vehicle's service history.

(iv): ENFORCEMENT, OR THE LACK OF IT

DVLA's response to reports of untaxed vehicles

Complaint: Mr AB complained about the DVLA's response to his reports of untaxed vehicles on the road. He said that the response from NSL, the DVLA's clamping contractor, was "glacial", and he objected to the DVLA's publicity campaigns which he said were in contrast to the reality.
Agency response: The DVLA said it did not offer a call-out service, nor could it provide personal updates to customers. It also said that it did not publish the service standards for NSL responsiveness and, in any event, an NSL targeted visit to try to spot vehicles that had been reported was not necessarily the best use of resources. It pointed to the increase in clampings since 2014.
ICA outcome: The ICA said that he felt that Mr AB's complaint was essentially about the DVLA's policies. He could identify no maladministration in the pursuit of those policies, and the agency's correspondence had been appropriate. Mr AB would need to pursue the matter politically rather than through the complaints process.

A resident frustrated by untaxed vehicles near his home

Complaint: Mr AB complained that the DVLA and its contractor had failed to respond adequately to his reports of untaxed vehicles in the vicinity of a garage close to his home.
Agency response: The DVLA set out its policy of referring such reports to its clamping contractor. It directed its contractor repeatedly to the areas identified by Mr AB. On occasion, the vehicles he had reported were actually taxed at the time that they were sighted. On other occasions, vehicles were clamped as a result of his reports. The agency explained that much of its enforcement was applied through its register, electronically, and that it could not provide a callout service.
ICA outcome: The ICA outlined the DVLA's policy and provided statistics illustrating that increased numbers of vehicles were being subject to aggressive enforcement. The ICA did not identify any departures by the DVLA from its established policies. He did not uphold the complaint.

Customer clamped in ignorance of DVLA's automated processes

Complaint: Mr AB and his daughter complained in respect of the clamping of her car. She had taxed the car but a Transfer to the Motor Trade Supplementary (form V5/3) received subsequently from the auction company from which she had bought the car had had the effect of removing her from the vehicle record, and cancelling the tax (which was in the nil tax band). Mr AB also sought compensation for damage to the car that he said was the result of it being clamped (vandalism), and said his daughter's reputation had been libelled. He said the Agency's offer of £150 was derisory.
Agency response: The DVLA had said that once it became clear that the car had been clamped in error it was released free of charge. The DVLA had acknowledged poor service and made a consolatory payment of £150.
ICA outcome: The ICA said he did not think the immobilisation notice placed on the car was defamatory or an act of libel. Nor did he think it was incumbent on the DVLA to publish retractions to rebuild Mr AB's daughter's reputation. But there was no doubt she was the entirely innocent victim. The ICA did not agree that the offer of £150 was derisory. However, he recommended that Mr AB be invited to submit a claim for repairs in consequence of any vandalism for the DVLA to consider. He also recommended that

the DVLA consider changes to its processes to prevent other customers suffering the same fate as Ms AB. This was one of a number of cases where the DVLA's automated systems require transactions to be done in a certain order, but the poor customer often has no control or knowledge of this.

Two over-zealous enforcements of cases relating to direct debits

Case 1: A direct debit did not auto-renew, unknown to the customer, leading to a clamping and court attendance

Complaint: Mr AB's partner was clamped outside her place of work when she was due to collect her children from school. Mr AB complained that the clamping had occurred despite the fact that he had taxed almost two years earlier using direct debit (DD) when they acquired the car. He complained that the failure to renew the DD by the DVLA was contrary to the Direct Debit Guarantee. He argued that the agency had his own contact details and those of his partner, and should have flagged the fact that the DD renewal had failed and the tax had expired. He demanded the return of the unclamp fee and that the out-of-court settlement (OCS) for £262 should be quashed. He also asked that his own expenses of £200 should be refunded. He complained of poor service on the telephone and that a member of the DVLA's contact centre had laughed at him when he had telephoned after the clamping.
Agency response: The DVLA's Enforcement Centre upheld the OCS on the ground that the DD had failed to auto-renew because the car had not been registered. Mr AB had been able to set up the direct debit with the information on the V5C/2 slip, but his partner had taken no action when the agency had written to her (at the address on the V5C/2 slip) to say that the car needed to be registered. For some reason, the V5C had never been received from the dealer from whom they had bought the car. The DVLA allowed Mr AB to register the car without paying the £25 fee. However, it progressed the enforcement case to court. Before the hearing its prosecutor accepted Mr AB's mitigation, taking a payment for the arrears of tax only.
ICA outcome: The ICA did not agree with Mr AB that the DVLA was responsible for the fact that the car was not registered. He pointed Mr AB to the clear message in the letter to his partner shortly after the car had been taxed. He also highlighted the wording on the V5C/2 slip itself that warns customers that if their car is unregistered they could face prosecution. In his view, the root cause of the clamping was the fact that the car was not registered. The ICA noted that the DVLA had changed the wording on the acknowledgement sent to DD customers. In future, it will ask them to make contact if they do not receive a schedule of payment at the end of the first year of the order being in place. The ICA felt that the agency should go a stage further by developing the technology to ensure that customers are told when an auto renewal has failed. The ICA regarded the quashing of the £262 OCS as adequate remedy for any lack of clarity in the DVLA's communications about the status of the DD. The ICA was critical, however, of aspects of the DVLA's administration, in particular its failure to investigate Mr AB's complaint that a member of staff had been rude. Two members of DVLA staff had separately listened to the call and neither had responded to that aspect of the complaint. The ICA also noted that points that Mr AB had made in his correspondence, and letters he had sent to the agency, had not received a response. He therefore partially upheld the complaint. The ICA recommended that DVLA should make a consolatory payment of £100.

Case 2: A direct debit cancelled without the keeper's knowledge leading to a clamping and fine

Complaint: Mr AB bought a car and set up a DD using the reference number on the front of the V5C/logbook. He did not notify the DVLA that he was the new keeper at the time (the DVLA expects new keepers to use the serial number on the V5C/2 slip rather than on the front of the V5C itself). When the DVLA received the disposal notification, its systems assumed that the DD in place belonged to the disposing keeper and cancelled it. Unaware, Mr AB continued to use the car and two months later he was clamped. He paid the unclamp fee and an additional £25 for a V5C. Four months later, a letter arrived announcing that he would be prosecuted if he did not pay an out-of-court settlement of £85 relating to the original offence. This was the final straw for Mr AB. He complained that the DD should not have been cancelled; that he was not informed of the cancellation; that he had provided the V5C/2 and therefore should not have to pay for a new logbook; and that he had followed all the prescribed steps and yet still been penalised.
Agency response: The DVLA explained that there had been no sign of a change of keepership at the time that the vehicle was taxed through DD. Therefore, the notification of disposal had cancelled the DD before any money had been taken from Mr AB. The DVLA set out its powers of enforcement, and declined to cancel the OCS.
ICA outcome: The ICA pointed Mr AB to the instructions printed on the V5C. These tell new keepers to ensure that the sections notifying the agency of their acquisition are completed on the main form and returned, and to chase if a new logbook has not arrived within four weeks. To avoid the £25 charge for a new logbook, the keeper needed to provide the V5C/2 with the V62 application which Mr AB had not done. The ICA could not see any grounds to refund Mr AB the £25 charge for the new logbook. He also felt that the failure of Mr AB to follow the clearly published steps had led to the clamping and that he should accept responsibility. However, Mr AB had then inexplicably been notified four months later of further enforcement action based on the same on-road sighting. The ICA was critical of the DVLA for the delay in initiating this action, and for its failure to flag it in its earlier correspondence. The ICA also felt that it was disproportionate given the clear evidence that Mr AB had set up DD in good faith and had only failed to tax through a genuine misunderstanding. He recommended that the £85 should be reimbursed to Mr AB minus any outstanding arrears of tax.

A complaint about a Fixed Penalty Notice for a vehicle already sold

Complaint: Mr AB complained about an FPN he received in respect of a vehicle he had sold.
Agency response: The DVLA said that it had no record of Mr AB's disposal of the car. Nor had he responded to the warning letter.
ICA outcome: The ICA said he sympathised with Mr AB. However, he had remained the registered keeper. Parliament had legislated in such a way that strict liability applied. Mr AB had had two opportunities to inform the DVLA that he was no longer the registered keeper of the vehicle. In such circumstances, the ICA could find no maladministration on the part of the DVLA in applying the law as Parliament intended.

A complaint about a SORNed vehicle being clamped while awaiting its MOT

Complaint: Mr AB complained that his SORNed vehicle had been clamped while parked near the garage where it had been taken for its MOT. He said the garage had no off-road parking space and had moved the vehicle nearest to the garage. He said it was unfair to have been clamped in such circumstances over which he had no control.
Agency response: The DVLA had said that the law allows a SORNed vehicle to be driven to a garage for a MOT but not for it to be parked on the public road. It accepted that Mr AB had not set out to break the law.
ICA outcome: The ICA said he sympathised with Mr AB. However, the law relating to vehicle licensing and SORN resulted in strict liability for the vehicle keeper. He found that Mr AB had been doubly unlucky in that the clamping was not targeted but entirely random. The ICA also said it was not improper for the DVLA to suggest that Mr AB might wish to raise the matter with the garage. They would not have known that his car was SORNed but might have other customers in the same position.

Erroneous action by one of the DVLA's devolved powers partners

Complaint: Mr AB complained about the removal and destruction of his vehicle by contractors of a local authority, a devolved powers partner of the DVLA. He said it was now accepted that his SORNed vehicle was on private land when it was removed, and that the DVLA were responsible, the Council having declined to pay compensation and the Local Government Ombudsman having declined jurisdiction.
Agency response: The DVLA said that liability rested with the Council. The agency had authorised disposal on the basis that the removal had been correct.
ICA outcome: The ICA said that this was a difficult issue in terms of the ICA terms of reference. He had no responsibility for the Council and was not a point of appeal against decisions of the Local Government Ombudsman (LGO). However, it was clear that Mr AB was the wholly innocent party. The ICA agreed with the DVLA that its actions had been reasonable on the information available to the agency, and that responsibility rested with the Council. Although conscious that Mr AB might think this was another exercise in buck-passing, he recommended that a copy of his report be shared by the DVLA with the Council so that they reconsider their decision in relation to the compensation to be offered to Mr AB. In light of the Council's decision, the DVLA should then consider sharing a copy with the LGO and invite him to reconsider his decision to decline jurisdiction.

Enforcement arising from a driver's confusion regarding direct debit

Complaint: Mr AB set up an annual direct debit for road tax on his car. Unbeknown to him, his MOT expired days before the direct debit was due to auto-renew. The transaction did not complete and his car was untaxed. Mr AB had the car MOT'd and, on checking his bank account, saw that a sum in line with his annual tax had been taken by the DVLA. He assumed this was for his own car tax. Shortly afterwards he was issued with a late licensing penalty followed by an OCS based on an on-road sighting. He complained that the DVLA's system should make it clear for which vehicle the tax is being collected through the direct debit system. He also complained of delays, and failures by the agency to address the points in his correspondence.
Agency response: The DVLA set out the legal basis of its two enforcements. It explained that the tax that had been taken had been for Mr AB's wife's car. It upheld the two enforcements.
ICA outcome: The ICA noted that most of Mr AB's complaints related to DVLA policy over which he had no sway. He concluded that the policy had been implemented

correctly. He agreed with Mr AB that it would have been helpful to have had some clarity as to which car the debit had related to. But he also noted that the DVLA had written to Mr AB a month later before commencing enforcement action alerting him to the fact that his car remained untaxed. The ICA did not uphold the complaint.

When a direct debit does not roll over

Complaint: Mrs AB complained in relation to the clamping of her vehicle and the OCS subsequently imposed. She said she had set up a direct debit and had assumed this had automatically renewed as indicated in DVLA pages on gov.uk.
Agency response: The DVLA said that Mrs AB had not been recorded as the registered keeper. The direct debit had expired because there was no keeper on the record. The agency said Mrs AB should have chased for acknowledgement of her keepership, and checked the direct debits on her bank statement. It also said that non-receipt of a new payment schedule should have alerted Mrs AB that there was a problem.
ICA outcome: The ICA said that at the heart of the complaint were the relative responsibilities of vehicle keepers and the DVLA. He concluded that, as a matter of law, the enforcement action had been correct. Mrs AB also had to take responsibility for the minor sins of omission identified by the DVLA. However, the ICA was critical of the information made available to keepers before December 2017 (when changes were made to gov.uk). Mrs AB had every reason to suppose her direct debit would roll over automatically, as this is what the information said. He recommended that the DVLA review its current process whereby a direct debit is automatically cancelled if no keeper is on the record. In light of the poor information offered to Mrs AB and other minor maladministration he also recommended a consolatory payment of £150 (approximately half of the OCS and other costs involved).

DVLA overturns enforcement action when it becomes clear that explanations offered to the ICA were confusing and partial

Complaint: Mr and Mrs AB complained about the Late Licensing Penalty (LLP) imposed for not taxing a vehicle they said they had sold many months earlier. They also said that a DVLA advisor had been very rude and unhelpful.
Agency response: The DVLA said that the LLP had been imposed in line with the legislation on Continuous Registration (CR). It said it had never received notice of disposal and that no approach had been made to them after 20 days because an acknowledgement had not been received. It said it had listened to the only call it could identify and no rudeness had been shown.
ICA outcome: The ICA said that the law on CR was in strict terms and, while he had no reason to doubt Mr and Mrs AB's account, the LLP had been correctly imposed. The complainants had also benefited from the former policy of having their overpaid road tax refunded on a backdated basis. As far as the phone call was concerned, this had now been deleted, and the ICA repeated a recommendation that consideration be given to retaining calls for beyond 90 days if there was the possibility of an ICA referral. He also negotiated an extension of the period in which a reduced LLP of £40 would apply. Subsequently challenged by Mrs AB as to why the direct debit had cancelled rather than rolling over, it became clear that the explanations offered to the ICA had been confusing and partial. In light of this, the DVLA agreed to waive the enforcement action.

Late Licensing Penalty imposed on a vehicle the customer had sold

Complaint: Mr AB complained about the LLP imposed for a car he had sold to a dealership. He said the garage had offered to pay the LLP on his behalf, but the DVLA said it could not approach them for the money.
Agency response: The DVLA said that no disposal notice had been received and that Mr AB therefore remained responsible. It said there was no impediment to the garage paying the LLP on Mr AB's behalf and had provided details of how to do so.
ICA outcome: The ICA said that there had been no maladministration on the DVLA's behalf, although he entirely understood Mr AB's frustrations. The ICA arranged for the DVLA to extend the period under which the reduced LLP could be paid and that all enforcement action would remain on hold for four weeks. Without offering any formal advice, the ICA suggested that the solution now rested in Mr AB's own hands.

Failure of online system leads to enforcement action #1

Complaint: Mr AB complained about the clamping of his vehicle. He said he had tried to tax it online on four occasions, but had been unsuccessful. He also said he had not been told by the DVLA that he could tax it at a Post Office, and criticised the agency's policy of not retaining call records for more than 90 days.
Agency response: The DVLA said it was the vehicle keeper's responsibility to ensure their vehicle was correctly taxed. Mr AB's vehicle had been clamped two months after the attempts to tax it online.
ICA outcome: The ICA said that it was clear that Mr AB had not set out to evade tax. But he had nonetheless kept the vehicle on the road for two months. There was no maladministration in the clamping and other enforcement action. The ICA said that, while it was a matter for the Information Commissioner, his own view was that the retention of calls for 90 days was also not maladministrative, albeit it had restricted the extent of any review he could carry out in this instance. While the ICA considered that the DVLA’s decision to retain calls for 90 days was not maladministrative he suggested that in the light of another similar case that DVLA might consider extending the retention period for cases where the complaint is likely to be referred to him.

Failure of online system leads to enforcement action #2

Complaint: Mrs AB complained about the Fixed Penalty Notice (FPN) imposed for a breach of Continuous Insurance Enforcement (CIE). She said that on receiving the Insurance Advisory Letter (IAL), she had tried to SORN the vehicle and had no idea that this had been unsuccessful.
Agency response: The DVLA said its records showed that the SORN transaction had been abandoned. It pointed out that notification of successful SORNing online was given by email if requested and by post, and appeared on the screen too.
ICA outcome: The ICA said that he sympathised with Mrs AB who had clearly tried to SORN her vehicle. However, it was her choice not to elect for email notification of a successful transaction. The DVLA was not obliged to inform customers if their transactions were abandoned, and he did not agree that the form on gov.uk was poorly designed. As there had been no maladministration on the DVLA's behalf, the FPN had been correctly imposed. However, the ICA was able to negotiate for a further extension of one month during which the reduced sum of £50 could be paid.

Time limit for reduced Fixed Penalty Notices

Complaint: Ms AB also complained in relation to an FPN imposed for a breach of Continuous Insurance Enforcement (CIS). She challenged the date on which the reduced FPN of £50 would be payable, and asked for a refund of the extra £50 she had paid.
Agency response: The DVLA said that its notice had made clear that the 31 days within which a reduced FPN could be paid ran from the date of the notice itself. It had declined to refund £50.
ICA outcome: The ICA said that it was entirely clear that Ms AB had been given the date by which the reduced FPN could be paid. The agency had no trace of the phone calls Ms AB said she had made, and there would have been no reason for the advisor not to have taken the reduced FPN had Ms AB rang when she said she had.

(v): OTHER CASES - DRIVERS

A complaint about the application of the Immigration (EEA) Regulations 2016

Complaint: Mrs AB, a US citizen, complained that the DVLA incorrectly refused an application for a GB provisional driving licence given the Immigration (EEA) Regulations 2016 and other legal provisions. She said her US citizen EEA Biometric Residence Permit (BRP) issued by another EU authority was valid, and sufficient to confirm her minimum 185 days per calendar year residency status in the United Kingdom while the UK remained in the EEA, and she was married to her UK citizen husband. Border Force had confirmed that she had been admitted to the UK with her husband under the 2016 Regulations without her passport being endorsed with any limit on her stay.
Agency response: The DVLA stated that, before issuing a provisional driving licence to a non-UK, non-EEA citizen, the DVLA was entitled to require the complainant to provide her passport or equivalent travel document together with proof of her being issued leave to remain in the UK.
ICA outcome: The ICA did not uphold the complaint that a foreign issued BRP on its own was sufficient to establish lawful residence for the required minimum period (at least 185 days), and found that the agency was therefore justified in refusing the initial licence application. The DVLA was entitled to seek more information to show that the complainant was lawfully resident under the 2016 Regulations. However, once the complainant had notified the agency of the circumstances of her admission to the UK and the Border Force decision which had allowed this, the DVLA could and should have done more to progress the application by seeking documents from the complainant. Had it done so, a licence should have been issued sooner. The ICA recommended that the DVLA apologise for this failure in performance and offer a consolatory award to the complainant of £250 for the inconvenience and added insurance expense caused by the delay to her being allowed to drive. The ICA also recommended that DVLA: (i) published information about when a BRP would provide proof of residency be clarified; (ii) the processing of emailed complaints be improved to prevent them being treated as 'spam' mail; and the agency's Operational Instructions on the handling of applications from non-UK citizens be reviewed and revised so as to equip staff to deal with the effect of the 2016 Regulations.

Two complaints about fraud and identity theft

Case #1: Positives and negatives in the DVLA's handling of a case of attempted identity theft

Complaint: Mrs AB complained that the DVLA's response to her report of identity theft had been delayed and lacking in helpful information or assistance. She had discovered that her licence had been registered to an unknown address that the DVLA would not disclose when she attempted to test-drive a car. Similarly, her husband's licence had been re-registered. She reported this to the DVLA but heard nothing for two weeks. She became increasingly frustrated by the refusal of the DVLA to give her information, including the address to which her licence had been registered.
Agency response: The DVLA referred the case to its fraud team who put a marker against Mrs AB's record and investigated the allegation of fraud. This was substantiated and, after further dealings with the DVLA, new licences were issued to Mrs AB and her husband. The DVLA's chief executive wrote to Mrs AB explaining its processes.
ICA outcome: The ICA considered that many aspects of the DVLA's handling of the case had been appropriate. For example, contact centre staff could not give Mrs AB information from her driver record when she could not confirm the address to which it was registered. This was very frustrating for her but understandable as the DVLA was protecting confidential information. On the other hand, the ICA felt that it had taken far too long for Mrs AB's case to reach the fraud team. He recommended that the DVLA should consider an electronic portal for expediting reports of fraud. Once in the hands of the fraud team, the ICA felt that the handling had been much better. His only criticism was that the rationale for not giving Mrs AB further information about the address to which her case had been registered was thin. The ICA compared Mrs AB's treatment with the standards set out in the Victims' Code (*Code of Practice for Victims of Crime*). While he noted that the DVLA was not required to adhere to the Victims' Code, he judged that the agency should take on board some of the principles enshrined in it. These include the provision of information and advice to victims of crime at an early stage. The ICA did not judge that this had been done sufficiently by the DVLA, and he was unhappy at the delay in the case arriving in the fraud team. He therefore partially upheld the complaint and recommended that the DVLA should make a consolatory payment of £100.

Case #2: Fraudulent application for licence not subject to sufficient checks

Complaint: Mr AB complained that the DVLA had issued a driving licence in his name to an address not his own.
Agency response: The DVLA had acknowledged that an application had been processed from someone claiming to be Mr AB in respect of an allegedly lost licence with a new address. A form had been sent to the fraudster to provide a signature, but DVLA Operating Instructions did not require this to be checked against the original. It had offered £20 to enable Mr AB to join CIFAS (formerly the Credit Industry Fraud Avoidance System) – which he had declined as he was already enrolled.
ICA outcome: The ICA said he did not believe the DVLA had remotely faced up to the maladministration for which it was responsible. The failure to check signatures may have been unavoidable given the volumes of correspondence, but it was a ridiculous weakness. The DVLA had said that it had reviewed its processes, and more robust procedures would now be introduced. The ICA increased the consolatory payment to one he considered more proportionate to the maladministration he had found.

A complaint about the transfer of entitlements

Complaint: Mr AB complained that he was unable to transfer his moped entitlement from another EU country onto a GB licence. He had been told he would have to undergo compulsory basic training (CBT).
Agency response: The DVLA said that it was bound by the terms of an EU directive. Mr AB was being treated in the same way as a GB licence holder who passed their category B test after February 2001.
ICA outcome: The ICA said he sympathised with Mr AB who had driven mopeds for many years. However, the DVLA position had been endorsed by both the EU and the country where he had obtained the original entitements.. The ICA had asked if the DVLA could exercise any discretion (since there was some suggestion that an alternative option might be available), but had been told that this was not possible.

An application to convert a licenceto a GB licence that set in train a Home Office raid

Complaint: Mr AB is a non-EU national man married to an English woman. After living in Spain with his wife and child, he entered the UK with a passport stamp indicating that he had been admitted under the Immigration (EEA) Regulations 2006 for six months. Two months later he applied to exchange his driving licence issued by his country of origin for a GB one. He complained that the DVLA refused to do this on the spurious grounds that it doubted the validity of his identity document (his passport). But his main complaint was that the DVLA had referred his passport to the Home Office, and immigration enforcement staff had then raided his home and arrested him. He had subsequently had an admission from the Home Office that this raid had been based on a failure to check his passport properly. The Home Office explained that the error had originated in the DVLA's referral of the case. Mr AB submitted evidence that he had been successful in court after further efforts by the Home Office to deport him (on the basis that his time in Spain had been designed to circumvent the UK immigration rules). He complained that this too had been insufficient to obtain a GB licence.
Agency response: Initial checks by the DVLA with the Home Office confirmed that Mr AB had not been granted leave to remain. This was taken to mean that he had entered the country unlawfully and his passport was sent to the Home Office by the agency. This prompted the raid which involved the use of physical restraint, and the arrest of Mr AB in front of his child. Throughout its correspondence with Mr AB and his MP, the DVLA stated that the problem with the licence exchange application had been concerns about the authenticity of Mr AB's documentation. At no stage did it mention its actual requirement of leave to remain and 185 days residency (a period of time that will always exceed a six-month period). This position was reiterated during the DVLA complaints team's involvement.
ICA outcome: The ICA made repeated enquiries of the DVLA and was pleased to take up the opportunity to speak directly to a member of its fraud team during a visit to Swansea. The DVLA accepted that its clerk had no reason to check the status of Mr AB's entry into the country given the clear passport stamp. Further, the information that came back from the Home Office (that Mr AB had not been granted leave to remain) did not mean that he had entered the country unlawfully. So there had been no need to send Mr AB's passport to the immigration authorities. The agency reflected on its own handling and changed the wording of its standard letter that explained to customers why it had referred documents to the Home Office. All work related to status checks had

been centralised to a single team and retraining was underway to ensure that only documents without the correct status recorded on them were referred to the Home Office. The ICA welcomed these changes. He was highly critical of the agency though, not only for its original error but also for its failure to recognise and remedy it. In Mr AB's case, the refusal of his applications should have been routine transactions. The ICA said that at no stage had Mr AB been actually told the DVLA's requirements. Instead, a correct policy-based decision to refuse his application had been muddled with the DVLA's (incorrect) understanding of Mr AB's status in the country. The ICA pointed to other inaccuracies and lapses in service by the DVLA. He recommended that DVLA explanations for involving the Home Office should be made clearer, and that stringent measures should be put in place so that its officers understand the distinction between unlawful entry and the absence of leave to remain. The ICA also recommended that the chief executive of the DVLA should apologise for the failings he had identified, and that a consolatory payment of £500 should be made.

A test pass from another European country

Complaint: Mr AB complained that the DVLA would not recognise the test pass certificate for a HGV test taken in another European country. He also said that the information provided to him by the contact centre had been incorrect.
Agency response: The DVLA said that it could only transfer entitlements shown on a licence, and had advised Mr AB to engage with the authorities in his own country. The DVLA also said that the pass did not show on the pan-EU RESPER database.
ICA outcome: The ICA initially tried to see if the problem could be sorted between the DVLA and the authorities from Mr AB's country of origin. However, the Agency said that if Mr AB was resident in the UK he should not have taken the test abroad, and that his attention should not have been drawn to the RESPER database as it could only transfer entitlements from licences. The Agency cited the relevant EU and domestic legislation. In these circumstances, there was nothing the ICA could offer. However, it did seem that the Agency would transfer entitlements from RESPER from lost licences, so its approach did not seem entirely logical. However, in Mr AB's case the point was moot as the entitlement did not show on RESPER (which the DVLA had checked again at the ICA's request).

A complaint about a lost passport

Complaint: Ms AB complained that she had been wrongly informed she needed to send her passport when renewing her driving licence at age 70 via form D801. (The electronic application could not be completed because of a minor difference in the spelling of Ms AB's first name on the passport and in the DVLA records.) She said the passport had been safely posted at a Post Office but had gone missing at the DVLA.
Agency response: The DVLA said that the application had been annotated by the clerk 'NOT ENC' and the details entered into the NO ID book. A thorough search had also been conducted but to no avail. In these circumstances, the DVLA said it was not responsible for the loss or liable to pay for a replacement.
ICA outcome: The ICA said he sympathised strongly with Ms AB. He had no doubt she had sent the passport as she said. However, the DVLA's evidence was equally strong that it had not arrived. The ICA said that, although he could not listen to the recording of Ms AB's conversation with a DVLA adviser as it had not been retained, the evidence of those who had listened was that there was an unfortunate misunderstanding between Ms AB and the adviser, with both speaking at the same time. In these circumstances, he

could not say that the DVLA was responsible for the loss of the passport or had acted maladministratively. He made two recommendations: the DVLA complaints team to review its processes for retaining recordings beyond 90 days when it was likely that a complaint could escalate to an ICA (this recommendation is also reflected in other cases considered by him); the DVLA to revise form D801 which the ICA said was a very poorly designed document and one that was potentially misleading to customers.

Unfair claims of abuse by contact centre staff

Complaint: Mr AB complained in relation to the exchange of his driving licence following his change of name. He said the process had taken too long, that his licence had been returned by standard post rather than in the special delivery envelope he had provided, and that staff in the contact centre had treated him very poorly.
Agency response: The DVLA said that processing times had been explained to Mr AB, and that in fact the transaction had been completed well within those times. It acknowledged that Mr AB's licence had been returned by standard post, but said there was nothing to suggest Mr AB had not wanted this; instead his deed poll had been returned in the envelope provided. It also stood by the staff of the contact centre, while acknowledging that one manager had wrongly refused to take Mr AB's call.
ICA outcome: The ICA said that he did not think that taking less than one week to issue Mr AB's new licence could be considered maladministrative. He also judged the evidence to be uncertain as to whether Mr AB had (as he claimed) included a note with his application asking for the licence to be returned in the special delivery envelope. Turning to the calls, the ICA said most had been conducted courteously, but that Mr AB had himself been argumentative (although he had not sworn). One call had been terminated when Mr AB had told the adviser she could not complete her sentence and that her attitude was sickening. One call had been terminated somewhat precipitately when Mr AB and the adviser were talking over each other. Overall, he felt the calls did not reflect badly on the contact centre staff and Mr AB's allegations that he had been bullied and tortured were simply not proportionate to what had occurred.

(vi): OTHER CASES - VEHICLES

A customer with a history of avoiding tax by cancelling direct debits

Complaint: Mr AB had a history of repeatedly setting up and cancelling direct debits for tax on his two cars. Under a new policy, the DVLA blocked him from using the facility. He complained that he had been told that he had been able to set up a direct debit for one of his cars only to be penalised when the tax was not collected. He also complained about confusing and inaccurate advice from the DVLA's contact centre. He regarded the DVLA's effort to reclaim over 20 months of unpaid tax as victimisation.
A**gency response**: The DVLA itemised the unpaid tax on one of the vehicles and threatened Mr AB with court action if he did not pay. It also issued a fixed penalty notice for non-payment of tax on the other. Eventually, Mr AB paid the sums under protest. However, he did not repay the arrears of tax on the second vehicle and the enforcement action was put on hold during the ICA review.
ICA outcome: The ICA review was confounded by the poor presentation of the file by the DVLA. The case was withdrawn and reissued to him two months after the initial referral as live enforcement activity was underway. The ICA found the key letters and information was missing. All of this and Mr AB's at times unreliable account of events, added to the complexities. The ICA concluded that Mr AB had avoided tax habitually

and that the DVLA's efforts at reclaiming it did not amount to victimisation. The only fine that was levied was a system generated fixed penalty notice which Mr AB had been given every opportunity to avoid. The ICA found that at times the DVLA had not been completely clear with Mr AB about the fact that he could no longer tax with direct debit. He had insisted that he could and had successfully done so despite repeated communications from the DVLA telling him that no direct debit was in place. However, the ICA could not recommend that Mr AB, a serial tax avoider, should be issued with a consolatory payment. He recommended that the DVLA should apologise for the lapses in administration he had identified. He did not uphold the complaint.

A customer paying the wrong rate of VED

Complaint: Mr AB complained about the vehicle excise duty (VED, or road tax) reimbursement he had been offered in respect of his vehicle. The vehicle had been registered as PLG (private or light goods) but he had obtained a Certificate of Conformity (CoC) to show it was in diesel class E.
Agency response: The DVLA had offered a reimbursement covering six months tax. It had said it could not reimburse sums from before it was notified that the taxation class was wrong.
ICA outcome: The ICA said that Mr AB could not be reimbursed for the costs of obtaining the CoC – which was necessary to prove his case – given that the DVLA had made no mistake on the evidence it was given at first registration. However, Mr AB had been wrongly offered a reimbursement covering just six months, had been wrongly advised that the DVLA could not offer more by law, and wrongly advised that the agency could not reimburse from before it was notified. These errors on the part of the business area and the complaints team meant that Mr AB was put to additional inconvenience and delay. The ICA therefore recommended that the DVLA exercise its discretion and reimburse all the additional VED he had paid since first acquiring the vehicle.

A complaint about the loss of a cherished plate

Complaint: Mr AB complained about the loss of his right to display a personalised number plate.
Agency response: The DVLA said that Mr AB had lost the right to display the plate as it had not been renewed since expiry in October 2010. Although it had previously allowed customers to retain 'lost' entitlements on payment of the appropriate fee, the policy had changed in November 2016. That policy had been the subject of a formal consultation and the Government had endorsed the outcome.
ICA outcome: The ICA said that he had huge sympathy with Mr AB. He had also considered whether the DVLA could be asked to adopt a more customer-friendly approach. However, in light of the Government's decision, and the rationale for a cut-off point of six years after expiry of the entitlement during a transitional phase, he did not feel there had been any maladministration on the Agency's part. Mr AB was clearly very unfortunate in losing his entitlement by a matter of a few months.

An unfortunate loss of entitlement to a registration mark

Complaint: Ms AB complained that the DVLA had removed her entitlement to display a personalised number plate, without her permission, and despite her following DVLA instructions at every stage of the assignment process.

Agency response: The DVLA explained that Ms AB had successfully applied to retain the plate after her car was written off. However, she had then returned the V778 certificate along with the logbook for the car – which had the effect of restoring the plate to the vehicle. At this stage the vehicle was the property of her insurance company and it was subsequently sold at auction. The DVLA referred Ms AB's request for the plate to the new keeper of the vehicle but the keeper declined to assign the rights back to Ms AB.
ICA outcome: The ICA judged that the problem had been the inexplicable decision by Ms AB to return the V778 to Swansea with the logbook for the vehicle that she had disposed of. While the V778 did not specify the vehicle to which the plate was to be assigned, the ICA judged that it had been a reasonable and logical assumption by the DVLA that Ms AB intended to assign the plate to that vehicle. The transaction was initially rejected because Ms AB had not signed the V778. At this stage the ICA felt that the agency should have also asked her to complete the form properly – in order to make it clear which vehicle she intended the registration to be assigned to. Had this happened, Ms AB might have realised the effect of her application. However, after the V778 was signed and returned, the plate was assigned back on to the car. The ICA did not think that the DVLA had taken full responsibility for its lack of clear guidance to Ms AB. He therefore partially upheld the complaint and recommended that a consolatory payment of £50 should be made to her. However, he regarded the root cause of the problem as Ms AB's decision to return the paperwork. No logical purpose for this other than reassignment of the plate was clear to the ICA. Further, had Ms AB notified disposal of the car the transaction could not have been completed.

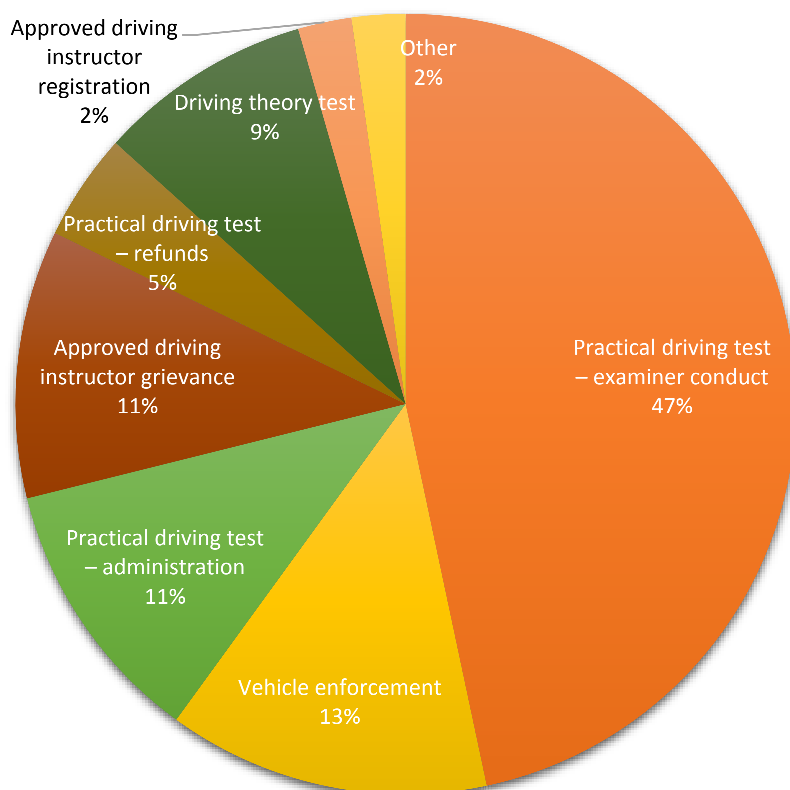
A complaint about SORNing and scrapping

Complaint: Mr AB complained in relation to the scrappage of his vehicle. He said he had been incorrectly advised by the DVLA and should have been told to SORN the vehicle as it was in a commercial garage awaiting an MoT. Second, he asked for refund of a month's VED.
Agency response: The DVLA said that it could not refund the VED as notice of disposal had not been received until mid-month. It said it could not access a recording of Mr AB's phone call, but said it would not have expected its adviser to have discussed SORN when Mr AB had indicated an intention to scrap the vehicle imminently.
ICA outcome: The ICA said he could offer no assistance in respect of the VED since the DVLA was acting in line with the legislation (albeit Mr AB was right to say that the consequence was that the agency received two months' VED in the month in question as, in the event, the vehicle was not scrapped by the garage concerned). The ICA said he could reach no view on the contents of Mr AB's call, but was critical of the DVLA for its dogmatic assertions about a call no one had been able to listen to. He also suggested (short of a formal recommendation, but subsequently endorsed by the DVLA) that staff in the contact centre be reminded that there were in fact circumstances when SORNing a vehicle intended to be scrapped could indeed be beneficial to customers (e.g. SORNing in one month and disposing the next).

3. DVSA casework

3.1 Figure 11 illustrates the business areas regarding the 45 cases referred to us by the DVSA in 2017/18. Some 40 of the cases were from the driving standards part of the business (the former Driving Standards Agency) and five from the vehicles side (formerly VOSA, the Vehicle and Operator Services Agency).

Figure 11: DVSA complaints 2017/18 against business areas



3.2 Table 7 compares the cases received this year with the previous two years. No particular pattern is evident, other than that complaints about practical driving tests, and the perceived unprofessional conduct of examiners represent about half of all our DVSA work.

3.3 The nature of the ICA review process means that we are rarely able to add value in reviewing cases where candidates or their driving instructors complain about driving examiner conduct. All too often, these amount to one person's word against another's, but we are generally content that the DVSA is entitled to place considerable weight upon the professional views of an examiner who conducts many hundreds of tests each year over those of a pupil with, necessarily, limited driving experience.

3.4 The contemporaneous driving test reports completed by the examiner are an invaluable aid to our deliberations, but frequently difficult to read. The forthcoming use of electronic tablets to record driving test outcomes will be a boon to us as to the DVSA and its examiners.

Table 7: DVSA complaints 2015-2018 against business areas

Business area	2015/16		2016/17		2017/18	
	No.	**%**	**No.**	**%**	**No.**	**%**
Practical driving test - conduct	9	32%	22	56%	**21**	**47%**
Vehicle enforcement	3	11%	4	10%	**6**	**13%**
Practical driving test – administration	1	4%	2	5%	**5**	**11%**
Approved driving instructor grievance	0	0	4	10%	**5**	**11%**
Driving theory test	4	14%	1	2.5%	**4**	**9%**
Practical driving test – refunds	4	14%	1	2.5%	**2**	**5%**
Approved driving instructor reg.	0	0	1	2.5%	**1**	**2%**
Other	7	25%	4	10%	**1**	**2%**
Total	**28**		**39**		**45**	

3.5 We have also been pleased to see the DVSA's commitment to improving the diversity of its driving examiner workforce. This is a matter upon which we have commented in a number of reviews down the years.

3.6 We believe the DVSA's current three stage complaints procedure (which, in practice, can mean more than three internal responses before an ICA referral) should be brought into line with the two-stage process applying elsewhere in the DfT family.

3.7 The DVSA's current refusal to consider any video-recorded evidence in relation to complaints is increasingly out of line with all other walks of life. It is also incomprehensible to customers, many of whom have dashcams fitted, the evidence from which can be used by the police, insurance companies, and others. The DVSA's view seems to be that video-evidence is only partial – and this is of course true. It is also the case with every other form of evidence. Assessing candidates' reaction to a static forward-facing video view has been part of the driving theory test since 2002. We would like to see the agency reconsider its approach to legitimately-made video recordings in the practical test.

3.8 Table 8 sets out the outcome of DVSA cases referred to us in the year as well as our average case completion time. The Table shows that the small number of approved driving instructor (ADI) complaints take on average twice as long to complete as all other DVSA referrals.

Table 8: DVSA case outcomes, 2017/18

Business area	Not upheld	Partially upheld	Fully upheld	Average completion time h:m
Practical driving test – examiner conduct	16	5	0	3:07
Vehicle enforcement	4	2	0	3:48
Practical driving test – administration	4	1	0	2:16
Approved driving instructor grievance	2	3	0	6:31
Driving theory test	2	1	1	3:34
Practical driving test – refunds	2	0	0	0:51
Approved driving instructor registration	1	0	0	3:25
Other	1	0	0	4:40
Total	**32**	**12**	**1**	**3:28**

3.9 Our 13 recommendations to the DVSA fell into the following categories:

- Consolatory payment: 7
- Change systems: 3
- Change information provided: 1
- Apology: 1
- Other: 1

CASES

(i): DRIVING TESTS & STANDARDS

The evidence the DVSA relies upon when assessing complaints about practical driving tests

Complaint: Mr AB complained in relation to a HGV Class 2 practical test. He said he had successfully completed the test until an incident occurred when returning to the test centre involving parked vehicles. His complaint touched on the DVSA's policy of not viewing CCTV coverage relating to a practical driving test.
Agency response: The DVSA had offered £205 representing the costs of a re-test and a contribution towards the costs of his training. (Mr AB had rejected this offer.)
ICA outcome: The ICA said he was not a means of appeal against a driving test result. But he noted that Mr AB had had to write on four occasions before it was acknowledged that the agency could not be certain that the test had been conducted in line with DVSA guidelines. He therefore increased the sum offered to £295 to take account of this inconvenience. The ICA said the decision not to view the coverage from Mr AB's forward-facing cameras was in line with DVSA policy and therefore not maladministrative. However, he recommended that the policy be reviewed, and that – when the present policy was quoted – a rationale for it was provided.

A complaint about the conduct of a driving examiner

Complaint: Ms AB complained about the conduct of a driving examiner during a practical driving test. Amongst other things, she said that the examiner had given her the wrong result at the conclusion of the test.
Agency response: The DVSA had carried out its standard procedures in regard to such complaints. It said the examiner denied behaving in the manner described and was content that the test had been conducted properly.
ICA outcome: As ever with such complaints, the ICA was presented with two conflicting versions of what had occurred. However, he said that some of the things to which Ms AB objected – such as the rigorous checking of identity and the visual acuity test – were not unreasonable. He also said that there was no justification for the DVSA to commission a lie detector test (which in any case could not distinguish between genuinely different recollections of the same events). Given that the DVSA had conducted appropriate and sufficient inquiries, the ICA had no grounds to uphold the complaint.

A complaint about poor handling of a driving test supported by the candidate's ADI

Complaint: Ms AB complained about the conduct and outcome of her driving test. She had the support of her instructor who was present during the test. Ms AB felt that she had been marked down for not driving in the preferred style of the examiner rather than for driving in a potentially dangerous fashion. In this regard, she highlighted the examiner's view that she had been wrong to control the car using the clutch in the approach to some traffic lights. She also denied that the glancing contact she had made with the kerb on the approach to a roundabout had represented a loss of control of the vehicle. Both she and her instructor stated that the examiner's attitude had been poor on the day.
Agency response: The DVSA reiterated throughout the correspondence its view that the faults had been recorded correctly. The examiner had noted that there had been three moves forward approaching the lights when the handbrake should have been used. She had also recorded her judgement that the contact with the kerb represented a second loss of control. The local driving test manager upheld the conduct and outcome of the test.
ICA outcome: The ICA felt that the agency's explanation as to how Ms AB had lost control was very thin. While he could not safely conclude that the outcome of the test had been incorrect, he was surprised that the evidence of the instructor, who was a former driving examiner, had not been given greater weight. He recommended that, in future, where evidence relating to a complaint was available from a credible source, the DVSA should seek it out and incorporate it into its own investigation. The ICA was also satisfied, on the balance of probabilities, that the examiner's conduct was not "pleasant and outgoing" as required in the guidance. He therefore partially upheld the complaint. He recommended that the DVSA should make a consolatory payment of £30 to Ms AB.

Two complaints about the reallocation of test dates

Complaint #1: Mr AB had a family crisis and was unable to attend his driving theory test. He had difficulties getting through to the contractor, Pearson Vue, on the phone, and in the end the cancellation was not logged until shortly before the test appointment. He complained that Pearson Vue had failed to take into account the circumstances and that its systems were inefficient. He also stated that Pearson Vue had undertaken to obtain a refund for him.
Agency response: Pearson Vue initially refused to reimburse Mr AB or to provide a free re-test on the ground that Regulation 36 of the Motor Vehicles Driving Licence Regulations required three clear working days' notice for a refund or reallocation of test date to be made. Later on in the process, the DVSA offered Mr AB a £20 consolatory payment for delays in complaint handling. However, its review of the call records did not corroborate Mr AB's account that he had attempted contact within the three-day period.
ICA outcome: The ICA noted that there was only one day in the previous week prior to the test date where Mr AB could have cancelled within three clear working days. He noted that the DVSA had eventually consulted Pearson Vue's call records and that there was no evidence that Mr AB had made contact in the required timeframe. He regarded the £20 consolatory payment as adequate remedy. He did not uphold the complaint.

Complaint #2: Mr AB had his driving test cancelled by the DVSA a fortnight in advance due to the lack of availability of an examiner. He re-booked the test for the same day, but an hour later. He then rebooked again, this time for a date three months in the future. He did not attend that appointment and lost his test fee. Mr AB complained that the DVSA had failed to remedy the inconvenience and disruption caused by its original cancellation.
Agency response: The DVSA explained that its policy was only to refund expenses where a cancellation occurred close to the date of the test appointment. As Mr AB had been given good notice of the cancellation, no payment was due.
ICA outcome: The ICA regarded the DVSA's handling as in line with its established policy on refunds for cancelled tests. He did not attribute Mr AB's hardship in forfeiting the test fee to any error or omission on the part of the DVSA. He did not uphold the complaint.

Poor investigation of a complaint about noise in a driving theory test

Complaint: Mr AB complained that noise from staff, as well as interference and a screen freeze on the computer monitor, impaired his performance in the driving theory test. He failed the multiple-choice element by a single point while comfortably passing the hazard perception test. He became increasingly dissatisfied with the agency's responses to his complaints, feeling that the advice that he should have summoned staff at the time was unfair and unrealistic, and did not excuse the fact that he was distracted during the test.
Agency response: Pearson Vue initially responded to the complaint, checking Mr AB's marks and its systems for signs of malfunction. It could not ascertain whether there had been a system malfunction during the multiple-choice test. There was no evidence of malfunction during the hazard perception test. It noted that there had been no other complaints about noise or malfunctions on the day and that Mr AB had not logged his concerns at the time. The position that there was no evidence of undue distraction was maintained by the DVSA in its own communications. The DVSA also pointed Mr AB to the fact that earplugs were available for candidates, and that candidates were instructed

before the test began to attract the attention of staff in the event that they were experiencing problems.
ICA outcome: The ICA noted that Mr AB had scored only a single missed point in his first 30 answers before accruing seven missed points in the final 20. He had also scored very poorly in the early stages of the hazard perception test. While the ICA could not conclude that this was evidence of Mr AB's performance being influenced by the distractions he complained of, he was critical of the DVSA the not making further enquiries of Mr AB as to the approximate point in the test when the distractions were occurring. The ICA was critical of some of the complaint responses which had simply reiterated earlier positions and added no value to the process. Given this, he recommended that the agency should make a consolatory payment of £15 to Mr AB.

Inappropriate question in a driving theory test

Complaint: Mr AB complained about one of the questions in his driving theory test that concerned first aid.
Agency response: The DVSA had initially said that the question was a proper one, but that they would now withdraw it. It subsequently came to light that the relevant supporting material for the question was no longer in the Highway Code. The DVSA had offered Mr AB a re-test and £75.
ICA outcome: The ICA discovered that a theory test of 50 questions is mandated in statute. However, the pass mark of 86 per cent (43 correct answers) is non-statutory. Nonetheless, Mr AB could not be offered a pass based on correctly answering 42 out of 49 questions (i.e. the 50 he was asked less the inappropriate one) given that a total of 50 is in the legislation. That said, the ICA criticised the DVSA for retaining the particular question and for repeating to Mr AB that the question was sound. He also found that internal advice had been incorrect in saying there was no statutory basis for the 50 questions. The ICA increased the proposed payment to £250 as Mr AB had been seriously disadvantaged by being asked a question for which he could not prepare.

A complaint about the loss of the test fee for a cancelled practical test

Complaint: Mr AB complained about the decision of the DVSA not to refund the £62 test fee for a short notice test that he booked online and then cancelled.
Agency response: The DVSA said that information on the internet booking system (IBS) made clear that any change or cancellation would result in forfeiture of the fee.
ICA outcome: The ICA said this was a matter of DVSA policy and was, in any event, not maladministrative. The DVSA policy reflected the difficulty of re-allocating examiners at very short notice and was in line with practice in other walks of life – e.g. the hotel industry. The ICA was also content that information about the policy was readily available – crucially on the IBS itself.

A complaint about the inability to pause a theory test

Complaint: Mr AB complained about a driving theory test in which he was unsuccessful. He said the instructions were not clear and not in the same format as the DVSA app. He said he had been unable to pause the test or speak with an invigilator. After the first five questions of the hazard perception test he had performed well.
Agency response: The DVSA had said there was a 'patterned response' to the answers Mr AB had given to the first five clips. The agency was content that the instructions were suitable and sufficient and that the result would stand.

ICA outcome: The ICA said he had no power to overturn a test result, and there was no evidence of technical malfunction. A free re-test would have been good customer service, but in light of the guidance available and what he had discovered during the review, it was not maladministrative not to have done so. The ICA had also asked if a pause was feasible, but the technical advice from the DVSA and was that this would present new problems and was not practicable.

A complaint implying racial bias in a practical test

Complaint: Mr AB complained about the outcome of his LGV practical test. He said the examiner had falsely claimed he had rolled back when on a hill start and accused the examiner of racism or of simply not liking him. He said that video evidence should be used in driving tests.
Agency response: The DVSA said that it had a zero tolerance approach to any racist behaviour. It stood by the examiner's decision.
ICA outcome: The ICA said that, while he could not be certain having not been in the vehicle, he had no reason to doubt the examiner's version of events, or had any evidence of racism beyond Mr AB's assertion. However, he did make three observations: that the DVSA's blanket ban on the use of video was increasingly out of line with practice in the rest of life; that the DVSA should improve the quality of its monitoring of test outcomes by ethnicity; and that he would like to see a more diverse examiner workforce (as is the case amongst ADIs and in the workplace generally).

Customer locked out of driving test centre

Complaint: Ms AB complained that, when she attended for her practical driving test, there was no examiner present and the centre was locked. She asked why she could not have been told in advance, and asked for refund of all her costs.
Agency response: The DVSA said that it had not been aware that the examiner was not present, and no administrative staff were available on a Saturday. It had refunded the costs of two hours of ADI time, and the difference between the costs of a test on a Saturday and a weekday (when Ms AB had rearranged). It had also offered £25 as a goodwill gesture.
ICA outcome: The ICA said it was poor customer service that Ms AB had not been given any advance notice that the examiner would not be present. However, he could not criticise the DVSA for adhering to its policy of not paying for the costs of lessons taken before a test was due. However, he had found that the relevant information on gov.uk was very partial (referring to 'guidance notes' that seemed not to exist and making no mention of the rule restricting ADI costs to hours at their standard rate.) He also felt that the offer of £25 was not proportionate to what had occurred. Ms AB had had to wait outside a locked test centre not knowing if her test was to proceed or not. He recommended increasing the consolatory payment to £100.

Serious faults alleged on practical HGV tests

Complaint: Mr AB complained in relation to the outcome of three practical HGV tests.

Agency response: The DVSA said that each test had been judged fairly and it would not offer a free re-test.
ICA outcome: The ICA said that the test report forms (DL25s) indicated that Mr AB had committed a serious fault on each occasion. He could not adjudicate on specific aspects of Mr AB's complaint as he had not been in the vehicle at the time. However, two of the DL25s independently accused Mr AB of having behaved poorly at the end of the test. Mr AB had not expressly accused the examiners of discrimination. However, the ICA said that he hoped the DVSA would show greater urgency in ensuring that the diversity of its examiner team better matched the diversity of its customers and of the ADI workforce.

A complaint about the new driving test

Complaint: Mr AB, who is an ADI, complained in respect of the new practical driving test. He said that the manoeuvre involving stopping on the right-hand side of the road was inconsistent with advice in the Highway Code.
Agency response: The DVSA said that it was content that the new manoeuvre was consonant with the Highway Code rule 103 on signalling. It also suggested (and Mr AB agreed) that his complaint concerned agency policy and/or legislation and was therefore outside the ICA jurisdiction.
ICA outcome: The ICA said he agreed that the content of the new practical test was a matter of DVSA policy. Moreover, any alleged inconsistency with the Highway Code (and its lawfulness on these grounds) would be a matter for a court to decide. He therefore said he could not formally opine on the matters raised. However, his lay opinion was that there was no inconsistency between the new manoeuvre and the terms of rule 103.

Errors in complaint handling following a practical driving test

Complaint: Mr AB complained about the outcome of a practical driving test. He said the examiner had misjudged his approach to a roundabout and attempted to turn the wheel unnecessarily.

Agency response: The DVSA said that it was content that the test had been marked fairly. However, it acknowledged that some of the details given its responses was inconsistent and had offered a goodwill payment of £25.

ICA outcome: The ICA said that the DVSA's correspondence had included three errors (the suggestion that Mr AB had shaved a car ahead of him, whether the examiner had actually moved the steering wheel, and – at stage 3 – the nature of Mr AB's claim for an extra £28). The latter had been misunderstood to be a claim for a lesson prior to the test, but was actually a claim for hire of the vehicle during the test itself. The ICA took the view that, had this latter mistake not been made, it was possible Mr AB would not have been put to the inconvenience of an ICA referral. He therefore recommended the payment of a further £28.

A complaint about a decision by the Registrar

Complaint: Mr AB complained about a decision of the Registrar to retain on the register an ADI with whom he had been involved in a road rage incident, and who had pleaded

guilty to an offence of threatening or abusive behaviour. Mr AB also criticised the Registrar for not viewing dashcam footage he had offered to supply.
Agency response: The DVSA had said that the Registrar was entitled to reach the decision she had, and it was not possible to share all details with Mr AB (as they were of a personal nature).
ICA outcome: The ICA quoted the terms of the Road Traffic Act, and said that a wide discretion was vested in the Registrar in determining if an ADI was a 'fit and proper' person. Such decisions could only be overturned if they were so perverse as to be wholly unreasonable. The ICA did not believe that this threshold was remotely reached in this case; and he doubted if he had the authority in any event to overturn a Registrar's decision. He also felt that the Registrar's discretion extended to decisions as to which evidence to draw upon. It was therefore not unreasonable for the Registrar to conclude that, in the circumstances, she did not need to see Mr AB's dashcam footage.

An ADI's responsibilities

Complaint: Mr AB, who is an ADI, complained that one of his pupils was not allowed to take his practical driving test because the door to the car (owned by the ADI) would not open from the outside as a result of a broken handle. He said the vehicle had been used on previous occasions and, had he known there was a problem, he would have got the handle fixed.
Agency response: The DVSA said that cars had to be roadworthy and it supported the decision of the examiner on grounds of health and safety.
ICA outcome: The ICA found little merit in Mr AB's argument. It was clear that vehicles had to be roadworthy, and that it was the candidate's responsibility (and, by extension, that of the ADI) to ensure that the car met this criterion. The fact it had been used on previous tests was neither here nor there. The examiner was entitled to say that the vehicle was not safe, and the DVSA was entitled to support its member of staff on grounds of health and safety. There had been no maladministration (save that one DVSA letter was outside the time target).

(ii): VEHICLE-RELATED ENFORCEMENT AND STANDARDS

A complaint relating to the regulations on drivers' hours

Complaint: Mr AB complained about the enforcement action taken against his vehicle. He said that the vehicle and load were not subject to the regulations on drivers' hours and the installation of tachographs.
Agency response: The DVSA had accepted that its examiner had not followed agency guidance, and that the agency could not sustain its argument that the vehicle and trailer were correctly subject to enforcement action. It had refunded the penalties.
ICA outcome: The ICA said that, contrary to Mr AB's view, the DVSA had shown good customer service in repeatedly trying to explain the regulations and to arrange face-to-face meetings. The agency's in-house policy adviser had been able to show why the regulations did indeed apply to Mr AB's vehicle combination and, had it not been for the examiner's mistake in not recording the basis for the enforcement action, it was likely the penalties would have stood. However, the DVSA had not yet carried through its commitment to consider a claim for financial recompense from Mr AB and the ICA recommended that they should now do so (although he did not take a view of the merits of such a claim).

A bus driver who vehemently objected to the conduct and outcome of a spot check

Complaint: Mr AB was subject to a DVSA inspection while behind the wheel of a bus. He was issued with a fixed penalty notice (FPN) for being unable to provide a copy of his driver certificate of professional competence (CPC) documentation during the check. He complained about the issue of the FPN on the ground that it amounted to an identity card; as such, Mr AB insisted that there is no requirement for any UK citizen to produce an identity card. Mr AB also complained about the conduct of the inspectors during what had clearly been a fraught inspection process. He alleged in particular that one inspector had threatened him during the check. Mr AB claimed to have video footage of the threat. He complained that the DVSA's further correspondence in which it upheld the FPN constituted further threatening behaviour.
Agency response: The DVSA set out the legal framework underpinning both the requirement to produce evidence of relevant training and the DVSA's right to issue FPNs. The agency made a distinction between an identity card and a card that must be available for inspection while a driver is in charge of a vehicle within the classes stipulated in law. The agency did not comment on Mr AB's allegation of threatening behaviour but its own internal investigation did not uphold that part of the complaint.
ICA outcome: The ICA regarded the issuing of the FPN as outside of his jurisdiction as Mr AB had a statutory remedy by taking the matter to court. He had not done so, choosing instead to contest it while settling the sum within the required period. Having checked the legislation himself, the ICA concluded that the DVSA's explanation for the issue of the FPN was reasonable. The ICA had asked Mr AB if he wished to disclose to him any footage supporting his claim of intimidation (Mr AB did not reply). He concluded that the DVSA had looked into the matter adequately, and did not uphold any part of the complaint.

A member of the public complains about unlicensed limousine operations

Complaint: Mr AB complained about the failure of the DVSA to respond to intelligence he had provided about unlicensed limousine operations.
Agency response: The DVSA had said that it could not provide an account of its actions to a third party.
ICA outcome: The ICA agreed that it was not maladministrative for the DVSA not to provide an account of its actions in response to intelligence provided by a member of the public. However, he had visited the Intelligence Unit and received a personal briefing on the actions taken. On the basis of what he had been told and the papers he had seen, he was content that the actions taken had been proportionate and not subject to improper delay. However, while the ICA could not provide details of the specific outcomes to Mr AB, he suggested that greater information about the actions taken by the DVSA in response to intelligence should be made available on gov.uk and elsewhere.

A customer for vehicle approval complaining that the DVSA had made him late, costing him over £600

Complaint: Mr AB was 20 minutes or so late for a three and a half hour individual vehicle approval (IVA) appointment for his self-built kit car. He complained that his lateness had been caused by the closure of one of the two gates at the off-road entrance to the test centre. He had assumed this had meant that the centre was closed (he had checked the area on Google maps beforehand and both gates had been open). Mr AB

had therefore driven around the block repeatedly in rush hour traffic, with his kit car on a trailer, before returning to the test centre only to be told there was not time to conduct the test. He also complained about the attitude of the examiner. Mr AB argued that the examiner could have at least commenced the test. The entire wasted appointment had cost £450 with additional losses relating to the trailer hire and parking (£617.05 in total).
Agency response: The DVSA stated that if there had been cars in the car park of the test station that should have made it obvious that it was open. The metal gate on the left hand side of the entranceway was indeed closed. It was very hard to open and close it and the centre no longer needed it. As Mr AB's had been the only complaint about confusion over whether the centre was open or not, the centre manager was not prepared to change the policy of opening only one gate. After further correspondence with Mr AB, the DVSA offered him a £100 consolatory payment.
ICA outcome: The ICA also looked at the area on Google maps and noted that the view from the road (taken at a much later date than the vantage that Mr AB had referred to from the very front of the centre) showed the centre clearly closed with both gates shut. This was the aspect that Mr AB would have seen from the road. The ICA could not agree with Mr AB that it had been logical for him to have driven past the test centre 10 minutes before his appointment. In a worst-case scenario where the centre was closed, he could at least have entered the grounds and turned his vehicle around. The ICA considered that Mr AB had been given fair notice of the need for punctuality in the DVSA's confirmation letter. He could not adjudicate over the different accounts of the examiner's attitude, but it seemed to him that the examiner's choice of words (where he pointed out that he had managed to arrive on time himself) had been insensitive in the circumstances. Nor did he agree with the DVSA that it was acceptable for the entrance lane to a public facility to be closed during opening hours. He therefore recommended that in future the entrance gate should be open. He regarded the £100 consolatory payment as sufficient in the circumstances.

When is a tachograph required?

Complaint: Mr AB complained about a decision of the DVSA that the HGV he used to transport the cars he raced as a hobby required a tachograph. He said there were exemptions or derogations (although he could not cite them) and that his cars did not constitute 'goods'.
Agency response: The DVSA had met with Mr AB and taken legal advice before responding to his complaint. It said that EC Regulation 561/2006 applied.
ICA outcome: The ICA said he could not offer authoritative legal opinions. But he could see nothing maladministrative in the DVSA following its own legal advice in the absence of compelling reasons otherwise. Indeed, the DVSA seemed to have gone the extra mile in providing explanations to Mr AB and answering his questions.

Use of DVSA logo on a manufacturer's recall letters

Complaint: Mr AB complained about the use of the DVSA logo on safety recall and non-code action letters used by Volkswagen (VAG). He said that the fix used by Volkswagen

after the emissions scandal actually resulted in serious reductions in the performance of its vehicles.
Agency response: The DVSA said that use of its logo encouraged vehicle owners to return unsafe vehicles to the manufacturer.
ICA outcome: The ICA said that this was a policy issue and therefore outside his remit. However, there was nothing irrational in the DVSA wishing to encourage vehicle owners to return recalled vehicles. This was in the interests of road safety, notwithstanding that some customers might assume incorrectly that the particular action taken had been ‘approved’ by the DVSA. The ICA could offer no views on the effectiveness or consequences of the 'fix' applied by VAG. However, it had subsequently come to light that VAG had unilaterally decided to dispense with the DVSA logo, and the agency itself had acknowledged that use of its logo had caused 'confusion' for drivers.

4. Highways England casework

4.1 The 32 Highways England referrals received in 2017-18 represented a 50 per cent rise, albeit from a low base. The nature of the complaints fell into the following categories (with 2016-17 cases shown in brackets):

- Diversions 5 (0)
- Land disputes 4 (3)
- Traffic management 4 (5)
- Trees and vegetation management 3 (0)
- Dart Charge 3 (7)
- Road noise 3
- Statutory removal of vehicles from the highway 3 (2)
- Vehicle damage 2 (3)
- Unsafe road works 2 (1)
- Other 3 (3)

4.2 The average completion time for HE cases remained high (6 hours and 28 minutes). This reflects the complexity of many HE referrals that typically involve interactions with contractors and several functions within the company.

4.3 We welcome the simplified two-stage complaints procedure introduced by Highways England. In our experience, this is a genuine two-stage procedure.

4.4 The quality of the responses provided by Highways England is also high, reflecting the involvement of senior managers within the business.

4.5 Given the extent of the Government's planned investment in road infrastructure, we anticipate that Highways England will see an increase in the number of complaints relating to road building schemes and their impact upon people living on, or adjacent to, the routes of new or widened trunk roads. The company will need to ensure that its community liaison is as open and effective as possible.

CASES

A customer's business badly affected by repairs to a bridge

Complaint: Mr AB complained about the time taken to complete construction work on a bridge that had caused a long detour for those visiting his business.
HE response: Highways England accepted that works had over-run the original estimates. It said this was because defective concrete had been identified at a late stage, and because of a series of contractual disputes involving both its contractor and their sub-contractors.
ICA outcome: The ICA said he could offer no views on the technical aspects of this issue (including whether it would have been quicker to have demolished the bridge and start afresh). Nor could he adjudicate upon the contractual disputes or hold Highways England responsible for those between its contractor and their sub-contractors. But he observed that the impact of the delay on Mr AB and his business had not been uppermost in anyone's mind. His sympathies lay very much with Mr AB. He recommended that a copy of his report be shared with the chief executive of Highways

England so that the matter would be considered at the highest level. The ICA hoped the bridge could now be speedily re-opened.

A customer badly affected by noise from a road scheme

Complaint: Mrs AB complained about noise from traffic outside her house. She said that there was a bang every time a lorry went over ironwork close to her home.
HE response: Highways England and its contractor had carried out a number of inspections. They had concluded that there was no problem with the manhole covers or the chambers below and that the problem was caused by empty lorries travelling at speed.
ICA outcome: The ICA said he could not adjudicate upon the technical issues, and had to focus on the narrower question of how Highways England had handled the complaint. He said that, coming at the matter anew, he was content that the company had taken the matter very seriously. There had been a series of letters and phone calls, tests, repairs and inspections. None of this represented maladministration. Nor was it maladministrative for Highways England to have concluded that triple glazing would be a poor use of public money given the likelihood of other mitigation (a new road) by the early 2020s. However, the ICA sympathised with Ms AB, and said he understood that the promise of mitigation in 2020/21 would give little comfort.

A complaint about the inconvenience caused by a prematurely imposed diversion

Complaint: Mr AB complained that Highways England's contractor had implemented a road closure and diversion 10 minutes ahead of the advertised time. This had necessitated a diversion that had added an hour and 20 minutes to his journey home. He was the passenger in a work-owned vehicle travelling with a colleague.
HE response: Highways England and its contractor accepted that the closure had occurred prematurely (five minutes before the advertised time). Highways England apologised and had had firm words with the contractor to ensure there was no repetition.
ICA outcome: The ICA considered the extent of remedy offered given the applicable guidance. He welcomed the contractor's and Highways England's early admission that the closure had occurred too soon, and their acceptance that this had inconvenienced Mr AB. In terms of remedy for the hardship to Mr AB, the ICA recommended that a £40 consolatory sum should be paid. The ICA made a similar recommendation when the driver approached Highways England with the same complaint.

A sensible decision to refund two Dart Crossing fees

Complaint: Mr AB's father took a wrong turn while distressed following a bereavement, and ended up making two crossings on the Dartford-Thurrock crossing. He paid the £5 crossing charge but his son asked for a refund and complained that Highways England was intransigent and cruel in its initial refusal.
HE response: Highways England declined to refund the charges until the ICA stage.
ICA outcome: The ICA discussed the position taken by Highways England with it and the company reflected further, deciding to refund the £5.

Poor complaint handling by a Highways England contractor

Complaint: Mr AB complained that his vehicle had been damaged by a contractor while travelling close to works to reinforce an embankment. His claim against Highways England's contractor had been unsuccessful.
HE response: The company had said it had found no reason to overturn the contractor's decision.
ICA outcome: The ICA said he could not sensibly adjudicate upon what was in effect a claim by Mr AB against Highways England's contractors or their insurers. However, he could concentrate upon the complaint handling which he found to have been poor. Had the correspondence been handled more appropriately, Mr AB could probably have exhausted the company's complaints process six months earlier than was in fact the case. He also found fault with the handling by the contractor. He recommended an apology from the chief executive of Highways England and that a copy of his report be shared with the contractor for their consideration.

A complaint about the statutory removal of a vehicle

Complaint: Mr AB complained about the statutory removal of his vehicle. He said that it was in a safe position and that he had been told by the customer contact centre to expect a phone call before the vehicle was removed.
HE response: Highways England said that the vehicle was a distraction for other drivers and that, therefore, the company's actions had been correct.
ICA outcome: The ICA said that he had no reason to question the professional judgements of the Traffic Officers. He was content that the removal was in line with the 2008 Regulations. However, while it was clear that one unsuccessful attempt had been made by the regional control centre to contact Mr AB, he had been given a reasonable expectation of receiving such a call before the car was removed. No repeat attempt had been made. In these circumstances, the ICA recommended a consolatory sum equal to half of the costs Mr AB had incurred.

The ICA commends Highways England's handling of a historic claim for perimeter fencing

Complaint: Mr AB complained that Highways England had failed to honour a commitment it had made over 15 years previously to install safety fencing around the perimeter of his property where it joined Highways England land on a major motorway. Mr AB also complained that Highways England had failed to undertake other work to mitigate the impact of the motorway on the property where his elderly parents, who were both physically infirm, still lived.
HE response: Highways England repeatedly attended Mr AB's property and employed contractors to investigate his concerns about drainage and noise pollution from the motorway. In line with its policy, it installed a noise-reducing road surface in the area. It reminded Mr AB that he had bought the property at a substantial discount when it was no longer required for the construction of a service station. He was receiving all that he was entitled to given the proximity of his property to the motorway. Highways England maintained that the undertaking to provide safety fencing had been superseded by new policy whereby noise reduction fencing was no longer supplied. Armco safety barriers were installed in line with standard policy along the perimeter of Mr AB's land. Highways England therefore regarded it as having met its commitment to install safety fencing – a term, it no longer used or recognised.

ICA outcome: The ICA noted that the fencing that Mr AB sought had no safety benefit. If it were to be installed then Highways England would not have met the letter of its commitment 15 years previously to install 'safety fencing', whatever that was. The ICA judged that that commitment had been addressed by the installation of safety barriers that had been regularly repaired and maintained as required. The ICA noted other efforts by Highways England to respond to Mr AB's concerns including a water survey, regular picks of litter, and inspections of the environmental screening fence in his property. The ICA judged that Highways England staff had made every effort to respond quickly and sensitively to Mr AB's concerns and that there were no grounds to provide him with an enhanced service. He did not uphold the complaint.

An unnecessary statutory removal creating £270 extra costs for a customer

Complaint: Mr AB broke down in his taxi in the middle of the night on a busy A road and called the police for help. The police towed him off the highway into an emergency refuge area. He agreed with the police to have the vehicle recovered soon after daybreak. The police told him that a record of their involvement was on the case and that the vehicle would not be removed. However, after Mr AB had been given a lift home, Highways England traffic officers arranged the statutory removal of the vehicle. Mr AB complained that this had been contrary to his agreement with the police and had cost him an additional £270.
HE response: In its initial response Highways England stated that there had been no grounds to think that the police had been involved, and that the removal had been justified within a two-hour period given the location of the vehicle. In its second stage response, Highways England stated that immediate removal had been necessary. It reaffirmed its view that the police had not made contact. It was suggested that Mr AB might wish to contact the police himself.
ICA outcome: With Mr AB's permission, the ICA contacted the police and established that a clear 'police checked' marker had been entered on the police national computer (PNC) by the officers who had assisted Mr AB after his breakdown. In its responses to the ICA's enquiries, one Highways England officer stated that he would not have declined to uphold the complaint had he known that a marker had been placed on the PNC and missed. However, this view was not shared by all of his colleagues. The ICA judged that the police account that its involvement should have been known to Highways England was more persuasive than the company's. He upheld the complaint and recommended that Mr AB should be refunded the £270 extra he had paid to recover his vehicle. He also recommended that Mr AB should be paid £25 to reflect the fact that he had contacted the police himself when, in line with Ombudsman guidance, Highways England itself should have involved its partner public sector body in the complaint investigation.

Better explanation needed for limited safety measures at an accident black spot

Complaint: Mr AB complained that a section of trunk road near his home with a bend was unsafe as three cars had left the carriageway and got within close range of his neighbours' garden over the previous three years. In correspondence with HE, he pressed the company for increased safety measures, in particular a safety barrier but also a reduced speed limit and rumble strips. Mr AB was very disappointed indeed by HE's responses, accusing it of having no regard for his and his neighbours' safety.
HE response: HE's asset manager had been in contact with Mr AB in relation to safety concerns over a number of years. In response to this correspondence, HE explained that a 2013 review had confirmed that the 70 mph speed limit was appropriate, and that signage had been introduced advising drivers of the bend and suggesting that they might slow down. HE was working closely with the local Safer Roads Partnership to monitor the situation. In its second stage response, HE explained that improvement measures had to be weighed against those proposed in other areas in order to ensure the budget was best spent.
ICA outcome: The ICA could not adjudicate over the technical aspects of Highways England's safety measures on the site. He noted that the legislation and Network Management Manual did not prescribe safety barriers for all-purpose trunk roads except in very specific circumstances, none of which applied here. The ICA also noted the long-standing campaign work by successive MPs for the area in relation to the stretch of road. He asked that HE make its Road Restraints risk assessment process available to Mr AB, if necessary with a member of staff to explain any technical elements of it, so that he could fully understand the basis of the company's position. He also recommended that Highways England provide Mr AB with its 2013 speed limit review if it had not done so already. He did not uphold the complaint.

Payment record for the Dart Charge

Complaint: Mr AB complained that he had paid the Dart Charge by telephone in 2015, but had been pursued for the payment of Penalty Notices.
HE response: Highways England said it had no record of the phone call Mr AB said he had made. It had invited Mr AB to provide evidence from his phone records so that the recording of the call could be traced and listened to.
ICA outcome: The ICA had repeated the invitation to Mr AB to trawl through his phone records. However, it then came to light that any recording kept by Dart Charge would have been wiped after six months (something Highways England had not known about when first inviting Mr AB to provide evidence of the call). In the circumstances, the ICA felt there had been a mistake on Highways England's part, and that in order to bring matters to a close he suggested that the company make an ex gratia payment equivalent to the Penalty Notices. This was agreed.

A regular user of the M6 infuriated by traffic management

Complaint: Mr AB's complaints centred on his assertion that MIDAS[5] is a failing and out of date infrastructure given the significant increase in traffic volume since its inception. In the context of this complaint, his point was evidenced by his experience of regularly driving the M6 where he had been repeatedly subjected to variable speed limits in the absence of any incident or road condition that would justify them. He argued that MIDAS itself created hazards in the form of unsafe driver behaviour, including tailgating. He also complained about: a lack of prior warning of delays on the M6; the poor quality of HE's responses and handling of his concerns (in particular delays, "cut-and-paste" explanations, references to non-existent incidents and partial responses); the delay in the progression of his complaint to stage 3; the poor response of HE's management to his representations (which he said contrasted with the polite and professional of approach of Customer Contact Centre staff); and the generally outdated and inefficient running of the motorway, evidenced by a need to (in his view) "platoon" HGVs and also by the fact that many of the speed "limits" were not enforceable.
HE response: HE's initial response consisted of little more than a reference to two lane closures on the day of Mr AB's call. None of his other points was engaged with. In further telephone calls HE staff discussed the performance of its infrastructure with Mr AB. Meanwhile, as a regular and informed user of the M6, Mr AB continued to raise new concerns with the focus shifting from MIDAS to his view about platooning lorries. A certain amount of confusion set in within HE as to how best to respond. Eventually, after further complaints and reports of inefficient traffic management, HE responded at stage 2 of its procedure to apologise for the delay and address Mr AB's criticisms and suggestions in detail.
ICA outcome: The ICA welcomed HE's reflection at the second stage of its complaints procedure that it had dropped the ball in its initial response. He commended the officers involved in preparing the second stage response which he regarded as authoritative and thorough. The ICA was particularly critical of the first stage response which did not meet any of the necessary standards. He understood that some HE staff may have doubted their ability to resolve Mr AB's concerns which extended beyond his own experience as a driver and into policy and resource areas. However, the ICA did not think that this absolved HE of its duty to engage constructively with a customer. As a result of a recommendation in the ICA report, HE made further contact at a senior level with Mr AB to discuss his concerns and the offer of a visit to inspect the MIDAS system was made (Mr AB had visited three years previously). In addition, HE agreed that its chief executive would apologise for the deficits identified in its response to the complaint.

Failure to assist a customer by supplying CCTV

Complaint: Ms AB complained on behalf of her company. One of its customer's vehicles had been hit by another car that had not stopped, and the company had asked Highways England to supply CCTV of the incident. In the event, no usable CCTV was provided.
HE response: Highways England said it had no legal obligation to supply the CCTV and thus no legal liability for the losses that Ms AB's firm had incurred.

[5] Motorway Incident Detection and Automatic Signalling (MIDAS) is a network of sensors designed to alert HE's Regional Control Centres to traffic flow. This in turn determines active and automated traffic management measures.

ICA outcome: The ICA identified significant failings on the part of Highways England. The initial contact had been mis-recorded; the wrong CCTV had been sent; there had been three failures to update details to the regional control centre; two failures to supply camera details to the control centre; failure by the control centre to act on the initial log; failure to respond to the complaint in a timely manner; confusion as to whether the complaint was at stage 1 or 2; a mistake in the stage 1 response; a mistake in informing the complainant as to who would receive details of their claim (this one at least was speedily remedied). Given this list of errors, the ICA felt that neither the stage 1 nor the stage 2 response demonstrated the appropriate degree of candour. The letters focussed on legal liability rather than the service the company had offered. The ICA recommended an apology and that Highways England should consider making a consolatory payment. Although the claim against Ms AB's company for damage to the highway had been kept separate, the ICA also recommended that a copy of his report be shared with those responsible for that claim so that the appropriate lessons could be drawn.

A well-handled case about traffic management on the M5/M6

Complaint: Mr AB complained about traffic management by Highways England and its contractors.Over a four month period, he repeatedly called Highways England's Customer Contact Centre (CCC) to report problems including: inaccurate variable messaging signs (VMS); inadequate road markings and layout; encouragement to use the M6 toll by Highways England; poor diversion arrangements; and a failure to investigate his concerns and to respond appropriately on the part of Highways England and its contractor.
Contractor and HE responses: The contractor apologised and highlighted the most significant stumbling block drivers faced in reducing delay – that the only practicable alternative for those heading south of Birmingham and wishing to avoid the congestion building up north of junction 10a on the M6 was the M6 toll. The contractor explained that, as a road closure had not been implemented, a diversion route would not normally be provided. Mr AB was also referred to information about markings on the M5 southbound.Further information was provided about how VMS had worked during the journey, and apologies were offered for the delays. Investigations had not established a cause for the level of congestion reported by Mr AB. He was told more about the changes to the M5 southbound markings, and given some context to the works and their unavoidable impact given 120,000 vehicles per day were using the viaduct.
ICA outcome: The ICA sympathised with Mr AB's experience of driving on one of the most congested and delay-prone stretches of motorway in the country. Having looked at the correspondence, he could not see evidence of maladministration on the part of Highways England or its contractor. He considered the explanations and responses to be sympathetic, informative and addressed to Mr AB's concerns and criticisms. He did not uphold the complaint.

Poor handling of a complaint about a lack of signage

Complaint: Mr AB, complained about the explanations he had received for the lack of signage on the A43 flagging an imminent road closure. He had driven up the road an hour to an hour and half beforehand and seen no warnings or signs of the closure in either direction. This necessitated a diversion (itself poorly signed) that had added half an hour to his return journey later that day. The second element of Mr AB's complaint concerned the responses from Highways England which were delayed and

unconvincing. Mr AB understood the need for planned maintenance but could not accept Highways England's account as to why it could not inform motorists. Highways England had, in his view, every opportunity to forewarn drivers. The need to complete the works before the annual Grand Prix did not represent an emergency.
HE response: Highways England initially apologised for the diversion and explained the need for it. It had been an emergency and therefore signage had not been put out. In its second stage letter, apologies and further explanations were offered. In fact, the company had had a month to get the signage in place and had not done so. But the core complaint issue – the lack of signage – was not really addressed.
ICA outcome: The ICA referred to the relevant standards (the DfT's "Safety at Street Works and Road Works" Code of Practice), and noted HE's aim of providing two weeks' notice of planned roadworks. Warning signs had been displayed on the M40 but not on the trunk road itself. On balance, the ICA did not consider that the Code of Practice requirement for as much signage as was "reasonably practical" had been met. He also felt that HE had missed the main crux of the complaint. Mr AB understood that the closure was necessary, but his argument that there had been time to provide signage was not picked up until the ICA stage. The ICA upheld the complaint and recommended that a consolatory payment of £50 should be made to Mr AB.

A complaint about the management of trees on the trunk road network

Complaint: Ms AB had a long-running complaint regarding the management of trees that are the responsibility of Highways England and which are close to her home and other neighbours. She complained about the actions taken by Highways England and the handling of her complaint.
HE response: Highways England had engaged in a long correspondence and had organised a face-to-face meeting with Ms AB. It had apologised for a variety of failures in complaint handling.
ICA outcome: The ICA said he could not sensibly adjudicate upon specialist matters of arboriculture. However, he did expect Highways England to take a broad view of its responsibilities to citizens whose homes adjoin the trunk road network, rather than arboricultural issues alone. For example, Ms AB had said that she and her neighbours' gardens were in shadow, their home insurance was affected, and there had been a loss of television signal. The complaint handling had at times been very good (offering frank and comprehensive replies) but also very shoddy (delays, ignoring requests for escalation). The ICA proposed a consolatory payment of £250, judging that this is what the PHSO might offer and to avoid Ms AB having to escalate further.

A failure by HE to be clear with a landowner about the limits on its ability to work with him, and actively manage a contract, to remove noxious weeds

Complaint: Mr AB had been in regular contact with Highways England for some time in relation to the removal of a noxious weed from land owned by HE in the proximity of farmland, including Mr AB's property. The essence of Mr AB's complaint was that HE had unfairly and unreasonably restricted his access to contract management staff overseeing the implementation of the weed removal contract. This restriction had followed a meeting, attended by Mr AB, that he had hoped would involve the National Farmers Union in a joint working process that HE had agreed to implement in the form of a strategy group. In the build-up to the meeting Mr AB had been frustrated by the lack of responses from HE staff to his queries. There had been slippage and the timescale for the strategy group meetings and noxious weed management in the network area in

question had not been as agreed. Mr AB expressed his dissatisfaction in the meeting and one of the HE staff members became upset. It was following this that HE management decided that Mr AB's route of access to HE staff would be through the standard conduit of the Customer Contact Centre.
HE response: Mr AB's complaint was reviewed by HE managers who upheld the position that his future contact should be through the Customer Contact Centre – which would be the norm for any member of the public wishing to report the growth of the noxious weed on the network.
ICA outcome: The ICA interviewed all the attendees of the key meeting and concluded that Mr AB had applied undue pressure on one member of staff in particular. He had not realised that lapses in correspondence handling related to a restructuring in HE for which the officer was in no way responsible. He had not picked up on the clear signs of her distress on the day. The ICA balanced this with a clear finding that HE had failed to inform Mr AB of the fact that it was unable to uphold the agreement it had made in relation to the strategy group. This had been a matter of resources and due to the nature of the contract which had several years left to run. Mr AB himself had invested considerable time and energy in trying to make this model work. The ICA recommended that HE should apologise to him for this. However, he did not uphold the complaint that it was unfair or unreasonable to require Mr AB to confine his communications to the established channel.

Defensible, if delayed, handling of a complex case involving a discretionary purchase application

Complaint: Mr and Mrs AB were owner occupiers living next to a large site close to the M20 which was proposed by HE for the construction of a very large HGV park to relieve congestion on the M20 when ferry and Channel Tunnel traffic was disrupted. They approached HE asking the company to buy their property, and were sent forms and guidance for requesting a purchase under the company's Discretionary Purchase Scheme. This request was refused because they did not show that they had a pressing reason to sell the property or that they would suffer hardship if unable to do so. They then submitted medical evidence showing Mr AB had several conditions for which he was being treated with medication. The company refused to change its decision, adding that by this time the scheme had been withdrawn and there was no longer any legal power to purchase property under the Discretionary Purchase Scheme. Mr and Mrs AB said they had been unfairly treated because:
- they were given insufficient information and misleading advice about their entitlement to ask the company to buy the property ("the misinformation complaint");
- there was unreasonable delay in the company's reaching a decision on their request ("the delay complaint"); and
- when compared with other applicants whose application had been successful, they had been discriminated against unfairly ("the discrimination complaint").
HE response: HE denied there were any grounds for complaint since due process had been followed and a reasonable conclusion reached on their application, since no pressing need to sell had been evidenced. Mr and Mrs AB had been provided with written guidance along with the application form to request discretionary purchase; had applied these guidelines when submitting their application in which they had acknowledged, and countersigned that neither of them had medical conditions that would be severely aggravated by the physical effects of the scheme. After the application was rejected, they stated that they had a pressing need to move for medical reasons, presenting a GP's letter which made no mention of such a need. This evidence was

received after plans for the lorry area scheme had been withdrawn, and the company's lawyer confirmed there was no legal power to purchase the Mr and Mrs AB's home. In addition, any delay in dealing with the initial application was due largely to uncertainty caused by Judicial Review proceedings (which had, in fact, led to the proposal being withdrawn).

ICA outcome and recommendation(s): The misinformation complaint was not upheld by the ICA though there were grounds for criticism of some company communications and information provided. There was no evidence Mr and Mrs ABs were actively misled by the company's staff. Since they were sent clear, comprehensive guidelines for the Discretionary Purchase Scheme – but did not claim to have fully read these – Mr and Mrs AB had the information they needed which told them how to make the application, the two stage approach it would follow, and the issues and evidence which would be relevant to a successful outcome.
The delay complaint was not upheld by the ICA. Although it took a total of over 11 months for the application to be determined (the target time was three months), this delay could be justified by the exceptional circumstances which prevailed: uncertainty as to what legal power (if any) existed to enable a purchase; judicial review proceedings; uncertainty about the future of the scheme; and the desire to deal with all cases at the same time.
The discriminatory treatment complaint was also not upheld. Only two out of eight applicants under the Discretionary Purchase Scheme were successful, so it was clearly exceptional. The circumstances of these successful cases significantly differed from those of Mr and Mrs AB in relation to evidence of a pressing need to sell and hardship in the event of no sale. Law and policy were applied without Mr and Mrs AB experiencing unfair discrimination, although the decision letter received by their neighbours was written in such a way as to suggest this.

Recommendations:
(i) Since there were failings in some of the company's communications with Mr and Mrs AB, a recommendation that the company's chief executive write to them with a suitable apology and that the company make a consolatory payment in the sum of £75.
(ii) Since Mr and Mrs AB did not read the full guidelines and appreciate their meaning and effect, a recommendation that the company review the wording of its s. 246(2A) Highways Act 1980 documents and, where and when practicable, modifies these to stress the essential benefits of an applicant receiving professional advice and assistance when preparing and submitting their application.
(iii) Since the text of the company's successful outcome letter was markedly different from that sent to unsuccessful applicants, a recommendation that the company adopts a practice requiring all decision letters (whether an application is granted or refused) to be roughly comparable and to reflect what the decision taker has determined – for or against the applicant.

5. Other DfT and delivery body casework

(i): HS2 Ltd

5.1 We received four HS2 Ltd referrals in 2017-18. We report on the three that fell within our jurisdiction below.

5.2 As was the case in last year's annual report, we must emphasise that complaints about professional judgement (for example, property valuations) do not come within our remit. Nor are we a means of appeal against decisions made by expert property panels or other tribunals.

CASES

ICA jurisdiction following passage of the High Speed Bill

Complaint: Mr AB complained in relation to a claim for compensation following a decision to safeguard property in the area of the proposed railway. His petition had been heard by both the House of Commons and House of Lords select committees.
HS2 Ltd response: The company said that it had made a payment following instruction from the chair of one of the Select Committees. It said the matter was now closed.
ICA outcome: The ICA said that he could not properly conduct a review. The High Speed Rail Bill had been enacted, and there was no appeal against decisions taken by both Houses of Parliament in respect of Mr AB's petitions. It also can never have been intended that an ICA would act as an appellate body in regard to decisions of Parliamentary Committees. However, the complaint did raise valid questions about the ICA terms of reference and what appears on gov.uk.

Delays in purchasing a property on the proposed route of HS2

Complaint: Ms AB complained about the time taken by HS2 Ltd to deal with the purchase of her property and related transactions, and delays in responding to her correspondence.
HS2 Ltd response: The company had acknowledged a lack of timeliness and customer service in responding to issues raised by Ms AB during the negotiations. It has also acknowledged that an email mistakenly sent to Ms AB by one of its agents was in unacceptable terms.
ICA outcome: The ICA felt that the failings were such that a modest consolatory payment was justified. However, he also commended the thoroughness of HS2 Ltd's formal complaints process.

A complaint resulting from a home survey

Complaint: Mr AB complained about matters relating to a survey of his home which is on the route of HS2. He said the surveying staff had been unprofessional in advance of the visit by not preparing, that damage had been caused to the latch hatch during the survey, and that the surveyor had breached data protection by revealing that he had also visited a neighbouring home.
HS2 Ltd response: There had been various exchanges with both HS2 Ltd and the surveyors before HS2 Ltd commissioned an internal case review at stage 2. This had found that there had been a minor breach of data protection that was unprofessional, and

that the surveyors needed to review their processes before site visits. The surveyors had offered to pay for any damage caused.
ICA outcome: The ICA said that, while he took a slightly different view than the author of the internal case review, it was clearly a very diligent response to the complaint. Indeed, it was arguable that it went beyond what was proportionate and was testament to the priority that HS2 Ltd attached to relationships with members of the public along the route.

(ii): Civil Aviation Authority

5.3 We received three CAA referrals this year.

CASES

The rights offered under ATOL

Complaint: Mr AB's complaint arose from the failure of a travel company and the claim he made under the Air Travel Organiser's Licence (ATOL). He said that there had been delays in handling his claim, and that losses he had suffered had not been met.
CAA response: The CAA had explained that consequential expenses such as mobile phone calls were excluded under the policy set by the trustees of the Air Travel Trust (ATT), as were alcoholic drinks. It said that ATOL was not to be characterised as an insurance scheme and was not governed by any aspect of the legal framework surrounding insurance. The CAA complaint said that the delays in processing Mr AB's claim were not such that compensation was appropriate.
ICA outcome: The ICA expressed sympathy with Mr AB, saying it was every traveller's and holidaymaker's worst nightmare that the company they are travelling with cannot meet its obligations and they are left stranded. However, the ICA's role was simply to determine if the bodies in jurisdiction acted reasonably, fairly and without maladministration. Under the terms of the Air Travel Trust (ATT) payment policy, it was clear that alcoholic drinks were expressly excluded. In respect of phone calls, the CAA had drawn upon the blanket exclusion of consequential losses, but the only express reference to phone calls that the ICA could find referred to those who had not travelled, and was therefore irrelevant to Mr AB's circumstances. The ICA did not think there was any maladministration in the CAA relying upon the reference to consequential losses, but he observed that the very term 'consequential loss' was suggestive of insurance and might be better avoided. Noting that the payment policy as a whole might benefit from a refresh (as it dated from 2012), and while unable to make a direct recommendation to the trustees of the ATT, the ICA suggested that the CAA might wish to share his observations with them. On the question of the costs Mr AB had incurred abroad, the ICA was content that the CAA had adopted a proper approach in respect of the repayment it had made. The CAA had also apologised for any delays by explaining that the size of the collapse of company in question had resulted in many more claims than normal. The ICA's view was that it was not maladministrative to balance service standards against the need to keep costs down. He further judged that the delay Mr AB encountered was not such that the threshold for a consolatory payment consistent with HM Treasury guidance was triggered.

A flying instructor who regarded the CAA's accreditation requirements as excessive

Complaint: Mr AB, a pilot with several thousand flight hours under his belt, complained that restrictions had been placed on his recently-obtained flight instructor qualification. These restrictions required him to undertake a 100 hours of flight instruction, and to have supervised at least 25 student solo flights, as well as to pass commercial pilot licence (CPL) theoretical knowledge examinations. Mr AB initially complained that these restrictions drew incorrectly from out-of-date documentation. He then argued that he met the overall requirement for knowledge of CPL theory, and that the requirement to pass the related exams was perverse and superfluous.
CAA response: The CAA explained that the requirements in the current framework (the European Aviation Safety Agency, Part Flight Crew Licence – EASA Part FCL) in this regard were the same as those in the out of date document (Civil Aviation Publication 804 – CAP804) - which had been retained but marked for reference only. The CAA apologised for delays and inconsistencies in its responses and repeatedly informed Mr AB of its requirements. As EASA Part FCL had statutory force, the CAA had no discretion to vary the requirements in Mr AB's case.
ICA outcome: The ICA noted that EASA Part FCL indeed has statutory footing. He established from the CAA that its requirement in relation to the demonstration of CPL theoretical knowledge was the passing of CPL exams and, while this was not spelt out in the statutory regulations, he judged that it amounted to policy over which he had no jurisdiction. In the absence of maladministration, the ICA could make no recommendation in relation to the restrictions on Mr AB's qualification. The ICA felt that some of the information referred to Mr AB through the complaints process could have been provided sooner, and that the CAA should have addressed itself to Mr AB's numbered questions when he asked them, rather than at its final stage. However, the ICA felt that the explanations given overall to Mr AB had been correct.

A pilot concerned about the safety of an airline complaining of a poor response to his whistleblowing

Complaint: Capt. AB complained that the CAA's response to his whistleblowing allegations against a charter operator he had been working for was inadequate and weak, and that the CAA had failed to act rigorously despite the evidence of significant safety breaches.
CAA response: The CAA subjected its investigation to independent review and concluded that it had been appropriate and proportionate. It had met Capt. AB in the investigation process and provided him with outline information about the outcome.
ICA outcome: The ICA noted that Capt. AB, although a whistleblower, was not entitled to know the full details of the CAA's investigation process or outcome. He considered that, from the limited evidence available to him, the CAA had complied sufficiently with its whistleblowing policy. His sole reservation was that the senior manager of the staff involved in the investigation had declined to respond to the complaint at stage 2 because his direct reports were being challenged. The ICA expressed the view that a cardinal principle of complaint handling is that second stage responses should be escalated up the management line to ensure that responsibility for operational quality and complaint handling is owned by the relevant service area. However, he did not uphold the complaint.

(iii): DfTc

5.4 We logged three complaints this year about DfTc (the Department's central functions) compared to five last year. We begin our case summaries with a digest of a case that was logged against the DVLA but where we judged greater culpability resided with the DfT.

CASES

Incorrect advice from the DfT inflamed an already fraught complaint

Complaint: Mr AB was, through no fault of his own, involved in a collision with another vehicle in 2005. The other driver's insurer accepted liability. Unbeknownst to Mr AB, the insurer decided that his vehicle should be written off and the money he received for it represented complete settlement of its estimated value, minus the salvage cost (Mr AB assumed that the sum was for repairs). Mr AB was unaware that a category C marker (equivalent to category S under the revised framework) had been placed against his vehicle's entry on the DVLA's register by the insurer. Eleven years later when he tried to value the car, that had classic status, he was told that it had scrap value only due to the marker. He complained to a variety of bodies at great length, and at times with rancour, in an effort to reverse the position. These bodies included the DVLA and the DfT as well as the other driver's insurer and the Motor Insurance Bureau (MIB). He complained that they had failed in their duties and, in the case of the DfT, had provided false information.
DfT bodies' responses: The DVLA explained consistently that the marker on its register had been placed electronically through a notification by the insurer. The information did not belong to the DVLA which was merely acting as registrar and could not change it. The DVLA directed Mr AB to the insurer. The DfT became involved in this correspondence and suggested that Mr AB could get the marker removed by applying to the DVLA. This incorrect advice was repeated and triggered further, , correspondence from Mr AB. This was initially directed to the DVLA and then to the DfT.
ICA outcome: The ICA set out the framework through which category C write-offs had been assessed and reported to the DVLA. This meant that the sum of money that Mr AB had received had not been for repairs, as would have been the case if the vehicle was adjudged to be category D (now N), but rather represented the sale of the vehicle back to him minus the salvage value. The ICA judged that the root cause of Mr AB's difficulty was the fact that he had been unaware after the accident of the status of his vehicle and of the need under the old framework to have a vehicle identity check (VIC). The ICA considered that the DVLA's responses to his correspondence had been, on the whole, reasonable and accurate. However, he noted that the DfT had made two significant errors. Although DfT officers had acted in good faith, they had not checked their understanding of the regime following the abolition of the VIC process. The ICA upheld the complaint against the DfT and recommended that the Department should make Mr AB a payment of £50 for its well-intentioned but unfortunate errors. With Mr AB's permission, the ICA made direct contact with the agent acting for the insurer and the MIB. Through liaison with these bodies the ICA arranged for the category C marker to be removed from Mr AB's vehicle record. The ICA referred Mr AB's thank you card to the insurer and the MIB with his own thanks for their assistance in what represented a case with great personal significance to the customer.

Correspondence handling in the Department for Transport

Complaint: Mr AB complained about the handling of his correspondence by the DfT and about maladministration in the handling of an appeal concerning Dart Harbour Navigation Authority that had been ongoing for ten years. He said it was prejudicial that these matters were being handled by the same division of the Department.
DfTc response: The Department had acknowledged unacceptable delay in the handling of Mr AB's appeal to the Secretary of State. It also accepted that the original decision letter had been based on an incorrect understanding of Mr AB's dispute.
ICA outcome: The ICA said it was evident that the DfT had mishandled Mr AB's appeal and there was a delay in replying to some of his correspondence. Both of these failings amounted to maladministration. However, the mistakes and misjudgements had been fully acknowledged by the Department. The ICA said that, on the basis of one case, he could not conclude as Mr AB did that the Department's appeal process was not fit for purpose. However, he recommended that his report be shared with the Director of Maritime Directorate for their consideration.

A complaint of bias in the exercise of the Secretary of State's powers

Complaint: Mr AB had a long running dispute with his local council about its attempt to enforce a requirement for a crossover to be built between the road and his yard where he parked his car. In the meantime, Mr AB was banned from parking in the yard in the very busy town centre where he lived causing him significant inconvenience. His local council invoked its enforcement powers under section 184 of the Highways Act 1980, and Mr AB engaged with the Department through his right of appeal to the Secretary of State under schedule 14 of that Act. Mr AB complained that the Department considered his appeal in a peremptory way, failing to interrogate the (he argued, non-existent) evidence that the crossover was needed. Through a Freedom of Information request, he established that the Department had never found in favour of an appellant in a schedule 14 case. He argued that this was clear proof of bias. He also complained about the Department's failure to answer his correspondence in a specific and timely way.
DfTc response: The DfT took three months to consider the appeal because it regarded the referral from the council as a request for advice rather than a customer-driven transaction. It apologised and changed its policy so that such appeals would be considered within its standard correspondence target of 20 working days. Throughout the correspondence, the Department defended the decision of the senior civil servant who had acted on behalf of the Secretary of State. Full consideration had been given to the evidence provided and legal advice been taken at every stage. However, delays had set in because the officer involved had unexpectedly required leave from work, and his responsibilities had not been reallocated in his absence. The Department apologised.
ICA outcome: The ICA could not consider those parts of Mr AB's correspondence that amounted to an appeal against the Secretary of State's decision. He noted that no such appeal mechanism existed in the Department. He further noted that the Department had not responded to Mr AB's allegation of bias, and he recommended that it did so. The ICA found that the Department should have escalated Dr AB's correspondence at a much earlier stage as it amounted to a complaint against the judgement and conduct of his case by the officer who had acted on behalf of the Secretary of State. In addition, that officer had been absent from work meaning that letters addressed to the Permanent Secretary from Mr AB had not been acted on for many weeks. Given this, the ICA recommended that the Department review its arrangements for handling challenges to its involvement in schedule 14 appeals to ensure timely, and where appropriate, escalated responses. The ICA also recommended that the Department should make a consolatory payment of £50 to reflect its regret at the frustration Dr AB had experienced.

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: