Department for Transport

# Independent Complaints Assessors
# **Annual Report, 2019-20**

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: https://forms.dft.gov.uk

# Contents

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

We are pleased to submit our Annual Report covering the period April 2019 to March 2020.

**Stephen Shaw**

**Jon Wigmore**

# Foreword

Having served as the two Independent Complaints Assessors (ICAs) contracted by the Department for Transport (DfT) since 2013, we were delighted to have been made Public Appointments with effect from April 2020. The establishment of the ICAs as Public Appointees is a demonstration of the emphasis the Department is placing upon good complaints handling and the promotion of the highest standards of public service.

We too place great emphasis upon helping to drive improved performance and customer care across the DfT, as well as providing independent oversight of complaint handling on behalf of the users of transport services.

This report describes how we have gone about our duties during 2019-20. We can review complaints against more than 20 DfT bodies (as well as the Department itself) once the internal complaints processes have been exhausted.

In the report we detail the record level of cases we have received and reviewed, as well as providing information on outcomes and our personal productivity. The report also contains detailed case histories demonstrating the range of transport-related issues that we cover, and the approach we have taken to them. As in previous years, we have anonymised the case histories to ensure that no complainant is identifiable.

The majority of our reviews concern complaints against the Driver and Vehicle Licensing Agency (DVLA); we received 282 referrals from the DVLA in the year. The other DfT Bodies in our jurisdiction from whom we received complaints during 2019-20 were (in ascending order):

- The Driver and Vehicle Standards Agency (DVSA) [47]
- Highways England [46]
- Civil Aviation Authority (CAA) [4]
- Maritime and Coastguard Agency (MCA) [2]
- High Speed Two Ltd [1]

We also received three complaints regarding the Department for Transport's central functions (DfTc) and conducted a one-off review of a case referred to us by Network Rail.

In total, we received 386 complaints and, including those carried over from 2018-19, completed reviews on 401. Both input and output were at unprecedented levels, representing respectively an 11.5 and 24.5 percentage

increase on 2018-19. Only a slight falling off in referrals as the Covid-19 pandemic took hold in March 2020 prevented the annual total passing 400.

It would be foolish to pretend otherwise than that this volume of cases presented a challenge to the ICA scheme itself, which is predicated on two people working from home part-time, and responsible for all their own administration. Although time targets were met in most cases, we are conscious that some complainants have had to wait longer than either they or we would have liked for the outcome of our reviews.

Indeed, our ability to serve complainants and the Department might have become impossible had we not been able to call upon the services of 'substitutes' (experienced complaint investigators who conduct reviews on our behalf, subject to our final approval). We are hugely grateful to Claire Evans, Lindsey Wilby and the former ICA, Ian Bynoe, who have acted as substitutes during 2019-20.

It is unfortunate that some investigators with the Parliamentary and Health Service Ombudsman (PHSO) still seem not to appreciate the difference between an ICA review, lasting in total just a few hours, and a PHSO investigation that in our experience can extend over a period of years.

We have annexed to this report our latest terms of reference which are correct as of April 2020. 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.

The latest version of our terms of reference clarifies that we cannot look at complaints about:

- disputes where the principal focus is upon Government, DfT, or DfT Body policy
- complaints arising from contractual and commercial disputes
- complaints about the law
- matters considered by Parliament
- 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 for, the Secretary of State
- legal cases that have already started and will decide the outcome
- an ongoing investigation or enquiry
- how the DfT or its Bodies handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- how the DfT or its Bodies handle subject access requests made under the Data Protection Act
- personnel and disciplinary decisions or actions
- any professional judgment by a specialist, including, for example, the clinical decisions of doctors.

Although these terms of reference can sometimes look rather restrictive to complainants (especially because we cannot overturn the outcome of licensing decisions or driving tests), in practice we believe that they allow us to provide a quality service both to our fellow citizens and to the DfT and its constituent parts. Indeed, the many case histories in the Report provide an insight into the work of the Department that cannot be obtained through more mainstream management information.

Having said that, we are also aware both that we review a tiny, unrepresentative[1], sample of the work of those organisations we oversee, and that total complaints volumes are an uncertain – and sometimes, perverse – guide to underlying performance. We are also dubious about the attachment that both complainants and the bodies in jurisdiction ascribe to whether the complaint is upheld (in whole or part) or not upheld. Reality rarely fits with such a simplistic categorisation of outcome.

Some complainants are also dissatisfied with the level of consolatory payments that we can recommend where we have identified maladministration on the part of a DfT Body. Until recently, we were limited in practice to a maximum sum of £500 to accord with HM Treasury guidance. However, we have now agreed with the Department that, in exceptional circumstances where we deem it appropriate, we may recommend more than £500. (Should the Department or DfT Body accept such a recommendation, this will be subject to prior agreement with HM Treasury.) Nonetheless, the sums of money that can be offered for non-material loss (there is no upper limit when it comes to compensation for demonstrable financial loss) should be seen as symbolic rather than fully restorative.

[1] In the sense that the vast majority of transactions do not generate complaints.

As far as we are able, we try to ensure a consistent approach to consolatory payments and other remedies, while conscious that no two circumstances are ever identical.

As we have said, we place great emphasis upon that aspect of our role which is to help drive improved performance and customer care across the DfT family. In general, we have received very positive responses to our recommendations and the learning contained within our reviews. In our time in office, we have witnessed a genuine cultural change – particularly in the DVLA – towards the needs of those who use DfT services, although we sense there remains a defensiveness in respect of some policy areas that can act to the detriment of customer service.

So far as complaint handling is concerned, this has also improved across all DfT Bodies. We greatly welcome the stripping out of a stage in complaints against the DVSA. Highways England has introduced a process for monitoring ICA reviews so that learning is captured, and the HS2 Ltd complaints process at stage 2 is amongst the most thorough we have ever come across in either the public or private sectors. The DVLA has changed its standard wording so that complainants no longer mistakenly anticipate a personal response from the chief executive herself.

As we did last year, we have grouped in our case histories those complaints that explicitly raise issues of equality and diversity. Allegations of unfairness or improper discrimination often engender some defensiveness on the part of both public and private organisations. However, it is not sufficient simply to cite overarching statements committing to equality and diversity; where a complaint is made what is required is an objective enquiry into what is alleged to have occurred. We do not expect complaint handlers to offer opinions on compliance with the Equality Act 2010 and we are not here to do so ourselves. We have no doubt that complaints about discrimination and the accessibility of DfT services should be graded at the highest level and investigated with rigour and determination.

We conclude this foreword by expressing our gratitude for the support offered to us by the DfT, its Agencies and other Bodies. Although jealous of our independence, we greatly value the opportunity of working alongside colleagues especially through the DfT's Complaint Handlers Improvement Group, and in visits to the DVLA in Swansea and others elsewhere. This year, both ICAs have also addressed the Cross-Government Complaints Forum, and contributed to a DfT 'masterclass' at the PHSO offices in Manchester. In respect of HS2 Ltd, we maintain regular contact with the two independent Commissioners (the Residents' Commissioner and the Construction Commissioner).

As Public Appointees, we hope in future to increase our profile both within the Department and with its Ministers, and externally.

# 1: Overview of our year's work

## Input

1.1 For the second year in a row, the number of incoming cases has set a new record. Some 386 new cases were referred to us, compared to 346 in 2018-19.

1.2 As we noted in the foreword, this represents an 11.5 per cent increase from 2018-19 and means the volume of incoming work has more than doubled (an increase of 117 per cent) in the last five years.

1.3 An overview of our caseload in the context of referrals in the last two years is provided in Table 1. While some DfT Bodies experienced a reduction in ICA referrals in 2019-20, this has been dwarfed by a continuing rise in work from the DVLA.

1.4 However, as Table 1 also shows, the rate of increase in referrals has fallen compared to 2018-19. We attribute at least part of that reduction to the impact of Covid-19 during March 2020.

**Table 1: Cases received 2019-20 and changes in referrals since 2018**

| | 2019-20 | Change 2019-20 | Change 2018-19 |
|---|---|---|---|
| **DVLA** | 282 | +33.6% | +27.8% |
| **DVSA** | 47 | -20.3% | +31% |
| **HE** | 46 | -6.1% | +53% |
| **CAA** | 4 | -1 case | +2 cases |
| **DfTc** | 3 | +1 case | -1 case |
| **MCA** | 2 | -5 cases | +7 cases |
| **HS2** | 1 | -12 cases | +9 cases |
| **NR[2]** | 1 | N/A | N/A |
| **Total** | **386** | **+11.5%** | **+37%** |

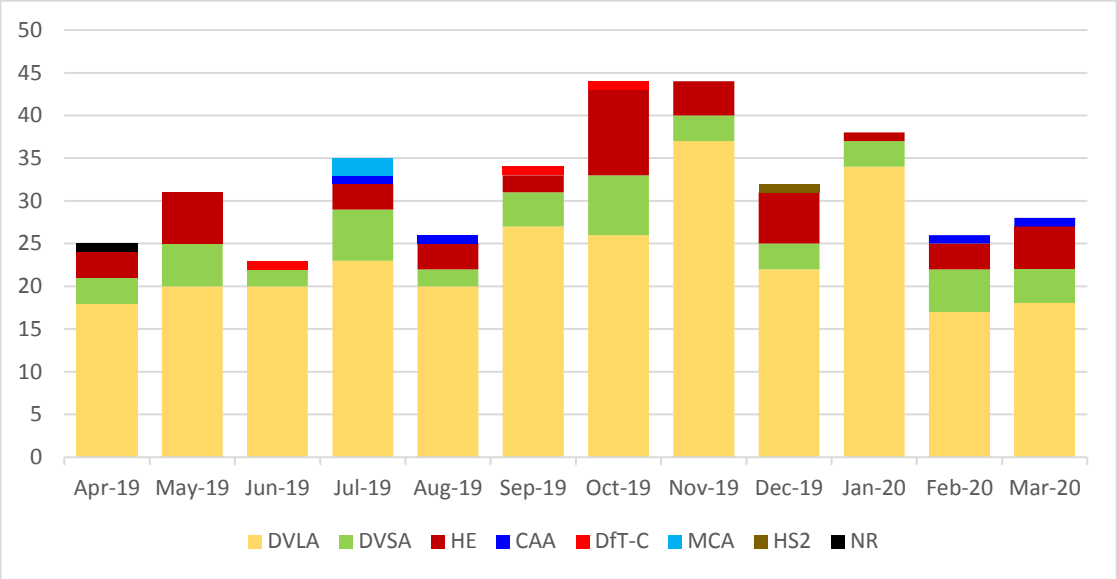
1.5 Figure 1 shows the year's incoming cases, by month and DfT Body. As was the case in the previous reporting period, new records were set repeatedly during the year.

1.6 Of particular note, in the third quarter (October-December 2019), we received 120 cases (compared to 87 in the corresponding period the previous year). This was an increase of almost 24 per cent over what was

[2] Network Rail does not currently subscribe to the ICA scheme. We reviewed a single case in the year on an exceptional basis.

formerly our busiest ever three-month period (quarter 2 of 2018-19). Within that period, the tally of 44 cases in both October and November represented the joint busiest months in the history of the ICA scheme.

**Figure 1: Incoming cases 2019-20 by month and DB**




1.7 The increase in DVLA referrals of 34 per cent has, to a significant extent, determined our workload. The DVLA provided 73 per cent of all new cases. The year by year percentage changes in DVLA referrals since 2015 are outlined below:

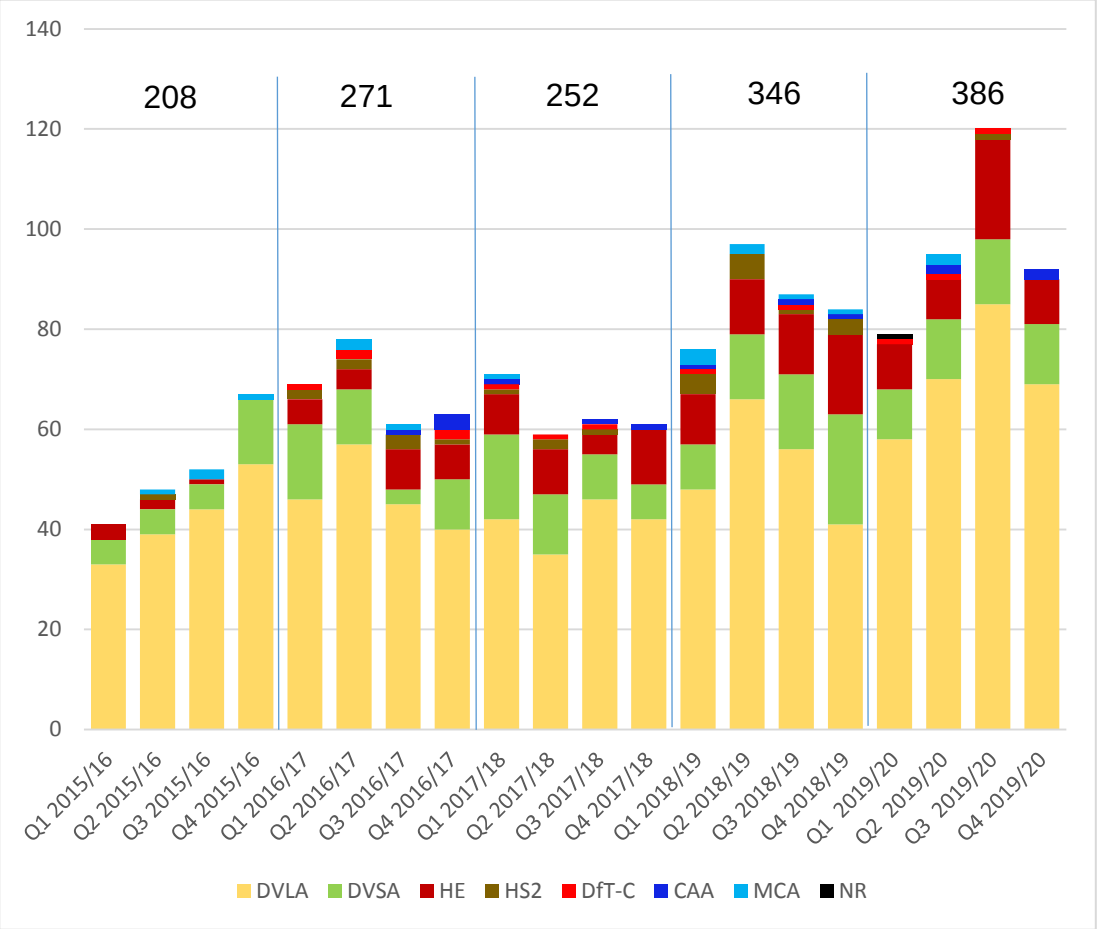
- 2015-16: + 38.5%
- 2016-17: + 11.2%
- 2017-18: - 12.2%
- 2018-19: + 27.8%

1.8 We look further into trends within the DVLA caseload in the next chapter of this report. As always, complex complaints about Drivers Medical, the DVLA's medical investigation service, have figured large this year, rising to an all-time high of 98 cases, 21 per cent higher than in 2018-19.

1.9 We welcome reduced number of referrals from our second and third most prolific customers, the DVSA and Highways England.

1.10 Figure 2 illustrates the overall rate of increase in referrals over the last five years.

**Figure 2: All incoming cases over the last 5 years, by year and quarter**

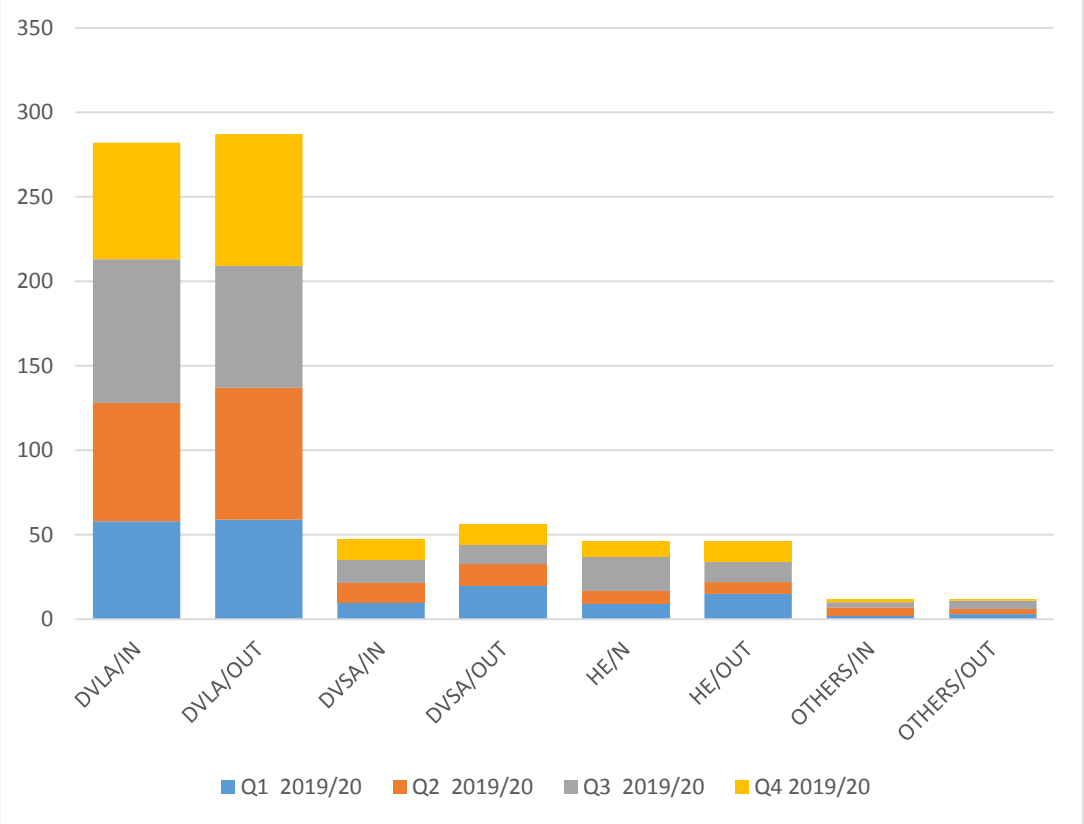



## Output and outcomes

1.11 During the year we completed 401 reviews, a 25 per cent increase from last year (322 cases). Balancing our increasing DfT commitments against the demands of other work has at times been challenging, and there have been occasions when we have had to reallocate the workload between ourselves, suspending the standard 'cab-rank' allocation of incoming work.

1.12 Figure 3 compares incoming and outgoing work in each quarter. We believe this illustrates some success on our part in ensuring that backlogs did not develop.

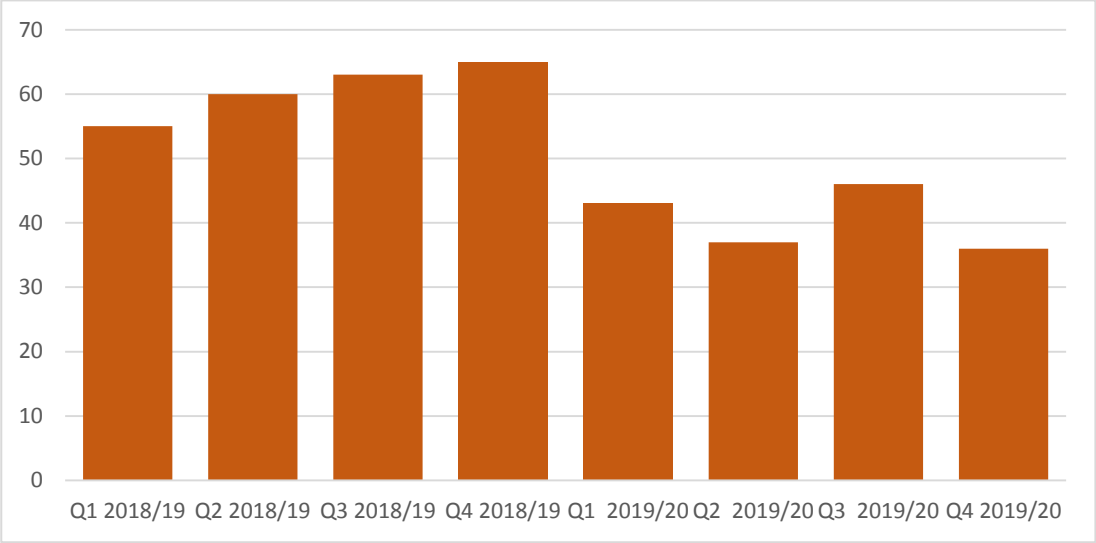
**Figure 3: Incoming and outgoing cases 2019-20 by DfT Body and quarter**




1.13 Although we (just) outpaced the flow of incoming cases, we have both carried at times heavier workloads than what experience teaches is the optimal range (6-12 cases each). Too many open cases mean delay and inconvenience for complainants, and additional cost for the organisations in jurisdiction.

1.14 However, as Figure 4 shows, the situation in terms of the number of open cases being carried has improved compared with 2018-19. This is, in part, because we have recently been able to commit more time to DfT casework.

**Figure 4: Open cases held by the two ICAs at quarter end, 2018-19 and 2019-20**




1.15 Both in the foreword, and in previous reports, we have expressed reservations about summarising case outcomes using the conventional ternary classification of upheld, partially upheld or not upheld. But we also understand why this matters so much both to complainants and to the Bodies we oversee, and why it is necessary for reporting purposes.

1.16 Accordingly, we can summarise our 401 in-year completed case outcomes as follows:[3]

**Overall**

- **Fully upheld**: 3.9% (2018-19: 11.2%)
- **Partially upheld**: 28.4% (2018-19: 32.8%)
- **Not upheld**: 65.5% (2018-19: 55.0%)
- **Discontinued**: 2.2% (2018-19: 1.0%)

1.17 Aggregating those cases that were fully and partially upheld (as is again conventional amongst Ombudsmen and complaint handlers), this gives a

[3] Here and elsewhere, we summarise cases *completed* in-year. In consequence, the figures will not tally with those in last year's report that included only cases *received* in-year (all of which had been completed when we finalised the report). This change in reporting practice reflects the request by the DfT that we complete this report as early as possible so that it can inform the Department's own annual report.

figure of 31.4 per cent of cases that were upheld to some extent. This compares with 44 per cent of cases upheld to some degree in 2018-19.

1.18 We have further disaggregated the proportion of cases upheld either wholly or in part by Delivery Body:

**Cases upheld to some extent**

- **DVLA**: 34.5% (2018-19: 47.7%)
- **DVSA**: 16.0% (2018-19: 19.1%)
- **HE**: 32.6% (2018-19: 71.2%)
- **CAA**: 1 fully upheld (2018-19: 1 partially upheld)
- **MCA**: 1 partially upheld (2018-19: 3 partially upheld)
- **DfTc**: 2 upheld to some extent (2018-19: 1 partially upheld)
- **HS2 Ltd**: 2 upheld to some extent (2018-19: 6 partially upheld)
- **NR**: 1 upheld to some extent.

1.19 These figures reveal an encouraging trend replicated in different degrees by each of our 'big three' referral Bodies – a reduction in the cases where we have been critical of service delivery and/or complaint handling. This improvement in customer service has been evident over the last three years, and is in the context of greater operational activity and higher complaint volumes. It is also relevant that the number of upheld PHSO cases is no more than a handful per year.

1.20 We highlight good practice in later sections of this report as well as areas where further progress is required. Our overall view is that the lower uphold rates on our part reflect more influential, objective and customer-focussed complaints functions – particularly within the big delivery bodies. Phrases like 'the customer experience' that we encounter from the DVLA, for example, would have been unheard-of when we were first appointed.

1.21 Complaints specialists working prior to ICA review appear better placed to challenge operational colleagues in entrenched cases and to identify opportunities to resolve grievances. Pragmatism and resolution-mindedness rather than a reductive "We are right" mentality is far more strongly embedded. Complaint handlers are also more adroit at anticipating and resolving the un-remedied injustices that we and the PHSO would otherwise identify in the later stages.

1.22 Having said that, we do still encounter cases where the inflexible application of rules has been given precedence over good sense and customer service.

1.23 A small number of cases also show different parts of the DfT working less in harness with one another than should be the case.

## Productivity

1.24 We took, on average, four hours and 46 minutes to complete each case in the 2019-20 reporting year, compared with five hours and 32 minutes in 2018-19. However, this average is made up of completion times that range between 29 minutes and 41 hours. Happily, the average number of week days we took to complete a case reduced to 32.4 (from 39.5 in the previous year). Table 2 sets out comparative statistics for cases completed in the last two reporting years.

1.25 It is not hard to discern that cases with which we are less familiar – like those from the CAA and the Department centrally – take substantially longer than those from the DVLA, DVSA and Highways England. It is also our experience that the rare complaints that do proceed from the CAA and others are much more complex than, say, complaints against the DVLA for its enforcement activity or those against the DVSA relating to driving tests.

**Table 2: Average time taken to complete in working days and hours**

| | 2019-20 | | 2018-19 | |
|---|---|---|---|---|
| | **Av. w/days** | **Av. time, h:m** | **Av. w/days** | **Av. time, h:m** |
| DVLA | 30.5 | 4:34 | 41.3 | 5:13 |
| DVSA | 28.1 | 4:07 | 32.7 | 4:10 |
| HE | 44.5 | 5:17 | 37.3 | 7:00 |
| CAA | 57.0 | 8:34 | 31.7 | 8:46 |
| MCA | 3.5 | 3:49 | 29.6 | 4:52 |
| DfTc | 25.0 | 7:03 | 78.0 | 10:37 |
| HS2 Ltd | 125.5 | 27:38 | 46.5 | 12:18 |
| NR | 52.0 | 7:45 | N/A | N/A |
| **AVERAGE** | **32.4** | **4:46** | **39.5** | **5:39** |

1.26 Nonetheless, all of our work involves disputes that have become entrenched – otherwise they would not have escalated to an ICA referral. As in previous years, the following factors militate against timely completion of an ICA case review:

- From an ICA perspective, novel subject matter and regulatory frameworks with which we have to familiarise ourselves from scratch

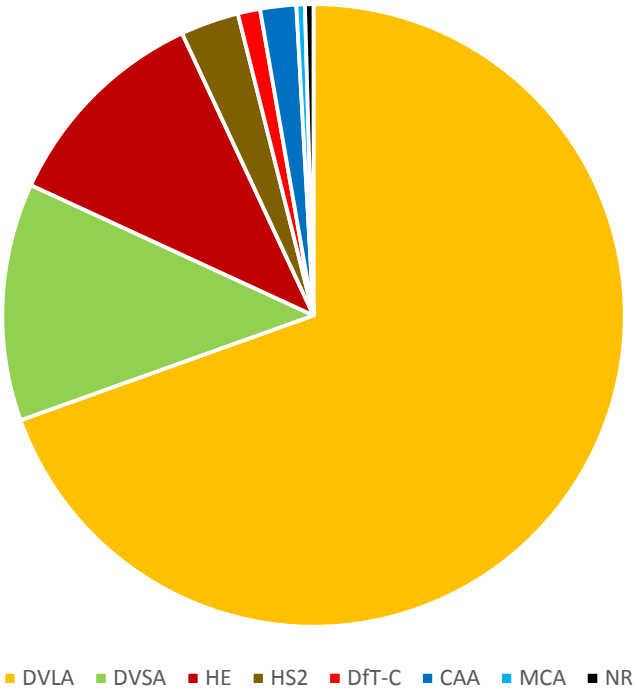
- Elongated dealings between the customer and different functional parts of the organisation (often in the DVLA these involve medical licensing decisions, as well as noise/nuisance complaints in Highways England)
- Disputes that continue to rumble along during the course of our reviews
- Voluminous correspondence
- Poorly presented and/or organised and/or incomplete referral files
- Complaints on the periphery of our jurisdiction where matters that we cannot determine are interwoven with service delivery and administration-related unhappiness.

1.27 Our total case-working time in 2019-20 is illustrated in Figure 5.

1.28 The diagram shows that 70 per cent of our total of 1,894 hours of case-working time was devoted to the DVLA, with 12 per cent for the DVSA and 11 per cent for Highways England. All other referrals represented just seven per cent of case-working time.

1.29 Drivers Medical cases took over 55 per cent of our DVLA case-working time, and well over a third of all of our DfT casework hours.

**Figure 5: Total case-working time (1,894 hours) by Delivery Body**

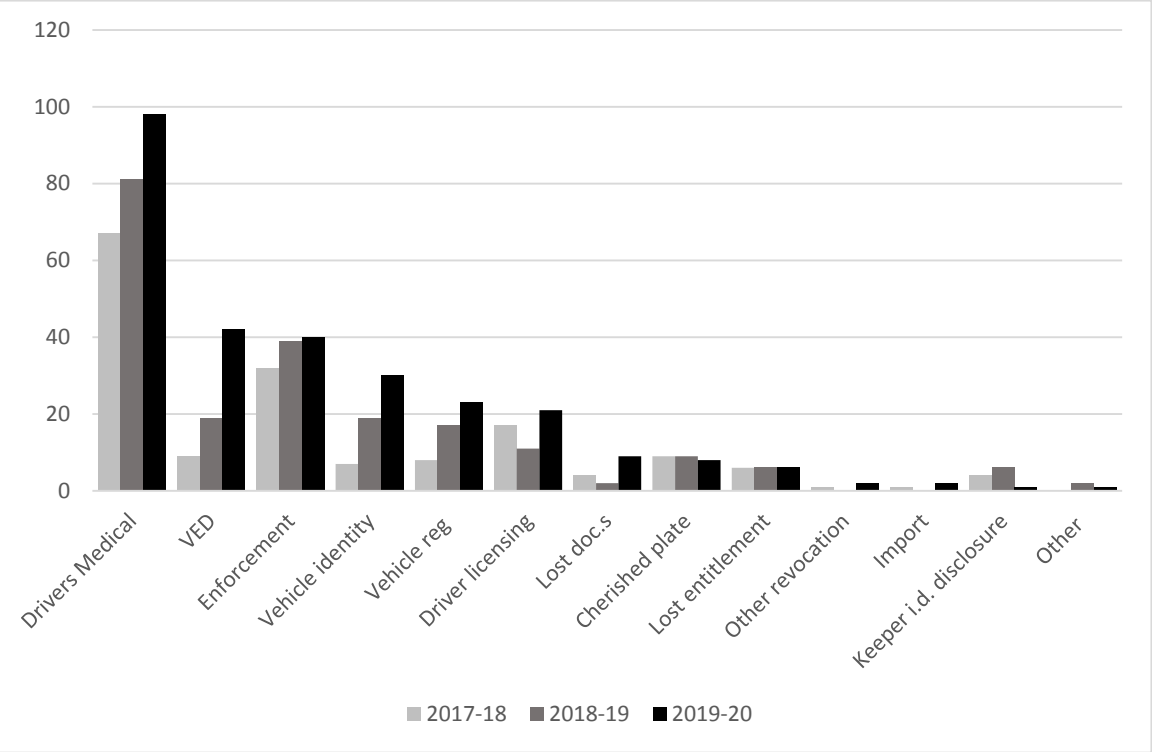


# 2: DVLA Casework

## Incoming cases

2.1 We have noted that the 282 referrals received in-year represents a 33.6 per cent rise in DVLA cases from 2018-19. Figure 6 presents comparative statistics for cases received in each of the last three years.

**Figure 6: Incoming DVLA cases, 2017-2020**




2.2 Inevitably, the 20.9 per cent rise in Drivers Medical (DM) cases has had significant repercussions for our workload. We have detected no clear trigger for the increase other than the high and increasing volumes of medical cases handled by DM. The significant impact of licensing decision-making on drivers and the people who depend on them demands rigour and attention to detail in complaint handling at the Agency's stage and ours, coupled with high quality service. In particular, the reasoning behind licensing decisions and the requirements for relicensing need to be clearly explained. We will comment later on the improvements we have seen in DM's systems which we link to fewer ICA cases being upheld. We will also highlight areas of the DM operation where we have continued to be critical.

2.3 The steep (121 per cent) rise in complaints about VED (vehicle excise duty or 'car tax') has been surprising as the major changes in collection methods occurred some time ago (in October 2014, when the tax disc was abolished). The main complaint areas remain as we reported last year. Customers expressed frustration to us about:

- The DVLA 'double collecting' VED from both disposing and acquiring keepers for the month of keeper change
- Refunds of VED being calculated on the date that notification of a qualifying event arrived in Swansea rather than the date of the event itself
- Direct debit payments continuing after the disposal of a vehicle (and not being refunded after having been collected from the disposing and acquiring keepers concurrently, in some cases for many months).

2.4 Customers have frequently expressed incredulity to us that their clear evidence of vehicle disposal is neither disputed by the DVLA nor considered sufficient to trigger a full refund of VED. For its part, the Agency is clear that disposal notifications must be received through the appropriate channels, and that customers must take it upon themselves to chase up the non-arrival of an acknowledgment of disposal after four weeks. We are very conscious that the law relating to the 'rebate condition' for refunding VED is in strict terms, and any loosening of the DVLA's current approach would require a change in legislation.

2.5 Keepers have also expressed anger at the fact that they have not been informed when direct debit mandates have been cancelled by the DVLA. This may occur because a vehicle is not covered by an MOT at the time the mandate should auto-renew. In other cases, customers who have been able to tax at the acquisition stage as a one-off have found their vehicles being clamped the following year because the direct debit auto-renewal failed due to them not being registered as keeper.[4]

2.6 Unfortunately, in such cases we are rarely able to resolve the dispute at the heart of the complaint. Customers will be emphatic that they notified the DVLA that they had become the vehicle keeper. Meanwhile, the DVLA will insist that no such notification was received and that it fell to the acquiring keeper to chase up the non-arrival of the V5C/logbook in the month post-acquisition. We upheld just three out of 42 VED cases we completed this year.

[4] The DVLA has pointed out that customers are informed of this when a direct debit is being set up.

2.7 That said, we remain unconvinced by the DVLA's rationale for not notifying the person who paid the VED that their direct debit has failed. We do not consider persuasive the DVLA's suggestion that the non-arrival of a new payment schedule for the coming year should raise a question mark in the customer's mind. People lead increasingly busy and complex lives. Noticing and addressing a non-event, like the absence of a direct debit schedule on the anniversary of paying for vehicle tax, is asking a lot. The DVLA should reconsider its approach.

2.8 The stakes are higher in enforcement cases where former keepers whose disposal notifications have not been sent, have not arrived, or have not been processed, are fined by the DVLA and in many cases pursued to court. Customers who have attracted enforcement inadvertently for the first time have complained that no quarter has been afforded them by the DVLA - despite their history of compliance with the law. Again, we are rarely able to resolve disputes that turn on whether paperwork was dispatched by the customer or processed correctly by the DVLA.

2.9 More and more customers are notifying vehicle disposal online. This generally gets around the problem of notifications made near the end of month 1 not arriving at the DVLA and being processed until month 2, thereby reducing the refund payable. However, the online system closes at 7.00pm, meaning that someone notifying disposal on the last day of the month may still be liable for tax in the month thereafter. We hope that this can be speedily remedied.

2.10 Of course, enforcement is not supposed to be a pleasant experience and where it has been pursued in line with the DVLA's published Vehicle Enforcement Policy we are rarely able to uphold a complaint.[5] However, as one case we report on in detail later in this chapter shows, we expect the Agency to be vigilant when enforcement is challenged. In that case and others we have reviewed, we have found the DVLA's clamping contractor NSL of great assistance in the review process.

2.11 The complaints we have aggregated in Figure 6 under the heading "vehicle identity" are disputes between the DVLA's registration function and vehicle keepers about whether the Agency's registration reflects fairly and accurately the vehicle's history and composition. The way that a vehicle is registered may have a significant impact on its value, particularly if it is allocated a Q plate (which is designed to indicate that there is uncertainty about a vehicle's provenance).

2.12 This year the increase in vehicle identity cases was caused by changes in the way that the DVLA registers the body type of vehicles that have been

[5] https://www.gov.uk/government/publications/vehicle-enforcement-policy.

converted into campervans and motorhomes. We do not think this was well managed at all, and the DVLA's stance that its policy had not changed was disingenuous. There are identical vehicles on the road, some of which are registered as motorhomes and some of which are registered as vans with side windows.[6]

2.13 It was also a mistake for the DVLA to tell customers that a vehicle's body type as recorded on the registration certificate had no effect on motor insurance, when it was the customers' own experience that demonstrated this was the case.[7] We received so many complaints on this issue, most of them raising similar points, that we have only reproduced a sample in the case histories that follow

2.14 The 21 non-medical complaints about driver licensing represented a near doubling of last year's total. These consisted, in the main, of complaints about delays, errors and unfairness in processing. Far more serious complaints that identity documents had been lost by the DVLA or in transit, also increased to nine, perhaps following coverage of the issue on the BBC consumer affairs programme, *Watchdog*. However, these numbers should be contrasted with the many tens of millions of successful transactions completed by the DVLA using old-fashioned document-based methods.

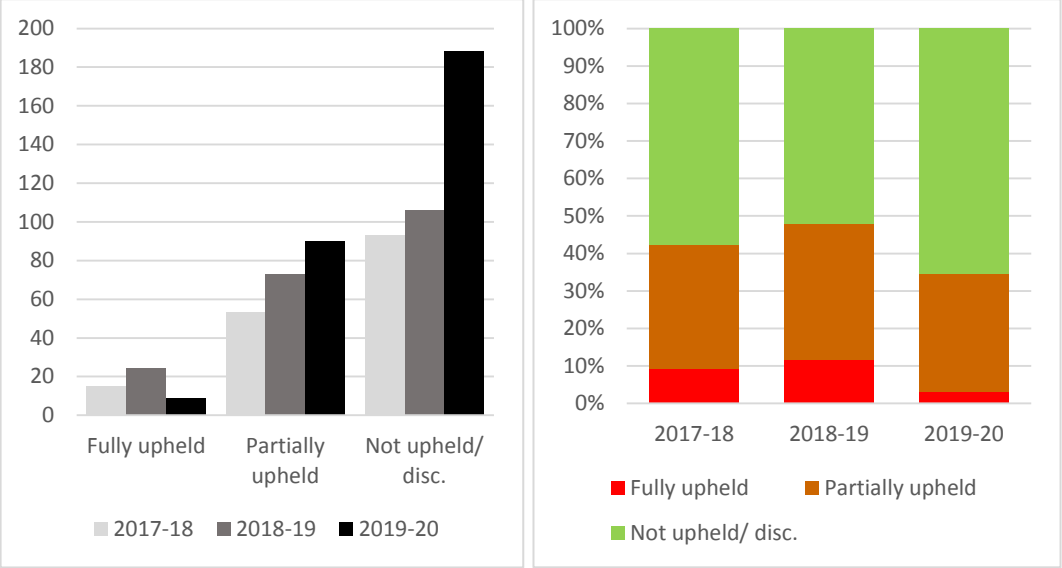
## Cases we completed, 2019-20

2.15 The outcomes of the 287 DVLA cases we completed (41 per cent more than in 2018-19) are summarised in Figures 7 and 8 along with comparisons from the previous two reporting years. (A handful of discontinued cases have been added to the not upheld figures.) As we noted above, we upheld to some extent 34.5 per cent of the DVLA cases we completed in-year, compared to 47.7 per cent in 2018-19.

[6] In comments on the draft of this annual report, the DVLA wrote: "There have been no changes to the way a body type is allocated. The body type must reflect the external appearance of the vehicle in traffic and this has always been the case. The policy has not changed and this is a matter of fact. The administration of the policy was applied consistently during this period after a time when it wasn't."

[7] The DVLA has told us: "We have correspondence from the Association of British Insurers (ABI) that backs up our advice that body type should not affect the insurance cover available for these vehicles. DVLA cannot be held accountable for the relationship between an individual and their insurer, or the insurers' processes and decision making. Body type is used exclusively by DVLA to support law enforcement". We have not seen the correspondence from the ABI, but customers have told us that insurers have declined to accept that vehicles converted to motorhomes have a higher value than standard vans with side windows.

**Figures 7 and 8: DVLA case outcomes over the last three years**




2.16 Although the increased volume of ICA referrals is of concern, the total of upheld completions increased by just two cases (to 99) from the previous year. The DVLA should take some comfort from the fact that the percentage of cases we have upheld this year has dropped from 47.7 per cent (2018-19) to 34.7 per cent, as illustrated in Figure 8. Fully upheld cases – that often reflect failings in both the original service and subsequent complaint handling – have plummeted from 24 (11.8 per cent) to 9 cases (3.1 per cent).

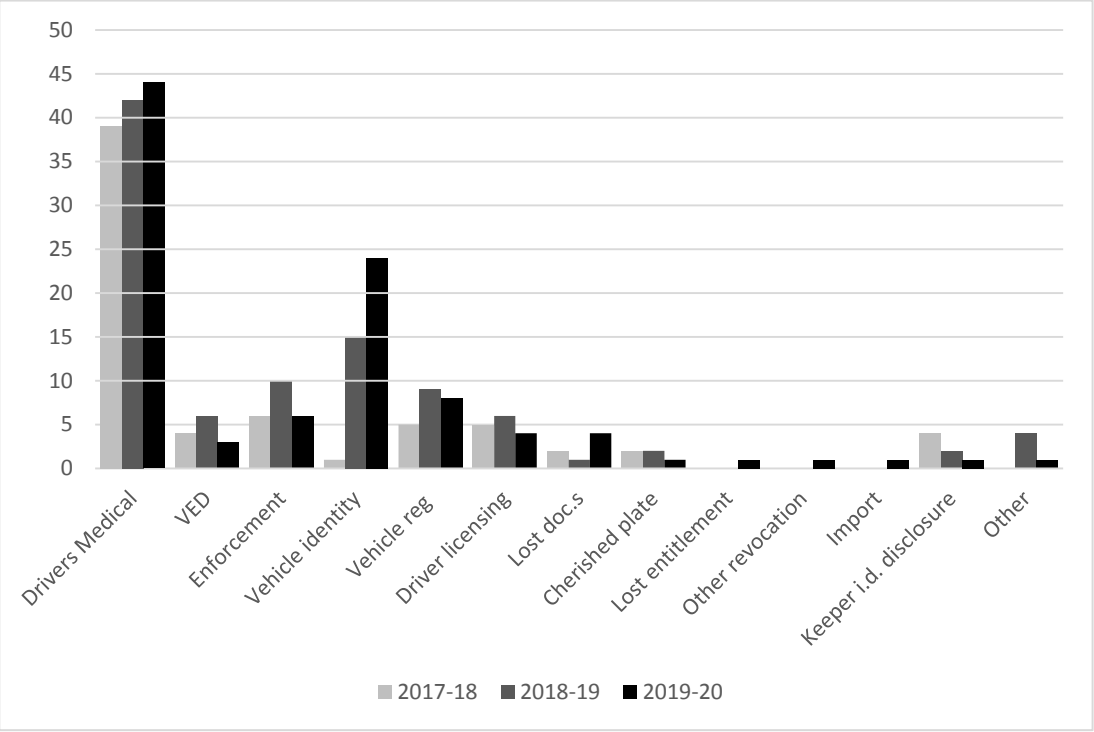
2.17 We noted earlier our view that the lower rate of upheld complaints reflects more influential complaints functions in all the DfT bodies we oversee. This is particularly true of the DVLA. The Agency has invested in training and development for its complaints staff, and found better ways of engaging its operational areas in complaint handling. Figure 9 illustrates the number of DVLA cases upheld to some extent over the last three years by business area.

2.18 The improvements in case analysis and management were particularly evident in the 102 Drivers Medical cases we completed in the year.

2.19 We especially welcome the involvement of individual DVLA doctors in complaint handling both at the Agency's stage and following ICA referral. The quality of explanation of how the medical standards of fitness to drive have been applied, and how decisions may be contested, is also much improved. Furthermore, the DVLA actively considers the provision of

consolatory and compensation payments before referral to the ICAs in cases where administrative failings have caused hardship and loss. Generally, we have found fewer grounds to uphold complaints and make recommendations.

**Figure 9: All DVLA cases upheld to some extent, 2017-2020**




2.20 We continue to encourage the DVLA to improve the information it provides to drivers and their doctors about how to have a case reopened after revocation. Many are confused or unaware that the DVLA operates a two-stage process. First, it falls to the driver to furnish (if necessary by commissioning) new medical evidence showing that they meet the relevant standard/s. Second, if the DVLA decides that the driver-commissioned first stage evidence is sufficient, it will commission its own investigation. This involves starting a new tiered questionnaire enquiry process – often involving the same clinicians. Unsurprisingly, drivers and their doctors often characterise this as unnecessarily repetitive and time-consuming.

2.21 Better advice should be available to customers who ring the DVLA's contact centre. The information that is provided over the phone should fully meet the Ombudsman principle that "Public bodies should provide clear and timely information on how and when to appeal or complain."

2.22 It can also be difficult for drivers whose licences have been revoked or applications refused to overcome the first hurdle to reopening their case, for example, if a revocation has been made on the basis of a driving assessment. Other requirements, for example evidence of full functional adaptation to visual field loss, or of an annual seizure risk of under 2 per cent, have been baffling to drivers' own clinicians.

2.23 DVLA decisions at the first stage of this process are often made with clinical judgement, following a risk-based appraisal of all available information. Delays can set in. Also of concern to many drivers is that the reason for their case not passing the first stage is not always clearly spelled out. Too often drivers are given the generic message that the information is not sufficient and they should go back to their own doctor. Drivers and their doctors do not always understand what is required.

2.24 The well-documented pressures on primary care also mean that the DVLA's reliance upon busy doctors completing questionnaires accurately is inherently vulnerable to innocent mistakes being made. In other cases, General Practitioners or other clinicians may be unwilling to help their patients in their dealings with the DVLA.

2.25 A welcome change in DM policy came into effect in February 2020. Hitherto, it had been possible for DVLA doctors to issue Provisional Disability Assessment Licences (PDALs) for the day of the assessment only. This afforded the would-be driver no opportunity for re-training or re-familiarisation, often after years without being behind the wheel. The new policy means that PDALs must allow for a period of re-training. This new approach is in line with what we have proposed in a number of reviews (see our 2017-18 annual report p.26, and our 2018-19 annual report, p.27), and followed from a Parliamentary Ombudsman investigation and a judicial review. There is obviously some danger that the number of PDALs overall will fall if DVLA doctors think that even the re-training accompanied by an Approved Driving Instructor is too great a risk to road safety, but in such cases they will have to document their decision-making.

2.26 Another contentious area in our casework has been the DVLA's application of the fitness to drive framework to reports that drivers have been drinking excessive alcohol. Several such cases are presented together in the case histories that follow. Drivers have protested that their and their doctors' accounts of achieving sobriety and rebuilding their lives have not deflected the DVLA from revoking their entitlement until a prescribed period of not drinking has been achieved. Many cannot understand how a sanction commensurate with having been found guilty of a criminal offence can be applied when they have never broken the law. Some have complained that they have been penalised for being honest

with their doctor and/or the DVLA, and that the effect of the DVLA's involvement has been to undermine their rehabilitation by preventing them from working and caring for others.

2.27 In our reviews we have noted that the inclusion of *"persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency"* (alongside epilepsy, severe mental disorder, giddiness and fainting and visual disability) as a relevant disability is a matter of law that the DVLA must apply.[8] However, our casework has revealed difficulties in the way *"persistent misuse"* and *"dependence"* are defined and differentiated, particularly when the driver's own clinicians may have a different concept of problematic drinking from the DVLA (that regards the Chief Medical Officer's recommended weekly allowance of 14 units as defining 'controlled drinking'). We note that official statistics point to very many members of the population (particularly men) who drink in excess of 14 units per week, and wonder if millions of drivers lawfully adhering to the drink driving laws could have their entitlement revoked on medical grounds if the extent of their drinking was known to the DVLA.

2.28 Finally we have agreed with some complainants that the DVLA should be much more transparent in its decision-making about short-period licensing in this area, and about the requirements it makes of drivers seeking a restoration of *'til 70'* licensing.

2.29 Drivers Medical cases took us an average of seven hours to complete compared with 3 hours 11 minutes for other DVLA cases. We made recommendations in 57 per cent of DM referrals (compared with 33 per cent of other DVLA cases). The single main recommendation areas per case are set out below:

Drivers Medical

- Consolatory payment (36 cases)
- Improved information and communications (10)
- Consolatory and compensation payment (7)
- Apology (3)
- Change systems (1)

Other DVLA service areas

- Consolatory payment (26 cases)
- Consolatory and compensation payment (1)

[8] In section 92 of the Road Traffic Act 1988 and sections 71 and 72 of the Motor Vehicles (Driving Licences) Regulations 1999 (both as amended).

- Apology (4)
- Improved information and communications (14)
- Review decision (3)
- Change systems (2)
- Other (7)

2.30 As the case studies at the end of this chapter illustrate, these high level data do not reflect the many other recommendations we have made in cases aimed at improving administration and customer service. Our case log is frankly rather basic, and unfortunately does not make retrieving this information straightforward. However, we have inspected the Agency's own register of recommendations arising from our cases, PHSO investigations and its own audit and assurance processes, and are confident that the learning process is now a robust one. But for the avoidance of doubt, we should emphasise that seeking and reviewing evidence of implementation of our recommendations is not required under our terms of reference, nor would it be feasible without a major reorganisation of the ICA function.

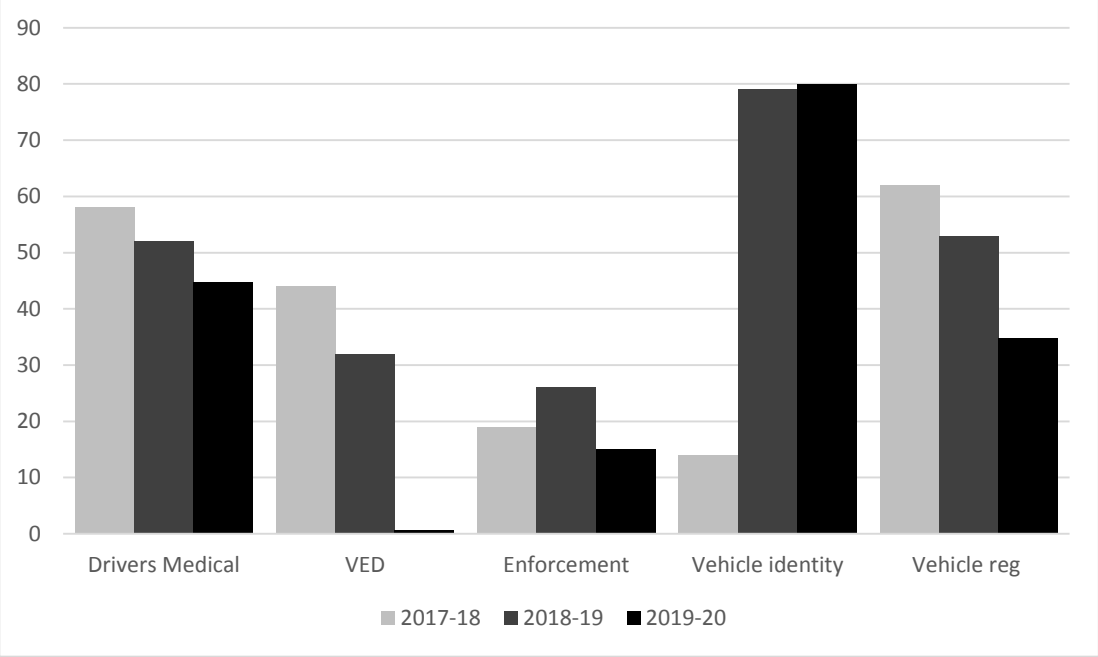
2.31 Other parts of the DVLA business have also demonstrated a flexibility when customers have innocently fallen foul of the Agency's rules. We report an important case where the DVLA had negated a driving test pass without taking account of the circumstances, and despite the legislation affording the Agency discretion to issue a licence. This case has led to other customers having their cases considered more sympathetically.

2.32 For reasons we do not understand, this flexible approach, and sensitivity to a customer's individual circumstances and needs, seems to inform the DVLA's Drivers Policy but has been less evident to us in decisions in relation to motorhomes and vehicle identity overseen by Vehicle Policy.[9]

2.33 Figure 10 presents data relating to the top five complaint areas in percentage form. It demonstrates that in cases involving vehicle identity the ICAs are consistently finding flaws in the approach taken by the DVLA. Here, more than in every other area of the ICA jurisdiction combined, ICA recommendations are from time to time flatly refused.

[9] We should acknowledge that the DVLA dissents from this judgment. In comments received on the draft of this annual report, the Agency said: "The vehicle policy team have been open and honest in their discussions with ICA. They have listened, Q plate and motorhome information available to customers has been improved, and further improvements are planned." We would of course expect nothing less than openness and honesty, and must agree to differ on the merits of individual case decisions and their impact on the customer.

**Figure 10: Percentage of DVLA cases upheld to some extent in top five complaint areas, 2017-2020**




2.34 In contrast, we have found the Agency's understanding of its legal responsibilities in respect of vehicle tax to be robust, albeit, as we have noted, many customers are critical of what they regard as unfairness in the way the law is applied.

## CASES

## (i): DRIVERS MEDICAL GROUP

### Updating *Assessing fitness to drive*[10] in line with recent NICE guidance

**Complaint:** Mr AB complained about the revocation of his vocational licence for five years. He said that the DVLA had been mistaken in thinking that he had suffered a seizure. He said it was a syncope brought on by not eating and drinking on a hot day. He also said that the DVLA's guidance on temporary loss of consciousness differed from the current NICE guidance.

**Agency response:** The DVLA had confirmed its licensing decision.

[10] The DVLA's guide for medical professionals: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866655/assessing-fitness-to-drive-a-guide-for-medical-professionals.pdf.

**ICA outcome:** The ICA said that Mr AB's complaint was at the margins of his jurisdiction. However, he recommended that the DVLA provide a clearer explanation of its licensing decision. The relevant guidance would also be reviewed as the specialist advisory panel's views pre-dated the current guidance from NICE.[11]

---

**Ensuring unsafe driver does not take to the road**

**Complaint:** Mr AB was the subject of a third party report after a near miss. DVLA enquiries into his vision and general health proceeded. He was referred for a driving assessment, during which the examiner and occupational therapist terminated the driving section prematurely given Mr AB's inability to control the vehicle. He was recommended to retire from driving immediately and the DVLA duly revoked his entitlement. He complained about an onerous, unnecessary and inconclusive investigation process.

**Agency response:** The DVLA had first revoked Mr AB's licence for his non-attendance at an independent medical examination. A different DVLA doctor then referred him for a driving assessment. The DVLA maintained that Mr AB should stop driving with immediate effect.

**ICA outcome:** The ICA recommended that the DVLA involve the police in ensuring that Mr AB was not continuing to drive, as he had said repeatedly in his correspondence he was doing. The ICA considered that the outcome of the driving assessment was absolutely clear: Mr AB should not drive again. The ICA judged that the DVLA's medical enquiries had been conducted sympathetically and in line with policy and he did not uphold the complaint.

---

**Delay and lack of clarity regarding exercise tests**

**Complaint:** Mr AB complained about delay in issuing his vocational licence. He said his employers had grown impatient and he had lost his job as a lorry driver. He complained that he had been unable to complete an exercise test because of arthritis in his knee and had not known what such a test involved.

**Agency response:** The DVLA had apologised for the time taken. It also said it would consider providing more information about exercise tests.

---

[11] There are six specialist panels covering cardiology, neurology, diabetes, vision, alcohol or substance misuse and dependence, and psychiatry (https://www.gov.uk/government/news/honorary-medical-advisory-panels-to-the-secretary-of-state-for-transport).

**ICA outcome:** The ICA was very critical of the delays. The review also pointed to a lack of clarity in the guidance relating to exercise tests - the matter would be referred to the cardiology panel for advice. He recommended a consolatory payment of £300.

---

**Rare condition not covered in *Assessing fitness to drive***

**Complaint:** Mr AB recovered fully after surgery for a rare brain cancer that was not specifically covered in the DVLA guidance. He complained that the DVLA had applied the fitness standard for serious malignancy inappropriately, meaning that he could not be licensed for two years. He also complained that the Agency had been inconsistent in its account of its decision-making and that undue delays had set in.

**Agency response:** The licensing decision was referred to the DVLA's senior doctor given the rarity of the tumour. When it was challenged by Mr AB with the support of his consultant oncologist, the senior doctor had a telephone conference with the oncologist and agreed to investigate further. More information was received and referred to a member of the advisory panel who agreed with the original decision that there should be two years off driving. This was relayed to Mr AB by the senior doctor who also provided a detailed breakdown of decision-making, identifying that an erroneous reference to a different type of tumour had been made in one of the letters. An apology was made for the initial delay in the medical review of the case.

**ICA outcome:** The ICA could not adjudicate over the difference in clinical opinion between Mr AB's oncologist and the DVLA's medical team, up to and including its expert panellists. The original licensing decision had been delayed by three months due to pressure on the DVLA's medical resource for which the ICA recommended that a consolatory sum of £300 should be paid. After that, given the involvement of external clinical experts in the referral of the case for panel opinion, the ICA judged that good progress had been made. He balanced the criticisms of delay with the fact that the DVLA had taken time to look again at the licensing position and had been open to a revised decision if specialist advice supported it. There had been occasional delays, inconsistencies and a lack of clarity but not such that DVLA handling amounted to maladministration.

---

## COMPLAINTS ABOUT THE APPLICATION OF THE ALCOHOL MISUSE AND DEPENDENCE FITNESS STANDARDS

### Clarity in respect of reapplication timetables

**Complaint:** Mr AB complained that, following his decision to notify the DVLA of a period of alcohol abuse that had followed a series of traumatic events in his life, the Agency had overreacted by revoking his driving entitlement for 12 months. This had undermined his efforts at rehabilitation by preventing him from working.

**Agency response:** The DVLA explained that, because Mr AB had recently attended an alcohol detoxification programme, the fitness standard applicable to alcohol dependence applied. This meant that the DVLA had no discretion but to revoke Mr AB's entitlement for 12 months.

**ICA outcome:** The ICA sympathised with Mr AB and accepted that he might well be correct in arguing that his own circumstances most closely resembled alcohol misuse. However, the DVLA had acted in line with its standard policies and the ICA therefore had no scope to find against the Agency. The ICA did note that some of the DVLA's letters (particularly those from the complaints team) suggested that Mr AB would have needed to have completed 12 months of abstinence before he could reapply. The ICA underlined the fact that, in DVLA policy and law, applicants could apply up to eight weeks before the period off driving was finished. The ICA emphasised this to Mr AB and asked the DVLA to ensure that its letters were clear in this regard. He did not uphold the complaint.

### Alcohol dependence standards last a lifetime

**Complaint:** Mr AB complained about the decision of the DVLA to restrict the length of his licence on medical grounds. He said that, with one lapse, he had been abstinent of alcohol for many years.

**Agency response:** The DVLA said it had applied the standards mandated by the Honorary Advisory Panel.

**ICA outcome:** The ICA said there had been no improper delay on the part of the DVLA, and its decision-making had been very considered. Indeed, one of the DVLA doctors emerged particularly impressively from the story. The ICA commended Mr AB for turning his life around, but he could not look behind the Advisory Panel's decision that the standards in respect of those who had been dependent upon alcohol applied throughout the applicant's lifetime. Indeed, the

circumstances of Mr AB's single lapse were so serious that they illustrated why the DVLA took such a cautious approach.

**Another case about alcohol dependence**

**Complaint:** Mr AB complained that the DVLA had applied a rigid, and tick box, approach to his case after he reported having been abstinent of alcohol for five months after approaching his doctor for support following a period of heavy drinking. He complained that he had been unreasonably encouraged by the DVLA's letters to submit further evidence when, in reality, the Agency had no discretion to change the decision that he should not drive for 12 months. He also complained of a failure to escalate his complaint, inaccurate information being held on DVLA records, and a lack of compassion and individualised consideration.

**Agency response:** Drivers Medical re-sent its original licensing decision letter and then, eventually, responded to Mr AB's complaint. The Agency provided more detailed responses through its complaints procedure, including a letter from the chief executive. In these documents it explained why the alcohol dependence criterion had been applied to Mr AB's case, and why information about tattoos, weight and appearance had been included in the independent medical examination into his fitness to drive.

**ICA outcome:** The ICA concluded that decisions had been made in line with the published standards, even if they were not always clearly explained. The ICA disagreed with the DVLA's view that it had no discretion; discretion was needed to differentiate between alcohol misuse and alcohol dependence, the two categories the DVLA applied in its application of the fitness to drive framework. The ICA was satisfied that the dependence standard had been applied in line with policy. He also noted that Mr AB had been provided with links to information about the fitness standards, as well as the advice that he could reapply eight weeks before the period off driving would expire. The ICA did not agree with Mr AB that the DVLA had kept him off the road through maladministration, and been unduly delayed in its handling of his reapplication. However, given the poor response to some of his initial correspondence, the ICA recommended that a consolatory payment of £50 should be provided. The DVLA doctor acting as panel secretary for alcohol and drug fitness standards set out in detail the steps the Agency was taking to be clearer with drivers and doctors about its application of the alcohol-related fitness categories.

**Re-licensing of a High Risk Offender #1**

**Complaint:** Mr AB, who had been convicted of having more than three times the legal limit of alcohol in his bloodstream, complained of DVLA inefficiency after he had re-applied for his entitlement. First, the Agency took months to corroborate the reduction in sentence that had followed his attendance on a drink-driving awareness course. Second, it unreasonably applied the High Risk Offender (HRO) status to him despite the fact that he had been falsely convicted and his sentence reduced significantly on appeal. The DVLA had also told him that re-licensing should be smooth and trouble-free. Mr AB thus took out a loan for a car and had then been unable to repay it because delays in licensing stopped him from working. Considerable emotional and financial hardship had followed.

**Agency response:** The DVLA explained that the difficulties had resided in obtaining corroboration from the court of the fact that Mr AB's disqualification had been significantly reduced on appeal, and then by a further three months after he had attended the drink-driving awareness course. The Agency was not empowered to make its own decisions about the validity of convictions; it was merely a registrar putting into practice decisions made by the court. After Mr AB's MP had become involved, the Agency accepted that there had been a breakdown of communication with the court and made a consolatory payment of £150.

**ICA outcome:** The ICA's detailed review of communications between the DVLA and the court corroborated the Agency's own finding that the confusion had primarily emanated from HM Courts and Tribunals Service. The ICA could not establish exactly what had been said to Mr AB by the DVLA to give him the confidence to take out a loan for a car, but he did not regard this understandable but risky act as the responsibility of the DVLA. Mr AB refused, on principle, to pay the enhanced (£90) HRO re-application fee and medical costs (£99). The ICA respected this but noted that it was the only way that he would get re-licensed as his original conviction had not been overturned meaning that the HRO designation still applied. The ICA regarded the Agency's £150 consolatory payment as generous given the lack of clear evidence that it had been the DVLA's fault that it had taken several months to clarify when Mr AB could be re-licensed. He was sympathetic to Mr AB's account of a miscarriage of justice but could not determine it. He not uphold the complaint against the DVLA.

**Re-licensing of a High Risk Offender #2**

**Complaint:** Ms AB, a High Risk Offender, complained about the time taken by the DVLA to conduct medical enquiries to enable her to regain her licence.

She said that five months had elapsed since the ending of her disqualification period. She also asked why carbohydrate deficient transferrin (CDT) testing could not be conducted first.

**Agency response:** The DVLA said that there had been no periods of delay for which it was responsible. It said the end of a disqualification period did not mean that a licence would be restored immediately.

**ICA outcome:** While sympathising with Ms AB, the ICA said he had identified no improper delay on behalf of the DVLA. Its medical enquiries also seemed appropriate and in line with *Assessing fitness to drive*. Since CDT testing for HROs was at the customer's expense, it was sensible that this was left to last after the enquiries with no direct cost to the applicant. Once the CDT results were received, Ms AB's case would be treated as a priority. There were thus no recommendations the ICA could sensibly make.

**Arrangements for Carbohydrate Deficient Transferrin testing**

**Complaint:** Mr AB complained about the arrangements made by the DVLA for a CDT test.

**Agency response:** The DVLA said it had offered Franchise Doctors (FDs) closest to Mr AB's home. When he had said he could not reach these locations on public transport, it had offered a third FD - an appointment Mr AB had accepted.

**ICA outcome:** The ICA said he could identify no maladministration. The offer of FDs closest to Mr AB's home had been appropriate, and the Agency could not be expected to know who was reliant on public transport - or the ease of travel in different parts of the country. The Agency had made sensible decisions when Mr AB had explained his difficulties.

**The trigger for a finding of alcohol abuse**

**Complaint:** Mr AB's alcohol intake was investigated by the DVLA after an anonymous tip-off. After information had been obtained from Mr AB, his GP, and from an independent medical examination, his entitlement was revoked for six months on the grounds of persistent alcohol misuse. Mr AB complained that the licensing decision had been made contrary to evidence from the independent medical examination (that showed a CDT score of under 0.5%) but where he disclosed a weekly intake of 30-36 units. He also complained that the Agency had relied on his early evidence in which he had miscounted

the units of alcohol he was consuming per week (telling the DVLA that he was drinking 60-66 units).

**Agency response:** The DVLA initially referred to Mr AB's early declaration in justifying his decision. After he challenged this, the Agency explained that the Chief Medical Officer's advice was that controlled drinking represented no more than 14 units/week. Even based on the lower intake, he was regarded in policy as having an alcohol misuse problem.

**ICA outcome:** The ICA did not uphold the complaint as the Agency had followed its standard policy. Mr AB's case had been reviewed by the senior DVLA doctor who confirmed that the revised amount Mr AB said he was drinking was still regarded as alcohol misuse.

---

**Medical decision making outside ICA jurisdiction**

**Complaint:** Mr AB complained about the DVLA's medical decision making in relation to alcohol dependence. His application for a licence had been refused, yet he said he drank alcohol only rarely.

**Agency response:** The DVLA said that its licensing decision followed from the guidance in *Assessing fitness to drive*. The decision had been reviewed and endorsed by the Agency's senior doctor.

**ICA outcome:** The ICA said the licensing decision and medical decision-making were outside his remit. As he had identified no maladministration in the handling of this matter, he could not uphold the complaint or provide any direct assistance to the complainant.

---

**Poor management of enquiries into alcohol use**

**Complaint:** Miss AB complained about the time taken for the DVLA to complete its medical enquiries following a licence re-application. She also complained about the service provided by the DVLA contact centre.

**Agency response:** The DVLA had explained its medical enquiries into Miss AB's use of alcohol, but had offered a consolatory payment of £50 for poor service.

**ICA outcome:** The ICA said he understood why Miss AB had not welcomed the enquiries into her alcohol use, but he did not think that these enquiries were unreasonable. However, it was clear that the enquiries had not been conducted efficiently (four questionnaires had been sent, two of which were

unnecessary). It was also clear that on two occasions the service provided by the contact centre (in not making clear that alcohol enquiries would be conducted, and in refusing to accept a Subject Access Request over the phone) had been poor. In the circumstances, the maladministration was at the lower end of level 2 on the PHSO scale, and thus justified a higher consolatory payment of £100.

**High Risk Offender seeks compensation for time taken to regain licence**

**Complaint:** Mr AB complained about the time taken by the DVLA to issue him with a new licence following a ban for drink-driving. He asked for compensation for the costs of a drink awareness course he had attended to reduce the length of his ban, for lost earnings, and for the inconvenience of attending doctor's appointments on three occasions.

**Agency response:** The DVLA had declined to pay compensation, explaining that a reduction in the disqualification period did not guarantee that a new licence would be issued immediately.

**ICA outcome:** The ICA noted that, while Mr AB was to be commended for turning his life around, he came within the DVLA's policies for High Risk Offenders and was therefore required to undergo a CDT examination. It was unfortunate that the first urine test was too dilute to be relied upon, but this was not the fault of the DVLA. A further examination was required, as was one for possible drug abuse. Although some time had been taken to send and review medical information, the ICA did not think this amounted to maladministration, and there was therefore no case for compensation.

**Review of frequency of medical consent**

**Complaint:** Mr AB complained about the time taken for the DVLA to conduct medical enquiries. In particular, he said that time was lost when the DVLA required renewed medical consent that he had already provided earlier in the year.

**Agency response:** The DVLA had acknowledged a failure to include the medical consent form with the renewal papers. It said a review was being conducted into whether medical consent forms needed to be supplied every time a case was re-opened.

**ICA outcome:** The ICA said that he could not uphold the complaint in terms of the remaining areas of grievance. He could not anticipate the outcome of the

DVLA review, but suggested that if medical consent lasted for, say, 12 months, it would not infringe medical ethics.

---

**Whether medical enquiries are always required**

**Complaint:** Mrs AB complained in relation to her licence revocation. She also said that the DVLA had inappropriately enquired into her alcohol use, and into her husband's prostate cancer.

**Agency response:** The DVLA had said that any delays were the consequence of Mrs AB's consultant not returning a medical questionnaire. It had defended its enquiries into alcohol use on the basis that Mrs AB had been given advice by her consultant to reduce her alcohol intake.

**ICA outcome:** The ICA said that he could find no delay on the part of the DVLA and its licensing decisions appeared to be in line with the guidance in *Assessing fitness to drive*. He acknowledged that the DVLA's senior doctor had endorsed the decision to send an alcohol questionnaire to Mrs AB's doctor, but noted that the accompanying letter said that the Agency had evidence of alcohol abuse (which was not the case, as the subsequent enquiries revealed). The ICA also doubted whether a questionnaire needed to have been sent to Mrs AB's husband in regard to his initial diagnosis for prostate cancer. He said that the DVLA's medical enquiries were not costless and caused anxiety and delay for customers. He recommended that the senior doctor consider offering further advice to colleagues.

---

**Mishandling of a complaint**

**Complaint:** Mr AB, who had suffered a severe head injury some years earlier, complained that the refusal of the DVLA to reinstate his driving entitlement had been perverse, unfair and devastating to him in his efforts to re-establish a normal working life. The impact of DVLA maladministration was heightened by an error whereby Mr AB was accidentally awarded a one-year driving licence by the DVLA instead of a provisional disability assessment licence. Mr AB attended three separate driving assessments over this period, but was not found to meet the fitness standard given the cognitive deficits the assessors identified. Mr AB pointed repeatedly to objective evidence in the form of cognitive tests that supported his contention that he was safe to drive, plus his extensive safe driving during the period that he had been erroneously licensed. He said the reason his performance had been deficient in the driving assessments was the excessive trepidation and anxiety he felt during the artificial test conditions.

**Agency response:** Throughout its correspondence, the DVLA repeated the standard requirement that additional medical evidence should be supplied in order for Mr AB's case to be reopened. After the error in the relicensing was noticed, the Agency began a standard medical investigation process in which evidence relating to a different health condition emerged. This was the basis of the second revocation. When Mr AB reapplied, the DVLA required him to sit a further driving assessment which he did not pass. The Agency explained that he would need to obtain clinical evidence to support his contention that his performance in the assessment was the product of nerves created by the test conditions rather than cognitive deficits. It offered him a £100 consolatory payment.

**ICA outcome:** The ICA regarded the licensing decision-making as falling within DVLA policy and the published medical standards. However, he felt that the impact of the error (the relicensing of Mr AB before he had undertaken a driving assessment) had not been given sufficient weight by the Agency. He also identified deficits in administration including an over-reliance on generic and stock letters (despite Mr AB's detailed challenges), and a delay in escalating his complaint appropriately. Being given his entitlement back in error only to have it withdrawn had been devastating for Mr AB. The ICA therefore partially upheld the complaint and recommended that a consolatory payment of £500 should be made.

---

**Risk of seizures following brain biopsy**

**Complaint:** Mr AB complained that his driving entitlement had been revoked unlawfully for six months as he did not have a diagnosed disability (biopsy had revealed no pathology). Mr AB also complained of inconsistent and incomplete responses to his correspondence. He was re-licensed after six months on a three-year basis as his 70th birthday was approaching. Mr AB was then briefly put on insulin by his doctors and he notified the DVLA accordingly. The DVLA then wrote threatening to revoke his licence if he did not return it in order to be issued with a three-year licence. This was the final straw for Mr AB who refused to do so. He also complained of rude treatment by a member of staff when he telephoned to ask why he was being threatened with revocation in relation to the issue of a three-year licence when he already held a three-year licence.

**Agency response:** For a long time, the DVLA did not engage with Mr AB's legal challenge. The doctor who initially looked at his case did not realise that DVLA policy was to revoke an entitlement for six months from the date of brain biopsy given the possibility that the procedure itself could increase the risk of seizures. Mr AB was therefore able to drive on his entitlement for over half of the six month period when he should not have been (he had the full support of

his doctors to do so). Eventually the penny dropped in Swansea and the DVLA revoked his licence. The doctor involved wrote to Mr AB explaining the reasons but not setting out why he was regarded as having a potential (or *'prospective'*) disability.[12] This explanation eventually came after six months of correspondence. The DVLA's chief executive wrote personally to Mr AB emphasising the position that the Agency had, in her view, acted lawfully. The DVLA reflected that its processing team should have been aware that Mr AB was on a three-year restricted licence, and therefore did not need to return it when the diabetes marker was added to his record.

**ICA outcome:** The ICA did not feel that the DVLA had dealt with Mr AB's challenges about the legality of its licensing decision in a very timely way. It had taken months before this point was picked up. Its own doctor had also made a mistake in not noticing the fact that the biopsy should have triggered a six month period off driving. The ICA obtained more information from the DVLA about why Mr AB's licence had been recalled after the insulin notification. This had boiled down to clerical error for which the Agency had apologised. The ICA could not comment on the legality of medical decision-making but he felt that the DVLA had explained itself sufficiently clearly in the end. He was, however, after listening to the call, critical of the Agency for the way Mr AB had been spoken to when he telephoned. The DVLA accepted that its operator could have handled the call in a better fashion. The ICA recommended that Mr AB should receive a consolatory payment of £100 to reflect the frustration he had experienced through the DVLA's poor administration. He partially upheld the complaint. Mr AB wrote to the ICA to say that the £100 would go to his wife who had to put up with him every day.

---

**Adaptation to mild double vision**

**Complaint:** Mr AB, who had mild double vision (diplopia) complained that he had been subjected to overly rigid decision-making and an inordinate delay in getting his entitlement restored after the diplopia standard (satisfactory functional adaptation) was applied. Delays had occurred in the administration of his case. In addition, Mr AB called into question the appropriateness of the panel advice on diplopia – it did not seem to him to be nuanced or applicable to a mild presentation. He also argued that the DVLA had overlooked the input of his own clinicians, and had been overly occupied with the wording of the standard rather than common sense and clinical judgement.

[12] The DVLA states in *Assessing fitness to drive*: "Prospective disabilities are any medical conditions that, because of their progressive or intermittent nature, may develop into relevant disabilities in time. Examples are Parkinson's disease and early dementia. A driver with a prospective disability may be granted a driving licence for up to 5 years, after which renewal requires further medical review."

**Agency response:** The DVLA insisted that the diplopia standard had been applied correctly. Mr AB was re-licensed after his doctor confirmed that he had adapted satisfactorily to the diplopia.

**ICA outcome:** The ICA judged that, overall, the DVLA's handling had been of a good standard. There had been some delays in the initial licensing decision caused by workload pressures, but Mr AB had been allowed to drive in this time so was not disadvantaged. Some time had elapsed in the post-revocation correspondence caused by the DVLA's insistence that the diplopia standard should be addressed precisely in the medical evidence put forward by Mr AB. When the correct sequence of words was dispatched to the Agency there was a delay in referring the evidence to the DVLA doctor concerned. When the referral happened, the licensing decision was made quickly. The ICA included further comments from the DVLA's chief doctor in his review. He did not uphold the complaint, noting that core areas of the complaint (DVLA policy, panel advice and clinical decision-making) were not in his jurisdiction.

---

**DVLA not responsible for purchase of expensive new vehicle for dementia sufferer**

**Complaint:** Mr AB, who suffered from dementia, complained with the support of his family that the DVLA had revoked his driving licence in error, and then had re-licensed him with automatic restriction after he passed a driving assessment. His own car, with expensive adaptations, had a manual transmission meaning he had to spend several thousand pounds buying and adapting an automatic vehicle.

**Agency response:** The DVLA established that the licensing error had been caused by a mistake in the paperwork completed by the assessment centre. It expedited the issue of a new licence. The DVLA offered a £100 consolatory payment for minor lapses in service. The family remained dissatisfied, pressing for a sum in the order of £20,000 to reflect the cost of the new automatic car and adaptations.

**ICA outcome:** The ICA found that the revocation had been inevitable and correct given the initial information provided by the NHS trust providing care to Mr AB. On challenge, the DVLA had commendably arranged a timely driving assessment and re-licensed Mr AB as a priority based on the report from the assessment centre. It was not the fault of the DVLA that this report was inaccurate. All of the decision-making had been made by DVLA doctors and there was evidence on file of considerable deliberation at each stage. The ICA considered that the DVLA's involvement in Mr AB's case was exemplary. None of the root causes of the problems faced by Mr AB (the presence of a relevant disability as defined in the legislation, the information leading to revocation and

the driving assessment report) related to any error or omission by Drivers Medical. In looking at the timeline from the point at which the error on the licence was reported, the ICA noted that Mr AB's son had bought the new car (which was over 20 times more valuable than his original car) only two days after reporting the error to the DVLA, and before the Agency had a reasonable opportunity to investigate. The ICA did not uphold the complaint that the DVLA was liable for the £20,000 cost of the new adapted vehicle, and he asked the Agency to re-offer the consolatory payment of £100. He suggested to the family that they should not assume that Mr AB's entitlement – subject now to annual review – would be renewed indefinitely.

**Renewing group 1 and group 2 entitlements as an insulin-dependent diabetic**

**Complaint:** Miss AB, an insulin-dependent diabetic, complained that the DVLA did not provide all the necessary forms to enable her to renew her group 1 and C1/D1 driving entitlements. She had been re-licensed for a year against both sets of entitlements. However, the D42 renewal form and medical questionnaire sent to her by the Agency at the renewal stage related to her group 1 entitlement only. Several weeks after submitting the group 1 pack she realised that the C1/D1 entitlements were not covered. She complained that her group 1 and C1/D1 entitlements had been temporally aligned to her disadvantage (meaning that her group 1 was now renewable annually rather than every three years), and yet the DVLA's requirements were not aligned, meaning that the group 1 and C1/D1 entitlements had to be applied for separately. The group 1 renewal documentation only was supplied automatically by the DVLA. Miss AB also complained of poor advice from the DVLA which included an assurance that her group 2 entitlement was being renewed. She was also wrongly told that she might have section 88 cover to drive before she had made a valid group 2 application.

**Agency response:** The DVLA explained that the higher medical standards needed to be demonstrated and that the D42 form clearly informed drivers that they would need to submit a D2 in order to activate C1/D1 renewal. The DVLA processed Miss AB's C1/D1 application as a priority once it realised the misunderstanding.

**ICA outcome:** The ICA agreed with Miss AB that the DVLA had fallen into error, in particular by giving her the clear impression that all of her entitlements would be renewable using the documentation it sent to her three months before they expired. He acknowledged that the D42 clearly flagged the need for the D2 for drivers in Miss AB's position. He obtained further information from the DVLA which clarified why the D2 was not sent out with the group 1 renewal pack; and why the group 1 entitlement had to be temporally aligned with the

C1/D1 entitlements for drivers in Miss AB's position. In essence, because Miss AB's C1/D1 entitlement had originally been linked to her category B (ordinary car) entitlement (because she had passed her driving test before 1 January 1999), the DVLA's Driver 90 mainframe could not process the different sets of entitlement separately. This meant that renewal packs were limited to the group 1 entitlement and the periods of entitlement had to be aligned. Given the lapses in administration highlighted by the ICA, and the DVLA's failure to explain the limits of its systems, the ICA upheld the complaint in part and recommended a £150 consolatory payment. He also recommended that the anomalies and inconveniences highlighted by Miss AB's complaint should be taken forward into the DVLA review of the renewal process for C1/D1 drivers dependent on insulin.

**Testing visual fields**

**Complaint:** Ms AB complained that the DVLA had unreasonably refused to take into account her objections to Specsavers testing conditions when revoking her driving entitlement on the basis of visual field defect. Over the following nine months, assisted by lawyers, she put forward further field results that she argued invalidated the Specsavers charts. The DVLA, meanwhile, referred her for further testing using the Goldmann protocol. The DVLA's view remained that the weight of evidence was prohibitive of relicensing. Ms AB complained that the licensing position was based on a limited and negative review of the available evidence. She argued that Goldmann testing was not comparable to Esterman testing (some of the Esterman results had been supportive of re-licensing). In correspondence that ran to many hundreds of pages, she also raised deficiencies in DVLA customer service, delays and many instances of substandard treatment.

**Agency response:** The doctor acting as secretary to the DVLA's expert vision panel was involved in all but one of the medical reviews of the eight sets of charts considered. Given the evidence of debarring scotoma (blind spots), he was cautious about those Esterman results relied on by Ms AB that (only just) seemed to support re-licensing. When an Esterman chart that met the standard was received, further tests were commissioned using the Goldmann protocol. These did not support re-licensing but further Esterman charts provided by Mrs AB did. The case was re-opened and considered by the vision panel which decided that fixation difficulties, more likely than not, explained the disparity between automated (Esterman) and manual (Goldmann) testing. Ms AB, who had become deeply embittered and demoralised by the experience of dealing with the DVLA, was referred for further Goldmann testing that, once again, did not support re-licensing.

**ICA outcome:** The ICA considered that the greatest part of Ms AB's complaint related to matters of law and clinical judgement over which he had no sway. While he agreed with Ms AB that the DVLA's explanations were not sufficiently detailed in places, he did not uphold her overall complaint that her experience had been grossly unsatisfactory or comparable with one of the drivers covered by the Parliamentary Ombudsman's 2016 report, *Driven to Despair*. He recommended that the DVLA should inform drivers referred for Goldmann testing that they will be required to undergo a different protocol, but he did not uphold the complaint.

---

**Exceptional case criteria in relation to vision standards**

**Complaint:** Mr AB made a wide-ranging complaint about the DVLA in respect of a medical licensing decision. In particular, he said he had not been informed about the exceptional case criteria in respect of the vision standards. He argued that the licence could have been issued earlier and sought compensation.

**Agency response:** The DVLA had made a consolatory payment of £150 in acknowledgement of poor service - not least, that issues raised by Mr AB in his correspondence had not been answered. It had declined to entertain an application for compensation.

**ICA outcome:** The ICA said that, in his judgement, Mr AB could have received his licence three months earlier were it not for the DVLA's failure to draw his attention to the exceptional case criteria. He therefore recommended that the DVLA invite a claim for lost earnings to cover this period. Of the many issues raised by Mr AB, the ICA accepted some and rejected others, and part upheld the complaint.

---

**Meeting all seven of the exceptional case criteria**

**Complaint:** Mr AB's entitlement had been revoked because he did not meet the visual standards for safe driving. He complained in relation to the exceptional case criteria, and the time taken by the DVLA.

**Agency response:** The DVLA said that Mr AB needed to show supportive evidence from his clinicians that he met all seven of the exceptional case criteria.

**ICA outcome:** On reading the papers, the ICA felt that what was needed was a more detailed letter from Mr AB's GP than the one he had provided hitherto. That would have been his recommendation, but by chance as he was

completing his report the DVLA informed the ICA that just such a letter had arrived and Mr AB would be invited to re-apply with a view to undergoing a driving assessment. The ICA concluded that there was no more he could achieve for Mr AB and judged the case to have been resolved without his direct intervention.

**Misapplication of visual field standards**

**Complaint:** Ms AB complained about the DVLA's decision-making in respect of the eyesight standards for licensing. It was not in doubt that he had been issued with a one-year licence only for it to be revoked by the DVLA on review of further eye charts. Mr AB also said that he had never received the revocation letter.

**Agency response:** The DVLA had said that the initial letter granting a one-year licence had been sent in error. It also said that entries on the CASP (Casework and Specialist Processes) case log indicated that Mr AB had rung the Agency on two occasions in respect of the revocation letter.

**ICA outcome:** The ICA said that the DVLA's reference to the letter being sent in error was less than candid, as it was clear that it was sent after a casework discussion. However, he was uncertain if Mr AB would now be able to re-apply for his licence. He therefore asked the DVLA to review the latest eye chart and the previous decisions. In doing so, the DVLA's senior doctor concluded that the initial decision to grant a one-year licence was correct, and it was unclear on what grounds a medical adviser had subsequently decided to revoke. The ICA concluded that Mr AB had in fact received the revocation letter, but as he had ignored it he had not suffered any detriment and no compensation was therefore payable.

**Visual acuity standards and other health problems**

**Complaint:** Mr AB, a truck driver who had his licence renewal application refused as he did not meet the visual acuity standards, complained of unreasonable requirements, illogical medical enquiries and delays in the restitution of his group 2 driving entitlement.

**Agency response:** The DVLA initially declined Mr AB’s re-application because the information about his visual acuity that he submitted consisted of a prescription for spectacles rather than any measure of acuity. He went back to the optician and obtained Snellen acuity scores at which point the DVLA re-opened his case. On medical review, a history of chronic obstructive pulmonary disease and heart problems was noted, and Mr AB was referred for

tests. His case was prioritised and he was relicensed in shortly under four months after the revocation decision. The DVLA explained why the prescription had been insufficient and why the heart tests had not been triggered when Mr AB first re-applied. The DVLA doctor involved had agreed to change the format of heart testing in line with Mr AB's preference.

**ICA outcome:** The ICA judged that the case had been handed squarely within the policies and statutory standards for visual acuity. There had been a slight delay at one stage that should not have happened given the obvious fact that Mr AB needed his licence to work. The ICA partially upheld the complaint on that basis. The ICA noted and welcomed the views of the DVLA's senior doctor, and the DVLA doctor involved in the case, who explained in more detail the medical decision-making.

---

**Revocation following police report of likely blackout**

**Complaint:** Mrs AB complained that the DVLA had unreasonably revoked her licence on the back of a speculative and inaccurate report by a police officer of a potential blackout after she had been involved in a multi-vehicle collision.

**Agency response:** The DVLA explained that its initial revocation had been based on the police report but this was reversed following senior medical review in order for an investigation to occur. A consolatory payment of £25 was made. While Mrs AB was being investigated medically for a potential explanation for her lack of memory of the events preceding the crash, her GP advised the DVLA that she was not fit to drive. Her entitlement was therefore revoked. Mrs AB re-applied over four months later and, after being referred for a GP examination and submitting further questionnaires, she was re-licensed. Mrs AB remained infuriated by DVLA delays and repetitive requests for information.

**ICA outcome:** The ICA considered that the DVLA had been wrong to revoke Mrs AB's entitlement at the very beginning without having investigated the police report. However, he did not think that Mrs AB's arguments that the police report was unbalanced and unfair carried any weight. The DVLA did not in policy investigate an index event but rather fitness areas potentially linked to reports of dangerous driving. Given the weight of evidence referred by the police (that included multiple witness accounts), he did not think that the DVLA had any choice but to investigate. The ICA was of the view that Mrs AB had clear opportunities to reapply for her entitlement much sooner than she did, and he did not consider that the DVLA was responsible for the delays that occurred. Given the diagnosis, a period of six months off driving would have been required anyway in line with the relevant standards. The ICA did not think that Mrs AB's claim for six months wages was therefore tenable. He did not uphold

the complaint but, as an aside, he asked the DVLA to remind its staff about the importance of giving customers accurate information about the right to drive under section 88 of the Road Traffic Act.[13]

**Third party notification of poor mental health**

**Complaint:** Mr AB complained about the revocation of his licence following a third party notification.

**Agency response:** The DVLA said it was required to conduct medical enquiries in these circumstances. It said it had revoked the licence because it was believed that Mr AB was suffering from a relevant disability (mental ill health). When further evidence came to light that this was not the case, Mr AB's licence was restored.

**ICA outcome:** The ICA said he sympathised with Mr AB but the DVLA had acted in accordance with the law on fitness to drive. There were sufficient grounds for believing "on the balance of probabilities" as the DVLA doctor had minuted that Mr AB did have a relevant disability. When it became clear this was not the case then the licence was speedily restored.

**Clarifying section 88 of the Road Traffic Act**

**Complaint:** Mr AB complained that the DVLA's correspondence misrepresented the meaning of section 88 of the Road Traffic Act. He said it was not the case that to benefit from s.88 the driver must have been told by his doctor that he was fit to drive. He sought a commitment from the DVLA that the guidance would be amended.

**Agency response:** The DVLA said that it was conducting a review. It would not give an assurance about the outcome of that review.

**ICA outcome:** The ICA found that Mr AB had in fact been given two contradictory pieces of advice: that s.88 applied if a clinician said the customer was safe to drive and/or if a clinician had not said that a customer was not fit to drive. The ICA said s.88 was a system of self-declaration, and the latter seemed more in line with the legislation (which did not require positive approval from a doctor). However, the ICA could only part uphold the complaint as he

[13] The implications of section 88 of the Road Traffic Act for drivers whose licence has expired while the DVLA investigates their fitness to drive are set out in the Agency's leaflet INF188/6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695575/inf188x6-can-i-drive-while-my-application-is-with-dvla.pdf.

did not think it was maladministrative for the DVLA to decline to give any assurance about how its guidance would change until the completion of its review.

**Delay in conducting medical enquiries**

**Complaint:** Ms AB complained about the time taken by the DVLA to conduct medical enquiries into her fitness to drive.

**Agency response:** The DVLA had acknowledged poor service and made a consolatory payment of £150.

**ICA outcome:** The ICA found there had been a series of further errors by the DVLA in addition to those previously identified. He recommended increasing the consolatory payment from £150 to £250.

**Three failed driving assessments**

**Complaint:** Mr AB complained about the decisions of Drivers Medical in relation to his fitness to drive, and the time they were taking. He said he led an active life and wanted to be allowed to return to driving.

**Agency response:** The DVLA said that Mr AB had taken three driving assessments and the outcome was that he was not medically fit to drive. A further re-application could not be invited currently.

**ICA outcome:** The ICA said he could identify no maladministration on the part of the DVLA. Mr AB had been permitted no fewer than three driving assessments and in each he had been judged not medically fit to drive.

**Poor administration of medical licensing case**

**Complaint:** Ms AB underwent an operation that resulted in the revocation of her licence for a period of not less than six months. She actually regained her licence nine months later. Ms AB complained about the renewal process and the service she had received during her re-application.

**Agency response:** The DVLA had apologised for incorrect information included in some of the Agency's correspondence.

**ICA outcome:** The ICA could not comment on the clinical decision making, but he felt that it would have been good practice to have referred Ms AB to the exact paragraph in *Assessing fitness to drive* under which she had been revoked (the DVLA doctor disagreed). He also criticised two enquiries that were conducted serially rather than in parallel. However, while the overall processing times were not commendable, they were not so poor as to be maladministrative. Nevertheless, given the ICA's findings and the poor information that the DVLA had already acknowledged, he recommended that the DVLA write to Ms AB accepting the findings of his report and to make a consolatory payment of £100.

---

**Medical standards relating to brain tumours**

**Complaint:** Mr AB complained about the revocation of his licence on medical grounds. He said he had the support of his consultant.

**Agency response:** The DVLA said that it had applied the relevant standard which required two years off driving. The standard had been endorsed in 2015 by the Secretary of State for Transport's Honorary Medical Advisory Panel on driving and disorders of the nervous system.

**ICA outcome:** The ICA said that he could not adjudicate upon licensing decisions or medical decision-making. However, he was able to report to Mr AB that all the standards relating to brain tumours were under review and it was possible that advances in the treatment of CNS lymphoma would mean that the current two years revocation because of the risk of seizure would be re-visited. In addition, Mr AB's consultant had been invited to supply further information in support of his view that two years off driving was not required.

---

**'Mortifying' questions on the DVLA's DG1 questionnaire**

**Complaint:** Mrs AB complained about delay and poor communication when she re-applied for her licence following its revocation on medical grounds.

**Agency response:** Alongside the ICA referral, the DVLA acknowledged that the licensing decision could have been made earlier if the application had been handled more helpfully.

**ICA outcome:** In view of the DVLA's acknowledgement, the ICA inferred that the licensing decision could have been made at least two months earlier. In light of this, and other elements of poor service, the ICA recommended a

consolatory payment at the upper end of the level 2 on the PHSO scale.[14] The ICA noted that the complainant was very upset to be asked to complete a DG1 questionnaire ("mortified" was the word she used in her correspondence). The ICA said it was not hard to understand why many law-abiding members of the public would be shocked to have to answer questions about ketamine, LSD, and legal highs (a term that should probably be amended when the form is next revised). However, the form was sent because of the problems she had faced in withdrawing from diazepam, and her previously prescribed use of opiate medication including morphine. The ICA did not think that use of the DG1 questionnaire could possibly be deemed maladministrative in these circumstances, although again the DVLA might wish to consider if the set of questions currently used could be worded differently or if more radical surgery is necessary.

**Seven months in medical queues**

**Complaint:** Mrs AB complained about delays and the decision-making in respect of her re-application for a driving licence. She said the DVLA had caused her considerable anguish, and that she would not seek a driving licence if she felt she was not safe to drive.

**Agency response:** The DVLA said that that Mrs AB had a progressive eye condition and therefore did not qualify as a special case under the standards in *Assessing fitness to drive*.

**ICA outcome:** The ICA said that he could not comment on the clinical decision-making although it appeared to follow from the published standards. He sympathised with Mrs AB in that she had a rare condition of uncertain origin and progression. But even if he had the clinical expertise to do so, he could not comment on the decisions of the DVLA doctors under his terms of reference. However, the ICA identified a period of delay when no actions were taken (the case was in different DVLA doctor queues for seven months) and recommended a consolatory payment of £250. In view of Mrs AB's praise for a named member of DVLA staff, the ICA also recommended that a copy of his report be shared with the member of staff and his manager.

[14] Published in the PHSO document, *Our guidance on financial remedy* (https://www.ombudsman.org.uk/sites/default/files/Our-guidance-on-financial-remedy-1.pdf).

**Revocation after a stroke**

**Complaint:** Mr AB had suffered a stroke. He complained about the revocation of his licence on the grounds of cognitive impairment. He also criticised the outcome of a driving assessment.

**Agency response:** The DVLA had said that it had applied the relevant standards in *Assessing fitness to drive*. It would consider any further medical evidence Mr AB or his clinicians might provide.

**ICA outcome:** The ICA could identify no maladministration on the part of the DVLA. The results of the assessment were challenged by Mr AB but the ICA did not feel that the Agency had any choice but to accept them. Indeed, it was arguable that Mr AB's licence could have been revoked on the medical information alone, but the DVLA had agreed to the driving assessment as a previous commitment had been given.

**Poor communication with customer revoked following a stroke**

**Complaint:** Mr AB had his driving entitlement revoked following a stroke when he was unable to demonstrate a satisfactory visual field. He reapplied under the exceptional case criteria and, after some delays, sat a driving assessment. In the assessment the occupational therapist and driving examiner noted instances where Mr AB appeared to be unaware of moving objects in his right visual field and the dual brakes had to be used. He failed the assessment. Mr AB complained about delays, misinformation and an unreasonable refusal to allow him to re-sit the test. In particular, he alleged that the provision of a vehicle with unfamiliar controls had created significant anxiety and impaired his test performance on the day.

**Agency response:** The DVLA had progressed Mr AB's case down the exceptional licensing route after his consultant ophthalmic surgeon had attested to his full functional adaptation. In between this decision and the date of the assessment, the DVLA's rules changed meaning that Mr AB was not licensed for practice drives beforehand (we refer to the current, updated, position on practice licensing earlier in this chapter). Other delays set in while he was subject to an investigation related to the original stroke. He complained that this was presented in the DVLA correspondence as a new health condition. The result of the driving assessment led to immediate closure of Mr AB's case, and subsequent reviews by two senior DVLA doctors upheld the medical handling.

**ICA outcome:** The ICA could not override the views of two DVLA doctors, and he approached Mr AB's complaint about the conduct of the assessment with

caution, having not been in the car that day. The ICA did not think that the DVLA was unreasonable to give weight to the professional opinion of the assessors, but he was critical of some aspects of DVLA handling. In particular, he argued that the Agency should make it clear when consultant-level evidence in relation to exceptional criteria is required. The fact that Mr AB was not told this at an early stage added delay to the assessment of his re-application. The ICA also felt that some of the standard communications Mr AB had received had not addressed the circumstances of his case. Given this and other failings, the ICA recommended that a consolatory payment of £150 be made, and that the DVLA take the necessary steps to ensure that its communications were completely clear.

**Revoked driver expedites re-licensing herself**

**Complaint:** Mrs AB complained that the DVLA had taken far too long (nine weeks) to re-license her after revoking her entitlement on the grounds of medication side-effects (wrongly reported by her GP). In the time that her entitlement was revoked she struggled to maintain her work and childcare commitments. She was re-licensed for a limited period after a private medical opinion was obtained from a doctor who had assessed her a year previously.

**Agency response:** The DVLA considered that the original revocation decision was correct given the GP report of medication side-effects. The DVLA then needed a favourable specialist report in order to re-license Mrs AB, but her own specialist refused to assist. A certain amount of confusion occurred as different aspects of the same fitness standard were introduced sequentially into the investigation. Eventually, the DVLA senior doctor intervened and judged that the specialist report and further comments were sufficient to support relicensing.

**ICA outcome:** The ICA accepted that it was difficult for the DVLA given the refusal of the specialist seeing the driver to assist. He was nevertheless critical of the piecemeal way that it looked into Mrs AB's fitness to drive. He felt that the specialist could have been asked to comment on every aspect of the fitness standard when his opinion was first commissioned, rather than different aspects on different occasions. There had been other errors, including seeking evidence from the driver's consultant when she had indicated from the outset that she was not prepared to assist. However, the ICA noted that good efforts had been made to expedite medical review, and that the case had been repeatedly subject to re-consideration by the medical team. He accepted that much of the credit for the relatively speedy re-licensing rested with Mrs AB herself as she had taken every step to expedite each stage of the process. Part of the problem had been that the revocation letter had referred only to medication side-effects and not the fact that other information received from the

GP created new potential obstacles to re-licensing. The ICA recommended that steps should be taken to refer to all the relevant parts of the fitness standard at the revocation stage. The ICA also recommended that Mrs AB should be reimbursed for the specialist report, and that a consolatory payment of £100 should be paid in light of the lapses in administration he had identified.

**Poor handling of re-application before customer's 70th birthday**

**Complaint:** Mr AB complained of significant delays in the DVLA's medical investigations after he re-applied for his driving entitlement in the run up to his 70th birthday. He characterised this as ageism and inefficiency. He remained deeply dissatisfied with the Agency's responses to his complaints and challenges. Mr AB also complained that the information he had been given about the right to drive under section 88 of the Road Traffic Act had not been sufficiently detailed. He had been driving for over a year without a licence, and reflected that the DVLA should have notified him much earlier that section 88 is time-limited.

**Agency response:** The DVLA set out its duties and powers in relation to driver fitness and licensing in its six-month correspondence with Mr AB.

**ICA outcome:** The ICA identified a number of errors in the DVLA's handling, none of which had been fully understood or acknowledged in the complaints correspondence. First, the referral for a medical examination should have happened six weeks earlier. Second, an omission by Mr AB's GP on the medical questionnaire was not spotted for eight months. Third, there was an administrative delay while Mr AB's case was queued. Fourth, the DVLA pursued a non-existent doctor for several weeks. Fifth, the Agency did not prompt Mr AB to re-apply for his entitlement as the anniversary of his original application approached so that he could continue to enjoy the right to drive under section 88 (assuming that he met all of the conditions). The ICA was therefore particularly critical of the DVLA for not getting to grips with Mr AB's arguments and challenges in the complaints process. Its lack of attention to documentation on the case meant that avoidable enquiries, based on the incorrect assumption that he had not seen a doctor in three years, were initiated. The ICA was also critical of Mr AB for delaying his notification of two serious health problems until his 70th birthday renewal application. The ICA felt that a timely notification of each condition, in line with his legal responsibilities as a driver, would have meant that any question marks about his fitness would have been ironed out long before the re-application. Given the poor service, the ICA recommended a consolatory payment of £100 and an apology, as well as improvements in Drivers Medical administration.

**Customer let down by his consultant**

**Complaint:** Mr AB, who had a congenital heart problem, complained that DVLA inefficiency led to a two-month delay in his being re-licensed. He also complained that the DVLA had lied in its claim that his consultant had not provided the necessary documentation in response to the Agency's queries.

**Agency response:** The DVLA explained throughout that the requested medical reports had not been provided by the consultant, meaning that the request had to be repeated thereby causing delays.

**ICA outcome:** The ICA established that the DVLA's account of events was correct - the consultant had completed the questionnaire but had not provided the requested report. It had been open to Mr AB to re-apply for his licence eight weeks before the earliest re-licensing date. Doing so would have mitigated the delay that occurred. The ICA considered that, on balance, the root causes of the delay were not related to DVLA handling and he did not uphold the complaint.

---

**DVLA liable for contractor's mistakes**

**Complaint:** Mr AB complained about delay and the decision-making in relation to his re-application for a vocational licence. He asked for compensation of £25,000.

**Agency response:** The DVLA said that it had followed standard procedures. It had acknowledged that there had been mistakes by its contractor, Specsavers.

**ICA outcome:** The ICA said that the DVLA had to take responsibility for its contractor's failures. He also identified a period of delay for which the Agency was responsible. In the circumstances, a consolatory payment of £250 was appropriate, but the ICA could not endorse Mr AB's claim for compensation of £25,000.

---

**Very poor handling of medical licensing case**

**Complaint:** Mr AB complained in relation to the handling of his medical licensing case. This included an incorrect revocation decision, correspondence going to the wrong address, clinic letters not being considered, and some of his questions not being answered.

**Agency response:** The DVLA had reversed the revocation decision and acknowledged poor service. It had offered a consolatory sum of £200.

**ICA outcome:** The ICA said that the DVLA's senior doctor had judged that the revocation decision (taken by a clerk) had been wrong in that it was based on information that had been superseded. In consequence, Mr AB had been without his licence for seven months. Given the other mishandling, the ICA judged that the consolatory payment should be increased to £500 (the maximum at the time that could be awarded without specific Treasury approval).

---

**Blanket criticism of Drivers Medical**

**Complaint:** Mrs AB made a wide ranging complaint about Drivers Medical. She criticised a decision to revoke her licence as baseless, and said she had never encountered a Government body so secretive and lacking in basic competence. She also criticised arrangements for notifying customers of the ability to surrender a licence and to contact the ICA.

**Agency response:** The DVLA had acknowledged two service failures: a failure to send Mrs AB a medical consent form, and a failure to progress medical enquiries. It had made an offer of a consolatory payment of £50 that had been rejected by Mrs AB. The Agency had defended its medical licensing decisions.

**ICA outcome:** The ICA said that the DVLA's licensing decision seemed to follow from the appropriate standards. He also said he was content that information about the ICA role and the surrendering of licences was readily available, and did not feel that Ms AB's wider arguments had substance. However, he felt the offer of £50 was too low, and recommended it be increased to £100 to reflect the aggregate period of delay before Mrs AB regained her driving licence.

---

**Historic complaint about medical licensing**

**Complaint:** Mr AB made a complaint about medical actions and decisions of the DVLA in 2013-14. He had approached the PHSO and his case was therefore accepted (and prioritised) notwithstanding that it was outside the normal time limit for an ICA referral. Mr AB had asked for compensation for lost earnings as a result of the DVLA's delays and decision-making.

**Agency response:** The DVLA had said that its actions were correct, and that Mr AB had been consistently advised of his right to drive under section 88 of the Road Traffic Act.

**ICA outcome:** The ICA said that, in light of the information provided about section 88, he did not think Mr AB was entitled to compensation for lost earnings. The ICA did identify a short period of delay (commonplace at the time) that could have justified a small consolatory payment. But conscious of the time that had passed, and Mr AB's engagement with the PHSO, the ICA was not persuaded that a small consolatory payment would be of any relevance at this stage. He did not uphold the complaint.

---

**DVLA doctor emerges well from ICA review**

**Complaint:** Mr AB complained about delay and misleading information offered by Drivers Medical. He said he had been sent from pillar to post and had never been offered a consistent explanation for the revocation of his licence.

**Agency response:** The DVLA said that its medical decision-making had been correct, and that there had been no undue delay.

**ICA outcome:** The ICA said that he was content that the decision making was in line with *Assessing fitness to drive*, and that there had been no maladministration. The DVLA doctor involved in the case emerged well. The ICA was pleased to learn that a one-year licence had now been granted, and he understood Mr AB's frustrations. However, in the absence of evidence of maladministration he could not uphold the complaint or make any recommendations to the DVLA.

---

**Incorrect application of Operating Standards results in unnecessary revocation**

**Complaint:** Ms AB complained about the time taken by the DVLA to complete its medical licensing decision-making. She also criticised the quality of information given to her and aspects of the Agency's complaints system.

**Agency response:** The DVLA had eventually granted a three-year licence. It said that Ms AB's clinical presentation (a combination of two elements) was not yet covered in *Assessing fitness to drive* and this contributed to the delay.

**ICA outcome:** In making the ICA referral the DVLA had acknowledged delay and poor information. It also indicated that the initial revocation decision had been incorrect (resulting in an unnecessary period of revocation of four months) and the Agency's Operating Instructions had not been followed. The ICA said the implication was that the decision to endorse the revocation was also wrong. The ICA also identified errors in the DVLA's correspondence handling. He said

that the combination of errors and poor service justified a consolatory payment of £450 - at the top of level 2 on the PHSO scale.

**Customer unable to use a Motability vehicle**

**Complaint:** Mr AB complained that there had been delays in the DVLA's medical licensing decision with the consequence that he had purchased a Motability vehicle (thereby losing the mobility element of PIP) but had not been able to use it. He sought compensation.

**Agency response:** The DVLA had said that it was Mr AB's decision to purchase the vehicle before its licensing enquiries were complete. It had offered a consolatory payment of £100 in recognition of poor service (including poor advice from its contact centre).

**ICA outcome:** The ICA agreed that compensation was not due (and elements of Mr AB's claim were for non-monetary losses that would not come within HM Treasury guidance on compensation). However, given that there had been delay in conducting medical enquiries and the poor service from the contact centre, he recommended doubling the consolatory payment to £200.

**Police notification of cannabis use leads to revocation before physical licence is issued**

**Complaint:** Mr AB, a new driver, complained in relation to medical licensing decisions. He said he had been discriminated against.

**Agency response:** The DVLA had acknowledged some administrative failures, and made a small consolatory payment, but stood by its licensing decisions.

**ICA outcome:** The ICA said he could identify no maladministration in the licensing decisions. Mr AB had passed his driving test but the physical licence had not been issued following a police notification of cannabis use. Mr AB had subsequently been revoked for non-compliance (he had been in prison at the time and had not received the forms). The ICA acknowledged some DVLA administrative failings, and it was unfortunate that a urine sample had gone astray somewhere between the DVLA’s Franchise Doctor and the laboratory. But he was content that the consolatory payment already made by the DVLA was consonant with the degree of injustice.

**Poor handling of correspondence after licence restored**

**Complaint:** Mr AB complained that the DVLA had wrongly revoked his driving licence on medical grounds. He also criticised the DVLA's handling of his complaint.

**Agency response:** The DVLA's senior doctor had reviewed the case and concluded that the licensing decision was correct. The Agency had therefore declined to pay any compensation or refund the costs of a second medical test.

**ICA outcome:** The ICA could not comment directly on the medical licensing but it seemed to be in line with the relevant standards. However, the ICA agreed that the handling of Mr AB's correspondence had been poor (when his licence was restored, it was evidently decided that his letter did not need a reply even though it had raised other issues including the alleged rudeness shown to him by a member of staff). For that reason, the ICA recommended a modest consolatory payment of £50.

---

**Vocational driver correctly revoked following insertion of ICD**

**Complaint:** Mr AB complained about the revocation of his vocational licence on medical grounds.

**Agency response:** The DVLA said the permanent revocation followed from the medical standards following the insertion of an implantable cardioverter defibrillator (ICD). It acknowledged that its correspondence had been incorrect at one point in saying that the loss of Mr AB's driving licence was the result of drug use.

**ICA outcome:** The ICA said it was clear that Mr AB had been correctly revoked, but that one of the DVLA's letters was in error. However, the Agency would have to enquire into both Mr AB's heart problems and (reported) drug use should he re-apply for his licence.

---

**Mis-addressed letter enables customer to drive for two years after revocation**

**Complaint:** Mr AB complained that his entitlement to drive had been revoked on the basis of a single consultation with the GP who did not know him. He insisted that he had no cognitive problems and that he was safe to drive. The DVLA’s revocation letter had not been posted to the correct address and he had continued to drive for almost two years without incident. He contested the

DVLA's requirement that he furnish new medical evidence in support of his fitness to drive when he had not been diagnosed with any condition.

**Agency response:** The DVLA reviewed its decision and re-affirmed it on the basis that two GPs from Mr AB's practice had, over a two-year period, written to the Agency with concerns about a decline in his cognition likely to affect his ability to drive safely. The DVLA offered a £50 consolatory payment for sending the revocation letter to the wrong address.

**ICA outcome:** The ICA found that all of the licensing decision-making had been made in line with standard DVLA policy. He considered, however, that the Agency should offer £100 in recognition of the impact of mis-addressing the revocation letter – notwithstanding that Mr AB had been able to drive for approaching two years, in good faith, when the DVLA had decreed that he should not be so doing.

**Delay in managing licence application from vocational driver**

**Complaint:** Mr AB complained about the time taken by the DVLA to make a medical licensing decision and the inadequacy of the explanations given to him and his GP. He was a vocational driver who had suffered a seizure. The DVLA had rejected a re-application following receipt of visual fields. The Agency had also sought the views (unsuccessfully) of neurologists who could advise whether Mr AB's chances of a further seizure were below 2 per cent. The clinicians had said they could not advise, and the matter had eventually gone to a member of the neurology panel for their advice.

**Agency response:** The DVLA had said its enquiries were necessary, but had apologised for the time taken. In its referral documentation, the Agency's senior doctor had indicated that a visual field test should have been accepted.

**ICA outcome:** The ICA recommended a consolatory payment of £200 in respect of delay and correspondence handling. He also said that the licence decision had been delayed by two to three months and, if the neurology panel member recommended licensing, the DVLA should invite Mr AB to submit a claim for compensation for lost earnings. The ICA could not offer views of his own on the clinical decision-making. But it was instructive that no fewer than six doctors (including two neurologists) had felt unable to advise in respect of the relevant standard that the chances of a further seizure were less than 2 per cent. He recommended that his report be shared with the chair of the neurology panel and/or the findings be considered internally by DVLA doctors. It was clear from the extensive and helpful comments received on his draft report that the ICA's review had been taken very seriously.

**Poor handling of customer's correspondence in medical case**

**Complaint:** Mr AB made a detailed complaint in relation to a medical licensing decision. In particular, he said that his correspondence had not received replies that answered his questions.

**Agency response:** The DVLA had acknowledged some poor handling, and made a consolatory payment of £40. It had also decided that any future correspondence from Mr AB might be filed without response if it repeated matters the DVLA had already covered.

**ICA outcome:** The ICA said that that Mr AB had been issued with a licence and no medical enquiries were outstanding. It was important therefore to conduct a proportionate review. It was understandable that the DVLA had not felt able to address the very many points that Mr AB had made, but aspects of the correspondence handling had been very poor. He therefore recommended increasing the consolatory payment to £100, the starting point on level 2 of the PHSO scale.

---

**Information for customers seeking to regain their licences following revocation**

**Complaint:** Mr AB complained about the unclear information provided to him following a revocation after two failed on-road driving assessments. He said the DVLA did not spell out what information it would consider sufficient to accept a renewed driving licence application.

**Agency response:** The DVLA had said that revocation resulted from Mr AB being unable to show functional adaptation to the age-related macular deterioration of his eyes (notwithstanding that he actually met the acuity and field standards). It had eventually suggested that Mr AB might wish to take an off-road assessment at his own expense.

**ICA outcome:** The ICA said that he could find no specific reference to macular deterioration in *Assessing fitness to drive* although there was separate advice on gov.uk. He shared Mr AB's view that the DVLA had not spelled out what sort of additional information Mr AB could provide that might allow an application to be considered, and therefore part upheld the complaint. He wished Mr AB well in his off-road assessment, but cautioned that a successful off-road assessment might still not be judged sufficient for the DVLA to agree a PDAL. An off-road assessment necessarily excluded the normal hazards faced

by motorists – including other traffic, pedestrians, traffic lights, roundabouts, junctions, road signs, etc.

**Continued appeal against revocation following unsuccessful appeal in the magistrates' court**

**Complaint:** Mr AB complained about the revocation of his licence on medical grounds. He had appealed against the revocation in the magistrates' court but had been unsuccessful.

**Agency response:** The DVLA had explained the reasons for the revocation and what evidence Mr AB would need to provide for a re-application to be considered.

**ICA outcome:** The ICA said that the circumstances of the complaint meant that there was little or nothing he could contribute under his terms of reference. He could not overturn the revocation or comment on the clinical decision making. Some very minor mishandling aside, there had been no maladministration by the DVLA and no possible grounds to uphold the complaint.

**Very poor handling of vocational licence application**

**Complaint:** Mr AB, an insulin-dependent diabetic, complained about the time taken by the DVLA to make a medical licensing decision. He was a vocational driver.

**Agency response:** The DVLA had acknowledged that Mr AB had been wrongly advised that he needed to take a D4 test (medical examination report) despite his having done so within the previous five years, and had refunded the costs (albeit describing the payment as consolatory, when it was really compensation for material loss).

**ICA outcome:** The ICA found that there had been a major error on the part of the DVLA. It had initially rejected Mr AB's application as he had not included three months' blood sugar readings. However, he had supplied these within a week. But the DVLA had not progressed Mr AB's application and had instead sent renewed application forms (it was in dispute whether these had ever arrived). Be that as it may, when Mr AB chased after progress, no action was taken and it was not noticed that his case had in affect been closed. It was arguable that a total of eight months had been lost in consequence. The ICA upheld the complaint in full, recommending an apology, a consolatory payment

of £500, and that Mr AB be invited to submit a claim for compensation for lost earnings.

**Customer's own diligence brings mistake by Specsavers to light**

**Complaint:** Mr AB complained in relation to his licence re-application following a revocation as he could not meet the visual acuity standards. He said that there had been unnecessary delays.

**Agency response:** The DVLA had apologised for poor service as Specsavers had provided out of date results that had led to the incorrect rejection of Mr AB's application, and had offered £200 as a consolatory payment.

**ICA outcome:** The ICA said that he calculated that three months had been lost in consequence of the wrong results having been supplied by Specsavers. Moreover, he agreed with Mr AB that, had it not been for his own persistence and diligence, the mistake might never had come to light. Although the ICA commended the stage 1 complaints response (this was so comprehensive that the DVLA had been able to dispense with stage 2), he was critical of earlier responses. There had been a failure to engage with the points Mr AB had made.

**Time lost while DVLA asked for information it already had**

**Complaint:** Mr and Mrs AB complained in relation to a re-application for a driving licence following a medical revocation. They said they made many telephone calls, but no one seemed willing to help, and there was a lack of clarity about what was required.

**Agency response:** The DVLA had apologised for poor service and had made a consolatory payment of £120 that Mr and Mrs AB considered insufficient.

**ICA outcome:** The ICA said that a period of three months had been dead time as the DVLA asked for information it already had on file. However, he acknowledged that the DVLA had identified mistakes and attempted to remedy them before the ICA referral. He part upheld the complaint and increased the consolatory payment to £225.

**Restoration of licence requires a re-application from the driver**

**Complaint:** Mr AB complained about the revocation of his licence and the time taken by the DVLA to restore his entitlement.

**Agency response:** The DVLA had said that its enquiries were necessary and that a revocation could not be simply lifted without a re-application from the driver. The 'delay' was the result of the driver not submitting such an application.

**ICA outcome:** Some minor issues aside, the ICA said there had been no maladministration by the DVLA, and its enquiries were in line with the relevant standards. The ICA hoped that these would now proceed speedily and achieve the outcome Mr AB sought, but there was nothing directly that the ICA could contribute. He judged the DVLA's correspondence with Mr AB to have been appropriate and courteous.

---

**Poor service to vocational driver in his 60s**

**Complaint:** Mr AB complained about the time taken by the DVLA to consider a re-application for a vocational licence. He said he was in his 60s and had lost the opportunity of jobs as a consequence.

**Agency response:** The DVLA had apologised for the delay. It said that it would prioritise Mr AB's case when the results of a stress echocardiogram were received.

**ICA outcome:** The ICA said that the three months delay between the results of the exercise tolerance test being received and their being reviewed by a DVLA doctor may have been in line with the internal guidance as to when cases should be prioritised. But given the number of phone calls Mr AB made, and the evident importance of time when handling the case of a vocational driver in his mid-60s, this represented poor service. He recommended a consolatory payment and that the DVLA reconsider its guidance.

---

**Customer's right to submit his own Goldmann perimetry test results**

**Complaint:** Mr AB has glaucoma affecting both eyes. He complained that his re-application for his ordinary driving licence had been refused unreasonably by the DVLA. This was despite the fact that panel advice was that licensing decisions for drivers with borderline visual field loss should be made with reference to the most favourable chart. Mr AB attributed his performance in the field test to the Esterman equipment used in Specsavers. He was also critical

of the DVLA's customer service and its failure to address key points and challenges within his correspondence.

**Agency response:** The DVLA eventually escalated Mr AB's case to its senior doctor who went through each chart explaining why it did not meet the field requirements. As glaucoma was regarded as progressive, exceptional licensing was also an impossibility. This information was relayed to Mr AB through the complaints process but he remained dissatisfied.

**ICA outcome:** The ICA obtained further comments from the DVLA's senior doctor confirming that Mr AB could re-apply himself, if he wished with Goldmann charting, but would have to commission them himself as there was no case for the DVLA to do so. This was because all of the field tests submitted by Mr AB consistently revealed debarring field loss that did not call into question the methodology or equipment used. Mr AB was not seen as a borderline case. The ICA could not substitute his own view for professional clinical opinion and therefore accepted the DVLA's account that its decision-making had been correct. He felt that aspects of the complaint responses had not been sufficiently clear as to why the DVLA did not regard the panel advice as engaged in Mr AB's case. The ICA did not uphold the complaint.

---

**Error by oncologist in completing medical questionnaire**

**Complaint:** Ms AB had successful immunotherapy for metastasis secondary to primary cancer from which she had fully recovered. She re-applied for her driving entitlement many months before the minimum licensing point given the requisite time off driving. Ms AB complained that the DVLA did not follow its own guidelines in re-licensing her six months after the commencement of immunotherapy treatment, and that she had to complain in order to expedite matters. In the event, she had been kept off the road for over six months unnecessarily.

**Agency response:** The DVLA explained that Ms AB's oncologist had ticked *Yes* to the question on the medical questionnaire related to chemotherapy/radiotherapy. This meant that the standard for immunotherapy could not be applied. Eventually, after further information from the oncologist had been supplied, the Agency was able to re-license Ms AB.

**ICA outcome:** The ICA could not fault the DVLA for acting in line with the consultant notification that immunotherapy/chemotherapy had occurred. With hindsight, it was clear that he had misunderstood the paperwork but a clear opportunity existed in the way that the form was laid out for him to confirm that immunotherapy had been the only treatment. The ICA was pleased to learn that the suite of questionnaires related to cancer was being updated to reflect

developments in treatment including immunotherapy. The ICA noted that the standard related to immunotherapy had changed on the basis of panel advice during the life of the complaint. Evaluating decision-making at the time, without the benefit of hindsight, he did not uphold the complaint that the DVLA had fallen into error. Other aspects of the process that had been of concern to Ms AB, like the requirement to re-apply from scratch after her oncologist had provided new evidence, were intrinsic to DVLA policy and procedures. The ICA could understand why these were vexing but he had no jurisdiction to criticise the Agency for following its standard process. He did not uphold the complaint.

**Intractable complaint from a driver deemed unfit to drive following a stroke**

**Complaint:** Mr AB's driving entitlement was revoked after he disclosed to the DVLA a partial left homonymous hemianopia (loss in the visual field), following a stroke seven months earlier. After several months of frustrating dealings with the Agency, it was decided that Drivers Medical would consider his fitness to drive under the exceptional rules that apply to people who cannot meet the legally-prescribed visual field requirements. After some delay, a provisional disability assessment driving licence was issued. In the assessment, Mr AB was surprised to be confronted with a battery of cognitive tests. In the on-road assessment, two physical interventions were required from the examiner to reduce the risk of collision with other road users. Other significant errors (driving exceedingly slowly and too close to parked cars) were also observed. Mr AB contested the conclusion of this assessment that he was not safe to drive. He pointed out that he was driving in an area he had never been before, after 18 months off the road, and had been justifiably cautious. He emphasised that his own clinicians were supportive of his case that he was fit to drive, and he contested the assessment of cognitive impairment. He asked the DVLA to re-open his case and to issue a provisional disability assessment licence (PDAL) which allowed for practice lessons before re-assessment.

**Agency response:** The Agency asked the Driving and Mobility Centre to comment on the complaints about the assessment. The Centre apologised that Mr AB may not have received any information about the table top cognitive tests in advance of the assessment; this was due to the short timescale between the decision to grant a PDAL and the assessment itself. The Centre maintained that allowances had been made for his difficulty in hearing, his time off driving and his lack of familiarity with the area. The complaint about whether Mr AB might have a cognitive impairment, that was only apparent when driving, became intractable. After senior medical review within the DVLA, the position was upheld and Mr AB was told that he would not be licensed for practice drives in the absence of compelling evidence that his cognitive abilities (or his visual field defect) had improved.

**ICA outcome:** The ICA did not uphold Mr AB's primary complaint that the DVLA unreasonably refused to licence him. Its decision to refuse his application based on a cognitive assessment and on-road drive was not a judgment the ICA could call into question. The ICA took additional advice from the DVLA's senior doctor in order to explain to Mr AB what medical evidence could be accepted in future. The ICA partially upheld Mr AB's complaint about the handling of his application - there had been frustrating delays. The DVLA should have made reference to Mr AB's ongoing visual field defect when it refused to re-open his case, and the failure to do so had caused unnecessary confusion. The Agency should also have provided more timely and detailed responses to Mr AB's GP's requests. The ICA recommended a consolatory payment of £150. The ICA also found that having a named contact within the complaints team had been helpful and reassuring to Mr AB, and recommended once again that this approach be adopted in other intractable cases.

**No surrender to the DVLA**

**Complaint:** Mr AB, who had suffered a traumatic head injury and subarachnoid bleed, complained that his entitlement to drive was pointlessly revoked given his undertaking not to drive, and that he had been prevented from resuming driving by the bureaucratic and irrational actions of the DVLA. He also complained that earlier that year his undertaking not to drive in the weeks following elective surgery had been processed as licence surrender – this had kept him off the road needlessly for weeks.

**Agency response:** The DVLA made a consolatory payment of £150 for the surrender error. However, it explained that it could not re-license Mr AB until six months had passed with no symptoms of brain injury. The Agency had prioritised his case, and encouraged Mr AB to apply early within the eight week window allowed in law prior to the expiry of the prescribed time off driving.

**ICA outcome:** The ICA set out the legal framework for Mr AB, including the fact that prospective disabilities provided a lawful route for the DVLA to refuse an application: this was why he was not re-licensed in the absence of evidence of brain injury. DVLA policy provided that the earliest this could happen would be after six uneventful months. The ICA felt that the surrender error had been remedied fully. He concluded that most of Mr AB's dispute with the DVLA related to policy matters over which he had no sway. He was critical of the DVLA for repeatedly asking the consultant who was managing Mr AB's shoulder injury for information about his brain. The ICA felt the licensing decision could have been made earlier but Mr AB had not been particularly disadvantaged by the delay. The ICA did not uphold the complaint.

**Mental health problems affecting safe driving**

**Complaint:** Ms AB complained that her licence had been taken away without a proper medical investigation after reports from professionals that she was unsafe to drive due to her mental health. She had been under the care of mental health services for four years in which time no concern had been expressed about her safety behind the wheel. On the day that had been flagged as when she had been driving unsafely, she had evidence that she had not been behind the wheel at all.

**Agency response:** The DVLA explained that its doctor had acted immediately given the content of the disclosure, and Ms AB would need to demonstrate three months of mental stability before she could be allowed to drive again. Her case would be kept on priority. An invitation was made a month and a half later but Ms AB's GP stated that she was not safe to drive and therefore her application was refused and the licensing requirement repeated.

**ICA outcome:** The ICA explained the fitness to drive regime as applied to Ms AB, and considered that her case had been handled in line with the guidance. He had no locus to uphold the complaint where the DVLA had acted in line with its standard policy.

**Peremptory revocation of vocational driver**

**Complaint:** Mr AB, a vocational driver, suffered from a significant physical disability but his employer was prepared to make adjustments to the extent that he was excused certain duties. Concerned about increasing forgetfulness, he approached a psychiatrist for an assessment in his local hospital. Dementia was excluded but the DVLA received a third party notification that Mr AB might be a potential risk behind the wheel. A DVLA doctor revoked his ordinary and vocational entitlements immediately. Mr AB would complain over the following two and a half years that the revocation had been made on scant evidence and without a proper investigation. The impact on him was devastating. It had in effect brought forward his retirement and, in his words, destroyed his plans for the future.

**Agency response:** The DVLA re-licensed Mr AB on his ordinary entitlement shortly after the revocation, but it was not until Mr AB contacted the PHSO that a senior review of medical decision-making was implemented. This review concluded that the revocation had been peremptory and not justified on the evidence. The DVLA considered Mr AB's claim for compensation and decided to confine it to the 13 month period in which his vocational entitlement would have remained valid had the revocation not occurred. As Mr AB had not re-applied for his vocational entitlement in a timely fashion, the DVLA halved his

net projected income over that period, having deducted a sum commensurate with the benefits he had received. Mr AB remained dissatisfied.

**ICA outcome:** The ICA expressed disappointment that there had been a delay of over two years in the review of what had been a life changing decision for Mr AB. Having spoken to Mr AB, he accepted that his circumstances were exceptional in that his prospects for obtaining comparable employment were slight. The ICA judged that the impact on Mr AB was particularly heavy given his disability. The ICA said that the DVLA had been reasonable in taking responsibility for the 13 months leading up to the point at which the vocational licence was due to expire. But he did not think that the DVLA formulation gave sufficient weight to the fact that the redundancy occurred as a result of maladministration that Mr AB could not mitigate. The redundancy had been a key part of the hardship set out in the complaint. The ICA judged that the DVLA should take full responsibility for compensating Mr AB for lost earnings for the 13 month period. The ICA also recommended that a total consolatory payment of £500 should be made. The ICA recommended that the DVLA continue to explore ways of equipping its customer-facing staff to provide specific advice on the kind of medical evidence that might result in a case being re-opened.

## (ii): VEHICLE REGISTRATION AND IDENTITY

### Potential loss of cherished plate

**Complain**t: Mrs AB complained about the loss of a cherished plate on a vehicle her late father had gifted to his brother abroad. She said the plate had only been lost because of a mistake by two very elderly people.

**Agency response**: The DVLA had acted sympathetically, but had explained that the vehicle was now registered abroad and the right to retain the plate had been lost. It had suggested that Mrs AB could re-import the vehicle and then re-register under the former plate.

**ICA outcome**: The ICA said the DVLA had to act within the terms of the legislation governing number plates, which was tightly drawn. However, he was able to confirm that Mrs AB could re-import the vehicle and regain the plate, albeit this was not an attractive option. He part upheld the complaint in that there had been an error by the DVLA in not amending the vehicle record when informed of its export, albeit this had not affected the overall outcome for Mrs AB.

**Good handling of complaint about Q plate**

**Complaint**: Mr AB complained that he had been given incorrect information that he could retain a personalised plate when rebuilding a car including category B scrap following an accident. The rebuilt vehicle had been Q-plated. Mr AB said that if he had been given accurate information he would have transferred the plate on retention before scrapping the vehicle and might not have rebuilt it using other parts.

**Agency response**: The DVLA had initially said that there was no evidence of poor advice and the vehicle record had not been accessed. It said the Q plate followed from the use of category B scrap, and that Mr AB had lost the right to the personalised plate. After detailed enquiries, the DVLA accepted that the vehicle record had been accessed and that incomplete information had been offered. It said the Q plate would remain, but exceptionally Mr AB would be allowed to retain the personalised plate that he could assign to any other vehicle. The DVLA also apologised and offered a consolatory payment of £250.

**ICA outcome**: The ICA said that there was no remaining injustice to remedy. The DVLA had restored the personalised plate and offered a reasonable consolatory payment. The Q plate had to remain in place following DVLA policy (that the ICA could not comment upon but which he did not think was maladministrative). In consequence, and notwithstanding the initial error and the inconvenience caused to Mr AB over a number of years, the ICA could not uphold the complaint.

---

**Entitlement to cherished plates**

**Complaint**: Mr AB has five cherished plates on retention. He attempted to obtain valuations from specialist companies and online auctions as he planned to sell the rights, but it subsequently became clear that other vehicles were bearing two of the plates he had on retention. Mr AB sought compensation for the legal costs he incurred while proving his right to retain the plates in question. He also criticised the DVLA for delay in responding to the messages he had sent about the fraud.

**Agency response**: The DVLA said that following investigations, Mr AB would retain the rights to all five plates.

**ICA outcome**: The ICA said that it was Mr AB's choice to retain lawyers and the costs were not for the public purse to bear. But it was poor customer service that Mr AB received no news for over two months, and he recommended that the operational fraud teams were reminded of the need to

keep customers informed. Mr AB was also due an apology for the delay in replying to his correspondence.

---

**Purchase of cloned vehicle #1**

**Complaint**: Mr AB complained that he had purchased a cloned vehicle. He blamed the DVLA as he had conducted due diligence and the fraudster had had a valid V5C. He asked for compensation of £80,000.

**Agency response**: The DVLA said it had had issued the V5C in good faith, and it was not known how the fraudster had come by the details. It said it would not meet the claim of £80,000, but offered £30 for poor complaint handling.

**ICA outcome**: The ICA sympathised with Mr AB who had indeed conducted due diligence. However, he had also been tempted to pay cash for a vehicle he thought was a bargain. The ICA said a claim for £80,000 did no service to Mr AB's credibility, but he also criticised the DVLA for very poor complaint handling. He awarded a further sum of £100. He also recommended that, notwithstanding the difficulty of sharing information with the victims of cloning or other frauds, the fraud teams should ensure that correspondence from customers affected was properly acknowledged.

---

**Purchase of cloned vehicle #2**

**Complaint**: Mr AB complained that he had bought a vehicle that had turned out to be a clone. He blamed the DVLA for the fact that the fraudster had obtained a genuine V5C.

**Agency response**: The DVLA had said that it had processed an application for a V5C in good faith. The reference number of the extant V5C had been provided. It said that a V5C is not proof of ownership.

**ICA outcome**: The ICA said that Mr AB had carried out due diligence but this was of course related to the genuine vehicle not the clone. However, the issue was not what Mr AB had done to prevent fraud but whether the DVLA's systems were so flawed as to constitute maladministration. He did not think this was the case. However, the fraudster had obtained the reference number relatively easily by asking to see the V5C of the person selling the genuine vehicle. A window of opportunity had then emerged to obtain a replacement V5C in the fraudster's name and to sell the cloned car. The ICA recommended that the DVLA consider what additional safeguards it could introduce since, in

his lay view, it seemed all too easy to obtain a V5C by pretending to be a genuine purchaser of a genuine vehicle with which a stolen car is to be cloned.

**DVLA not responsible when customer buys cloned vehicle**

**Complaint:** Ms AB complained that she had bought a vehicle that had turned out to be a clone. She blamed the DVLA for processing a fake V5C/2 that she had supplied. She also criticised failure to respond to her correspondence.

**Agency response:** The DVLA had acknowledged that the V5C/2 should not have been processed (as the Agency was still waiting to hear from the registered keeper of the genuine vehicle - a notice of disposal not having been received). It also acknowledged a failure to respond to correspondence. A consolatory payment of £100 had been made. However, the DVLA said that it was the customer's responsibility to ensure that their vehicle was genuine.

**ICA outcome:** The ICA said that he sympathised greatly with Ms AB as a victim of fraud. However, he did not believe the DVLA (in effect, the taxpayer) was responsible for her losses. Nor was the sum of £100 so low that he could sensibly substitute a larger figure. The ICA hoped that Ms AB might be able to claim compensation in the court or bring civil action against the fraudster, although he appreciated that this might be a long way off if ever.

**Customer's responsibilities when purchasing second hand car**

**Complaint:** Mr AB had purchased a vehicle now known to be a clone that had been seized by the police. He complained that the DVLA had issued a new V5C to the fraudster, and that this had given him confidence to purchase the vehicle. He thus held the Agency responsible and asked for compensation matching his losses.

**Agency response:** The DVLA said it was Mr AB's responsibility to satisfy himself as to the bona fides of a second hand car. It said that a V5C had been issued in good faith.

**ICA outcome:** The ICA said it was clear that Mr AB had not carried out much due diligence (he had not even checked the VIN), but the issue for him was whether the DVLA's systems were so lax that they could be deemed maladministrative. He did not think this was the case. He agreed that compensation was not payable.

**A SELECTION FROM THE MANY COMPLAINTS WE RECEIVED ABOUT THE REGISTRATION OF BODY TYPE FOR VEHICLES CONVERTED TO MOTORHOMES**

**Campervans: more stringent application of policy on body type**

**Complaint**: Mr AB was one of many customers who complained that the DVLA would not allow him to change the description of his vehicle on his registration document. He said his vehicle had been converted by a specialist firm and met the requirements to be deemed a motor caravan.

**Agency response**: The DVLA said that the description had to match how the vehicle appeared from the outside, to assist both the police and the public.

**ICA outcome**: The ICA said that he could not adjudicate upon DVLA policy, but he said there was no doubt that earlier customers had been treated differently. He quoted an internal email to the effect that the policy was now being implemented 'more stringently'. It was also clear that the information on gov.uk was at best contradictory. He recommended the urgent amending of the gov.uk information (insofar as this was in the hands of the DVLA) and a public statement by the DVLA (the latter recommendation was declined, but the Agency said it was considering how best to clarify its approach).

**Campervans: decals do not change body shape**

**Complaint**: Mr AB also complained that the DVLA would not allow him to change the description of his vehicle on his registration document. He said he had converted the vehicle from a panel van to a campervan, and that he had met all the requirements on gov.uk. He also noted that he had converted an identical van for his son-in-law and this had been accepted as a campervan a week after his application was declined. Mr AB was also bemused having received five responses from the DVLA before engaging the complaints system.

**Agency response**: As in other cases, the DVLA said that the description had to match how the vehicle appeared from the outside.

**ICA outcome**: The ICA could not adjudicate upon DVLA policy, but it was clear it had been applied in an inconsistent manner. The ICA also could not adjudicate upon what Mr AB said he had been told by the Agency, but he doubted that the addition of decals could ever be said to change body shape

since this was about the physical appearance and silhouette of the vehicle. However, he sympathised with Mr AB's concerns about the number of stages in the DVLA complaints system. As in the sister cases, it was clear that the DVLA policy on body type was now being implemented much more rigorously (presumably in reflection of the number of people converting vans into campervans). He again recommended the urgent amending of the gov.uk information and a public statement by the DVLA.

**One of many more complaints about the DVLA approach to vehicles converted as motorhomes**

**Complaint:** Mr AB complained that the DVLA unreasonably refused to re-register the body type of his converted ambulance as a motorhome despite extensive internal and external adaptations. He repeatedly asked the DVLA what criteria it was using to make decisions about body type registration.

**Agency response:** The DVLA told Mr AB that the external appearance of his vehicle was not that of a motorhome. Moreover, the vehicle could no longer be registered as an ambulance as it was not being used as one. The DVLA therefore insisted on registering it as a van with windows.

**ICA outcome:** The ICA flagged the disparity between the published Department for Transport advice about motorhome conversions and the more stringent approach to body type registration taken by the DVLA. There had been a dramatic increase in the numbers of applications for changes in body type registration for converted motorhomes and campervan being rejected. People like Mr AB had undertaken conversion work in line with the DfT advice, only for an application to change the body type on the registration certificate to be refused by the DVLA.[15] The ICA was critical of the lack of specific responses to Mr AB's questions and challenges about what a motorhome should look like. He suggested that there were lessons to be learnt by the Agency in the way that it framed and advertised changes in the implementation of its policies. The ICA welcomed the publication of new guidance for customers seeking to re-classify motorhomes that occurred while he was conducting his review.[16]

[15] The DVLA has pointed out: "DfT Advice refers to the internal conversion of the vehicle of the vehicle rather than the external appearance of the vehicle in traffic. The body type and the internal conversion are separate matters. Gov.uk has always stated that the body type takes into account the external appearance and that this field would not be changed unless the vehicle was easily distinguishable as a motor home in traffic."

[16] The DVLA has reiterated: "There have been no changes and gov.uk, although now updated and clearer, has always stated that the body type would not be changed if it did not meet the policy for body type.

**Another campervan complaint**

**Complaint:** Mr AB complained that the DVLA would not allow him to change the body type description of his vehicle on his registration document. He said his vehicle had been converted from a Land Rover Defender to a campervan, and that he had met all the requirements on gov.uk. He also noted that other converted campervans had been allowed to have their body type changed.

**Agency response:** The DVLA told this customer too that the description had to match how the vehicle appeared from the outside.

**ICA outcome:** The ICA said that he could not adjudicate upon DVLA policy, but in this case, however, the silhouette and appearance of Mr AB's vehicle remained that of a 4x4.[17]

**More campervan problems**

**Complaint:** Like many other customers, Mr AB complained that the DVLA would not allow him to change the description of his vehicle's body type on his registration document.

**Agency response:** As with other customers, the DVLA told Mr AB that the description had to match the exterior appearance of the vehicle to assist both police and public.

**ICA outcome:** As well as repeating criticisms made in other cases, the ICA said that the descriptor 'motor caravan' seemed to be behind the times given the variety of vehicles now manufactured. The ICA also felt that there were inconsistencies in the body type applied to production models and those that had been converted. If body type referred to the appearance of the vehicle, the fact that production models had received type approval was irrelevant.

**American classic**

**Complaint**: Mr AB complained that the DVLA refused to issue his imported American classic with an age-related plate despite the fact that the licensing

[17] The DVLA has said that, in the other cases adjudicated by the ICAs, the silhouette of the vehicles presented remained those of vans with side windows or panel vans. However, the silhouette is only one aspect of how a vehicle appears in traffic.

authority in America had accepted that it had been built in 1964. Because a new vehicle identity number (VIN) had been applied in the 1970s, the DVLA could not accept the provenance of the vehicle and required that it be issued with a new DVLA VIN and registered on a Q plate.

**Agency response**: After setting out its initial requirements, the DVLA referred Mr AB's challenges to its policy team and dialogue occurred over the following three months. Mr AB was unable to meet the DVLA's requirement of a clear explanation for why the car had been allocated a new VIN. The relevant authority in America no longer held details. In the meantime, Mr AB incurred significant insurance and storage fees.

**ICA outcome**: The ICA noted the published guidance related to the registration of imported used vehicles. He also highlighted the existence of an unwritten policy that presumed any vehicle without a factory stamped VIN could not claim authenticity and age-related registration in the absence of a properly-documented explanation. Mr AB had received confusing and frustrating messages after challenging the registration decision. The ICA could not see that the DVLA's position was justified, given that the vehicle had been registered as built in 1964 in the jurisdiction where it had last been registered. However, the ICA was unable to persuade the Agency to change its decision. In the meantime Mr AB returned the vehicle to the vendor. The ICA, who considered that Mr AB should have had access to clear information to equip him to decide whether to buy a yet-to-be-registered import, recommended that the DVLA should pay half of the insurance delivery and collection fees (£215) on production of satisfactory evidence, and £250 in recognition of the poor service Mr AB had received. He considered that the operation of an un-written policy by a public authority, without due cause, was inevitably maladministrative. He partially upheld the complaint.

---

**Too good for spare parts**

**Complaint**: Mr AB had bought a classic car for spares or repairs. Pleasantly surprised by its condition, he examined the document set that came with it and pieced together what he thought was a good account of its history and successive renovations. Not knowing how the DVLA's policy department works, Mr AB felt that this would represent sufficient evidence for the DVLA to register it on its original plate. He complained when the DVLA refused to do so.

**Agency response**: The DVLA file consisted of its correspondence with Mr AB and historic documentation related to the vehicle, including the outcome of an inspection that had occurred when a previous keeper had applied to retain the registration. This recorded the examiner's view that the chassis plate had been tampered with. The DVLA therefore concluded that evidence linking Mr AB's

vehicle with the registration was flawed to the extent that it could not be registered under the original plate. The Agency suggested that Mr AB apply for registration using the reconstructed classics route.

**ICA outcome**: The ICA felt that the DVLA had handled Mr AB's case reasonably in that it had looked carefully at his arguments and evidence along with what it already knew about the vehicle. The ICA did not feel that he was in a position to substitute a different registration decision for that arrived at by the DVLA's experts. He did not uphold the complaint.

---

**Mistaken purchase of scrapped vehicle**

**Complaint**: Mr AB had bought a vehicle for £4,000 but was then concerned that he could find no online record of it on the gov.uk website. He therefore rang the DVLA in the presence of the vendor and was told that although a "scrapped" marker had been placed on the vehicle record, it could be re-registered as this was clearly a mistake. Mr AB bought the vehicle accordingly, only to be then told by the DVLA that the vehicle had been written off and could never be re-registered.

**Agency response**: The DVLA listened to the call recording and established that Mr AB had indeed been misadvised. However, it did not agree that it was liable for his losses. It made him a consolatory payment of £200. The DVLA confirmed that there were no lawful options for getting a vehicle on the road in the event that an insurer had placed a scrap marker on its register.

**ICA outcome**: The ICA did not judge that the DVLA's response sufficiently reflected the devastating impact on Mr AB of having purchased, in good faith and on the basis of DVLA advice, a vehicle that he could not use. The ICA asked the DVLA if there was any way that the vehicle could be licensed for road use and was told that it could not be, and then confirmed the legal position. The ICA felt the opportunities to mitigate the loss had been open to Mr AB. The DVLA could not be held responsible for any refusal by the vendor to refund Mr AB. The main body responsible for redress should be the vendor. However, as the body responsible for administering and advising on the vehicle register, the ICA judged that the DVLA had been maladministrative in misadvising Mr AB and the vendor before the vehicle had been bought. He therefore recommended that a further £300 consolatory payment should be made. After communicating with the DVLA about learning from the incident, the ICA was satisfied that appropriate measures had been taken to prevent any recurrence

---

**Q-plating of imported vehicle**

**Complaint**: Mr AB complained that his imported vehicle had a Q plate when it was in perfect original condition, and its age was not in doubt. He said it had only suffered water damage and the battery was the only item replaced.

**Agency response**: The DVLA said that its policy was that appeals against Q plates could only be made by the first registered keeper, and that Mr AB's vehicle had been written off by the Australian authorities. Any dispute about the vehicle's antecedents was a civil matter for Mr AB and the previous keeper.

**ICA outcome**: The ICA said that Mr AB had fallen foul of two DVLA policies (that on Q plate appeals and the approach to imported salvage). These were poorly publicised policies, but policies nonetheless and so outside of the ICA's remit. Nevertheless, he recommended a speedy review of the information provided to customers, to include a review of the markers used on V5Cs. (Mr AB's vehicle had a rebuilt marker that the DVLA agreed was inappropriate but was the only one available at the moment.) The ICA also hoped that, in time, the DVLA would develop a more individual and personalised approach to imported salvage, but he accepted that the DVLA could not be expert in the use of terms like 'written off' in every jurisdiction across the globe.

---

**Lost title to cherished number plate**

**Complaint:** Mr AB complained that the DVLA unreasonably refused to restore title to a cherished registration despite the fact that he was prepared to pay the necessary cost and, if required, to re-purchase the plate.

**Agency response:** The DVLA explained that there had been a significant lapse in payment over the retention period meaning that the retention had expired in 2010. This date was before the point at which backdated renewals could be accepted. The Agency did not consider that it had scope in policy or law to reinstate title to the plate.

**ICA outcome**: The ICA had no jurisdiction to require the DVLA to act contrary to its clearly stated policy position. He did not therefore uphold the complaint.

---

**A long-lost motorcycle**

**Complaint:** Ms AB complained in relation to the registration of a motorcycle she had once owned. She said a V5C had been fraudulently issued some years ago, and she was the true owner and keeper. She said her existing registration was the only true one and she wanted to declare the vehicle SORN.

**Agency response:** The DVLA said it had issued the replacement V5C in good faith, and could not become involved in a civil dispute. The vehicle could not be declared SORN by Ms AB as she was not the keeper (whether or not she was the owner). The DVLA said she should approach the police.

**ICA outcome:** The ICA said that he agreed with Ms AB's contention that the signature on the V5C application was not Ms AB's, but it was equally apparent that she was no longer the keeper as she did not know where the vehicle was now. The ICA sympathised but there had been no maladministration and the DVLA does not maintain a register of vehicle owners. Ms AB's V5C was no longer valid, and she could not declare SORN. The DVLA had responded well to Ms AB's enquiries over the years, but there was no more that could be done. It was equally likely that, given the time that had elapsed, the police were not likely to mount an investigation.

---

**Delay in issuing registration certificate**

**Complaint:** Mr AB complained about the service provided and time taken when first applying for a registration certificate. In effect he was unable to use his vehicle for two months. He also criticised the service provided when his direct debit for road tax continued to be taken after he disposed of the vehicle.

**Agency response:** The DVLA said it had not been able to issue a registration certificate as notice of disposal had not been received and further inquiries were necessary. It also said the direct debit payments had continued to be taken as Mr AB had set them up as a new keeper rather than as an existing keeper.

**ICA outcome:** The ICA said that in respect of the first limb of Mr AB's complaint the DVLA had followed its standard procedures designed to prevent fraud. However, the consequence was that Mr AB was unable to tax his vehicle. The ICA said it was not for him to design the DVLA's systems but he hoped some way of overcoming the current impasse could be speedily found. The ICA was content with the explanation given for the direct debit issue, but he recommended that the DVLA consider if the current information

provided to customers adequately covered situations where direct debits will not cancel. (The DVLA thought this would be confusing.)

**Vehicles wrongly registered to customer's home address**

**Complaint:** Mr AB complained that he continued to receive post from the DVLA for vehicles registered to the previous homeowner of which he had no knowledge. He asked the DVLA to undertake a search of its records to ensure that only vehicles belonging to him and his family were registered to his address.

**Agency response:** The DVLA had told Mr AB that it was unable to undertake a search on addresses (as opposed to registration numbers) but that only vehicles registered to Mr AB and his family were now registered.

**ICA outcome:** The ICA said that that the DVLA had failed to show a customer mind-set. He had discovered that it was not true that no search could be conducted on addresses (albeit most caseworkers do not have this functionality). He also discovered that one vehicle belonging to the previous homeowner remained on the register long after Mr AB had been told otherwise. He recommended that Mr AB receive an apology for the incorrect information. He also recommended that the DVLA consider if in like cases a review could be carried out by those staff with the appropriate functionality. The complaint was upheld in full.

**Loss of cherished number plate**

**Complaint:** Mr AB complained about the loss of a cherished plate.

**Agency response:** The DVLA said that Mr AB had lost the right to display the plate when he had sold the vehicle without first having arranged retention of the number. It had acknowledged that a subsequent retention application from Mr AB had been wrongly processed when it should have been returned to him as he no longer had the most up to date V5C.

**ICA outcome:** The ICA said he could offer no comfort to Mr AB in relation to the plate. It was quite clear that in law he had lost the right to display the registration when he sold the vehicle. However, it was also clear that Mr AB had received poor service from the DVLA and he increased the consolatory payment offered by the DVLA from £50 to £100 in line with the PHSO scale for level 2 injustice.

### Paying for a replacement registration certificate

**Complaint:** Ms AB complained that the DVLA had failed to change the address on her registration certificate, with the consequence that penalty notices had gone to her former home. She also said it was unfair that she would be charged £25 for a replacement V5C.

**Agency response:** The DVLA said it had no record of having received Ms AB's notification of a change of address. It referred to the advice to customers to contact the Agency if a new V5C was not received within six weeks. The DVLA added that the charge had been in place since 2004.

**ICA outcome:** The ICA said that the charge was mandated in the Regulations, and he could not expect the DVLA to waive it. Nor could he say what had happened to the notification sent by Ms AB. He found delay at step 2 of the complaints process but no other maladministration by the DVLA.

## (iii): VEHICLE TAX AND ENFORCEMENT

### Late Licensing Penalty (LLP) for scrapped vehicle

**Complaint:** Mr AB complained that he had been issued with a LLP and pursued by debt collectors in relation to a vehicle that he had told the DVLA had been disposed as scrap.

**Agency response:** The DVLA insisted that the enforcement should proceed because notification arrived after the Late Licensing Penalty had been issued. The DVLA had not received the letter sent by Mr AB explaining that he had disposed of the vehicle.

**ICA outcome:** The ICA could not get to the bottom of why Mr AB's notification had not been received or processed. He had not used the logbook because he had left it with the dismantler. The ICA pointed Mr AB to the wording of the logbook cautioning drivers that, if they have not received an acknowledgement that their removal from the register has been processed within four weeks, they should chase the matter up with the DVLA. The ICA concluded that the enforcement had been conducted in line with DVLA policy and he had no scope to uphold the complaint or make any recommendation.

**Request for Vehicle Excise Duty (VED) rebate (and then a botheration payment) #1**

**Complaint:** Mr AB complained that he had been charged a full month of road tax after setting a direct debit two days before the end of the month in which he bought his vehicle. He had also been charged that month for his old vehicle. He repeatedly requested a refund arguing that this could not be fair or right, and said he had been wrongly advised by the DVLA's contact centre.

**Agency response:** The DVLA explained that the rules on the refunding of vehicle excise duty did not allow it to meet Mr AB's request. Part months could not be bought or refunded. The DVLA was constrained by the relevant legislation.

**ICA outcome:** The ICA did not judge that a detailed review of the complaint could change the position as set out by the DVLA, a position that he noted drew from policy and legislation. He did not uphold the complaint about the refund of road tax. However, in liaison with Mr AB after he had issued his initial review, the ICA obtained the recordings of Mr AB's calls to the contact centre, and considered further the complaint that Mr AB had been misadvised. It was clear from the content of one of the calls that Mr AB had not been told about the mechanism for ICA review and had been misadvised about the escalation options open to him. The ICA therefore upheld this part of the complaint. In considering an appropriate remedy, the ICA noted that Mr AB had ready access to information about how the complaints procedure worked and had, indeed, complained several times using the online portal before ringing up to ask about escalation. He could easily have Googled the process as he actually went on to do during one of the calls to the contact centre. The ICA judged that Mr AB had ample opportunity to mitigate the impact of any hardship flowing from the DVLA's error. He judged that the error was in line with level 1 hardship as outlined in the Ombudsman's scale and he recommended that the DVLA apologise. He also recommended that training needs evidenced in the response to Mr AB's calls to the contact centre should be addressed in order to improve the service offered.

---

**Request for VED rebate #2**

**Complaint:** Mr AB complained that he had not been refunded road tax after part exchanging his vehicle.

**Agency response:** Quoting the terms of the Vehicle Excise and Registration Act, the DVLA said that it had not received notification of the sale and change of keepership for six months after the vehicle was sold. It said that refunds of VED could not be backdated. It suggested that the problem was between Mr

AB and the dealership as for some reason the electronic notification of sale had not been received.

**ICA outcome:** The ICA said that the DVLA had simply followed the law enacted by Parliament and that there had been no maladministration. However, he criticised the terms of one Agency letter that had given the wrong date for when the notification of change of keepership had actually been received.

---

**Enforcement of untaxed vehicles**

**Complaint:** Mr AB complained about the failure of the DVLA to enforce against a vehicle he said had been untaxed for a long period of time.

**Agency response:** The DVLA said that it could not offer a call-out service, but its contractor was required to visit every postcode twice a year. It said that much enforcement action was not visible to the public.

**ICA outcome:** The ICA said that there had been no maladministration by the DVLA. He provided statistics on the number of clampings over the past five years which showed a significant increase in enforcement activity, but the Agency and NSL were entitled to prioritise certain areas, and remote rural and island communities obviously presented logistical difficulties in terms of the best use of resources.

---

**Change of tax class**

**Complaint:** Mr AB complained about the tax class of his vehicle. He said that he had conducted modifications and the V5C now showed that it was a motorhome.

**Agency response:** The DVLA said that the modifications did not change the taxation class of Light Goods Vehicle. It had explained what sort of evidence Mr AB would need to produce to apply for a different taxation class.

**ICA outcome:** The ICA said that changes to vehicles (like engine size and weight) could result in a different tax class, but the simple fact of a change of wording on the V5C was not sufficient. He was content with the advice offered to Mr AB and could not uphold the complaint.

---

**Request for refund of direct debit**

**Complaint:** Ms AB complained that a direct debit for vehicle tax had been taken a day after she had sold the vehicle and two days after she had declared it SORN. She sought a refund.

**Agency response:** The DVLA said that by law rebates were for whole months after the DVLA had been informed of disposal. It had explained that the first payment had been taken 10 working days after the direct debit had been set up, in line with the requirements of the scheme. Future payments would have been taken on the first day of the month.

**ICA outcome:** The ICA said that the DVLA had simply applied the law on vehicle taxation. Ms AB was right to say that a few days' tax represented poor value for money, and that the DVLA might have benefited from two months VED on the month in question. However, that was the way the law was set up.

---

**Removal of option to pay by direct debit #1**

**Complaint:** Mr AB, a motor trader, complained that he was no longer allowed to pay for road tax by direct debit. He asked for compensation of £500. He said the DVLA was in breach of contract.

**Agency response:** The DVLA said that earlier direct debits from Mr AB's bank account had been cancelled. The Agency said it reserved the right to refuse to accept direct debits when previous instalments had not been paid.

**ICA outcome:** The ICA said that the DVLA, like any organisation, was not required to offer direct debits to all customers. While he appreciated the impact upon Mr AB's cash flow, the DVLA was entitled to remove the facility of paying for tax by direct debit when, by accident or design, there was a pattern of failure to pay. If Mr AB thought there had been a breach of contract, he would need to seek his own legal advice. (The evidence suggested there might have been a pattern of such behaviour on the part of some small traders to avoid paying tax or obtaining trade plates.)

---

**Removal of option to pay by direct debit #2**

**Complaint:** Ms AB complained because the DVLA would not allow her to pay road tax by direct debit. She said this was discriminatory and callous.

**Agency response:** The DVLA said that Ms AB had failed to pay direct debits on previous occasions and that it would not accept her back onto the scheme.

**ICA outcome:** The ICA said the actions of the DVLA were not discriminatory. There would come a point when Ms AB had, so to speak, wiped the slate clean, but it was little more than a year since the missed direct debits and there were other gaps in Ms AB's licensing history.

---

**Another complaint about the withdrawal of the right to pay VED by direct debit**

**Complaint**: Mrs AB complained about claims by the DVLA for unpaid VED and for cancelling her entitlement to pay by direct debit. She said she had SORNed her vehicle and been misinformed by the DVLA.

**Agency response**: The DVLA said that direct debits had failed to transact on five occasions. For this reason, the ability to use direct debits had been withdrawn.

**ICA outcome**: The ICA said that he had no reason to suppose that Mrs AB had set out to 'game' the system. However, she seemed to believe that if she SORNed a vehicle she did not have to pay that month's VED. This was not the case. The DVLA had correctly calculated the unpaid sums. It was also not maladministrative in the circumstances to say that Mrs AB could no longer use the direct debit system. However, the ICA hoped that, after a period of compliance, the ability to use direct debits could be restored (say after two years) and Mrs AB would be entitled to quote his report in her support.

---

**Attempt to change direct debit details**

**Complaint**: Mr AB complained about circumstances surrounding his attempt to change the direct debit details by which he paid road tax. He accused contact centre staff of being rude, and the DVLA's systems being not fit for purpose.

**Agency response**: The DVLA had accepted that some staff had not performed as well as they should have done and had offered a consolatory payment of £50. In practice, the change in direct debit had been successfully transacted.

**ICA outcome**: The ICA listened to recordings of the calls made by Mr AB. He judged that Mr AB's own conduct was far from blameless, albeit it was understandable that he had become increasingly agitated as the DVLA could not say if his direct debit would be taken successfully on the 1st of the month or if his car would be untaxed. The ICA also discovered that the error message that had led to the belief that the transaction had failed had been misinterpreted by the DVLA, and that this could have been known earlier if the IT support team

had been contacted earlier. He recommended an additional consolatory payment. (The DVLA had separately identified the action that the contact centre staff could have taken to ensure the direct debit was successfully transferred.)

**Direct debit ban is lifted**

**Complaint:** Mr AB complained that the DVLA had refused to allow him to pay his road tax by direct debit after a payment failed. He said he was being punished for being broke. He also criticised the DVLA for failing to answer his complaint by following the structure he had used himself.

**Agency response:** The DVLA said that, exceptionally, Mr AB would be allowed to restart direct debits once his current tax expired. It pointed out that he had missed payments on four occasions.

**ICA outcome:** The ICA said that there was no remaining injustice to remedy. The DVLA had shown a customer-friendly approach. The ICA felt that the DVLA was entitled to withdraw use of direct debits if it felt the facility was being abused. He was also content that the Agency could respond to complaints as it chose, so long as the key issues were covered.

**Failure to SORN leads to Out of Court Settlement (OCS)**

**Complaint:** Ms AB complained about an OCS imposed after her vehicle had been clamped on what she said was private land. She said she had not been told she needed to apply for SORN. She also said she would have taxed the vehicle had it not been for problems with the DVLA issuing a registration certificate.

**Agency response:** The DVLA said the OCS had been correctly imposed for failure to tax or declare SORN. It had been unable to issue a V5C as the documentation Ms AB had sent included the wrong vehicle registration number, and it had taken a while before Ms AB had provided a fully completed V62.

**ICA outcome:** The ICA sympathised with Ms AB as he had no doubt she had not intended to avoid her responsibilities as a vehicle keeper, and was a young driver still learning the rules. However, the DVLA had not acted maladministratively in processing the application for a new V5C nor in the clamping of Ms AB's vehicle. He was also content that sufficient information was available to customers about the process for SORNing.

**Complaint about VED for those in receipt of the Personal Independence Payment (PIP)**

**Complaint:** Mrs AB complained about the consolatory payment of £30 offered by the DVLA for its poor service in handling her PIP-related VED application. An incorrect amount sent and spelling error on the V5C meant the payable order could not be cashed. There were minor delays and Mrs AB said she had been discriminated against.

**Agency response:** The DVLA said it felt that its offer of £30 was proportionate and in line with HM Treasury guidance.

**ICA outcome:** The ICA approached the DVLA and it was agreed to increase the sum offered to £100.

---

**Continuous Insurance Enforcement**

**Complaint:** Mrs AB complained about a Fixed Penalty Notice (FPN) imposed for a breach of Continuous Insurance Enforcement (CIE). She said she had tried to SORN her vehicle but the DVLA's systems had failed.

**Agency response:** The DVLA said it accepted that Mrs AB had attempted to SORN but its record showed that she had abandoned the transaction. Had it been completed there would have been an online message and she would have received a confirmatory email. Mrs AB had successfully SORNed after the FPN was issued. However, in consequence of poor advice from the contact centre (telling Mrs AB that paying the FPN was an admission of guilt), it had extended the period under which she could pay the reduced fee of £50.

**ICA outcome:** The ICA sympathised with Mrs AB but the DVLA had confirmed that there had been no system outage on the day in question. The Agency could therefore take at face value that, presumably by accident, Mrs AB had terminated the transaction. Given the legislation on CIE, there had been no maladministration on the part of the DVLA in enforcing the breach.

---

**Registration of kit car**

**Complaint**: Mr AB complained that his kit car, first registered in 2006, that included the running gear from a 1974 vehicle, was not subject to tax-exempt status despite the fact that its registration reflected the age of the donor vehicle.

**Agency response**: The DVLA explained that, for tax purposes, it counted the age of the kit car from the date at which it was first registered not the date of manufacture of any donor vehicle.

**ICA outcome**: The ICA regarded the DVLA's policy position as logical and clearly expressed in the correspondence. The decision to register the vehicle in line with the age of the donor had been made following representations from the kit car industry. This was a 'cosmetic' decision and should not be conflated with the Vehicle Excise Duty requirements that were clearly pegged to the date of first registration. The ICA felt that this distinction should be better reflected in the published information and recommended accordingly, but he did not uphold the complaint.

---

**Taxation system does not update in real time**

**Complaint**: Mr AB complained that the DVLA failed to provide accurate information to the police about the tax status of a car he had acquired. He taxed the car online and was shown on the DVLA's systems as the new keeper, only to be pulled over by the police for driving an untaxed car. The car was impounded, necessitating him having to spend over £30 for a taxi to get to the pound and collect it (and accruing expenses approaching £200 in total) the following day. To add insult to injury, he was then initially told by the DVLA that the police should have access to up-to-date information about the tax status of a vehicle. Mr AB was dissatisfied with the DVLA's responses to his correspondence, complaining of inconsistency and delays. He sought compensation and characterised the DVLA's offer of £30 as derogatory.

**Agency response**: Throughout its correspondence, the DVLA reiterated that it could take up to five days before the tax transaction would be apparent on its electronic system. On one occasion, on the telephone, a DVLA officer had said incorrectly that the police would have access to live data. Mr AB remained convinced that the police enforcement had been based on failings by the DVLA.

**ICA outcome**: The ICA noted that most modern digitised payment systems communicated in real-time, or close to it. He fully understood why Mr AB had expected that his car would appear legitimately taxed. However, the DVLA did advertise the lag between the transaction and it showing on the system. It was not responsible for the police enforcement and had remedied the area where it had claimed that the police had access to live information. The ICA could not uphold the complaint.

---

**Allocating the correct bracket for VED**

**Complaint**: Mr AB complained that his vehicle had wrongly been placed in the above £40,000 bracket for VED. He also said that changes in VED following the 2015 budget had been poorly communicated.

**Agency response**: The DVLA said that it relied upon the list price notified by the manufacturer at first registration. If Mr AB could produce evidence from the manufacturer or dealership that a mistake had been made, then a different rate of VED would be charged.

**ICA outcome**: The ICA said he could identify no maladministration by the DVLA. The manufacturer had notified a list price in excess of £40,000, and it was not improper to ask the customer to find evidence that this was incorrect. Mr AB had also challenged the legal meaning of list price, but the ICA said this was something Mr AB would have to pursue with the help of his own legal advice. As a layperson, the DVLA's approach seemed sound.

**Clamping of motor trader's vehicle #1**

**Complaint**: Mr AB, a part time car dealer, complained that his vehicle had been subject to unreasonable enforcement after it had broken down while he was driving it to a potential purchaser's house. He thought he had left the trade plates clearly on display in the window. He also complained that, having taxed the vehicle, it took weeks to obtain a rebate after eventually finding a purchaser. He also complained of delays and failures on the part of the DVLA to respond to his correspondence.

**Agency response**: The DVLA set out its enforcement powers and explained that the trade plates had not been on display at the time of the enforcement. It was the following day, after the clamping, that the trade plates were displayed on the dashboard and rear parcel shelf. The DVLA eventually refunded Mr AB the relevant amount of tax. The problem had been that he was no longer the keeper at the time that he was applying for the refund.

**ICA outcome**: The ICA was sympathetic to Mr AB's predicament. He had a hearing impairment and had felt panicked and in despair when he returned to the vehicle with the mechanic only to find it clamped. His dealings with the clampers had also been highly stressful. However, the entire enforcement had been conducted in line with the DVLA's standard policy and therefore the ICA could make no recommendation.

**Clamping of motor trader's vehicle #2**

**Complaint**: Mr AB, a motor trader, complained that two of his vehicles had been wrongly clamped by the national wheel-clamping contractor, NSL.

**Agency response**: The DVLA accepted that one of the vehicles had been SORNed and had apologised. It said the other vehicle was not kept in an area that formed part of a motor trader's premises. In support of that view, it said there was no signage of any kind where the vehicle had been lifted.

**ICA outcome**: The ICA said it was disappointing that one vehicle had been wrongly clamped, and it was as well that it had been released without charge and an apology offered. The other vehicle was untaxed and parked in front of a shop. There was no reference to motor trading. The ICA said he could not offer an authoritative legal view on whether signage was required (it is not mentioned in s.29 of the Vehicle Excise and Registration Act), but in the circumstances it was not maladministrative for the DVLA to rely on its own internal advice that the clamping was lawful. If Mr AB took a different view, he would have to pursue the matter in the courts.

---

**Clamping of motor trader's vehicle #3**

**Complaint**: Mr AB complained that a car that had been legitimately left on a private road adjacent to his home was clamped, impounded and then disposed of by the DVLA's agents. He raised a number of challenges in relation to the enforcement as well as a complaint that his points had not been addressed through the complaints process.

**Agency response**: The DVLA and NSL had been found by the ICA in a previous case to have enforced incorrectly against Mr AB in relation to a vehicle subject to SORN in the same location. On this occasion, the vehicle was not subject to SORN. NSL and the DVLA looked into Mr AB's claims that land registry documents gave him the right to trade on the private road, and that the exemption that applied to motor traders meant that SORN did not have to be in place. They concluded that, as several people close to the street enjoyed similar rights, and the street was accessible to the public, in the absence of SORN the enforcement had been legitimate. The DVLA considered Mr AB's other challenges, including that the vehicle had been in the curtilage of his property and he had no prohibition on his right to operate as a motor trader. In the absence of evidence that he was a legitimate motor trader, for example business rates and insurance documents that applied to the property in question, NSL and the DVLA did not feel justified in closing the enforcement case. The deadline for disposal of the vehicle was repeatedly extended, eventually to eight months, before it was disposed of. The DVLA and NSL also

denied fraudulently reregistering the vehicle to another party and damaging it while it was impounded.

**ICA outcome**: The ICA could not adjudicate on the legal arguments and therefore there were significant limits on his ability to get to the nub of the complaint. From his perspective, Mr AB's challenges had been subject to appropriate consultation and escalation within NSL and the DVLA. The responses sent by the DVLA reflected its position accurately and referred to the relevant legislation. The ICA could not uphold the complaint as the enforcement had been conducted in line with the Agency's standard procedures

---

**Complaint about Out of Court Settlement**

**Complaint**: Mr AB complained that the DVLA had unreasonably levied an OCS in excess of £500 on the basis of a single incident when he had driven his car, subject to SORN, to a pre-arranged MOT. Mr AB was also critical of the harsh tone and content of the DVLA's enforcement correspondence, referring to his Post-Traumatic Stress Disorder following his military service. He also complained about aspects of the DVLA's enforcement administration, including its insistence that appeals against enforcements are written on paper and signed, in contrast with its own mass produced unsigned documents. Mr AB worked abroad and had been significantly disadvantaged. He also found communicating with the DVLA very difficult through the restricted portals available to people subject to enforcement who are not offering to pay.

**Agency response**: The DVLA refused to waive the OCS because it could find no evidence that an MOT had been booked and carried out.

**ICA outcome**: The ICA engaged with Mr AB during the complaint review and accepted that his trip to the garage had been for a variety of work on the vehicle leading up to an MOT that would be conducted through his garage but by a different company. However, the ICA could see on gov.uk that there was an interval of over three months between the MOT appointment and Mr AB's trip to the garage. While he could not adjudicate over the difference between Mr AB's interpretation of the exemption provided in section 45 of the Road Traffic Act 1988 and the DVLA's, the ICA did not think it unreasonable of the Agency to hold the line that the appointment could not readily be construed as pre-booked MOT appointment. The ICA was critical of the fact that the DVLA had not acknowledged Mr AB's distress at the tone and content of its enforcement correspondence. While he did not uphold the complaint, he asked the Agency to apologise.

---

**Dual complaint about enforcement action**

**Complaint**: Mr AB complained (i) that enforcement action taken against him in 2018 was unfair. He said that he had not cancelled his direct debit for VED and that when he accessed the online system to pay there was a message saying his vehicle was already taxed; and (ii) that the DVLA had failed to process a notice of disposal, sent the wrong rebate, and failed to pay adequate compensation.

**Agency response**: In respect of (i) the DVLA said the enforcement action had been correct. If there was any doubt about the cancelled direct debit Mr AB would need to contact his bank. The Agency accepted that its systems did not update in real time and that Mr AB would have seen the message he referred to. However, there was a further message saying that those asked to pay by the DVLA should do so. If Mr AB was confused he should have phoned. In respect of (ii), the Agency had accepted it had delivered very poor service. It had offered a total consolatory payment of £180 plus the additional tax rebate.

**ICA outcome**: The ICA agreed with the DVLA's judgements. He had no grounds for overturning the 2018 enforcement action and there had been no maladministration by the DVLA. In contrast, in 2019 there had been serial maladministration: Mr AB's notice of disposal had not been transacted for three months, the rebate had been wrongly calculated, the service from the contact centre was poor, the stage 1 letter was inaccurate, and when finally it was agreed to make Mr AB an additional payment the transaction failed because the shared service centre keyed the wrong sort code. However, the ICA was satisfied that there was no remaining injustice to rectify: the Agency's apologies, explanations, and total payment of £180 represented sufficient redress. (Mr AB had asked for his payments to be transacted electronically, and exceptionally the DVLA had agreed. The ICA said the reliance on payable orders and cheques was old-fashioned, and inconvenienced and delayed customers. He looked forward to a time when more transactions were made electronically.)

---

**Clamping of leased vehicle**

**Complaint**: Mrs AB complained about the clamping of her leased vehicle. She said she had been unable to reclaim the surety as she could not re-tax without the V5C which had been sent to an incorrect address because of a mistake by the dealership. The dealership had told her that she could not re-tax at the Post Office in these circumstances, and the 15 day deadline to reclaim the surety had passed before she had a new V5C.

**Agency response**: The DVLA said the enforcement action had been correct as the vehicle was untaxed. It said that Mrs AB could have taxed the vehicle at the Post Office notwithstanding the absence of the V5C (which Mrs AB had not chased in the more than 12 months she had had the vehicle).

**ICA outcome**: The ICA said that he sympathised with Mrs AB who had clearly not set out to avoid tax. However, there was no maladministration on the part of the DVLA and it appeared that Mrs AB had been let down twice by the dealership. The 15 days for refund of the surety was established in legislation, and the ICA could not therefore recommend that it be repaid.

---

**VED refund following mistaken notification of scrappage by Authorised Treatment Facility (ATF)**

**Complaint**: Mr AB complained that he had been told by the DVLA that his vehicle had been scrapped and given a VED refund. He said this had caused great stress and inconvenience as the vehicle was still in his possession.

**Agency response**: The DVLA had said there had been an error by the ATF in notifying scrappage of Mr AB's vehicle. It had restored Mr AB as the keeper within three weeks.

**ICA outcome**: The ICA said that no compensation was due and he was content that the DVLA had put matters right as speedily as could reasonably be expected. But he was disappointed that the responses from Vehicle Casework lacked empathy and had not included an apology. The DVLA accepted these criticisms and said Vehicle Casework letters were not supposed to be in apparently standard terms, and a reminder had been given to staff. Nevertheless, the ICA formally recommended that the DVLA assure itself that letters from Vehicle Casework were appropriately sensitive and apologetic. Mr AB had been inconvenienced through absolutely no fault of his own.

---

**Mistaken belief that vehicle had been SORNed**

**Complaint**: Mr AB complained that he had SORNed his vehicle online but the DVLA had continued to take direct debits. He asked for a refund.

**Agency response**: The DVLA said it had no record of Mr AB SORNing the vehicle at the time he said. It said the direct debit mandate was cancelled months later, and notification of disposal was received after that. It said no overpayments had been made.

**ICA outcome**: The ICA said he had asked for a copy of the vehicle record and it showed nothing to suggest an attempt to SORN the vehicle (either successful or unsuccessful) at the time Mr AB had quoted. Had it been successful the direct debits would have cancelled automatically. He could not recommend a refund in such circumstances (indeed it would be contrary to the rebate condition in s.19 of the Vehicle Excise and registration Act).

---

**Clamping in a private car park**

**Complaint**: Mr AB complained about the clamping of his vehicle while it was awaiting a service and MOT. He said that the car park where the vehicle was parked was a private one and the MOT company had to pay towards it as part of its lease. In consequence, he argued that it was covered by the exception to vehicle taxation under section 29 (2C) of the Vehicle Excise and Registration Act (VERA).

**Agency response:** The DVLA and NSL said that the exception did not apply. The car park in question did not form part of the business premises of the repairers. In addition, there was no signage saying that the car park was for the exclusive use of those having MoTs.

**ICA outcome:** The ICA said this was essentially a legal issue upon which he could not adjudicate. Mr AB said there was no mention of signage in VERA (which is true), but the DVLA's legal advice was that s.29 (2C) did not apply. The ICA could not adjudicate upon this matter under his terms of reference, and it was not maladministrative, in the absence of case law, for the DVLA to rely upon its own internal legal advice. Mr AB could take legal action or go to the PHSO.

---

**Eligibility to nil rate of VED under PIP**

**Complaint**: Mr AB complained about refunds for vehicle tax, and that a payable order had been improperly cancelled. He said that in effect he and his wife (both of who are entitled to the Higher Rate Mobility Component of PIP) had been accused of fraud.

**Agency response**: The DVLA said Mr AB had taxed two vehicles using the same Certificate of Entitlement which was why the first payable order had been cancelled. It was content that both vehicles were now properly taxed at the nil rate.

**ICA outcome**: The ICA said he was also content that both vehicles were now properly taxed and no further refunds were due. There was no remaining

injustice to remedy. This matter had caused a great deal of anxiety and confusion for Mr AB but there had been no maladministration by the DVLA.

---

**Clamping of vehicle without plates**

**Complaint**: Mr AB complained about the clamping of a vehicle outside his house. He said it was not bearing plates and was not intended to be driven, and had only been moved to enable roofers to erect their ladders.

**Agency response**: The DVLA said that it was limited in what it could say as the registered keeper was not Mr AB. However, it said that the clamping had been carried out by contractors working for the local authority and any questions about the lawfulness of the removal, and the conduct of staff, should be addressed to them. The DVLA was not responsible for the actions of its devolved powers partners.

**ICA outcome**: The ICA said he was also constrained in what he could say. However, there was no evidence of any maladministration on the part of the DVLA.

---

**Direct debit taken after sale of vehicle**

**Complaint**: Mrs AB complained that she had sold her vehicle at the end of the month but the DVLA had still charged her direct debit at the beginning of the next month. She asked for a refund. She said she was elderly and unable to notify sale online.

**Agency response**: The DVLA said that it had received notification of the sale the day after the direct debit was taken. It said that by law no refund could be offered.

**ICA outcome**: The ICA sympathised with Mrs AB. He said most people would be amazed to learn that you could still be charged VED after selling a vehicle (and that the DVLA would have received two VED payments for the same month once the new keeper taxed), but that was the way the law worked and there had been no maladministration.

---

**LLP for vehicle sold to dealership**

**Complaint**: Ms AB complained that she had received a LLP for a vehicle she had sold to a dealership.

**Agency response**: The DVLA said that it had not received notification of a change of keeper and the LLP had been imposed in line with the law on Continuous Registration.

**ICA outcome**: The ICA was uncertain whether Ms AB had asked the dealership to notify the DVLA or had done so herself, but in any event no notification was received by the DVLA until after the LLP was imposed. All he could achieve was an extension of the reduced sum of £40.

---

**LLP for vehicle said to have been SORNed**

**Complaint**: Mr AB complained that he had received a LLP for a vehicle he had told the DVLA had been SORNed. He accused the Agency of harassing him for payment via a debt collection agency. He said it was the first time he had declared SORN and was not aware that he would receive an acknowledgement.

**Agency response**: The DVLA said that it had not received notification of SORN and that the LLP had been correctly imposed.

**ICA outcome**: It came to light that Mr AB had simply ticked the box marked SORN on his V11 reminder and returned this to the DVLA. The ICA said that, as someone unfamiliar with SORNing a vehicle, it did not seem that Mr AB had carried out much research into how to do so properly. Even if the V11 had safely returned to the DVLA, it was not a form that staff would have expected to have acted upon. On the other hand, the wording of the V11 contained no reference to the V890 (the SORN application form), and it was not clear what purpose the SORN tick box actually served. Overall, however, he did not think the design of the V11 was so poor as to be maladministrative. Hundreds of thousands of SORN applications were successfully completed each year. The ICA confirmed with the DVLA that the reduced LLP of £40 would apply for a further fortnight and that debt collection would be put on hold until then.

---

**VED paid for unused vehicle**

**Complaint**: Mr AB complained that direct debits had been wrongly taken from his account for a year. He said his vehicle did not have a valid MoT certificate and had been sitting on his drive for a year.

**Agency response**: The DVLA said that the MOT certificate had been valid when the direct debits were first activated, and it did not check on a monthly

basis. It also said that Mr AB had not declared SORN and was therefore liable for VED.

**ICA outcome**: The ICA said that Mr AB had not declared SORN and there was therefore no legal basis on which his VED could be refunded.

---

**Clamping of community vehicle**

**Complaint**: Ms AB complained about the clamping of a community vehicle. She said she had been out of the country and the failure to tax was an oversight. She said that the community association of which she was the secretary had taxed the vehicle and been ready to pay the release fee. However, the charges had now risen to over £1,000.

**Agency response**: The DVLA said that the vehicle in question had remained clamped on the road for a fortnight but the release fees had not been paid. It said the actions of NSL were correct.

**ICA outcome**: The ICA said this was an unfortunate matter that would have an impact on the disadvantaged children who used the vehicle. However, the release and storage fees were set in legislation, and the DVLA could not pick and choose which of its customers to believe. He had listened to calls between the association's chairman and NSL, and borne in mind the information placed on the clamped vehicle, and was content that there could have been no misunderstandings. (NSL speculated that, once the tax was paid, it had been assumed that the removal of the vehicle would not go ahead.) The ICA had agreed with the DVLA an extension of the period during which the vehicle was held before disposal and he said he hoped Ms AB's association would be able to raise the release fee (whether by crowdfunding or other means.) Pleasingly, the DVLA later reported that the vehicle had been claimed by Ms AB.

---

**Correct clamping decision reveals flaws in Motor Insurance Database**

**Complaint:** Mr AB complained about the clamping of his vehicle. He said he had tried to tax the car that morning (this was not in doubt) but a flaw in the DVLA's systems had not allowed him to do so.

**Agency response:** The DVLA had said that an offence had been committed and the wheel clampers had acted correctly.

**ICA outcome:** The ICA noted that Mr AB had knowingly driven and parked an untaxed car on the public road. He could not recommend the DVLA rescind its enforcement activity or refund the clamping fees. However, the ICA review had

revealed a breakdown in the Motor Insurance Database upon which the DVLA relies. He recommended that the Agency liaise with the Motor Insurance Bureau to prevent any recurrence. He also identified flaws in the DVLA's correspondence handling that justified a small consolatory payment: £100 (equal to the fees incurred).

**No proof of notice of disposal**

**Complaint:** Mr AB complained that he had been issued with a Late Licensing Penalty for a vehicle he had disposed of some time earlier. He felt the enforcement was unjust given the fact that he had, in good faith, taken all steps required of him.

**Agency response:** The DVLA insisted that, in the absence of proof that the disposal notification had been dispatched, the enforcement stood.

**ICA outcome:** The ICA had no jurisdiction to uphold the complaint in the absence of error or failings in customer service by the DVLA.

**Court decision cannot be overturned by ICA**

**Complaint:** Mr AB first complained that the DVLA had unfairly taken 18 monthly payments of road tax by direct debit for a vehicle that he said he had notified as SORN. He had managed to claw back from his bank approaching £400 in tax corresponding with the 18 months during which he insisted SORN had been in place. The DVLA denied ever having confirmed SORN and took Mr AB to court, successfully prosecuting him and obtaining an attachment of earnings order to retrieve the money. Mr AB complained that this was unfair and unreasonable and that the responses to his complaint had been tardy.

**Agency response:** The DVLA explained that it had no record of the original SORN notification. Mr AB would have been told to expect an acknowledgement within four weeks and, if one was not received, to chase matters up which he had not done. The DVLA explained that the matter was now in the hands of the court and could not be reversed through the complaints procedure.

**ICA outcome:** The ICA was sympathetic to the DVLA’s position. The complaints process had no status in relation to legal proceedings, and he therefore had no jurisdiction to comment on the measures taken to recover the debt. He did not uphold the complaint.

**License is a verb; licence is a noun**

**Complaint:** Mr AB complained that standard enforcement correspondence related to a continuous licensing offence stated that his licence was void. On that basis he had stopped driving and accrued costs in the four weeks before matters were clarified. He rejected the DVLA's offer of a £50 consolatory payment for poor service, and sought £1,000.

**Agency response:** The DVLA stated that it had clarified that the licence was valid 12 days after the letter had gone out referring to the "license" (sic) being void. That reference was to the tax cover on the car not to Mr AB's driving entitlement. The DVLA provided a copy of all of the wording sent to Mr AB, arguing that a reasonable interpretation of the documents would not lead to the conclusion that the driving licence had been voided.

**ICA outcome:** The ICA noted that the reference to the "license" being void itself referred back to earlier correspondence about the tax being void. He did not therefore agree with Mr AB's interpretation of the wording. He also noted that the power to remove a driving entitlement was vested in the courts and the DVLA acting on behalf of the Secretary of State. These powers were exercised in relation to fitness to drive and criminality including drink-driving. The ICA could not see how a penalty reserved for such situations could be associated with the relatively minor civil offence of not notifying SORN. He thought that the wording was flawed - the DVLA should not be using the verb "license" in place of a noun referring to road tax. The wording across the suite of documents should also be the same. He recommended that this anomaly should be rectified. But he did not consider Mr AB's claim for approaching £1,000 of public money as plausible and did not uphold the complaint.

---

**DVLA re-considers earlier decision on VED refund**

**Complaint:** Mrs AB complained that she had returned trade plates but had not received any refund of VED.

**Agency response:** The DVLA had said it had no record of the plates being returned when Mrs AB said they had been.

**ICA outcome:** Before the ICA could begin his review in earnest, the DVLA said they had reconsidered and it was clear that a DVLA date stamp showed the plates had indeed been returned when Mrs AB had said. They were therefore arranging the refund plus a consolatory payment of £100 in recognition of poor service. In the circumstances, the ICA concluded that the matter had been

resolved satisfactorily, and closed the case. Formally, therefore this case was recorded as a not uphold - notwithstanding the earlier DVLA error.

**Circumstances when direct debits do not auto-renew**

**Complaint:** Mrs AB complained that she had been clamped despite the fact that she had set up a direct debit over a year previously when she acquired her vehicle. In addition, she was being pursued for an Out of Court Settlement. She complained that the assurance she had been given when she set up the direct debit was that it would auto-renew and that the DVLA had failed to alert to the fact that the auto-renewal had failed.

**Agency response:** the DVLA explained that, as its publicity materials set out, a direct debit auto-renewal cannot process if the car is not registered to a keeper. It declined to cancel the enforcement.

**ICA outcome:** The ICA was sympathetic to Mrs AB's arguments. The point that keepers should be alerted to the failure of a direct debit was logical and persuasive. However, he had no scope to rewrite DVLA policy. In the absence of error or omission by the Agency, he was unable to uphold the complaint.

**Another case when direct debit does not auto-renew**

**Complaint:** Mr AB complained that he had been clamped when the direct debit he had set up on his car was not automatically renewed by the DVLA. He also complained that he had been told by the DVLA that, once he settled the tax, the clamp would be removed without charge.

**Agency response:** The DVLA explained the basis of its enforcement regime. It told Mr AB that his request for a storage charge for the clamp that he had cut off himself would not be met. It continued to pursue him for an OCS.

**ICA outcome:** The ICA agreed with Mr AB that it was not a reasonable expectation on the part of the DVLA that customers who have set up direct debit mandates will act if a new payment schedule is not dispatched a fortnight before the tax cover ends. The ICA thought that it would be much better service to alert people who have placed mandates when that mandate is not going to auto-renew. However, the ICA noted that the enforcement had been applied in line with standard policy. Mr AB, as a new keeper, had been able to set up a direct debit mandate before he was registered to the car. He had an opportunity to act on the failure of the transaction registering him to the car but did not do so. The fact that no one was registered to the car meant that the

renewal of the direct debit failed. Given all of this, the ICA was unable to uphold the complaint.

**Prosecutor's failure to update system prevents payment of OCS**

**Complaint:** Mrs AB complained about the clamping and subsequent enforcement action in respect of a vehicle she had retained for sentimental reasons but no longer used. She said that she had tried to pay the OCS but had been unsuccessful, and that she had been misinformed by two prosecutors about the way the OCS could be paid.

**Agency response:** The DVLA said that the clamping and enforcement action were correct. It said it could not refund Mrs AB the fine that had been imposed by the court.

**ICA outcome:** The ICA found it difficult to disentangle the chronology. He said it was not in doubt, however, that the clamping had been correct as the vehicle was SORNed and on the public road (in a visitors parking place in a cul de sac where Mrs AB lived). He was also content that the DVLA could not refund a fine imposed by the court. But he did find that on one occasion Mrs AB had been unable to pay the OCS because the prosecutor had not updated the system with a new court date. In these circumstances, the ICA felt there had been maladministration and recommended a consolatory payment of £100.

**Young vehicle keeper learns hard lesson**

**Complaint:** Mr AB complained about the clamping and removal of his son's vehicle as it was untaxed. He said that his son had believed the vehicle was correctly taxed when he became keeper in place of another relative. He also said that the pound to which his son's vehicle had been taken had given misleading information, and that the removal and storage costs following a second offence should be refunded.

**Agency response:** The DVLA said that a Last Chance letter had been sent to Mr AB's son, and that he had clearly not checked his car's tax status when challenging the first OCS. It had acknowledged a failure to reply to one item of Mr AB's correspondence.

**ICA outcome:** The ICA said that, the mishandling of correspondence aside, he could not identify maladministration on the part of the DVLA. Mr AB's son was young and inexperienced, but vehicle keepership brought with it responsibilities and the law was in strict terms. The ICA could not be certain what had been

said at the pound, and was unable to adjudicate on that aspect of Mr AB's complaint.

**No notice of disposal means direct debit continues to run**

**Complaint:** Mr AB complained that, despite his notifying disposal of his previous vehicle, the DVLA collected four months tax by direct debit (approximately £90). He regarded this as a dishonest practice that he contrasted with his own history of lawful vehicle ownership.

**Agency response:** The DVLA explained that it had only received the notification of disposal much later than Mr AB alleged. It could not refund any full months of paid tax cover, in line with the legislation and its policy, because there was none. For reasons unknown, Mr AB's notification of disposal had not arrived or been processed in Swansea.

**ICA outcome:** The ICA had no scope to criticise the DVLA for following its standard policy. Mr AB had had an opportunity to follow up on the non-receipt of the disposal notification from the DVLA. Had he done so, then three of the four months of tax that he was complaining about would not have been taken.

**Late notification of SORN**

**Complaint:** Mr AB complained that, although he had notified SORN on the last day of the month (month 1), the DVLA had withheld a month's refund of Vehicle Excise Duty.

**Agency response:** The DVLA explained that, as the notification had arrived within month 2, VED for month 2 could not be refunded. It justified its position with reference to legislation.

**ICA outcome:** The ICA concluded that this was a policy matter over which he had no jurisdiction. He could not uphold the complaint.

**Poor value when taxing on last day of month**

**Complaint:** Mr AB complained that the DVLA had taken a year's tax from him when he taxed his car on the last day of the month. He had therefore paid for 12 months but received just 11 months and a day of tax cover in return. He also complained that the Agency had collected tax from himself and the disposing keeper for the same period of time.

**Agency response:** The DVLA set out the legislative and policy basis of its tax collection regime, explaining that matters of liability for tax were determined by the Exchequer.

**ICA outcome:** The ICA regarded this as a complaint against policy, the contents and statutory basis of which had been adequately explained by the DVLA in its correspondence with Mr AB. He could not uphold the complaint.

---

**A month's tax pays for less than 48 hours**

**Complaint:** Mr AB had purchased a vehicle at the end of the month and then taxed it. He complained that he had spent a full month's tax on what amounted to less than 48 hours.

**Agency response:** The DVLA had explained that tax was for whole months and not transferable.

**ICA outcome:** The ICA said that he sympathised with Mr AB but the DVLA had applied the law as Parliament intended, and there had been no maladministration. Concerns about taxation were for the political process not a complaints system, and Mr AB might wish to use the opportunity of the General Election to test the views of all candidates in his constituency.

---

**Complaint about double taxation**

**Complaint**: Mr AB complained that both he and the man to whom he had sold his car had paid VED for the following two months. He said this was double taxation.

**Agency response**: The DVLA said that notification of the change in keepership had not been received and the direct debits for Mr AB had therefore continued.

**ICA outcome**: The ICA said that he understood Mr AB's view that double taxation was unfair. However, this was the way in which the legislation on vehicle taxation was worded, and he could not criticise the DVLA for applying the law.

---

**Company vehicle correctly enforced**

**Complaint:** Mr AB complained in respect of enforcement action taken against a company vehicle. He said it was only on the road to allow a tow truck to take it for scrappage. The truck had been unable to pick up the vehicle on time because of other parked vehicles.

**Agency response:** The DVLA said that the vehicle was subject to SORN and should have been taxed before being placed on the road - even for just a short time.

**ICA outcome:** The ICA said that that he sympathised with Mr AB's company, but there was no question that the enforcement action was lawful. He could not ask the DVLA to pick and choose which customers to believe. In addition, the DVLA had been correct to say that, in law, having a SORNed vehicle on the road was a more serious offence than one that is simply untaxed. The ICA could not overturn the OCS or make any recommendations.

---

**A public highway or private property?**

**Complaint:** Mr AB complained about an OCS imposed for having a SORNed vehicle on the public highway. He contended that the location was in fact private property.

**Agency response:** The DVLA said it was content that the location was in fact part of the highway, but it would consider any further evidence that Mr AB wished to provide.

**ICA outcome:** The ICA said he could not adjudicate upon whether the location was in fact part of the highway, but the photograph on the DVLA file and information on Google Maps suggested very strongly that it was. The DVLA had acted properly in saying it would consider any contrary evidence. The ICA could not uphold the complaint but had agreed with the DVLA that the deadline for payment of the OCS could be extended. However, given that it had been outstanding for five months, no further extension would be appropriate.

---

**Inappropriate enforcement action against customer who was abroad**

**Complaint:** Mr AB complained about two penalties for breaching Continuous Insurance Enforcement (CIE). He said he had had no intention of flouting the law, but had not received the Insurance Advisory Letters (IALs) as he had been abroad.

**Agency response:** The DVLA had said that it had no discretion in the matter.

**ICA outcome:** The ICA read the papers and agreed with Mr AB that he had shown no intention of breaking the law, and could not have received the IALs as he was abroad following his retirement. The DVLA had also shown poor service in not responding promptly to two of Mr AB's letters. He therefore invited the DVLA to consider a consolatory payment of £100, and when this was agreed he closed the case as not upheld as there was no remaining detriment to make good.

---

**Customer says he cannot afford to pay road tax**

**Complaint:** Mr AB complained about two penalties imposed for having an untaxed car on the road. He acknowledged that he had broken the law, but said he was unemployed and could not afford road tax. Nor did he have off-road parking to allow him to declare SORN. He asked for the DVLA to show sympathy for his position.

**Agency response:** The DVLA had said that it had no discretion in applying the law. The second of the penalties, having not been paid, had been the subject of a successful prosecution.

**ICA outcome:** The ICA said he could not carry out a review of the court's decision. Since the court had also ordered Mr AB to make back tax covering the date of the first offence, he inferred that this was subject to a judicial decision too (although the DVLA had in fact not taken the first offence to court). Having identified no maladministration either, the ICA could not uphold the complaint.

---

**A mistaken analysis of the Interpretation Act**

**Complaint:** Miss AB complained about the LLP imposed under Continuous Registration. She said she had sold the vehicle to a dealer and informed the DVLA. She also said she had replied to the Last Chance letter. She argued that s.7 of the Interpretation Act meant that she had fulfilled her responsibilities by posting a notification to the Agency.

**Agency response:** The DVLA said it had received no notification. It argued that the law required the Agency to be notified of disposal and it was not sufficient simply to say that a letter had been posted.

**ICA outcome:** The ICA emphasised that he not a lawyer. But he was not aware of any court decision in like circumstances where Miss AB's analysis of

the Interpretation Act had been accepted. In contrast, there was plentiful evidence that the DVLA was not acting maladministratively in applying the law on Continuous Registration as Parliament presumably intended. While he had sympathy for Miss AB, and there was no reason to doubt what she said, he could not uphold the complaint. However, exceptionally, the DVLA had agreed to extend the lower LLP of £40 for a further fortnight, despite it being held at £80 for the previous five months.

**Mistaken clamping of vehicle**

**Complaint:** Mr AB complained about the clamping of his vehicle. He said he had lost two days of work as a consequence.

**Agency response:** The DVLA had acknowledged that Mr AB's vehicle should not have been clamped (a late disposal notice postdating the date of Mr AB's acquisition of the vehicle had cancelled the tax and removed his name from the record), and arranged for the release of the vehicle and the annulling of the charges. The Agency had also made a consolatory payment of £100 but had declined to pay compensation as there was no evidence that Mr AB had actually lost any earnings.

**ICA outcome:** The ICA said that a full review was not required as the DVLA had apologised and made a consolatory payment. The only question for him was whether the decision not to make a compensation payment was correct. The ICA concluded that the DVLA's reasoning was robust, and he did not uphold the complaint.

**The law on road tax refunds**

**Complaint:** Ms AB complained that the DVLA had not refunded the correct amount of VED when an intended car purchase fell through. She said she had had the car for just two days, but had been charged no less than two months' VED.

**Agency response:** The DVLA said it had not been notified of the change in keepership in month 1. Accordingly, by law only the remaining ten full months of VED could be refunded when notification was received in month 2.

**ICA outcome:** The ICA said that the law was clear: VED rebates were for full months when the DVLA received a notification. There had been no maladministration by the DVLA in applying the law, although he understood why Ms AB felt she had been unfairly treated. Having said that, the ICA

deprecated the abuse that Ms AB had been recorded as offering to DVLA staff over the phone.

---

**Customer questions principles behind calculation of VED rebates**

**Complaint:** Mr AB complained that he had received the wrong amount of VED refund when he sold his car. He said he had been deprived of one month's tax that had not been refunded after he had disposed of the vehicle. He said he was pursuing his complaint as a matter of principle.

**Agency response:** The DVLA said that notification had not been received until the month after Mr AB disposed of his vehicle. The refund had therefore been calculated in line with legislation.

**ICA outcome:** The ICA acknowledged that Mr AB felt very strongly. But the law relating to rebates of VED was robust and well-established and only allowed for full months calculated from when the DVLA received notification of disposal. He could not identify any maladministration on the part of the DVLA.

---

**Poorly drafted advice on gov.uk**

**Complaint:** Miss AB complained about the clamping of her vehicle on two occasions. She said she had notified the DVLA of her change of address for her driving licence. She said her direct debit had expired without her knowledge.

**Agency response:** The DVLA had quoted the relevant section of the Vehicle Excise and Registration Act. The Agency had explained that it could not take a change of address over the phone and that customers were advised that both the vehicle and driver records needed to be separately updated.

**ICA outcome:** The ICA said the enforcement action was correct, but he criticised wording on gov.uk as being misleading ("DVLA will write to you if your vehicle's MOT certificate will have run out when your vehicle tax is due to renew") as this is a responsibility of the DVSA. He recommended that it be amended.

---

**Poorly drafted advice to customers regarding direct debits**

**Complaint**: Mr AB complained about the enforcement action taken in respect of his vehicle. He said the DVLA was responsible for not reminding him that his

MOT had expired and that in consequence his direct debit for vehicle tax had not auto-renewed.

**Agency response:** The DVLA said that enforcement had been correct and that it was not responsible for alerting customers if their MoT had expired (this was the responsibility of the DVSA if customers opted into that service). As Mr AB was in receipt of PIP, the DVLA had proactively referred him to the lower rate of VED he could pay.

**ICA outcome:** The ICA commended the DVLA's actions in respect of the reduced rate of VED. He said the enforcement action was correct, but he criticised the wording of the automatic confirmation of a direct debit instruction which appeared to suggest that direct debits would auto-renew unless the customer advised differently, which was not the case. The ICA again criticised the wording on gov.uk (as in the case above). He recommended that both be amended.

## (iv): OTHER CASES - DRIVERS

**Motorcycle misery #1**

**Complaint**: Mr AB complained that his motorcycle entitlement had been removed from his driving licence when it was re-issued after he had lost it on a trip to America. He insisted that he had claimed it within the two-year statutory period and ascribed its absence to processing error by the DVLA.

**Agency response**: The DVLA could find no record of the entitlement ever having been reflected on Mr AB's record (a copy of the pass certificate was made available by Mr AB and there was no question that he had passed his motorcycle test on the date that he claimed). The DVLA reiterated the position that, in the absence of a copy of the original licence bearing the entitlement, it had no discretion to vary the rules.

**ICA outcome**: The ICA noted that the DVLA records did not include any reference to full motorcycle entitlement having been added to Mr AB's driver record. Nor could any trace of the completed pass certificate and application arriving within the prescribed two-year window be found. The ICA therefore did not regard the DVLA's decision that it could not licence Mr AB under sections 89 (1) (a) or (b) of the Road Traffic Act 1988 (as amended) as unreasonable. He did not uphold the complaint.

**Motorcycle misery #2**

**Complaint**: Mr AB, who had ridden motorbikes since the 1960s, complained that the DVLA had removed his "A" motorcycle entitlement when his licence had been renewed, substituting it for a tricycle entitlement. Mr AB submitted evidence in the form of his counterpart licence and international driving permits from the 1970s. He also highlighted instances where he had needed to produce evidence of full entitlement in court. He characterised the DVLA's responses as 'hogwash'.

**Agency response**: The DVLA searched its analogue and digital databases for variations in Mr AB's name and details, to no avail. It set out its standard requirements (in essence, an original or copy of a full licence). It did not agree with Mr AB that the evidence he furnished was sufficient for it to grant a motorcycle licence.

**ICA outcome**: The ICA noted the detailed searches that had been undertaken and the fact that Mr AB had not met the DVLA's standard requirement for the granting of missing entitlement. The ICA asked Mr AB to provide a copy of his international driving permit that showed the page where stamps had been made by the issuing body against specific driving entitlements. This clearly demonstrated that the issuing body (the Automobile Association in the 1970s) had been satisfied that he held a motorcycle entitlement and had issued a permit accordingly. The DVLA did not accept that this was sufficient and maintained its position that Mr AB would have to undergo driving theory and practical tests. The ICA regarded the outcome as perverse and unfair, but he was unable to uphold the complaint.

---

**Missing documents**

**Complaint**: Mrs AB complained that the DVLA sent her driving licence renewal form and driving licence in error to a complete stranger after she had applied to renew her entitlement. She feared that, although the recipient made contact promptly and returned the documents by special delivery, her information could be used for nefarious purposes. She was not satisfied by the DVLA's investigation nor by its offer of a £75 consolatory payment and two years' subscription to a data protection service.

**Agency response**: The DVLA established that a simple clerical error had led to the dispatch of the paperwork and licence to the wrong address. It did not agree with Mrs AB that her medical details had been referred to the third party as she had not ticked the relevant boxes on the renewal form the first time she had sent it (this was why the application had failed).

**ICA outcome**: The ICA did not think that Mrs AB's experience approached any of the categories of severe distress, embarrassment or inconvenience provided in DfT guidance. He acknowledged that it had been a worrying time, but he could not see that any party with improper intentions would have made contact so openly and readily as the recipient of the licence. He felt that a further consolatory payment of £75 should be made to Mrs AB with £25 being sent directly to the original recipient of the information by way of a goodwill gesture. He partially upheld the complaint.

---

**Rudeness by member of staff**

**Complaint**: Ms AB complained that her identity documents had not been returned by the DVLA with her new driving licence, after she had applied to renew it and notify a change of address.

**Agency response**: The DVLA explained that its arrangements for the dispatch of documents following driving licence issue were well advertised, and pointed Ms AB to the information accompanying the D1 form and attached to the leaflet assisting drivers in completing it. It established that the documents had been sent to the correct (new) address and advised Ms AB to raise the matter with the Royal Mail. Its investigation led it to uphold Ms AB's complaint of rudeness on the part of a DVLA staff member on the phone.

**ICA outcome**: The ICA agreed with the DVLA that its arrangements for the return of confidential documents were sufficiently well advertised to driving licence applicants. The ICA could not uphold the complaint in the absence of evidence that the DVLA had fallen into error in its handling of the application. However, he felt that, although robust management action had been taken in relation to the complaint about the phone call, some remedy was due to Ms AB herself. He therefore recommended that the DVLA make a consolatory payment of £40 to reflect its regret at the way the call had been handled.

---

**Lost marriage certificate**

**Complaint**: Mrs AB complained that the DVLA had lost her original marriage certificate after she had sent it in in order to update her driving licence with her marital name. She was also deeply dissatisfied by some of the responses she received from the Agency, some of which she felt implied that she had been lying about providing the driving licence and marriage certificate with her application.

**Agency response**: The DVLA had initially refused the application on the grounds that the documentation had not been provided. Mrs AB pointed out

that her driving licence had been returned to her, but not her marriage certificate. The DVLA could not therefore blame the Post Office. After further enquiries, the DVLA accepted that the most likely explanation was loss of the certificate in transit. It apologised to Mrs AB and offered to reimburse her the cost of a new certificate when she obtained one (because the marriage had been recent, it was not registered centrally and the DVLA was unable to secure the certificate for her). It also made a consolatory payment of £100.

**ICA outcome**: The ICA considered that the claim fell within the DfT guidance definition of "gross inconvenience" and, having looked at consolatory awards in similar cases, he reflected that the DVLA should pay a further £100.

---

**Another lost marriage certificate**

**Complaint:** Mrs AB complained that the DVLA had lost her marriage certificate when she had applied to change her name on her driving licence.

**Agency response:** The DVLA had said that it had no record of receiving the licence and correct procedures had been followed in these circumstances.

**ICA outcome:** As in most such cases, the ICA could not say what had happened to Mrs AB's missing document. All he could assess was whether the DVLA staff had followed the approved procedures (involving signing the application, and signing and countersigning the missing documents log). The ICA said it was not necessary for the DVLA to seek the views of the Post Office where Mrs AB sent her application, as this would not confirm whether the documents had actually arrived. He hoped Mrs AB would be able to obtain a replacement marriage certificate from the country abroad where the wedding had taken place, although he appreciated the difficulties. Without making a formal recommendation, the ICA said he hoped the DVLA could take a flexible approach to identity documents, rather than invariably insisting on originals.

---

**Loss of Residency Permit**

**Complaint:** Mrs AB complained about the loss of her Biometric Residency Permit (BRP) that she had supplied alongside her passport when applying for her provisional driving licence. She said the document must have gone missing at the DVLA.

**Agency response:** The DVLA denied responsibility for the loss of the document. It said that its member of staff had recorded contemporaneously that the BRP was not included with the application and passport.

**ICA outcome:** The ICA said that it was not possible, even on the balance of probabilities, to hold the DVLA responsible for the loss of the BRP. He did not doubt either the account of Mrs AB or of the DVLA member of staff. Nor could he say if the BRP had gone astray while in the charge of the Royal Mail. Mrs AB had suffered much inconvenience, but there had been no evidence of maladministration on the part of the DVLA.

---

**Access to DVLA website selling cherished plates**

**Complaint**: Mr AB complained that he had been unable to access the DVLA website when taking part in an online sale of cherished plates. He said that FOI enquiries had revealed that the big plate re-sellers had had no such difficulties, and had purchased large quantities of plates now available to purchase from them at a huge mark-up. He asked if they were prioritised or had special access to the DVLA systems.

**Agency response**: The DVLA said that there was no special access for anyone. It acknowledged that there had been technical difficulties with the particular sale about which Mr AB complained, but speculated that the large commercial re-sellers employed banks of temporary staff when new registrations were released.

**ICA outcome**: The ICA said that the DVLA had confirmed to him that no customers were prioritised over others or had special access to DVLA systems. However, while the process was fair, it was clear that the outcomes were not. Just five purchasers had claimed some 1,500 plates. He recommended that a copy of his report be shared with the Chief Executive for her consideration. The ICA was also able to include technical advice for Mr AB, although the DVLA was understandably keen to protect details that could be commercially sensitive or render its systems open to abuse. The ICA had suggested that the DVLA might wish to consider a face to face or telephone discussion with Mr AB (who is himself an IT expert) but the Agency declined.

---

**Mistaken cancellation of driving licence**

**Complaint**: Ms AB complained that her licence had been wrongly cancelled some years earlier when she notified the DVLA of the death of her mother. She said she would have been in a very difficult position had an accident occurred or had she been stopped by the police in the interim. She complained about the initial mistake, the time taken to rectify it, and issues related to her Subject Access Request.

**Agency response**: The DVLA had apologised, and made two consolatory payments totalling £100.

**ICA outcome**: The ICA found some of the DVLA's handling to have been very sensitive and thoughtful. However, there had also been significant flaws. It was apparent too that DVLA staff did not understand that s.88 cover to drive could apply in non-medical situations like this one (i.e. Ms AB had made a valid licence application). He said that the DVLA's consolatory payments were not consonant with the maladministration he had found and proposed a further payment of £250. He also recommended that additional advice be offered to staff as to the circumstances when s.88 could apply.

---

**Application for change of name**

**Complaint**: Mr AB complained that the DVLA would not allow him to change his name on his driving licence to remove his middle name. He said that the Department for Work and Pensions and his local electoral authorities had agreed to do this.

**Agency response**: The DVLA said that its procedures were in line with Government policy on identity. Mr AB's name had not been changed by the Passport Office and the DVLA would not do so unless Mr AB supplied a deed poll.

**ICA outcome**: The ICA said that the DVLA's approach could not be deemed maladministrative. But in fairness to Mr AB it should consider the evidence that allowed Mr AB to claim benefits and to vote. It was clear that Government policy on identity was interpreted differently by different Government departments. He invited the DVLA to reconsider (in part in recognition that Mr AB has a unique name). The DVLA replied saying that they would not change their decision – an outcome the ICA believed reflected an approach where 'Policy' trumped common sense.

---

**Need for an extended test**

**Complaint**: Mr AB complained that the DVLA had not alerted the DVSA that he had to take an extended test before gaining his full licence. He said he had wasted the money on a standard driving test which he had passed as the pass had been cancelled.

**Agency response**: The DVLA said that it had no option but to follow the order made by a magistrates' court some 15 years earlier that Mr AB was DTETP'd (Disqualified 'til an extended test pass). It said that Mr AB had had two driver

records in different names and the DTETP was only on the first record. Thus the DVSA would not have known that Mr AB could not take a standard test. The DVLA added that when it was suspected that there were two records Mr AB had not responded to the Agency's correspondence. The two records were only merged after Mr AB complained that the pass had been negated.

**ICA outcome**: The ICA could identify no maladministration on the part of the DVLA. Nor could he accede to Mr AB's request that the test pass be reinstated.

---

**Passport Office glitch**

**Complaint:** Mr AB complained that his electronic driving licence renewal would not process meaning he had to get new photographs taken and renew by terrestrial post. Mr AB noted that his wife had been able to renew on the same day with exactly the same documentation without any problem.

**Agency response:** The DVLA initially ascribed Mr AB's problem to a medical marker on his record. This did not prove to be the case. It then stated that all new passports had been issued without digital signatures meaning that customers' photographs were not transferring over from Her Majesty's Passport Office. When Mr AB challenged this, referring again to the fact that his wife's transaction had gone through, the DVLA checked with the Passport Office. It confirmed Mrs AB's account that she had been able to renew online. It established that the problem had actually been a glitch within the Passport Office systems. It apologised profusely for providing incorrect information to Mr AB and his record was rectified to enable future transactions to go through.

**ICA outcome:** The ICA agreed with Mr AB that the DVLA could have been clearer about the true cause of the problem much sooner. Extensive enquiries had eventually established that the glitch did not reside in the DVLA systems. The ICA judged that the DVLA had apologised sufficiently for not recognising the real cause of the problem in the early stages. Given the absence of substantive error, and the many steps taken by the DVLA to assist, the ICA did not uphold the complaint that there was un-remedied injustice.

---

**Failure to apply discretion when negating test pass reversed following ICA review**

**Complaint:** Mr AB complained that the DVLA had negated his test pass when it became clear that his original licence application had an incorrect date of birth. He said he had come to the UK as a refugee and only become aware of the discrepancy when issued with a new passport.

**Agency response:** The DVLA had initially accused Mr AB of deliberate fraud, but it had subsequently acknowledged that this was not the case. However, it had insisted that by law the test pass had to be negated.

**ICA outcome:** The ICA said all his sympathies were with Mr AB. He had come to this country as a refugee, raised a family and established a successful business, and the only body appearing not to assist him was the DVLA. The ICA could see no merit in requiring Mr AB to re-sit a theory and practical test. Moreover, it was clear that the legislation provided the DVLA with discretion to re-issue Mr AB with a licence and not negate his test pass following an innocent mistake. The ICA made four recommendations - all of which were accepted by the DVLA - and which the Agency accepted had implications for other customers with no papers, or incorrect ones. In particular, Mr AB would have a single point of contact to guide him through the re-application that would enable the DVLA to re-consider its decision.

---

**Change of policy when errors are inadvertent**

**Complaint:** Mr AB complained that the DVLA had negated his test pass because of an inadvertent error in his date of birth details. He had taken a new test but the original test pass was no longer on his licence.

**Agency response:** The DVLA had first said that the test pass was invalid because the details on Mr AB's licence were incorrect. However, following the change of policy resulting from the case reported immediately above, the Agency had reconsidered. The test pass was to be reinstated and the DVLA would refund the costs of the second test.

**ICA outcome:** Given what the DVLA had now agreed, the ICA said there was no more he could achieve. He was content that the DVLA had put matters right.

---

**Loss of data should trigger consolatory payments**

**Complaint:** Mr AB complained that the DVLA had sent his driving licence to the wrong address leading to a loss of his personal data. He also said that he had had to chase the DVLA at every point in order to learn what had happened. He threatened to take legal action.

**Agency response:** The DVLA had accepted that it had sent the licence to the wrong address and efforts to retrieve it had failed. It had offered £150 for poor service.

**ICA outcome:** The ICA said that if Mr AB wished to pursue a claim through the courts that was a matter for him. As it was, the offer of £150 was not so low, or so out of line with the guidance, that he could properly intervene. However, he entirely understood Mr AB's concern about his data, and Mr AB was a blameless victim. The ICA recommended that DVLA staff should be reminded to keep victims of data loss up to date with developments, and that the business area should be reminded that loss of data should almost always trigger a consolatory payment in addition to an apology.

---

**Customers short-changed when renewing photocards early**

**Complaint:** Mr AB complained that the DVLA had renewed his driving licence but it would expire ten years after the renewal was processed, but not ten years after the former licence would have expired. He said this penalised those who renewed their photocards early, and was a breach of the Consumer Credit Act.

**Agency response:** The DVLA acknowledged that those who renewed early would lose up to six weeks compared to those who renewed later. However, it said this was how the system was set up.

**ICA outcome:** The ICA said that the DVLA now publicised the fact that licences would run from the date of processing and not the former expiry date. This had been done in response to ICA reports in 2012 and 2013. Given that there are so few complaints on this issue (this was the first since 2016), the ICA was content that it would not be appropriate to ask the DVLA to re-design its whole system. However, the current arrangements were not perfect as some customers would not read all the guidance notes. The ICA said he could offer no view on whether the Consumer Credit Act had been breached (Mr AB had received a refund from his credit card company); if Mr AB remained of that view he would need to take his own independent legal advice.

---

**Sensible conclusion to complaint about licence lost in the post**

**Complaint:** Ms AB complained about the loss of her new driving licence in the post. She was worried about identity theft and used a premium phone line to contact the DVLA. She asked for her costs to be refunded.

**Agency response:** The DVLA said it would not repay customer's costs if they used premium phone services unnecessarily. It also said any responsibility for the lost document was with the Royal Mail, and that a replacement licence had now been issued.

**ICA outcome:** The ICA said that he agreed with the DVLA that premium phone calls should not be refunded. However, noting two elements of poor service (the member of staff in the contact centre had not shown empathy, and a DVLA letter had failed to engage with the issues Ms AB had raised), he invited the DVLA to consider an ex gratia payment of £40. This was readily agreed, and the ICA was able to close the case without further ado.

---

**Customer's responsibility for delay in licence re-application**

**Complaint:** Ms AB alleged that inefficiency, poor communications and delays by the DVLA had deprived her of her driving entitlement after she had reapplied having been convicted of drink-driving. Her initial applications had failed because she had completed the cheques incorrectly. Ms AB argued that the DVLA should have been more specific about what was wrong with the cheques, and she claimed that the re-application pack had not been sent out 90 days in advance as it should have been. She alleged £800 losses and pressed the Agency for a compensation payment.

**Agency response:** The DVLA's review of the documentation led it to conclude that the D27 application pack had been sent out correctly as Ms AB had used it to re-apply. She had repeatedly miswritten the cheques and, when a cheque had been correctly completed, the bank bounced it. The DVLA undertook to expedite the application but could not move it forward until payment had been received. It addressed Ms AB's other complaints about administration and declined to make any payment.

**ICA outcome:** The ICA did not consider that any case was made out in respect of alleged error by the DVLA. It fell to Ms AB rather than the Agency to take responsibility for the fact that the three initial transactions had failed. Having considered the rules on compensation, the ICA concluded that there was no plausible case for Ms AB to receive a payment given the many opportunities open to her to mitigate the impact of DVLA bureaucracy. He did not uphold the complaint.

---

**Lost motorcycle entitlement**

**Complaint:** Mr AB had complained over a 13 year period that his motorcycle entitlement did not show on his licence despite the fact that he had passed the test.

**Agency response:** The DVLA repeatedly searched its records for evidence that the pass slip had been received within the two-year statutory window

following Mr AB passing the test. No such evidence could be found and the Agency therefore did not feel that it could lawfully license Mr AB.

**ICA outcome:** The ICA identified no failing on the part of the DVLA, and he accepted the Agency's view that it had no scope within policy to change the licensing position. He could not therefore uphold the complaint.

---

**Mistaken removal of provisional bus driving entitlement**

**Complaint:** Mr AB complained that the DVLA had wrongly removed his provisional bus driving entitlement. In consequence, he was unable to take part in a planned training course and was without any source of income for several weeks.

**Agency response:** The DVLA had acknowledged its error and paid compensation (less the normal 20 per cent for income tax). At the time of making the ICA referral, the DVLA had also made a consolatory payment of £350.

**ICA outcome:** The ICA said that it was clear there had been maladministration by the DVLA. However, the payment of compensation and the consolatory payment (in addition to the apologies) were as much as could be achieved in returning Mr AB to the position in which he would have been had the maladministration not occurred. In these circumstances, the formal outcome was to not uphold the complaint, notwithstanding the acknowledged maladministration and its impact on Mr AB (including the long term impact on his credit rating given that he had got into debt when without income or a claim for benefits).

---

**A question of consent**

**Complaint:** Mr AB complained that the DVLA had not investigated properly a malicious police-authored report of dangerous driving due to a health condition. He refused to give permission for the DVLA to investigate his fitness to drive and then complained repeatedly when his entitlement was revoked.

**Agency response:** The DVLA set out its policy and powers and apologised for inapplicable wording in some of its standard letters. In the absence of consent to investigate, the Agency affirmed Mr AB's revocation.

**ICA outcome:** The ICA considered that the DVLA's handling of the case had been conducted within policy, and appropriate apologies been given where

customer service had fallen below an acceptable standard. He did not uphold the complaint.

**Old licence destroyed under standard procedures**

**Complaint:** Mr AB complained about the fate of his paper licence when he submitted it to the Fixed Penalty Office following a speeding fine. He said it had been destroyed by the DVLA, but the Agency had denied receiving it.

**Agency response:** The DVLA had indeed initially denied receiving the licence but had then acknowledged that it had been received and destroyed under standard procedures as it was not the most recent issue. After further correspondence, the DVLA had acknowledged poor service and made a £20 consolatory payment. It had also processed a replacement photo licence free of charge.

**ICA outcome:** The ICA said that there was no remaining injustice to remedy. The only maladministration had been the failure of DVLA staff to know their own procedures. The consolatory payment was appropriate.

**Test pass correctly negated but poor DVLA handling**

**Complaint:** Mr AB complained that the DVLA would not backdate his test pass to the date of his first successful test. That pass had been negated as Mr AB had not taken an extended test as required by the court.

**Agency response:** The DVLA had said it could not backdate the test pass as the initial test had been invalid. The Agency had acknowledged failures on its part (including that it had not checked Mr AB's passport when issuing his provisional licence, meaning that the date of birth was wrong, and it had therefore not come to light that Mr AB had been disqualified as an unlicensed driver years previously). Consolatory payments totalling £260 had been made.

**ICA outcome:** The ICA said that the consolatory payment was appropriate and in line with guidance. It was clear that Mr AB had not passed a valid test as he had been ordered to take an extended test and had not done so. Although the DVLA had made mistakes, Mr AB also had to take responsibility for what the court had ordered. However, the ICA criticised aspects of the DVLA's explanations which relied upon speculation as to which Regulation was involved in negating the test pass as the DVLA had no evidence for when Mr AB had taken his theory test.

**Test pass not recognised**

**Complaint:** Mr AB complained over a 20 year period that the DVLA refused to recognise his test pass of the early 1990s, and required him to re-sit a driving test from scratch before it would license him. He explained that he had been unable to submit his pass certificate within the requisite two-year period because he had been required to surrender it to the court. His understanding had been that the court would refer it to the DVLA, but this evidently had not happened.

**Agency response:** The DVLA stated that, given the legislation that applied at the time - section 89 (1) (a) of the Road Traffic Act 1988 as amended - it had no leeway to license Mr AB in the absence of proof that he had passed the driving test within the two-year period preceding his application. It looked further into his report that he had surrendered the test pass to the court but the position remained the same.

**ICA outcome:** The ICA was unable to criticise the DVLA for acting within the parameters of law and policy. He did not uphold the complaint.

---

**A DVLA investigation**

**Complaint:** Mr AB complained in relation to an investigation into reports prepared by his company for vocational drivers. The DVLA had refused to accept such reports while its investigation continued.

**Agency response:** The DVLA said it would not discuss its investigation or how long it would last while enquiries were ongoing.

**ICA outcome:** The ICA said that he could not offer an authoritative legal judgment, but it seemed to him that the DVLA was entitled to take the view that reports from Mr AB's company would not be accepted while the investigation continued. However, the ICA had no doubt of the impact upon Mr AB and his company, and he hoped that his report would act as a stimulus to the DVLA to complete the investigation as speedily as possible.

---

**Brit abroad applies for foreign licence**

**Complaint:** Mr AB complained that DVLA mistakes had meant that his entitlements were not transferred to a foreign licence.

**Agency response:** The DVLA had acknowledged that in response to a request via RESPER (*Réseau permis de conduire*/Drivers Licence Network) the Agency had said that Mr AB only had full Category B entitlement and not Category A as well. The error had been put right the next day, but nonetheless the authorities where Mr AB now lives had only processed the Category B (car) entitlement and not Category A (motorcycles). An apology had been offered.

**ICA outcome:** The ICA said that the mistake was probably due to human error caused by workload pressures in the run-up to Brexit when many people living abroad had applied for foreign licences. He felt that the DVLA had done as much as could be expected to put right the initial error and, while it was clear why Mr AB was unhappy that what should have been a routine procedure had gone awry and he part upheld the complaint, there were no recommendations he could make.

---

**Excessive secrecy in relation to European exchange arrangements**

**Complaint:** Mr AB complained that the DVLA would not register an imported motorcycle.

**Agency response:** The DVLA said that the information from the foreign jurisdiction was that the vehicle had been scrapped. After further enquiries, Mr AB had been granted a registration and allocated an age-related plate.

**ICA outcome:** The ICA said that the fundamental issue had now been sorted. But he was critical of the excessive secrecy applied by the DVLA to the EUCARIS (European Car and Driving Licence Information System) process for exchanging registration details. He part upheld the complaint, and recommended that the DVLA consider what learning could be taken from the handling of Mr AB's correspondence. In reply, the DVLA said that First Registration staff would be reminded to be as helpful as possible to customers in similar circumstances.

---

**A case of identity fraud**

**Complaint:** Mr AB complained about the DVLA's response to his report that a driving licence in his name had been fraudulently obtained.

**Agency response:** The DVLA said the fraudulent licence had now been cancelled, and had explained its processes when applications are made online. It had agreed to pay for two years subscription to CIFAS (formerly the Credit Industry Fraud Avoidance System) for Mr AB.

**ICA outcome:** The ICA said that he entirely understood Mr AB's concern about identity fraud. However, he could not design the DVLA's processes for it. The online system was vulnerable to fraud but also offered many advantages to customers. The ICA recommended that his report be shared with the chief executive so she was alive to the issue. He also noted that it was the DVLA's practice since mid-2019 to report all incidents of fraud to CIFAS.

---

**Restriction code on licence**

**Complaint:** Mr AB complained regarding that his driving licence contained restriction code 78 indicating that he could only drive automatic vehicles. He said he had passed his test on a manual vehicle and that his father and a friend could vouch for him.

**Agency response:** The DVLA said its records only showed Mr AB as having a licence for automatic cars. It had approached the DVSA but unfortunately the ten year retention period for test passes had expired. The DVLA said that statements from Mr AB's father and friend would not constitute sufficient evidence to change his licence.

**ICA outcome:** The ICA said that that he sympathised with Mr AB that a mistake made more than a decade ago meant that Mr AB had lost his entitlement to drive manual vehicles. However, a minor issue relating to correspondence aside, he could identify no maladministration on the part of the DVLA. It had processed an automated test notification from the DVSA (a process phased in from June 2004), and Mr AB had not raised the issue for more than ten years. It was also reasonable of the DVLA to say that statements from Mr AB's father and friend would not constitute sufficient evidence to amend the licence.

---

**Licence codes and related matters**

**Complaint:** Mrs AB made a broad complaint relating to the former counterpart licence, the codes on her licence and the information available. She also said she had no knowledge of two endorsements from many years ago.

**Agency response:** The DVLA had explained that the counterpart licence had been abolished in 2015. It had also explained the codes it uses on licences, but said that any concerns Mrs AB had about the endorsements should be directed to the sentencing court.

**ICA outcome:** The ICA said he was content that the DVLA had provided full answers to Mrs AB's many questions. He was also of the view that the

correspondence should now be brought to a close. He found no maladministration on the part of the DVLA - and in fact was impressed by the responses Mrs AB had received.

---

**Alleged mistake on driving licence**

**Complaint:** Mr AB complained that the DVLA had recorded the wrong date of birth on his driving licence. He said that a former partner had changed the date maliciously and that he had actually been born 12 years after the date used by the DVLA. He said that other Government bodies had recognised the wrong date had been recorded.

**Agency response:** The DVLA said that Mr AB had repeatedly applied for licences using the date recorded. It also said it had a clear link with records for his first provisional licence and when he passed the driving test. It said that if its dates were incorrect then Mr AB would have passed his test when still a child.

**ICA outcome:** The ICA said it was not for him to determine Mr AB's date of birth, but he was content there had been no maladministration by the DVLA. The ICA's own enquiries had also strongly suggested that the recorded date of birth was correct. The actions or decisions of other Government bodies were of no relevance given the DVLA's own records.

---

**Documents go astray but customer responsible for costs of flight and hotels**

**Complaint:** Mr AB complained that maladministration by the DVLA had led to him needing to obtain a replacement passport and losing money on flights and hotels he had booked for him and his family. He sought compensation.

**Agency response:** The DVLA had accepted that, while it had not in fact lost Mr AB's passport, its whereabouts in the Agency were not known for some time. It had agreed to meet all the costs of the replacement documentation, and made a consolatory payment of £100, but said it would not meet the costs of Mr AB's flights/hotel rooms which he had purchased but been unable to use because he was in hospital (there was some uncertainty whether the visas had been obtained in time either).

**ICA outcome:** The ICA said Mr AB had purchased non-refundable tickets and that was at his risk. It appeared he had also failed to arrange travel insurance, and that too was at his own risk. However, the poor service provided by the

DVLA was not adequately reflected in the consolatory payment which the ICA increased from £100 to £250.

## (v): OTHER CASES – VEHICLES

**False notification of scrappage**

**Complaint:** Mr AB complained that he had had to provide confirmation that his vehicle had not been scrapped following the DVLA being informed by an Authorised Treatment Facility of a Certificate of Destruction (CoD). He said that in those circumstances the DVLA should be questioning the ATF not the innocent customer.

**Agency response:** The DVLA had acknowledged the inconvenience caused. But it said it processed ATF referrals electronically. It contacted customers and asked for evidence that their vehicles had not been scrapped to ensure that things were put right as quickly as possible.

**ICA outcome:** The ICA said it was clear that Mr AB had been inconvenienced, but the mistake had been by the ATF not the DVLA. It was not for the ICA to design the Agency's processes, but contacting the customer had ensured that matters were corrected within ten days. It was for the DVLA to decide if it should manually check CoD notifications by comparing the registration number and VIN provided, but given the volume of vehicles destroyed each year this would be very expensive to introduce. There had been no maladministration by the DVLA and the ICA could not uphold the complaint.

**DVLA revisits consolatory payment following poor advice relating to re-built motorcycle**

**Complaint:** Mr AB complained about advice he said he had received from the DVLA contact centre that had resulted in him importing a used frame when rebuilding his motorcycle. In consequence, the bike had been Q-plated.

**Agency response:** The DVLA accepted that the advice from its contact centre had been vague, and had offered a consolatory payment of £100.

**ICA outcome:** The ICA said he could not question the decision to Q-plate the bike since this was a matter of DVLA policy. However, he invited the DVLA to listen to the recording of the call made by Mr AB and consider if the consolatory sum was sufficient, given that Mr AB had been put to considerable cost and inconvenience in importing the used chassis. The DVLA agreed to do so and

increased the consolatory payment to £250. The ICA said he was content that was in line with what he would have awarded, the sum awarded in a similar case, and the relevant guidance. He therefore closed the case at that point.

**Financial disincentive to converting to lower emission fuels caused by system flaw**

**Complaint:** Ms AB complained that when she converted her vehicle to a lower emission fuel she was no longer able to pay road tax by direct debit. Instead, she had to pay for six or twelve months tax before direct debits could be restored.

**Agency response:** The DVLA had simply said that following a change of taxation class the direct debits could not continue.

**ICA outcome:** The ICA was critical of the DVLA's responses. It was clear that a system flaw meant that Ms AB would have to pay for at least six months tax before direct debits could be restored. The ICA said he could not design the DVLA's systems, or determine its investment decisions. But he was sympathetic to Ms AB, and there was clearly no public interest in there being a financial disincentive to people converting to lower emission fuels. He therefore recommended that a copy of his review be shared with the DVLA's chief executive so that she was personally aware of the issue.

**DVLA policy on receiving V62 application for new registration certificate**

**Complaint:** Mr AB complained that the DVLA had issued a new registration certificate (V5C) on receipt of a V62 form for his vehicle that had been reported stolen. He said that his insurance company had refused to pay out for his losses on the grounds that the DVLA issuing a registration certificate showed that the vehicle was not stolen. He thus held the Agency responsible and asked for compensation matching his losses.

**Agency response:** The DVLA said it was its policy to issue V5Cs in such circumstances, in line with advice from the police. This was so as not to alert the probable criminal. The DVLA added that a V5C was not a certificate of ownership, and it could not intervene in any dispute between Mr AB and his insurer.

**ICA outcome:** The ICA said that he could not adjudicate upon DVLA policy, but its approach in such cases did not seem maladministrative since it followed police advice. He endorsed the view that compensation was not payable. The

ICA said that Mr AB might want to share his letter with the insurance company if their grounds for not paying out was the issuing of the V5C.

---

**Failed online transaction to SORN vehicle**

**Complaint:** Mr AB had tried to SORN his vehicle online. A week after the attempt he discovered that the vehicle was still showing as taxed. He complained that the DVLA's system must have failed. He asked for the SORN to be backdated to the first attempt.

**Agency response:** The DVLA said its system showed that the user had abandoned the transaction. It said it had no evidence of any system failure at the time in question.

**ICA outcome:** The ICA said he sympathised with Mr AB in that what should have been a straightforward transaction had led to inconvenience and escalating correspondence. However, he had no evidence of maladministration by the DVLA, and the Agency was entitled to rely on its electronic record and the absence of wider system problems. The Agency had also been right to say that, by law, a declaration of SORN cannot be backdated. If Mr AB took a different view, he would need to take separate legal advice.

---

**Fraudulent address on registration certificate**

**Complaint:** Mr AB had been the victim of fraud in that his address had been falsely used on a vehicle registration document. In consequence, he had received enforcement letters from a variety of organisations, and visits to his home by debt collection agencies, in relation to traffic and parking violations. He said this had caused stress and anxiety, and he blamed the DVLA. Mr AB said the Agency had failed to act on his letters and phone calls, that its processes did not prevent fraud, that there had been a data breach, and that the DVLA discriminated against disabled customers.

**Agency response:** The DVLA said that it had no trace of contact from Mr AB during the period he said he had written and called. Once it became clear that the registration was incorrect, it had acted speedily to remove Mr AB's address from the record. It denied any other maladministration.

**ICA outcome:** The ICA said he could not get to the bottom of the matter. However, it was clear that the DVLA's records showed no contact from Mr AB in the relevant period, and the vehicle record had not been accessed. The ICA said he had no responsibility for the DVLA's processes, but it was apparent that

they did not prevent the sort of fraud of which Mr AB had been the innocent victim. As in similar cases, he recommended that a copy of his report be shared with the DVLA chief executive for her consideration.

## (vi): OTHER CASES – ACCESS TO DATA

**'Reasonable cause' for sharing data**

**Complaint:** Mr AB complained about the sharing of his data with a parking company. He sought an investigation into the company concerned. He also argued that the 'reasonable cause' release of data should not have applied in that the strict time limits under the Protection of Freedoms Act (POFA) relating to CCTV cameras on private land had not been met.

**Agency response:** The DVLA had relied upon the 'reasonable cause' test in the Regulations. It had pointed Mr AB towards the British Parking Association and the Information Commissioner.

**ICA outcome:** The ICA said that the DVLA was not the regulator of the parking industry, and it was not required to carry out the investigation Mr AB sought. Given the consent of the Information Commissioner it was also entitled to rely on Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002) to release private data to parking companies. Mr AB had raised an interesting point in respect of the POFA, but this would be for the courts or the Information Commissioner to deliberate upon.

## (vii): OTHER CASES – EQUALITY ISSUES

**Fully upheld complaint about special vehicle adaptations #1**

**Complaint:** Mr AB had full-body nerve and brain damage following an accident. He applied to the DVLA to have vehicle adaptation restriction codes removed from his driving licence. He did not fully complete a form and the DVLA wrote to him with the standard warning that it would revoke his entitlement if he did not provide all the information requested. The DVLA had, however, Mr AB's signed consent for enquiries to be made of his medical professionals. Further information about his condition arrived from Mr AB's GP, including the opinion that he was fit to drive (his fitness to drive had never been in question or under investigation in this episode). However, for unknown reasons, the fully completed form Mr AB sent back to the DVLA was not received. The Agency therefore revoked his entitlement. In the correspondence that followed over the next three and a half months, Mr AB complained that the DVLA had failed to

discharge its duties under the Equality Act 2010. His main complaint was that the DVLA refused to contact him by email despite his repeated statements of his needs. Email communication was essential for him to organise and process information. He also complained of other actions and omissions by the Agency.

**Agency response:** In the deadlock after the revocation, the DVLA reiterated its right to revoke for non-compliance, its policy of communicating only by terrestrial post (a necessity where revocation notifications were involved), and the requirement for Mr AB to re-apply from scratch using the relevant forms. The Agency offered to prioritise his case but did not budge in its position that revocation had been justified. As the case was being prepared for ICA referral, the complaints team sought an opinion from the DVLA's senior doctor. This was the first time the medical department had been involved. The senior doctor recommended that the revocation should be lifted, and that Mr AB should be invited to undertake a driving test in line with the standard policy for drivers wishing to have restriction codes removed. (The policy requires the driver to undertake a driving test in a vehicle without the relevant restrictions and should be differentiated from the driving assessments and appraisals applicable where fitness to drive itself is being assessed.) Mr AB passed this with flying colours and was subsequently relicensed, some seven months after the revocation.

**ICA outcome:** The ICA did not think that the evidence pointed to Mr AB being non-compliant. He had completed almost all of the necessary forms, and had provided detailed information about his condition. His GP had also provided information. The ICA could not blame the DVLA for sending its requirements to Mr AB by terrestrial mail. But he did not think that the Agency should have revoked Mr AB's entitlement for non-compliance because he clearly had been complying. And the DVLA should have used the opportunity of the complaint to reconsider its position. Instead, it had taken three attempts by Mr AB to even engage the formal complaints procedure. The ICA was also very critical of the DVLA for refusing to communicate with Mr AB through email. The ICA reminded the Agency of its published equality commitment to provide information in alternative formats. Unfortunately, this commitment was not at the forefront of the minds of the people handling the case. They held the standard, outdated, line that email was contrary to the Data Protection Act. Mr AB argued against this vigorously and persuasively, pointing out that the Agency had his full consent to so communicate. The ICA agreed with Mr AB that a legal requirement to communicate by post in some circumstances (including revocation) did not mean that email could not also be sent. The ICA welcomed the pragmatic and helpful involvement of the DVLA senior doctor that broke the deadlock and led to the restoration of Mr AB's entitlement. The ICA judged that the DVLA should have asked itself much sooner whether the information omitted from the form was such that Mr AB should be kept off the road. Clearly it was not. The ICA could not make any determination about the Agency's compliance with its Equality Act duties. His own view was that

making adjustments to ensure fair and equal access to public services is part and parcel of providing reasonable customer service. He upheld the complaint fully because there had been significant lapses in customer service given Mr AB's cooperation with the DVLA's process and his clearly-stated needs. The ICA recommended that his findings should be disseminated amongst the areas of the Agency involved, including the relevant operational team and the equality team. He also recommended that the DVLA should pay Mr AB £300, and entertain sympathetically any request for compensation he might make for losses he had incurred while his entitlement had been wrongly revoked. Finally, the ICA noted that the referral form used by the DVLA when it sent the case to him had not included the section that asks the referring body to provide details about any special needs. He recommended that the DVLA should ensure that in future staff use the correct template. The DVLA accepted the findings and reflected that it was taking steps to improve electronic communications for customers by making encrypted email available.

**Fully upheld complaint about special vehicle adaptations #2**

**Complaint:** Mrs AB, who needed to drive a vehicle with special adaptations, asked the DVLA how she could get restriction codes (related to some of those adaptations) removed from her driving licence. She was initially told correctly that she needed to pass a driving test without the relevant controls in place in order to have the corresponding restriction codes removed. She failed the test, but the DVSA examiner was clear that the outcome had nothing to do with her adaptation to her disability. She complained that in the ensuing correspondence the DVLA mis-advised her, was rude and unhelpful, and wrongly revoked her driving entitlement. The DVLA refused to review its position despite her repeated challenges and complaints.

**Agency response:** A DVLA doctor became involved and decided, wrongly, that Mrs AB should sit a driving appraisal. This requirement was presented to her within the standard framework where people with a question mark over their fitness to drive must comply with DVLA enquiries. When Mrs AB refused, her entitlement was revoked and this position was upheld throughout her repeated challenges. Eventually, when the ICA pointed out that the fitness framework had been misapplied, the DVLA reinstated her licence and clarified its requirements in relation to the removal of restriction codes.

**ICA outcome:** The ICA noted that the information on file was very unclear in a number of regards, in particular Mrs AB's understanding of which codes she wanted removing and why, the DVSA's view as to whether she was driving legally without specific adaptations, and the DVLA's own position. Unfortunately, after correctly spelling out the requirement to pass a driving test without the no-longer needed controls, the DVLA had fallen into error. The ICA

was very critical of the Agency for not realising this despite repeated escalation of the case. This amounted to discrimination – a person without disability-related adaptations found by a public authority to be driving below the threshold for a driving test pass (for example caught speeding by the police) would not have their entitlement revoked. He recommended that the DVLA should ensure that learning from the complaint was disseminated within relevant departments, and customer-facing advice was published making its policy position clear. The ICA recommended that Mrs AB should receive a consolatory payment of £500 and that any compensation claim she might make, if suitably evidenced, should be looked at sympathetically. He fully upheld the complaint. He emphasised that the DVLA is not an authority on the adaptations that relate to specific codes (that are set within EU guidelines), and that Mrs AB should seek advice from a local specialist who could physically show her which controls relate to which code. He welcomed the DVLA's acceptance of his recommendations and commitment to improving the resources available to its own staff and members of the public.

---

**Poor service for customer who cannot read or write**

**Complaint:** Mr AB complained about the service offered by the DVLA's contact centre in relation to a vehicle tax issue. He said he could neither read nor write, but there had been miscommunication and on one occasion he had been told to write in to the Agency.

**Agency response:** The DVLA had acknowledged poor service and offered a consolatory payment of £150 that Mr AB had rejected.

**ICA outcome:** The ICA felt that the equality issues raised were sufficiently important that a higher consolatory sum should be offered. He invited the DVLA to reconsider. The Agency increased the consolatory payment to £250 which Mr AB accepted, and the ICA regarded the matter as resolved without his involvement. No letter or report was issued, and the ICA telephoned Mr AB with the outcome.

---

**No breach of Equality Act in conducting medical investigations**

**Complaint:** Mr AB complained that the DVLA had, contrary to the advice of a consultant in sleep disorders, refused to re-license him. He also characterised the DVLA's medical investigation system as intrinsically discriminatory against people with disabilities, contrary to the Equality Act 2010.

**Agency response:** The DVLA's doctor clearly set out the requirements for re-licensing in a letter to Mr AB based on the relevant fitness standard. The

Agency explained why an on road driving assessment was not appropriate in the context of a disorder affecting daytime consciousness levels. The DVLA re-licensed Mr AB quickly after the requisite evidence was provided.

**ICA outcome:** The ICA did not agree with the DVLA that its approach did not amount to discrimination. Obviously the DVLA treated people differently if it had grounds to believe that they were suffering from a disability. However, contrary to Mr AB's view, the ICA regarded this discrimination as mandated in legislation and not unlawful. The ICA considered that most of Mr AB's complaint related to policy matters over which he had no influence. He commended the DVLA doctor for spelling out the requirements for licensing and concluded that, once these had been met, the administration had been reasonably prompt and efficient. He did not uphold the complaint.

---

**Rebates for those receiving Personal Independence Payment (PIP)**

**Complaint:** Mr AB complained that the DVLA's systems for obtaining the 50% road tax rebate for customers in receipt of personal independence payments (PIP) were onerous and discriminatory.

**Agency response:** The DVLA explained that it did not intend to discriminate. The problem was that data on personal independence payments was held by the Department for Work and Pensions and could not be accessed remotely by the DVLA. This meant that evidence of PIP receipt had to be provided at every stage that tax was paid. The DVLA systems were not capable of allowing direct debit payments in these circumstances. Steps were underway to improve the process but the technology was limited.

**ICA outcome:** The ICA agreed that the process was onerous but he did not think that it was discriminatory. He urged the DVLA to expedite improvements to the process to enable people already living on low incomes to pay road tax by monthly direct debit, and to be spared repetitive and onerous overheads that currently applied. He did not uphold the complaint.

---

**Allegation of discrimination against those receiving standard rate of Personal Independence Payment**

**Complaint:** Mr AB complained that the DVLA discriminated against those on the standard rate of PIP as he could only transact his VED payments by post. He said this breached the Equality Act.

**Agency response:** The DVLA accepted that its systems and those of the Department for Work and Pensions were not aligned so that customers in

receipt of the standard rate of PIP could transact online or at the Post Office. It said it was its intention for this to happen in the future, but could give no time target. Separately the DVLA had also accepted some delay in responding to Mr AB's correspondence and had offered a consolatory payment of £20.

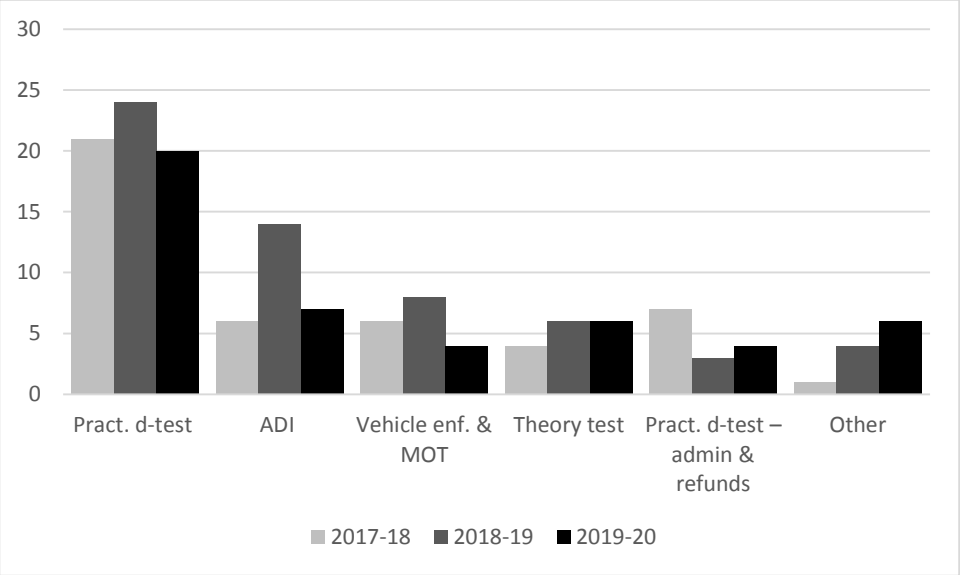
**ICA outcome:** The ICA said that he could not adjudicate upon the Equality Act, but while he shared Mr AB's impatience, he did not think the DVLA was discriminating against customers in receipt of standard rate PIP, nor could he tell the DVLA where to make its IT investments (much less tell the DWP). He did not think the offer of £20 had been generous given the acknowledged service failures, but a year after the event did not feel he could sensibly recommend an increased sum.

# 3. DVSA casework

## Incoming cases

3.1 We received 47 cases from the DVSA in 2019-20, a reduction of one-quarter from the year before. In Figure 11 we compare the year's incoming DVSA complaints, by topic, with those in the previous two years.

**Figure 11: DVSA complaints, 2017 to 2020, by main topic**




3.2 The data in Figure 11 are broadly consistent with previous years. As before, complaints about the DVSA's vehicle standards enforcement regime were rare. Meanwhile the conduct and outcome of practical driving tests (the first column on the left of Figure 11) remained the single greatest source of complaint.

3.3 Last year we mentioned the increased numbers of complaints submitted by approved driving instructors (ADIs) who have dealings with the DVSA as registrants as well as day-to-day when their candidates undertake driving tests. We have had reservations for some time about how appropriate registrant/registrar disputes are for an ICA scheme that is aimed at the service provided to citizens within a customer/provider relationship. We therefore welcome the moves during 2019-20 towards a separate process for driving and motorcycle instructors whose complaints concern registration-related issues. Complaints that relate to services to members of the public, in particular those concerning practical driving tests, will still be reviewed by us if they are made by an ADI so long as any necessary consent has been provided by the candidate.

3.4 Well over a quarter of the 47 DVSA complaints we received in the year were made by ADIs. They included:

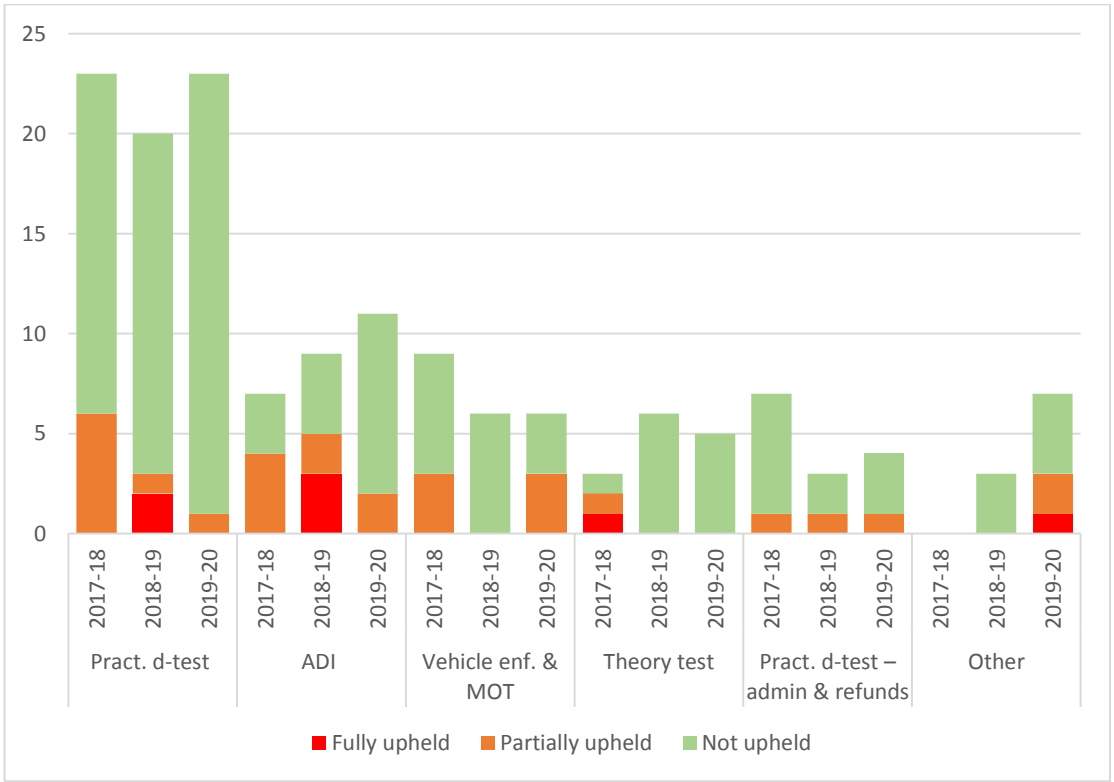
- Complaints about examiner conduct/judgement in practical tests (5)
- Complaints about DVSA tests for ADIs to complete or renew registration (4)
- Complaints about the DVSA refusing to allow a test to proceed in the ADI's car (3).

3.5 Given the change in the DVSA's process referred to in paragraph 3.3, we expect to receive many fewer complaints about the DVSA in its role as registrar (in other words, in the 'ADI' category in Figure 11) in the future.

## Cases we completed, 2019-20

3.6 We completed 56 DVSA cases in the year. In Figure 12 we set out case outcomes alongside those for 2017-18 and 2018-19.

**Figure 12: Completed cases outcomes, 2017-2020**




3.7 Figure 12 illustrates the reduction in fully upheld DVSA cases from five last year to just one. We upheld 12.5 per cent of the DVSA cases we

completed to some extent this year (compared with 17.0 per cent last year and 16.3 per cent in 2017-18). Figure 12 also shows the reduction in the number of upheld ADI complaints despite the increase in volume.

3.8 It is welcome that the DVSA has followed other Bodies within the DfT who have a clearly demarcated two-stage complaints procedure, meaning there are fewer hurdles for the complainant to overcome before invoking an independent review. However, the Agency will need to ensure that it does not introduce unnecessary replies at stages 1 and 2. Although there are occasions where more than one reply at a particular stage can be justified, we have in the past seen DVSA cases where there have been up to three responses at the final stage. Rightly or wrongly, this does give the impression of trying to keep the complainant from accessing the independent tier.

3.9 As at the DVLA, DVSA colleagues are now applying a fresh pair of eyes before ICA referrals are made. We welcome this more vigorous interrogation of earlier responses although, like all members of the DfT complaint handling family, the DVSA could do with more leverage in its complaints functions to challenge poor quality service delivery and/or complaint responses from operational areas.

3.10 The main focus of DVSA complaints revolves around practical driving tests. One consequence is that the demographic of DVSA complainants is much younger than for most DfT Bodies.

3.11 In this context, we believe that the justification for the DVSA's current policy position that video/audio evidence is inadmissible is not convincing. Nobody would regard such evidence as determinative (although complaints of tone of voice and appropriateness of speech would be more soluble with recourse to an audio recording). But it would be much better than nothing, and the current position contributes to the impression of unaccountability and that complaints about examiner conduct are pushed out into the long grass. Highways England routinely make use of dash-cam footage as well as their own extensive CCTV. The police could not operate today without CCTV, and many police officers wear body cameras. The DVSA's 'argument' seems to be that video evidence is only partial; the fact of the matter is that all evidence is only partial.

3.12 In our judgement, the DVSA has some way to go to embed fully an Equality Act 2010 understanding in response to reasonable adjustment requests/complaints. While conscious of the rules governing the proper use of public money, we also think a number of ICA referrals could have been avoided if a slightly more liberal approach had been taken to the refund of test fees.

## CASES

## (i): THEORY AND PRACTICAL DRIVING TESTS

### Cancellation of test for bad weather #1

**Complaint:** Ms AB complained that her practical driving test had been cancelled at the last minute because of bad weather. She asked the DVSA to pay the £75 she had paid to her driving instructor, on the basis that she should have been told earlier that the test would be cancelled.

**Agency response:** The DVSA said that it was always hoped that tests could go ahead and that decisions were therefore left as late as possible. It said it was not its policy to pay out of pocket expenses for driving tests cancelled because of bad weather.

**ICA outcome:** The ICA said that he could not adjudicate on DVSA policy, but it did not strike him as an unreasonable one. Moreover, the policy was clearly set out on gov.uk. Ms AB had said that the advice was to ring one hour in advance of a test, but in fact the guidance is to ring on the day of the test and there is no reference to a one-hour rule.

---

### Cancellation of test for bad weather #2

**Complaint:** Mr AB was told on the morning of his driving test appointment that it had been cancelled due to the non-appearance of a gritter needed to remove snow and ice in the vicinity of the driving test centre. He complained that the DVSA would not refund his out-of-pocket expenses on the grounds that the test had been cancelled due to bad weather.

**Agency response:** The DVSA explained that there had been snow and ice in the vicinity of the test centre at the time, and that its policy was explicitly not to pay out-of-pocket expenses in such circumstances.

**ICA outcome:** The ICA was sympathetic to Mr AB's arguments that the test could have gone ahead on the day. However, the difficulties in the vicinity of the test centre had undoubtedly been caused by the weather. He therefore could not criticise the DVSA for the way that it applied its policy. He did not uphold the complaint.

---

**Complaint about HGV test**

**Complaint:** Mr AB complained about the conduct of the examiner during a practical HGV test. He said he had been rude, and had not provided an appropriate debrief. He also complained that he could be allocated the same examiner in the future.

**Agency response:** The DVSA had sought comments from the examiner, his line manager and the Local Driving Test Manager. The examiner acknowledged that he might have raised his voice when applying the dual brakes in in an incident recorded as a dangerous fault, but denied swearing. The DVSA had explained why candidates could not elect which examiner would take their tests.

**ICA outcome:** The ICA said he was content with the extent of the DVSA's enquiries. He was also content that its practice of not allowing candidates to choose their examiner was not maladministrative (indeed, it was entirely reasonable), and that the time allowed for a debrief was a matter of DVSA policy but again not unreasonable.

---

**No refund for candidate who arrived late**

**Complaint:** Miss AB, who was late for her practical driving test, complained that the DVSA had not arranged a free rebooking or refund. She argued that her dyslexia meant that she frequently misread letters and numerals and that the DVSA should take account of this.

**Agency response:** The DVSA emphasised in its responses that it was prepared to make adjustments and allowances for Miss AB's disability in the way that the practical test was undertaken. However, in this circumstance, it did not agree with her that it should vary its standard policy of not refunding candidates who failed to present at the correct time.

**ICA outcome:** The ICA noted that the DVSA had applied its standard policy over which he had no jurisdiction. He did not agree with Miss AB that the DVSA should vary that policy, or that it was acting in a discriminatory or unreasonable way in its assertion that she should have taken the necessary steps to check the exact time of her appointment. He did not uphold the complaint.

---

**Factual elements of complaint unresolved**

**Complaint:** Mr AB, an approved driving instructor, complained that an examiner at his local driving test centre habitually placed the cones at the wrong distance apart for candidates undertaking the reversing exercise in the practical C1 driving test. He also alleged that the staff involved had been unhelpful when he challenged them about this, and argued that the DVSA's responses were self-serving and contradictory.

**Agency response:** The DVSA said that the examiner concerned was well aware of the correct spacing, and management of the driving test centre had no concerns about his practice. The DVSA explained in some detail why situations construed by Mr AB as supporting his complaint had no bearing upon it.

**ICA outcome:** The ICA considered that there was little evidence of un-remedied injustice and that key factual matters could never be resolved by an in-depth review at his stage.

---

**Complaint about examiner's accent**

**Complaint**: Mr AB complained that his son had been distracted during his practical driving test as he could not readily understand the instructions given to him by the examiner. This was because the examiner had a heavy accent.

**Agency response**: In the first three stages of its complaints procedure, the DVSA upheld the conduct of the test, having spoken to the examiner and his manager. Prior to ICA referral, a different DVSA officer became involved and reflected on some of the evidence that had not been fully considered in the earlier stages. She offered Mr AB's son a consolatory payment of £50 which he declined.

**ICA outcome**: The ICA looked at the case and decided quickly that there was scope for speedy resolution if the DVSA agreed to increase its consolatory offer to £200. This would reflect the fact that Mr AB had needed to get through four stages of complaints process before the merit in his arguments was accepted. The DVSA agreed. The ICA commented on Mr AB's courteous, logical and respectful conduct of his complaint throughout.

---

**Complaint about theory test**

**Complaint**: Mr AB complained after failing the multiple-choice part of the theory test four times. He was very proficient in the hazard perception part but argued

that the multiple-choice thresholds were wrongly set and should be lowered in his case.

**Agency response**: The contractor, Pearson VUE, and the DVSA explained the statutory basis of the theory test and that it could not change the pass threshold. Mr AB was advised to study the recommended materials.

**ICA outcome**: The complaint was aimed squarely at matters of policy and legislation over which the ICA had no jurisdiction. He regarded the Agency's and contractor's responses as courteous and helpful. He did not therefore uphold the complaint.

---

**Complaint about driving examiner #1**

**Complaint**: Mr AB complained about the attitude and professionalism of the examiner who presided over two driving tests that he failed. His main concern was the examiner's approach on his second test. He felt she had shouted at him, mis-read his handling of a manoeuvre on a busy junction, and adjusted the air-conditioning without his permission. He also complained that the responses to his complaints represented the DVSA siding with its own member of staff. The Agency had addressed him with the wrong gender title in its initial letter which also concerned him.

**Agency response**: The DVSA subjected the complaint to its standard local driving test manager investigation process. Detailed explanations for the marking on the two tests were provided. The examiner would always ask before adjusting air-conditioning but had no recollection either way. The Agency was satisfied that the test had been marked fairly and that its examiner had acted with professionalism.

**ICA outcome**: As usual in these cases, the ICA could not be certain about the conduct of the test. To have adjusted vehicle controls without the permission of the candidate would have been contrary to the Examiner Guidance. However, the ICA thought that Mr AB's account of the air-conditioner incident was far more plausible than that of the examiner, and he criticised the Agency for not encouraging her to think harder about events. The ICA could not adjudicate over the different recollections of the key manoeuvres that had informed the test outcomes. While he sympathised with Mr AB's argument that candidates were disadvantaged by the investigation process, he also felt that employees were entitled to a presumption of trust and competence on the part of their employer, and that it should take more than an unsubstantiated complaint for their performance to be called into question. He noted that the complaint would remain on the examiner's record for future reference.

---

**Complaint about driving examiner #2**

**Complaint**: Miss AB alleged that the DVSA examiner who had undertaken her driving test (and the one before it) had shouted at her during a difficult section of the drive. This had been frightening, had destroyed her confidence and affected her performance. She also suggested that the examiner had been racist.

**Agency response**: The DVSA investigated the complaint and the correspondence that followed, responding at all three stages of its complaints procedure. The local driving test centre manager established that the examiner had been genuinely concerned as Miss AB's wheels were straddling the centre of the road in the face of oncoming traffic, and she did not seem to be reacting. He had not shouted but rather had been more assertive in order to encourage her to change position. He denied racism but reflected on his performance going forwards given Miss AB's experience of the test.

**ICA outcome**: The ICA was faced with the perennial problem of one person's account of events versus another's. He could not adjudicate over the complaint that the examiner's performance had been inappropriate and had undermined Miss AB's driving. The ICA had no doubt that the examiner had distressed Miss AB, but he could not establish whether his handling of the contested situation had been reasonable or not. He noted the evidence of reflection on the part of the examiner concerned in the complaints file, and assured Miss AB that her feedback had been of benefit.

---

**Complaint about practical test settled at last minute**

**Complaint**: Mr AB complained about the decision of an examiner to refuse to allow him to take a practical driving test in a hired car. He also criticised the responses to his complaint from the DVSA.

**Agency response**: The DVSA had said that a marker had been placed on Mr AB's record and that he would not be allowed to take a further test until sat nav equipment it said had been left in his vehicle had been returned. It had also continued to insist that tests could not be taken in hired cars. As a final check before the ICA referral, the DVSA acknowledged that its handling had been very poor: that it should not have prevented Mr AB taking another test, that its response to his complaint was delayed, and that the real reason he could not take the test was not because he was in a hired car but because it was a hired car not fitted with dual controls (the information provided on gov.uk). It had offered £450 as a consolatory payment.

**ICA outcome**: The ICA said the DVSA's handling had indeed been very poor. He was particularly critical of the decision to refuse Mr AB a further test because of the missing sat nav when there was no proof of any link between Mr AB and its loss (the matter had not been reported to the police). However, given what the DVSA had (finally) acknowledged, and the consolatory payment made, there was no outstanding injustice to remedy. As a consequence, the ICA did not uphold the complaint.

---

**Complaint about practical driving test in poor weather**

**Complaint**: Mr AB complained about the outcome of a practical driving test. He said it should not have gone ahead because of the weather, and criticised the conduct of an examiner and a manager.

**Agency response**: The DVSA said that Mr AB had incurred three serious faults, and it stood by the decisions of the examiner.

**ICA outcome**: The ICA said that he could identify no maladministration on the part of the DVSA. The examiner was entitled to decide that weather conditions were not such that the test needed to be cancelled. The ICA's only criticism of the DVSA was its insistence that a Met Office weather warning for a neighbouring county had no relevance for Mr AB's test. In fact, the weather warning covered much of the central part of the country.

---

**Security checks before theory test**

**Complaint**: Ms AB complained about the security checks conducted prior to her theory test. She said that she had been asked to remove headwear worn for religious reasons, and that a member of Pearson Vue staff had been rude to her and that another had touched her hair and required her to lift her top.

**Agency response**: The DVSA said that staff had followed procedures and that Ms AB had been provided with all necessary 'accommodations'. The security check had been conducted by a female member of staff out of sight of others.

**ICA outcome**: The ICA said he could not be certain what had occurred, but the security checks were for a good purpose and Ms AB had been permitted to keep her headgear when it was explained that it was worn for religious purposes. However, the ICA noted that the information sheet shown to candidates had no mention of the security checks or the reasons for them. He recommended that this be remedied.

---

**A failed motorcycle test**

**Complaint:** Mr AB complained that he had been failed on his motorbike practical driving test as a result of examiner error. He argued that driving below the speed limit on a stretch occasionally subject to a 20 mile an hour limit was justified on the day. He contested the examiner's claim that he had driven 10 mph below the limit thereby causing hazard to other road users. He also accused the examiner of lying in his responses to the complaint.

**Agency response:** The DVSA explained in detail the basis of the marking and insisted that Mr AB had driven markedly below the speed limit thereby causing risk and problems for other road users.

**ICA outcome:** The ICA could not adjudicate over the two different versions of the test. He noted that the complaint had been investigated and Mr AB had received sympathetic and detailed responses to his complaint. He could not uphold the complaint.

---

**Hot drink leads to heated words**

**Complaint:** Mr AB complained about the conduct of a driving examiner during his pupil's test. He further complained that the Local Driving Test Manager had lied to him in saying that a complaint had been made against him.

**Agency response:** The DVSA said that the examiner had asked Mr AB not to have a hot drink in the back of the car on health and safety grounds. She had submitted a health and safety form (HS1) and enquiries had been conducted. The DVSA was content that both the examiner and LDTM had behaved properly, but it acknowledged a delay in responding to correspondence.

**ICA outcome:** The ICA said that he could not adjudicate on exactly what had happened in the car, but the separate accounts produced by the examiner and Mr AB were very similar in terms of the facts. The ICA said the examiner was entitled to ask Mr AB not to have a hot drink in the car, and he noted that notices to this effect had now been posted in the waiting area. He was also content that the LDTM had not lied, and had conducted himself well.

---

**A complaint about a failed driving test #1**

**Complaint:** Ms AB complained about a practical driving test. She said the examiner had changed the L plates on her car, and had asked her to read a sign on a building she was passing during the test. She gave a different

account to the examiner of the incident that had resulted in a serious fault being recorded.

**Agency response:** The DVSA said that the examiner had been entitled to change the L plates and that the remark about the building had been intended to put Ms AB at ease. The Agency stood by the examiner's marking.

**ICA outcome:** The ICA said that he could not adjudicate upon the fault itself as, like the DVSA, he had not been in the car. But he was content there had been no maladministration and with the explanations the DVSA had provided. The driving test report (DL25) suggested that Ms AB had arrived at the test without L plates and unaccompanied and the ICA reminded Ms AB that, if so, this was an offence and would have invalidated Ms AB's insurance.

---

**Complaint about failed driving test #2**

**Complaint:** Ms AB complained about the outcome of a practical driving test. She said she had now failed five times but was an efficient and safe driver. She said the examiner was in error in recording a serious fault for failure to use her mirrors before completing a manoeuvre at traffic lights.

**Agency response:** The DVSA said it could not say what had occurred for certain, but the driving examiner was experienced and had no interest in failing candidates unnecessarily.

**ICA outcome:** The ICA said he could not overturn the outcome of a driving test (indeed, a court of law did not have this power either). But he was content that the DVSA could rely upon the DL25, and had conducted proportionate enquiries. He was also content with the decision not to offer a free re-test or refund. He suggested that Ms AB might wish to be accompanied on any future test.

---

**Complaint about failed driving test #3**

**Complaint:** Mr AB complained about the outcome of a practical driving test. He also said the examiner had not provided feedback on one of his serious faults.

**Agency response:** The DVSA once more said the driving examiner was experienced and had no interest in failing candidates unnecessarily. The examiner denied not giving feedback, although it was pointed out that the time for doing so was limited.

**ICA outcome:** The ICA said he could not overturn the outcome of a driving test (indeed, a court of law did not have this power either). He said the DVSA could draw upon the DL25, and had conducted proportionate enquiries. There had been one dangerous fault and two serious ones. The ICA could not say whether the examiner had fed back on all of these faults. Despite Mr AB wanting his instructor questioned about this, the ICA said it was not maladministrative of the DVSA to say that this would not clear up the matter. However, he criticised a standard passage in one DVSA letter referring to the impact of lengthy feedback on the next candidate, since Mr AB's test was actually the one before lunch. He also said that the DVSA had exaggerated somewhat in saying it had conducted all possible enquiries when it had decided (albeit pardonably) not to speak to the instructor.

---

**Limited scope for ICA review of a practical driving test**

**Complaint:** Ms AB complained in respect of her practical driving test. She said that that the examiner's leg was too close to the gear stick meaning that her hand and his leg came into contact, making her feel uncomfortable.

**Agency response:** The DVSA said that any contact was inadvertent, but it acknowledged that it could happen in a small car with dual controls. However, Ms AB had been properly assessed on her test and had failed for one serious and one dangerous fault.

**ICA outcome:** The ICA said that he could not say what happened in the vehicle but he was content that the DVSA had carried out such enquiries as it could. He suggested that Ms AB might wish to be accompanied by her ADI on any future test.

---

**Excellent response by DVSA to complaint about ID at theory test**

**Complaint:** Ms AB complained that she had not been allowed to take a theory test on the grounds that her passport details and those on her paper licence did not match. She said the documents had been accepted on a previous occasion. She asked for a refund of the test fee.

**Agency response:** The DVSA said that the test centre had been right to refuse to allow Ms AB to take the test.

**ICA outcome:** The ICA noted that the publicly available information did not specify what additional documentation should be taken to test centres by customers whose identity documents contained different names (say after marriage or divorce). However, on approaching the DVSA it became clear that

this lacuna had already been identified and work was underway to remedy it. The DVSA also agreed to refund the test fee to Ms AB as a goodwill gesture. In these circumstances, there was nothing more for the ICA to contribute other than to commend the DVSA's actions.

**Protracted review of complaint from ADI about cancelled test**

**Complaint:** Mr AB, an approved driving instructor, initially complained that his pupil's driving test had been unnecessarily cancelled due to a problem with a malfunctioning seat. He became increasingly annoyed with the DVSA's requirement for details of his pupil in the correspondence that followed. Eventually the DVSA said it did not need pupil details to look into the complaint about the test termination. It then concluded that its examiner had been justified in terminating the test when the seatbelt did not pull out its home position. Mr AB also complained that a member of staff had been rude before terminating a phone call.

**Agency response:** After a slow and frustrating start, the DVSA subjected Mr AB's complaint to a thorough investigation. The Agency was satisfied that it had provided correct advice throughout the process, and its examiner had been justified in deciding not to allow the test to proceed. The DVSA spoke to the member of staff who had terminated the call. An apology was offered and the member of staff was encouraged to reflect on her handling of the call.

**ICA outcome:** The ICA was critical of the DVSA for requiring pupil details for over three months after the original complaint had been made. He was also puzzled by the DVSA's refusal to post notes of its meeting with Mr AB for supposedly data protection reasons (it had already attempted to email them repeatedly). The ICA felt that the DVSA had been over-cautious. The ICA judged that the apology and actions related to the phone call were sufficient. Although the DVSA had not always covered itself in glory, he did not feel that its administration was such that he could in fairness uphold the complaint.

## (ii): ADI PART 3 AND STANDARDS CHECKS

**Complaint about ADI test #1**

**Complaint**: Mr AB complained that the examiner, on his third attempt at the part 3 ADI instructional ability test, had marked him inconsistently and unfairly resulting in him failing to achieve a pass mark by one point. Mr AB was demoralised and disillusioned with the process and considered whether to abandon his plans of pursuing a career as an ADI. In his correspondence with

the DVSA, Mr AB highlighted what he felt were further inaccuracies and inconsistencies in the feedback he had been given at different stages.

**Agency response**: The DVSA subjected the complaint to repeated investigations by an ADI enforcement manager, and detailed statements were obtained from the examiner. She remained of the view that Mr AB had underperformed significantly in certain areas of the drive, in particular in the risk management domain, and further information explaining the scoring was provided. The DVSA also answered Mr AB's challenges about why it did not allow recordings to be made of driving tests and why it felt that its ADI 1 guidance was relevant.

**ICA outcome**: The ICA could not judge whose account of the drive was the most plausible. This was classic case of one account varying from another; the outstanding factual dispute was insoluble through ICA review. The ICA felt that the DVSA had responded adequately to the complaints and challenges put forward by Mr AB. He did not see any value in the granular analysis of each aspect of the DVSA's responses that Mr AB wished him to undertake. He was unable to make any firm finding in relation to the complaint.

---

**Complaint about ADI test #2**

**Complaint:** Mr AB complained about the outcome of his ADI Part 3 test. He said that he had passed the test and that he had been victim of abuse and discrimination.

**Agency response:** The DVSA said that it stood by the results of the test and the examiner's decision.

**ICA outcome:** The ICA said that he could not overturn the result of any driving test, and he was content that the DVSA had carried out appropriate enquiries. The Agency had discounted a letter from Mr AB's pupil on the grounds that he was not an independent witness. However, the ICA said the issue was not his independence or otherwise, but his inability to judge the competencies required during a Part 3 test.

---

**DVSA handling of a standards check**

**Complaint:** Mr AB complained that the DVSA had falsely described the actions he had taken in not undertaking his standards check. He explained that he did not refuse to take the test but was unable to do so. Mr AB also complained that the DVSA had: failed to investigate properly his concerns about the examiners' actions on the day of the test; provided an inappropriate comment about him to

the Parliamentary and Health Service Ombudsman; made inaccurate comments about him in internal emails; and delayed referring his complaint to the ICA.

**Agency response:** The DVSA was satisfied that it had correctly described Mr AB's actions as refusing to undertake the test. It refused to listen to a covert recording Mr AB had made of his conversation with a member of staff because to do so would go against its established practice and data protection and human rights legislation. The DVSA explained that it had expressed only an opinion to the PHSO as to why Mr AB had offered to take the test elsewhere, but it apologised for any upset the comment had caused. It did not accept that it had made inaccurate comments about him in internal emails.

**ICA outcome:** In line with his remit, the ICA was unable to question DVSA's established practice of not listening to the content of covert recordings. He was, however, pleased to learn that the DVSA is developing a formal policy in this area to provide greater clarity for all parties. The ICA found that DVSA had reasonably described Mr AB's actions as refusing to undertake the test. While the ICA did not consider that the opinion offered to the PHSO was maladministrative, he was satisfied that DVSA's apology was an appropriate resolution to any concerns Mr AB had. The ICA found evidence of one inaccurate statement made about Mr AB in an internal DVSA email, and evidence that the DVSA delayed dealing with Mr AB's complaint correspondence on two separate occasions (including referring it to the ICA). The ICA was satisfied with the chief executive's agreement to apologise for any frustration Mr AB had experienced because of the service issues identified. He was also satisfied that the DVSA's offer to store the ICA's report as a record that the information contained in the Agency's email was inaccurate provided a suitable remedy to the complaint.

---

**Limited scope for ICA review of an ADI's standards check test**

**Complaint:** Mr AB, an ADI, complained that his standards check test had been marked unfairly, and that the examiner had been rude to him. He asked for the result to be voided.

**Agency response:** After conducting inquiries, The DVSA said that it was content that the test had been conducted properly, and stood by the examiner's marking.

**ICA outcome:** The ICA said he could not overturn the results of a driving test (including a standards check). He added that he was content that the DVSA had conducted proportionate enquiries and drawn appropriate conclusions. He

suggested that Mr AB might wish to speak with a manager at the test centre, as the formal complaints process was unlikely to provide a resolution.

---

**Complaint about test eligibility sensibly resolved**

**Complaint:** Mr AB, an ADI, complained that he had been able to book a MOD4 Certificate of Professional Competence (CPC) test even though his candidate had not passed his MOD2 test. He said that the MOD4 test was cancelled on arrival as his candidate could not show the certificates, and he blamed the DVSA's systems and asked for compensation.

**Agency response:** The DVSA initially refused compensation and said that it was the candidate's responsibility to ensure they were eligible to take the MOD4 test. The Agency had explained why its IT systems operated as they did. At the pre-ICA stage, the DVSA - while maintaining that the responsibility rested with the candidate - acknowledged that its systems could have assisted Mr AB in showing that the test could not go ahead and £250 was offered. Nonetheless, Mr AB asked for an ICA review.

**ICA outcome:** The ICA agreed with the DVSA that candidates had a responsibility to ensure their entitlement. But it was also clear that Mr AB's complaint had revealed the need for a 'fix' to the DVSA's systems. The ICA therefore invited the DVSA to consider increasing its offer from the £250 to the £465 Mr AB had claimed. Pleasingly, this was agreed without further ICA involvement, and the complaint was recorded as not upheld as the matter had been resolved without a formal ICA review.

---

## (iii): COMPLAINTS AGAINST APPROVED DRIVING INSTRUCTORS

**A DVSA investigation**

**Complaint:** Mr AB complained that the DVSA would not re-open its investigation into circumstances surrounding a serious accident he had suffered while taking part in a motorcycle lesson off-road.

**Agency response:** The DVSA said that it was content that the investigation and audit it had conducted were sufficient and proportionate.

**ICA outcome:** The ICA said that he agreed that there was no maladministration in the DVSA's decision not to re-open its investigation, given that the original enquiries had been well-conducted and had drawn reasonable

conclusions from the evidence. However, the ICA felt that more details could have been provided to Mr AB, notwithstanding that there were concerns about third party issues regarding the motorcycle school and its staff. In consequence, the ICA was able to include details that had not previously been shared with Mr AB.

## (iv): VEHICLE STANDARDS

**Complaint about inverse MOT appeal**

**Complaint:** Mr AB complained in respect of an inverse MOT appeal (that is, an appeal against an MOT pass the customer believes was incorrect). He said that the DVSA had wrongly declined to carry out an inspection of his vehicle.

**Agency response:** The DVSA said that it could not conduct an inspection because Mr AB had had repairs carried out to the vehicle and it was not therefore in the same state as when the MoT was conducted.

**ICA outcome:** The ICA found that there were inconsistencies in the internal and outward facing guidance in respect of DVSA inspections of vehicles, and the time limits. The actual practice was that vehicles that had been repaired would not be inspected except in limited circumstances. The ICA recommended changes to the documentation and that Mr AB receive an explanation of what had occurred in his case. He made four recommendations in total.

**Another complaint about an MOT pass**

**Complaint**: Mr AB complained about an MOT pass. He said he had had the vehicle independently inspected and there were major faults found. Mr AB also complained about delays in handling his appeal and complaint.

**Agency response**: The DVSA had acknowledged a delay in handling Mr AB's appeal such that the 28 day time limit had expired. The Agency had also accepted a delay in its complaint handling and offered £50 as a goodwill gesture.

**ICA outcome**: The ICA said that by the time Mr AB had lodged his appeal the vehicle had already been driven 2,500 miles. It was unlikely therefore that the examiner would have been able to uphold the complaint about the MOT. Nonetheless, there had been significant maladministration by the DVSA. Although the ICA could not endorse Mr AB's claim for lost earnings (it had been his risk to buy an old car for use as a delivery driver, and any claim would be

against the garage that sold it), he felt the offer of £50 was not proportionate. The ICA increased the consolatory payment to £250.

**Complaint about MOT advisories**

**Complaint**: Mr AB complained about the advisories given by the tester on his MoT. He said they were not justified, and had only been included in order to encourage unnecessary work on his car.

**Agency response**: The DVSA had said that the tester had the legal discretion to make advisories, but there was no power for a vehicle owner or keeper to require their removal. It said it would only remove them if they were inappropriate to the vehicle in question.

**ICA outcome**: The ICA said he agreed with the DVSA's assessment of the legal position. However, he would also expect the DVSA to remove advisories if they were the result of clear and serious errors (i.e. in wider circumstances than the Agency had said). However, this was not the case here. There were no grounds for supposing the tester had recorded anything other than what he had seen.

**Problems with a Fixed Penalty Notice**

**Complaint:** Mr AB, a lorry driver, was subject to a Fixed Penalty Notice of £50 which he said he paid by cheque. For reasons unknown, the cheque was never received or processed by the DVSA and the matter was referred to the magistrates' court. The court pursued Mr AB for £75 (the original FPN plus £25 costs) but he refused to pay. His argument was that it had been an oversight by the DVSA that had meant his payment had not been processed. Further disputes arose around the DVSA's responses to the complaint and its rationalisations through three complaint stages.

**Agency response:** As the case was being prepared for ICA referral, the DVSA identified that opportunities to collect payment had been missed and that it had been less than clear at every stage about the basis for its actions. It therefore cancelled the FPN and made Mr AB consolatory payment of £150.

**ICA outcome:** The ICA regarded the remedy offered by the DVSA as appropriate, if not overgenerous, given the shortfalls in service that had been highlighted by Mr AB's complaint. He did not therefore uphold the complaint that there had been un-remedied injustice.

## (v): EQUALITY ISSUES

### Good support and engagement following customer's complaint

**Complaint**: Mr AB complained that the DVSA had failed to handle his FOI request properly, that it was in breach of the Equality Act, and that staff had not handled his complaint correctly.

**Agency response**: The DVSA had acknowledged that aspects of its handling could have been better. It had offered apologies, and said that it would consider if advice and training was required for its staff.

**ICA outcome**: The ICA said he could not deal with the Freedom of Information aspects of Mr AB's complaint, and his allegation that the Equality Act had been breached would have to be pursued elsewhere, albeit his lay view was that the DVSA had provided reasonable adjustments for Mr AB. It was clear that some aspects of the DVSA's handling had been less than optimal, and it was disappointing that some staff had advised Mr AB that his complaint would have to be made in writing. However, the ICA was content that the apologies and actions taken by the DVSA were appropriate and there were no additional recommendations he could make. Overall, the ICA felt that the level of support and engagement shown by the DVSA had been very high.

---

### Complaint about restriction code following successful test

**Complaint**: Mr AB complained about the restriction code for special adaptations put on his licence following a successful practical driving test. He said that assumptions had been made about his competencies. He pointed out that, following a successful disablement driving assessment, the DVSA had in fact removed the code 35 from his licence.

**Agency response**: The DVSA had said that the examiner had placed the code 35 on the licence because Mr AB had been unable to operate the windscreen washer on the right side of the steering wheel. However, its responses had also speculated upon Mr AB's abilities (based on the Local Driving Test Manager's own speculations).

**ICA outcome**: The ICA said he could not comment on the examiner's judgement on the day in question. But there were lessons to learn for the DVSA in that its formal responses (and internal emails) had speculated on Mr AB's abilities in ways that the subsequent disablement driving assessment - which Mr AB had passed with flying colours - showed were not justified. The

joint working of the DVSA and DVLA also needed attention, so that complaints engaging both Agencies received a more comprehensive response.

## (vi): OTHER MATTERS

### Further weak liaison between DVSA and DVLA

**Complaint:** Mr AB had been referred to the DVSA by the DVLA. He complained that a restriction code on his driving licence (code 78 - automatic vehicles only) was in error.

**Agency response:** The DVSA said its records only went back ten years and could not assist Mr AB. The Agency speculated that the restriction code might have been added in error when Mr AB exchanged his licence. It directed him back to the DVLA.

**ICA outcome:** The ICA obtained details from the DVLA's records that showed unambiguously that the restriction code had been in place since Mr AB had passed his test. He could not assist directly in having it removed, although he directed Mr AB's attention to possible sources that might be helpful to him. The ICA was critical of the bureaucratic 'pass the parcel' to which Mr AB had been subject, and said that poor liaison had led to him being directed to the DVSA even though it would have no records, and to the DVSA speculating wrongly that the restriction might have been added when he exchanged the licence. He recommended that the DVSA consider strengthening its liaison arrangements to avoid such circumstances recurring. He also recommended that a copy of his report be shared with the DVLA.

### Poor oversight of drink driving rehabilitation providers

**Complaint:** Mr AB, the director of a drink driving rehabilitation (DDR) provider complained that another firm was running courses on three consecutive days in contravention of DVSA policy and good practice. He further said that the DVSA's sub-contractor, JAUPT, was actually advertising these courses on its website. Mr AB said his business was suffering in consequence and sought compensation.

**Agency response:** The DVSA had said that action would be taken but that it could not provide details for reasons of confidentiality. It had declined to pay compensation.

**ICA outcome:** The ICA said there had been a failure to oversee the DDR providers and JAUPT. He recommended that a copy of his report be

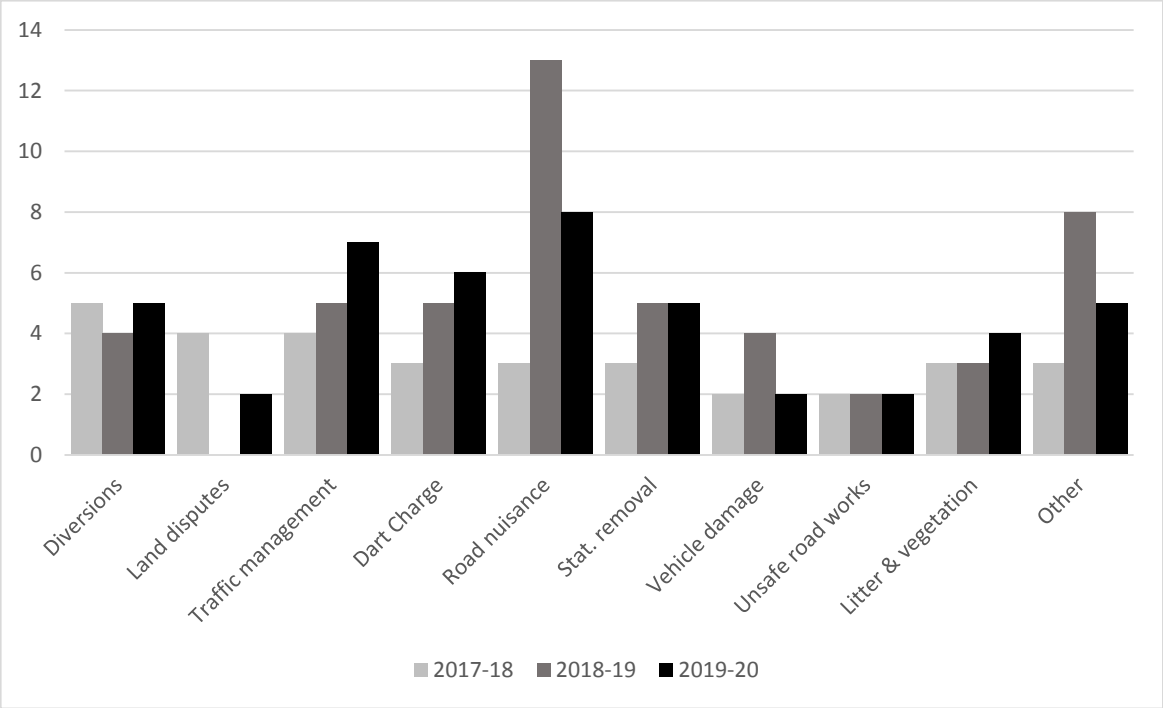
considered at a very senior level, and that the DVSA ensure that DDR providers did not mislead customers by misrepresenting courses on their websites. However, the ICA did not think he could assist in respect of compensation. If Mr AB believed his business had been adversely affected as a result of actions or inactions by the DVSA, he would need to take legal advice with a view to bringing a claim through the courts.

# 4. Highways England casework

## Incoming cases

4.1 The 46 complaints we received from Highways England represented a slight decrease from 2018-19 (49), and a welcome flattening out of a steadily upward trend over recent years. In Figure 13 we present the last three years' incoming Highways England cases.

**Figure 13: Incoming Highways England cases, 2017-20**




4.2 As was the case last year, noise and nuisance associated with Highways England's upgrade and maintenance of its network, as well as general road use, was the main complaint area. Twelve customers complained about traffic management and diversions, including inexplicable, confusing or non-existent signage. Complaints about Dart Charge, Highways England's scheme for remotely paying for use of the Queen Elizabeth II Bridge and the two bores of the Dartford Tunnel, also featured.

4.3 We received five complaints about statutory removal (where Highways England's traffic officers arrange the removal of a vehicle from the network using powers in the Removal and Disposal of Vehicles (Traffic

Officers) (England) Regulations 2008). Such removals are charged to the vehicle keeper on a statutory tariff that some customers have argued is excessive given the level of damage to their vehicle and/or what they would have paid had their own removal company been used.

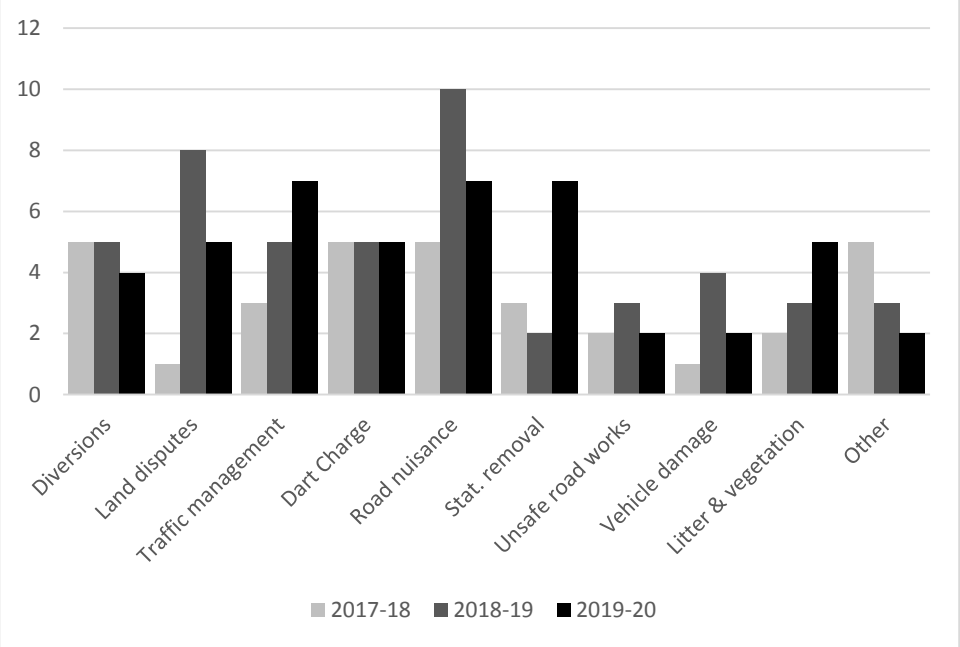
4.4 We understand that the much reduced traffic volumes occasioned by Covid-19 have resulted in a likewise reduced volume of complaints to Highways England. It is to be anticipated that this will be reflected in our own workflow during 2020-21.

## Cases we completed, 2019-20

4.5 We completed 46 Highways England cases in 2019-10. This is shown in Figure 14 which compares output alongside the previous two years.

4.6 We upheld one-third of Highways England cases to some extent, compared with just over one-half in 2018-19. The reduction in upheld cases is statistically significant.

**Figure 14: Completed Highways England cases, 2017-20**




4.7 The road nuisance category in Figure 14 combines complaints about road noise and roadworks (the latter being far more common, perhaps given the significant commitment to widening, bypass and Smart Motorway

projects signalled in the 2015-20 Highways England Delivery Plan[18]). However, there is often very little that an ICA review can do to resolve a complainant's grievance. Roadworks are necessarily disruptive and some work – like the removal of the central barrier on a motorway – is noisy. Work may also be conducted at night to reduce the impact on the travelling public but to the irritation of those living close by. Detours add to the time taken, and may cause anxiety to drivers who are not familiar with the route.

4.8 We see similarities between a number of Highways England cases and complaints against HS2 Ltd. As with HS2 Ltd, Highways England deserves credit for its efforts to improve engagement and communication with those affected by the road building programme. We especially welcome the willingness of Highways England staff to meet with complainants face-to-face rather than corresponding through an exchange of letters or emails.

4.9 Having made that point, we have been critical of what we felt was Highways England's unduly restrictive approach to the making of consolatory payments in cases of maladministration. We are ourselves parsimonious with public money, but the guidance on the making of ex gratia payments (namely the Treasury's *Managing Public Money*, the Parliamentary and Health Service Ombudsman's *Principles* (in particular the *Principles for Remedy*) and the advice, *Our guidance on financial remedy*, and the Department for Transport's own *Charter - Principles for Remedying Complaints*[19] apply equally to Highways England as to all other DfT bodies.

## CASES

### Trials of new road surfaces

**Complaint:** Ms AB complained about the noise emanating from trials of new surfaces on the motorway close to her home. She said that the trials should have taken place elsewhere, that there had been delays in responding to her correspondence, and that information given had been incorrect.

**Highways England response:** Highways England acknowledged that there had been some delays (three holding letters had been sent at different times)

---

[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/424467/DSP2036-184_Highways_England_Delivery_Plan_FINAL_low_res_280415.pdf.

[19] This document is not currently publicly available. It would be good practice were it placed on the DfT pages on gov.uk.

and that the company had not been clear in what it had said about resurfacing of the adjacent carriageway.

**ICA outcome:** The ICA said that he could not address the technical aspects of Ms AB's complaint. He part upheld on the grounds of delay in correspondence handling and the acknowledged inconsistency, but was content that the apologies already offered were sufficient redress. However, he recommended a face-to-face meeting between Highways England and Ms AB, and was delighted to learn that this had already been arranged.

---

**Complaint about inadequate signage #1**

**Complaint:** Mr AB complained that a lack of adequate signage on a designated diversion route meant that he had driven in a huge circle adding time, frustration and costs to an already stressful journey.

**Highways England response:** Highways England explained that the junction in question was not on the prescribed diversion route, and that the signage had been inspected on a two hourly basis to ensure that it was clear and accurate. It set out the expected diversion route, and the fact that the option of obtaining information in advance from the helpline or online resources was available.

**ICA outcome:** The ICA traced Mr AB's route alongside the prescribed route, and did not consider that the threshold for negligence was met in terms of Highways England's diversion arrangements. The ICA did not therefore uphold the complaint.

---

**Complaint about inadequate signage #2**

**Complaint:** Mr AB complained that confusing signage (that indicated a closure on a motorway junction in the absence of any apparent works or the closure itself) had resulted in him losing track of his speed, and being fined and allocated points for travelling over the speed limit.

**Highways England response:** Highways England explained that Mr AB had passed the signage in the latter stages of its removal after roadworks. A rolling roadblock was put in place shortly after his journey in which the final hard signage was removed. Highways England could not accept that its traffic management was responsible for Mr AB speeding. Standard procedures had been followed.

**CA outcome:** The ICA did not judge that a detailed review of the case would resolve matters for Mr AB. His complaint had triggered a timely investigation

and a sympathetic and accurate response explaining events had been sent to him.

**Damage caused by diverted traffic**

**Complaint:** Ms AB complained about damage to her home caused by vehicles using a diversion from motorway roadworks. She asked for compensation.

**Highways England response:** Highways England had explained why the diversion was in place and offered other information, but had not directly addressed Ms AB's claim for compensation.

**ICA outcome:** The ICA upheld the complaint on the basis that the correspondence handling had been poor. But there was nothing he could offer on the substantive point about compensation. Vehicles were entitled to use the highway, and would not be liable unless it could be shown that defects in their roadworthiness were such that a direct impact on Ms AB's property could be shown. Noting that Highways England had arranged a face-to-face meeting with Ms AB to discuss her concerns, the ICA judged there was nothing more he could contribute, and closed the case restoratively.

**Changes to Dart Charge's terms and conditions**

**Complaint:** Mr AB complained that changes to the terms and conditions for Dart Charge account holders were a breach of the Consumer Rights Act 2015. He further complained that Highways England's responses had directed him to the local Trading Standards department rather than through the complaints procedure.

**Highways England response:** Highways England had provided a detailed response based on advice from its legal team. It denied any breach of the Act.

**ICA outcome:** The ICA said he could not adjudicate on matters of law, and advised Mr AB to take his own independent legal advice or to go through Trading Standards as advised. However, he agreed that Mr AB should also have been alerted to the complaints process and recommended he receive an apology.

**Noise and light pollution**

**Complaint:** Mr AB complained about the noise and light pollution caused by major roadworks outside his house. He said he had had to take two days leave to make up for the loss of sleep, and asked for compensation.

**Highways England response:** Highways England said that the noisiest work was halted at midnight. It acknowledged the inconvenience to Mr AB but said it had a statutory duty to ensure the upkeep of the highway.

**ICA outcome:** The ICA said that he could identify no maladministration on the part of Highways England. It was clear that the roadworks would be disruptive, but Highways England had decided to conduct them at night to minimise the traffic disturbance and the effect on neighbouring businesses. He did not think there was any right to compensation in these circumstances. The ICA commended the actions of Highways England staff in engaging personally with Mr AB.

---

**Noise and disruption from major roadworks**

**Complaint**: Mrs AB complained in respect of noise, disruption and safety issues relating to major roadworks near her home. She said her street had been turned into a building site, and that children had been able to gain access to the works. She also said that contractors and others had failed to adhere to the Code of Construction Conduct.

**Highways England response**: Highways England had acknowledged that some vehicles may have been left idling, but it said it had attempted to engage with Mrs AB and her neighbours throughout the works.

**ICA outcome**: The ICA was able to put a series of specific questions raised by Mrs AB to Highways England and to report the answers. He said he could not independently verify everything that had occurred, but it was clear that there had been a lot of engagement. The company had no knowledge of children entering the works, and Mrs AB accepted that her concerns had now been met. In the circumstances the ICA could not uphold the complaint or make any useful recommendations.

---

**Another complaint about noise**

**Complaint**: Mr AB complained about noise from motorway repairs. He said they had disturbed his son's sleep and that his exam performance had been affected as a result.

**Highways England response**: Highways England and its contractor had apologised for the noise and explained the mitigation measures in place. The company had explained why works were conducted at night and why cones and speed limit signs were not removed.

**ICA outcome**: The ICA said that he could not comment on Highways England policies, but he was content with the responses Mr AB had received to his complaint. He did not think it maladministrative for Highways England to schedule works at night to reduce the impact on the travelling public. The company had said that lessons had been learned in terms of communications with those affected.

---

**The costs of statutory removal #1**

**Complaint**: Mrs AB complained that she had been initially refused the option of calling her own specialised recovery service when her horse box, containing two adult horses, broke down on a busy road. In the 15 minutes or so before the traffic officer (TO) arrived, she devoted herself to signalling the breakdown to other motorists in an effort to maintain safety at the scene. After the TO had arrived, he stated that the position of the horse box in a live lane, blocking an exit slip, meant that statutory recovery must be arranged immediately. However, 20 minutes later, Mrs AB was told that she could engage her own recovery. In the event, the statutory recovery went ahead at a cost of £2,000 to Mrs AB. Mrs AB was very unhappy about this as well as some aspects of the conduct of the recovery company used. Amongst the points she made was that her vehicle was not substantially damaged as claimed by the recovery company. It had been this tag that had contributed to the excessive recovery cross that she estimated would have ordinarily been in the region of £350.

**Highways England response**: Highways England obtained a statement from its TO but he did not explicitly state whether or not he had told Mrs AB that she could not arrange her own recovery. Safety considerations had been paramount - he had therefore arranged the statutory recovery within minutes of arriving and finding that no recovery had been arranged. The recovery had involved the closure of the entire carriageway in both directions with tailbacks going back five miles. Mrs AB was pointed to the guidance on statutory recovery, and the related tariff, that she had been provided with on the scene.

**ICA outcome**: The ICA obtained further information from Highways England given the lack of a clear statement about what had been said when the TO had first arrived. The ICA was told that at no stage had Mrs AB been told she could not call her own recovery. Highways England explained that there was no reason for it to make such an injunction. It would be commonplace for both the

customer's recovery and statutory recovery to be called with the first to attend the scene being deployed. The ICA was unable to resolve the difference in recollection between Mrs AB and the TO. He could not therefore arrive at a firm conclusion about whether she had been unreasonably prohibited from using her own recovery firm. The ICA set out the statutory basis of the £2,000 recovery cost and recommended that Mrs AB should complain directly to the recovery company about its handling of the day. Further, he recommended that Highways England should make a payment of £50 to reflect the fact that it did not address the main complaint area in its correspondence with Mrs AB.

**The costs of statutory removal #2**

**Complaint**: Mr AB complained that the company he worked for had been charged an excessive sum - £4,500 - by the contractor that carried out the statutory recovery of his truck after a motorway breakdown. He stated that the recovery methods had been unsafe and that the classification of the damage to his vehicle as "substantial" (immobilised after wheel studs had sheared off) was incorrect, and a ruse to justify the excessive recovery cost. Mr AB felt that the recovery could have been undertaken in a safer and more economical way.

**Highways England response**: Highways England explained that its traffic officers would not cite a specific sum the statutory recovery as the extent of the damage to the vehicle, and the corresponding category within the statutory tariff, would not be apparent at the point that they arrived at the scene. Highways England, in liaison with FMG, the National Vehicle Recovery Manager appointed to implement statutory recovery, itemised the work undertaken by the recovery contractor and upheld the classification as substantial damage.

**ICA outcome**: The ICA did not judge that Highways England had addressed the technical aspects of Mr AB's complaint adequately so he obtained further comments. Highways England reflected that Mr AB's alternative recovery suggestions had been appropriate but the one used on the day was also justifiable and had led to the successful recovery of the vehicle. The categorisation of "substantial damage" was justified in the eyes of FMG's Head of Rapid Response & Network who had over 30 years' experience in the recovery industry. The ICA did not uphold the complaint but he welcomed Highways England's undertaking to improve the technical content of its complaint responses.

**The costs of statutory removal #3**

**Complaint:** Mr AB complained about the statutory removal of a broken down lorry. He said it had suffered two tyre blow outs and did not meet the definition of 'substantially damaged'. He asked for the refund of the charges (less those he thought should have been applied).

**Highways England response:** Highways England said the charges had been correctly applied. The vehicle was unable to move, and the motorway had had to be closed to remove it from the carriageway.

**ICA outcome:** The ICA said this was essentially a legal dispute between Mr AB and Highways England, but he had endeavoured to carry out as full a review as possible. His lay conclusion was that, while Mr AB had undoubtedly been very unlucky (tyre fitters had refused to attend because the driver only had a foreign credit card, and the traffic officers had been called away to attend to another incident), the correct charges had been applied. He recommended that his report be shared with Highways England's legal advisers. He also recommended that Highways England clarify that statutory removal no longer comes within the ambit of the company's complaints policy.

---

**Damage alleged during statutory removal**

**Complaint:** Ms AB complained about damage to her vehicle that she attributed to the equipment used during a statutory removal. She asked for compensation and for the removal fees to be waived.

**Highways England response:** Highways England said that the equipment used could not have caused damage to Ms AB's bumper; there were no buckles, and the equipment was secured around the wheels.

**ICA outcome:** The ICA could not say how the damage had occurred but he was content that the investigations and conclusions drawn on the part of Highways England and its contractor FMG were reasonable. Nor could he recommend refunding the statutory removal fees. However, he drew attention to a breakdown in communication between FMG and its agent who actually carried out the removal as to whether the vehicle had been driven or winched onto the recovery truck. It was possible that this had resulted in an error in the stage 2 response, although the ICA could not know for certain one way or the other.

---

**Powers of traffic officers**

**Complaint**: Mr AB complained about the actions of traffic officers in requiring the removal of his flatbed lorry from a hatched area on the slip-road leading to a motorway. He had refused to allow the removal and waited for his own breakdown company to arrive.

**Highways England response**: Highways England had cited the statutory powers of traffic officers. The company said there was no doubt that the vehicle represented a hazard where it had broken down.

**ICA outcome**: The ICA agreed that the traffic officers were acting within their statutory powers. There were no grounds whatsoever to uphold the complaint.

---

**Complaint about Dart Charge**

**Complaint**: Ms AB complained that she had received a series of notices from Dart Charge at her rental property for a vehicle she did not own and for a person she did not know. She said this had caused her inconvenience, embarrassment and stress, and asked for compensation for the costs she had incurred.

**Highways England response**: Highways England said that it had relied upon the address supplied by the DVLA. When Ms AB notified Highways England that the DVLA had amended the address record, it had ceased all enforcement activity.

**ICA outcome**: The ICA sympathised with Ms AB. But it was clear that the letter she had received from the DVLA said that was for the relevant authorities to decide what to do regarding any penalty notices. Instead, Ms AB had simply sent the notices she received to the DVLA with the word FRAUD written across them. Although it was pardonable that she did not realise that the DVLA and Dart Charge are different entitles, the consequence was that Dart Charge/Highways England had not been aware that the address record was wrong until months later. In the circumstances, there had been no maladministration by Dart Charge, and while Ms AB had undoubtedly been inconvenienced and spent time and money on collecting unwanted penalty notice, there was no case for compensation from the public purse.

---

**Alerting customers to diversions**

**Complaint**: Mr AB complained about Highways England's practice of not alerting road users to planned diversions until the diversion was actually in

place. He said that he had been sent on a detour he could have avoided, and that this was dangerous as he was running short of fuel. He said this had happened on two successive nights.

**Highways England response**: Highways England said that its policy on alerting drivers to closures reflected the fact that planned closures could be delayed for a variety of reasons (as had happened on the first of these occasions). If it were to alert drivers in advance and the closure did not take place on time, the company would also be criticised. However, Highways England acknowledged that correct procedures had not been followed on the second night and had apologised.

**ICA outcome**: The ICA said that he could not comment on Highways England policy on closures, but it did not strike him as maladministrative. There were pluses and minuses of either approach. On the second night, Highways England had acknowledged a service failure, and this might not have come to light were it not for Mr AB's doggedness in pursuing his complaint. However, following the company's apology and internal action, there was no remaining injustice for the ICA to remedy.

---

**Clearing debris and weeds from the motorway**

**Complaint:** Mr AB had complained many times over the years about Highways England's performance, and that of its contractor, in keeping the network clear of debris and weeds. On this occasion he raised further complaints about a specific stretch of motorway. He compared the stretch and other parts of Highways England's network unfavourably with European motorways that he said were maintained to a much higher standard.

**Highways England response:** Highways England outlined its approach to litter and debris removal - programmed clearance, reactive spot clearance, and opportunistic clearances when other works were underway. It said that constraints included the need to keep the workforce safe and budgetary considerations. Highways England decided not to agree to Mr AB's suggestion of a meeting as the matter was being referred for ICA review.

**ICA outcome:** The ICA was critical of Highways England for seeming to base its decision about meeting Mr AB on the referral for independent review. However, in communications with Highways England, he established that Mr AB had met staff on several occasions previously and that the company had legitimate grounds to feel that it could not resolve matters through a further meeting. The ICA judged that the case had been reasonably handled and made no recommendation.

---

**Complaint about weeds and litter on a trunk road**

**Complaint:** Mr AB complained repeatedly about overgrown vegetation and litter along the sides of the trunk road near his home. He became increasingly frustrated with Highways England's responses to his complaints because the promised clean-up did not occur and he was not kept updated. The scheduling of the work was particularly important because the local council was responsible for litter removal and the maintenance of the cycle lane.

**Highways England response:** Eventually, the matter was escalated to divisional director level. The divisional director apologised personally to Mr AB and provided a revised schedule of work. The divisional director explained why weed killer had not been used on the first occasion that the area had been cleared (it was rainy and weed killer would have been ineffective). Highways England continued to inspect the stretch of road every week.

**ICA outcome:** The ICA considered that, after a positive initial response, Highways England had failed to keep Mr AB updated, and placed him in the position of constantly having to chase updates. Mr AB had therefore felt that Highways England had been fobbing him off. The ICA was pleased to see that the divisional director had apologised for lapses in the initial handling of the complaint, and gave concrete times and explanations in response to Mr AB's queries and challenges.

**Poor response to complaint about potholes**

**Complaint:** Mr AB complained that recurrent potholes on a section of trunk road posed a serious threat to motorcyclists' safety as well as of damaging his car. He supplied video footage and repeatedly escalated his concerns via Highways England's contractor up to the company itself.

**Highways England response:** Highways England explained that the route had been inspected and there were no safety-critical defects. However, it accepted that there were large areas of defect in one of the lanes with many of the holes too shallow to fill with Viafix (a compound with binding properties that cures into a durable material on contact with water without the need for heating). Eventually, Highways England undertook resurfacing on both sides of the carriageway.

**ICA outcome:** The ICA felt that the response from Highways England and its contractor to Mr AB's challenges had been rather thin (with the stock wording removed, all three responses laid end to end barely covered a single side of A4). He recommended that Highways England offer Mr AB a meeting with key

personnel. He also asked Highways England to take steps to improve the consistency and quality of its complaint responses. Many of the letters sent to Mr AB were lacking in specifics about what the company's standards were and why it thought its performance was adequate.

**Delays on trunk road following an incident**

**Complaint:** Mr AB travelled on a busy trunk road several hours after a major accident had closed the northbound stretch. He complained that Highways England had not alerted motorists to the closure, resulting in massive tailbacks and a long wait for people caught up in slow-moving traffic. He was very disparaging about Highways England's responses to his complaints, arguing that a lack of a review or debrief of Highways England's involvement on the day pointed to a vacuum in its leadership.

**Highways England response:** Highways England explained that the closures had been determined by the police who had been the lead agency in managing the incident. There was a lack of signage available for the stretch of road in question, and Highways England was looking into obtaining variable message signs to use in future incidents. Highways England judged that it had not failed to implement any relevant policy or procedure and did not uphold the complaint. At the second stage of its complaints procedure, it provided a detailed account of its involvement on the day in question.

**ICA outcome:** The ICA was not equipped to determine the technical aspects of the dispute between Mr AB and Highways England and he had no jurisdiction to comment on the resources available to the company. The ICA said Highways England could have been much more specific in its communications with Mr AB, and not all of the responses were particularly authoritative. However, in the absence of evidence that Highways England had fallen into error, the ICA was unable to uphold the complaint. He emphasised that this should not be construed as an endorsement of Highways England's management of the incident on the day.

**No ICA jurisdiction in respect of property valuation**

**Complaint:** Mrs AB complained that, almost two years after her blight notice had been accepted, Highways England had not reached a reasonable valuation for her property. She made a number of complaints about the agents involved in the valuation process.

**Highways England response:** Highways England addressed Mrs AB's queries, challenges and complaints thoroughly throughout the process,

attempting repeatedly to redirect matters into the professional agent-to-agent negotiation process. Eventually, Highways England's chief executive suggested specialised alternative dispute resolution (ADR) as the final opportunity to resolve the valuation dispute without recourse to the lands tribunal.

**ICA outcome:** The ICA did not regard it as proportionate to subject the administrative aspects of Mrs AB's complaint to exhaustive review, as her overarching concern was the property valuation. This was not a matter that the ICA had any scope to resolve. The ICA urged Mrs AB to consider ADR. He did not consider the complaint to be in his jurisdiction.

---

**Debris on the carriageway**

**Complaint:** Mr AB complained after his wife collided with material in a live motorway lane causing severe damage to the subframe of his car. He requested CCTV footage, only to be sent the wrong film (the film showing the original stretch of road was erased by the time this came to light). He also had confusing and unsatisfactory dealings with Highways England's customer contact centre. Through a separate process outside of the complaints procedure, his claim for damage against Highways England was rejected by Highways England's 'Red Claims' team.

**Highways England response:** Highways England explained that the area of motorway had been patrolled and checked that day and the day before, and there had been no sign of debris. The legislation did not confer automatic liability on Highways England for damage caused by debris on its trunk roads. Highways England provided information related to other vehicles that had hit debris in the same location at the same time and explained that the area had been debris-free on checking afterwards. There had been no roadworks in the vicinity that would account for it. Highways England therefore declined to make any payment to Mr AB.

**ICA outcome:** The ICA noted that the footage provided by Highways England had been shot at low resolution in order to assist in monitoring and regulating traffic flow in real time – it was not intended for investigations into liability for damage to vehicles. On the available evidence, the ICA did not think that it was likely that provision of the correct footage would have placed Mr AB in a position to successfully sue the third party who had left the debris on the carriageway. The ICA did not think that the lapses in service were sufficient to exceed the descriptors within the PHSO's stage 1, 'low impact' injustice. He therefore recommended that Highways England should apologise.

---

**Flooding as a consequence of Smart Motorway works**

**Complaint:** Ms AB complained about flooding to her property that she said was the result of Smart Motorway works. She said she wanted to move house but was unable to do so as a result.

**Highways England response:** Highways England had explained its difficulties in investigating Ms AB's complaint in that documents had been lost when asset management and operational planning had been brought back in-house. The company said that a temporary fix had been installed, and it promised that action was being taken to ensure other customers did not suffer the delays that Ms AB had faced. Highways England accepted that there had been delays and poor communication.

**ICA outcome:** The ICA said he was not a hydrologist and could not say if the flooding affecting Ms AB's property was the result of the Smart Motorway works. However, the implication of the company's letters was that it accepted that this was likely. The ICA said he also could not design Highways England's business processes, but it was apparent that outsourcing operational planning had not resulted in a system that was very agile. Indeed, other customers would also be facing waits of 18 months for remedial action. The ICA upheld the complaint and made a consolatory payment of £500. Acknowledging that the question of insourcing/outsourcing could have national repercussions, the ICA also recommended that a copy of his report be shared with the chief executive.

---

**Highways England criticised for its approach to making consolatory payments**

**Complaint:** Ms AB complained that Dart Charge/ Highways England had failed to honour its undertakings to ensure that she was not repeatedly sent enforcement correspondence in relation to a car bearing her plate making unpaid-for trips across the Dartford-Thurrock crossing. Enforcements in relation to seven different offences were sent to her over an eight-month period. Many of those occurred after her registration had been placed on a watch-list in order to intercept false enforcements. After she had involved her MP, Ms AB was put on an “enhanced” watch-list and assured that there would be no repetition. Unfortunately, three false cases against her were already in the system at this point meaning that further enforcement correspondence arrived over the following month.

**Highways England response:** Highways England’s Dart Charge provider, Emovis, offered Ms AB a consolatory payment of £25 based on the first four enforcement letters. Apologies, that the ICA felt were too often qualified, were

also offered on occasion by Dart Charge and Highways England. Highways England cited the Treasury document, *Managing Public Money*, in support of its position that it should not make a consolatory payment.

**ICA outcome:** The ICA acknowledged that Dart Charge generally had good systems for ensuring that innocent members of the public were not chased for payments they had not run up. However, given the prevalence of vehicle cloning, and the difficulty in enforcing against it, the ICA considered that Dart Charge needed to maintain responsive systems to act quickly on customer concerns. For unknown reasons, the initial measures put into place to prevent Ms AB from being ticketed did not work. The letter that followed assuring Ms AB and her MP that there would be no repetition did not take account of the possibility that live enforcement cases might be in the system. The ICA was particularly critical of the rationale used by Highways England for not offering a consolatory payment. He did not think that Dart Charge/ Highways England could have properly read *Managing Public Money* as the document clearly made provision for consolatory payments where failures in administration had created hardship and injustice. Taking all of these failings into account, the ICA recommended that Highways England should make a consolatory payment of £250, and should also reconsider its position on consolatory payments.

---

**Traffic management following motorway closure**

**Complaint:** Mr AB complained in respect of the closure of a motorway and a trunk road. He said that the detour had taken an hour and a half when the journey usually took 30 minutes. He also said that diversion signs were not in place.

**Highways England response:** Highways England had apologised for the inconvenience. It said the closure had been the result of activities by the National Grid. The company had provided details of the relevant Project Manager if Mr AB required further details.

**ICA outcome:** The ICA said that he could not assess professional traffic management decisions or say authoritatively if signage was in place. However, he identified an error in the step 1 response, which went uncorrected in the (delayed) step 2 reply. Given these handling errors, the ICA part upheld the complaint but made no recommendations, sufficient redress having been provided by his independent report and the option for Mr AB of speaking with the Project Manager.

---

**Poor signage on motorway**

**Complaint:** Mr AB complained about poor signage on the M6 motorway that failed to alert drivers to planned roadworks. He said that advance warning could have saved the time that he spent in queuing traffic.

**Highways England response:** Highways England had provided detailed explanations of its approach to signage. In this case, it was unfortunate that Mr AB had approached a particular junction at just the time the tactical signage over-rode the strategic signage.

**ICA outcome:** The ICA said that Mr AB was providing hugely useful information to Highways England. He proposed that Mr AB be invited to visit the Regional Control Centre to encourage a dialogue between the two.

---

**Night-time noise nuisance**

**Complaint:** Mrs AB complained that heavy freight traffic was being diverted at night through her small village causing damage to property, risking life and creating late-night noise.

**Highways England response:** Highways England said that there was no workable alternative diversion route available when the specific stretch of trunk road running close to the village was closed for repairs. Efforts had been made to programme repairs in such a way as to minimise the total disruption. The use of the route had been approved with the County Council and the police, and signage had been erected cautioning drivers to take care in villages. Speed limit enforcement had also been enhanced. Highways England also explained that the nature of the stretch of road it was resurfacing was such that a contraflow would not have been a viable option.

**ICA outcome:** The ICA was sympathetic to Mrs AB's predicament but, based on his administrative justice remit, could find no fault in Highways England's involvement in Mrs AB's case. He did not therefore uphold the complaint.

---

**Responsibility for a footpath**

**Complaint:** Ms AB and Mr AB complained that Highways England had reneged on a promise to restore a footpath near their business premises. They also said that a failure to control vegetation made entry and exit dangerous for pedestrians and drivers.

**Highways England response:** Highways England said that previous correspondence indicating a willingness to repair the footpath was in error. Local maps and local council records showed no indication of a right of way near the property in question. Highways England said that vegetation was cut back in line with policy to ensure good sightlines for drivers. There were no concerns at present.

**ICA outcome:** The ICA said that the approach taken by Highways England could not be deemed maladministrative. No right of way could be found and it was likely the path was an informal pathway rather than one for which Highways England had a responsibility. However, the company had said it would consider any further information the complainants submitted. As far as the vegetation clearing was concerned, the ICA could not make any finding on the facts, but he was content that policy was being followed. However, the ICA was critical of aspects of Highways England's correspondence, and upheld the complaint in part.

---

**Business affected by road closures**

**Complaint:** Mrs AB complained that road closures were affecting her business, and that Highways England gave insufficient notice of such closures. She also alleged that contractor staff had been rude to her.

**Highways England response:** Highways England said it had no legal duty to pay compensation in such cases. It detailed the arrangements it had made to escort customers to Mrs AB's business when the road was closed.

**ICA outcome:** The ICA said that he was content that Highways England had properly explained the legal position. He also noted the arrangements that had been made to escort customers, and identified nothing that would amount to maladministration. He understood the impact on Mrs AB's business, but there was no relief that he could offer. However, in light of Mrs AB's allegation that some contractors had been impolite, he recommended that Highways England remind contractor staff of the need to treat those affected by road schemes with courtesy at all times.

---

# 5. Other DfT and delivery body casework

## (i): HS2 Ltd

5.1 It is very pleasing to record that we received only one HS2 Ltd referral this year compared with 13 cases in 2018-19. As we have reported in past years, HS2 Ltd cases are amongst the most complex and time-consuming of all those we review.

5.2 The resolving of disputes without the need for independent review is, we believe, the result of the investment the company has made in its Public Response Team – the team responsible for the complaint handling – and the wider Community and Stakeholder Engagement Team, and its commitment to working with citizens and communities affected by the route of the new railway.

5.3 Given that it had been feared that the ICA scheme might be swamped by HS2-related complaints, huge progress has been made over recent years.

5.4 Where complaints do reach stage 2 of the HS2 Ltd complaints procedure, the process followed is amongst the most thorough of any organisation either of us have come across. The commissioning of an internal case review by a senior member of staff, to inform a personal response from the Chief Executive, sets a standard of excellence that few other complaints systems come close to meeting.

5.5 We completed two HS2 Ltd cases in-year, one of which is summarised below. The other, headed 'Discrimination against tenants' was summarised on page 142 of last year's Annual Report. The completion of that case was delayed as, with the agreement of the complainant and HS2 Ltd, we encompassed new complaints that were raised during the course of our original review.

## CASES

### Innovation in design

**Complaint:** A Parish Council complained (a) that HS2 Ltd had not complied with the intentions of a statement by a Minister that the company would encourage its contractors to be innovative; (b) that HS2 Ltd had not complied with a commitment that the design of viaducts would be sensitive to the local environment; (c) that HS2 Ltd had not followed its complaints procedure.

**HS2 Ltd response:** The company had explained the design considerations it had taken into account. It said innovation was encouraged, but this could not go beyond the terms of the High Speed Act.

**ICA outcome:** The ICA said he could not comment on HS2 Ltd or Government policies. Nor could he make aesthetic judgments about the proposed design of the viaduct in question. However, the ICA agreed that much of the early handling of the complaint had been poor, and part upheld the complaint on this basis. He recommended an apology and that a time target should be introduced into the complaints policy in respect of step 2.

## (ii): Maritime and Coastguard Agency

5.6 We received just two complaints about the MCA in 2019-20 compared with seven last year.

5.7 As in most MCA cases we have reviewed since 2013, both cases involved the MCA's relationship with maritime professionals rather than with the public at large.

## CASES

**Contractual dispute over fees and expenses**

**Complaint**: Mr AB, a professional contractor with specific maritime expertise, complained that the MCA had refused to fully pay his expenses and fees following a consultation.

**Agency response**: The MCA explained that the consultation had been exploratory and that no undertaking had been made before or during the meeting to employ Mr AB. However, in the circumstances, it agreed to make a payment, although less than the sum sought by Mr AB.

**ICA outcome**: The ICA noted that there had clearly been a misunderstanding about the basis of Mr AB's attendance. He could not adjudicate over what amounted to a contractual dispute. He noted that, on one hand, the MCA had been discourteous in not responding to Mr AB's correspondence. On the other, it was paying a not insignificant sum of money for a service it did not regard itself as having commissioned.

**Qualification for Chief Mate**

**Complaint**: Mr AB complained that the MCA did not recognise his qualifications as entitling him the Chief Mate Certificate of Competence. He said he was aware of other seafarers who did not have the E&T C+D certificates who had been granted Chief Mate status.

**Agency response**: The MCA said it had correspondence from Mr AB's college to say he had not passed the required modules. In three separate responses it said that the E&T C+D certificate was essential.

**ICA outcome**: The ICA said he could not adjudicate upon Mr AB's entitlement as this was a personnel decision that had been endorsed by the chief examiner and the chief executive. However, the ICA was critical of the responses Mr AB had received since it was not the case that the certificate was essential. As revealed at stage 2 of the complaints process, the MCA in fact had a failsafe in place for seafarers who could not supply the certificate, and would review details of the courses seafarers had taken. The ICA could not say if this had applied to the other seafarers Mr AB had named, but he was pleased that this process had then been offered to Mr AB - albeit he could not supply the required evidence. The ICA also commended the way the MCA had pursued other aspects of Mr AB's complaint relating to the quality of training offered by two named colleges.

## (iii): Civil Aviation Authority

5.8 We received four CAA complaints (compared with five last year). The three 2019-20 cases completed in-year that we have not reported before are summarised below.

5.9 The first case illustrates a general principle also demonstrated in other DfT bodies: that a complaints procedure is not a good way of attempting to resolve commercial disputes or disagreements between fellow professionals.

## CASES

**Decision to withdraw approval of an engineering company**

**Complaint**: Mr AB complained on behalf of an engineering company. He said that the firm had been systematically excluded from maintenance work on commercial aircraft for which it had received CAA approval. Mr AB said this

had been done maliciously and accused a named member of CAA staff of racism.

**CAA response:** The CAA said that there was no evidence for the allegations. Approval of the company had been properly withdrawn as it could not meet the CAA's requirements. The CAA said the allegations of racism were also not supported by the evidence.

**ICA outcome:** The ICA said that Mr AB had had the opportunity for a formal review of the decision to withdraw CAA approval. The case illustrated the generally undesirable and ineffective way of resolving regulatory issues via a complaints process rather than through formal legal channels set up for the purpose. The ICA was also content that the CAA had appropriately investigated the allegations of racism, and did not uphold any aspect of the complaint.

---

**Low flying aircraft endangering livestock**

**Complaint**: Mr AB complained that the CAA did not investigate his complaint of persistent nuisance from a low-flying aircraft close to his business premises that was endangering his livestock. He also complained that the CAA had denied that he had specific licensing.

**CAA response**: The CAA dismissed Mr AB's report at initial review stage on the grounds that the prospects for a successful prosecution were limited on the available evidence. However, the rationale the Authority provided at the time simply stated that there had been no breach of the relevant rules. Mr AB complained and the CAA went on to acknowledge that its statement that he was unlicensed was inaccurate. Sincere apologies were offered. The leader of the CAA's enforcement and prosecution team (the General Counsel) reviewed the case and confirmed that the evidence as presented was not sufficient to secure a successful prosecution. However, as a courtesy, the CAA would get in touch with the owner of the aircraft and ask them to avoid the airspace above Mr AB's premises.

**ICA outcome**: The ICA reviewed the evidence provided along with the relevant policies, including the CAA's enforcement policy and its online resource highlighting successful prosecutions. He considered that the General Counsel had reviewed the case thoroughly in light of the prospects for a prosecution and the resources available to her team. He accepted the outcome and commended the CAA for taking the extra step of contacting the owner of the aircraft. He did not uphold the complaint, but recommended that the CAA ensure that its responses to reports of breaches of the rules include more

detailed information about the way the report was considered so that customers did not have to complain in order to find out why a decision had been made.

**Time taken to process change to flight instructor licence**

**Complaint**: Mrs AB complained about the time taken to process an addition to her flight instructor licence. She said the delay had caused distress and she feared she would lose her job.

**CAA response**: The CAA had upheld the complaint and apologised. It had offered no further redress.

**ICA outcome**: The ICA said that the extent of the poor service and its impact upon Mrs AB was at level 2 on the PHSO scale. He also recommended that a copy of his report be shared with the chief executive, as it was apparent that the licensing system was under considerable stress. It was also arguable that a different approach to caseworking could be applied rather than passing those whose applications were incomplete back to the end of the queue.

## (iv): Network Rail

5.10 Network Rail is not formally a member of the ICA arrangements. However, we conducted an important one-off review at the company's request.

## CASE

**Disturbance from nearby railyard**

**Complaint:** Mr AB, a Member of the Scottish Parliament, complained on behalf of constituents in relation to noise emanating from nearby rail sidings and misleading information that had been given to residents. He asked for compensation in respect of their house move.

**Network Rail response:** Network Rail said that the information given had been correct at the time but had been overtaken by events. It acknowledged that its engagement with those neighbouring the railyard could have been improved. It said it could not pay compensation in the circumstances.

**ICA outcome:** The ICA agreed that compensation would not be possible. He drew attention to the engagement strategies followed by Highways England and HS2 Ltd and suggested that Network Rail might learn from these. He also

recommended that further advice be given to staff about the circumstances in which compensation/consolatory payments could be made, and that Network Rail consider if its complaints processes should be brought more in line with the rest of the DfT family, including an independent element.

## DfTc

5.11 A small number of complaints involve the Department's central functions. We received three such complaints about the DfT this year, each of which is summarised below.

## CASES

### Equality aspects of pavement parking

**Complaint**: Mr AB complained in relation to a review of pavement parking conducted by the Department. Mr AB also criticised the outcome of the Department's consideration of his Freedom of Information requests in relation to the way in which the review was conducted. In addition, Mr AB said that the Department had not applied its complaints procedure appropriately, and that it had shown "discrimination and bias" in failing to treat him "differently and appropriately" under the Equality Act 2010.

**DfT response**: The Department had acknowledged that one letter had not received a response, and that it had been too optimistic when promising a further reply. It said that it had followed its complaints procedure, save for accelerating Mr AB's access to the ICA.

**ICA outcome**: The ICA said it seemed to him that a lot of the problems arose from the DfT's division of its correspondence into BAU (Business as Usual), Complaints and FOI (Freedom of Information requests). What seemed neat from a bureaucratic perspective was experienced as inchoate and confusing by Mr AB. However, overall the ICA judged that Mr AB had received a high level of engagement. The ICA suggested that a more robust approach could have been taken towards the Information Commissioner's Office when it suggested that the Department carry out a review of a decision not to release information that does not exist.

### Policy on electric vehicles

**Complaint:** Mr AB complained (i) that the users of electric scooters were prosecuted whereas the users of electric cycles were not. He called for a moratorium on prosecutions while the DfT decided its policy. He complained

(ii) about the inaction of the DfT in respect of what he called the 'used cars scandal' - the mis-selling of former fleet vehicles.

**DfT response:** The DfT said that it had consulted on its future policy on electric vehicles and that this was a policy matter. It said that concerns about trading standards were for the Department for Business, Energy and Industrial Strategy (BEIS) - and BEIS had replied separately to Mr AB.

**ICA outcome:** The ICA said that he could not adjudicate upon DfT policy, and did not accept Mr AB's contention that the introduction of a moratorium on prosecutions would amount to an administrative choice. He also agreed that consumer protection was for BEIS and not the DfT. However, while he did not think that further correspondence was necessary given the findings of his independent report, the ICA part upheld the complaint because he did not feel that the Department had ever explained its view on a moratorium or why the 'used car scandal' was a matter for BEIS.

---

**Complaint from a traffic professional**

**Complaint:** Mr AB, a traffic professional, complained about the failure of the DfT to respond to his correspondence.

**DfT response:** The DfT had apologised for poor handling of some of Mr AB's correspondence.

**ICA outcome:** The ICA regretted that exchanges between fellow public servants had ended up in the complaints process. He said that some of the exchanges had been handled very well - courteously and promptly - by the Department. But a particular line of correspondence had been sent 'round the houses'. The ICA also noted that Mr AB appeared to have raised an issue of no little public policy interest regarding signage. He upheld the complaint but considered that the Department's apology and the findings of his independent report constituted sufficient redress.

# Appendix

**TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS (as at April 2020)**

## Introduction

The overall aims of the independent complaints assessor (ICA) process are to put right any injustice or unfairness suffered by customers, to improve services delivered through the DfT, and/or to provide assurance that proper procedures have been followed and that maladministration has not occurred.

1. The Department for Transport (DfT) independent complaints assessors (ICAs) provide independent reviews of complaints about the services delivered by:
    - the central Department for Transport (DfT(C))
    - all other bodies reporting to DfT (DfT Bodies).

2. This guidance sets out expectations of the ICAs and will, subject to annual review, apply throughout the current ICAs' terms of appointment.

3. Any changes in the interim will be subject to agreement between DfT, the DfT Bodies, and the ICAs.

## Referral and review process

4. The scope of the ICA scheme is defined by an agreed protocol that is annexed to this guidance (the 'protocol' – Annex A).

5. The Department and/or DfT Body will tell customers they can ask for ICA review through the information it provides about its complaints procedure and in its final response to each complaint.

6. The Department and/or DfT Body will ensure the complainant knows what the ICAs can do and that they must ask for referral following the Department and/or DfT Body's final response. A standard referral form for DfT Body use is annexed to this guidance (the 'referral form').

7. The Department and/or DfT Bodies must always refer a complaint to the ICA if asked to do so. Neither the Department nor a DfT Body should block a complaint being referred for an ICA review.

8. The Department and/or DfT Body will usually tell a complainant they can ask for ICA referral after it has provided a final response. However, in

some circumstances the DfT Body may decide to refer a complaint to an ICA before it has completed its complaints procedure, with the agreement of the complainant and the ICA.

9. The Department and/or DfT Body may also ask an ICA for advice on a case before its final response. If this happens, the ICAs will ensure a fresh review will take place should the complainant ask for an ICA review.

10. The Department and/or DfT Body will aim to pass a completed referral form, timeline and papers to the ICA as soon as possible, and no later than 15 working days of being asked to refer a case to the ICA. At that stage, the Department and/or DfT Body will ensure the ICA knows if the complainant has any disability, and/or communication preference or requirement.

11. The ICA will acknowledge receipt of a referral to the Department and/or DfT Body and complainant within five working days, unless the ICA judges that there is no need to do so in the circumstances. The ICA will give the complainant a contact telephone number, email and postal addresses.

12. The ICA will decide whether and how much of a complaint is in scope. They will do this after considering the information and documents the Department and/or DfT Body gives them and any other information they judge relevant. The ICA needs to keep in mind the public interest while doing this. Factors relevant here include:

*For a detailed review*

- the complainant has, or might have, suffered significant injustice, loss or hardship
- the Department and/or DfT Body's handling of the complaint has been poor. For example, it has failed to conduct a proportionate and reasonable investigation, and/or has failed to apply an appropriate remedy
- the Department and/or DfT Body has asked the ICA to review the case
- an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

*Against a detailed review*

- the Department and/or DfT Body has investigated the complaint properly and has found no administrative failure or mistake
- the complainant objects to the Department and/or DfT Body's policy

or legislation

- a full review would be disproportionate.

13. Having considered the factors set out in paragraph 12, the ICA may decide that subjecting the complaint to a detailed review would not meet the overall aims of the ICA review process set out in the introduction.

14. During the review the ICA may raise queries about the complaint history, or the policy or legal background and the delivery body will try to answer these. The Department and/or DfT Body will ensure the ICA has complete access to the relevant documents. This includes third party material.

15. The ICA will review the complaint and set out their conclusion about whether the delivery body has been fair and unbiased and has followed its complaints procedures correctly. The ICA is free to decide how to do this, but might want to consider documents and answers to written questions. An ICA may interview interested parties by exception and should tell the Department and/or DfT Body (and DfT Governance Division ICA sponsor if appropriate) beforehand.

16. An ICA may discuss a case with another ICA if they feel it would be helpful. An ICA may also, with subsequent prior agreement from DfT, co-opt a substitute ICA to support case handling.

17. The ICA will send a draft report to the delivery body for it to check for factual accuracy. If the Department and/or DfT Body thinks it might be difficult to accept and/or implement the ICA's draft recommendations, it may comment at this stage.

18. The review will include the ICA's findings and conclusions (with reasons) as to:
    - main facts in dispute
    - how much the complaint was justified
    - where any part of the complaint is upheld, and any recommendation to put it right
    - any recommendation or suggestion for improving the handling of complaints or the matter in question.

19. Exceptionally, the ICA may decide to issue a full (or partial) draft report to the complainant, as well as to the Department and/or DfT Body. This will allow all parties to provide their input before the ICA finishes the report.

20. The ICA will aim to complete their review of the case within three months.

They should tell the complainant and the Department and/or DfT Body if they think it will take longer and explain the reason(s) why.

**Remedies**

21. The ICA may recommend the Department and/or DfT Body put right any complaint they uphold by:
    - saying sorry
    - giving more information and/or explanation
    - taking other remedial action
    - paying out-of-pocket expenses (with evidence)
    - paying other financial losses (with evidence)
    - making a consolatory payment, if this is proportionate and necessary, to reflect the inconvenience, injustice, hardship or delay experienced by the complainant because of the Department and/or DfT Body's mistake or failure.

22. When making a recommendation for any financial payment, the ICA will consider the DfT Body's policy, relevant Treasury Guidelines (currently *Managing Public Money*) and the Ombudsman's *Principles for Remedy*.

23. In suggesting any remedy, the ICA will consider 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 consider whether anything the complainant did made their situation worse.

24. At the ICA draft report stage, this must be sent to the Department and/or DfT Body for fact checking and they should try to reach an agreement with the ICA about their findings and recommendations.

    - When the Department and/or DfT Body does not agree to implement a recommendation, it should tell the ICA at this draft report stage.

    - If the Department and/or DfT Body and the ICA cannot resolve any difference of opinion the Department and/or DfT Body should tell the complainant and the ICA, in writing, after the ICA issues the final report.

25. The Department and/or DfT Body must respond to every ICA report to a complainant, by writing to the complainant setting out its response to the report and to any recommendations, and must send a copy to the ICA

who handled the review.

26. The Department and/or DfT Body must tell the relevant ICA as soon as they are aware of a case the ICAs have reviewed has been accepted for investigation by the Parliamentary Ombudsman.

27. The Department and/or DfT Body must send a copy of any adjudication commenting on the ICA's handling of a complainant to the ICA that handled the case and copy in the DfT Governance Division ICA sponsor.

28. The Department and/or DfT Body should, following receipt of the final Ombudsman's report after investigation into a complaint, advise the relevant ICA and the DfT Governance Division ICA sponsor of the Ombudsman's recommendations about the outcome of the have reviewed.

29. The Department and/or DfT Body must write out to the complainant and copy in the ICA and DfT Governance Division ICA sponsor, as to whether they accept the recommendations of the Ombudsman or not.

**Confidentiality/personal information handling**

30. When a complainant makes a complaint to the Department and/or DfT Body, they will use the complainant's personal information, and where appropriate share it with DfT and its appointed independent complaints assessor (ICA), so they can handle the complaint properly

31. The Department and/or DfT Body may publish data relating to a complaint, in anonymised form, and in the ICA's annual report to show the public how DfT and DfT Bodies deal with complaints and what DfT ICAs do.

32. The Department and/or DfT Body will also use complainant personal data for producing anonymised statistical information.

33. The Department and DfT Bodies process personal data relating to a complaint so they can deal with it. Some DfT Bodies are separate data controllers under data protection law.

34. Where a complaint has been sent to the wrong DfT delivery body, they will forward it to the right one and let the complainant know they have done so

35. DfT and DfT Bodies will destroy securely all data about a complaint that was referred to the ICA, including the report, generally after two years.

36. DfT's privacy policy has more information about a person's rights in relation to their personal data, how to complain and how to contact the Data Protection Officer. This is available at; https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter.

37. Please note that this privacy policy covers DfT(C), its agencies and investigation branches only. Other DfT Bodies have their own privacy policy on their website. [Other data controllers should amend this paragraph as appropriate so that it refers to their own privacy policies.]

38. To conduct a review an ICA might require access to material that is personally sensitive; for example, because it is confidential, legally privileged or commercially sensitive.

- Where the Department and/or DfT Body has told the ICA some material, they have asked for is sensitive, the ICA must not disclose any part of it outside the Department and/or DfT Body or DfT(C) without first getting consent of the appropriate Data Controller(s).

- In rare cases, an ICA might not be able to confirm or deny the existence of data. The Department and/or DfT Body must inform the ICA in those circumstances.

39. The ICAs must handle all documents and information given to them in line with Department and/or DfT Body's requirements for the lawful protection of information, especially personal information.

40. The ICAs will pass any requests made directly to them for access to information under the Freedom of Information or Data Protection Acts directly to the relevant DfT Body or to the Department, together with any relevant documents or information to which the request may relate.

41. The ICA should copy their report to the complainant and to the Department and/or DfT Body (and any representative such as an MP). The ICAs' reports are not confidential; they should be written with the expectation they could be shared widely particularly by a complainant.

42. The ICAs shall not include the names of any individual staff in any reports to protect individuals from any malicious intent by others.

43. Two years after a review or the issue of the ICAs' Annual Report including the case (whichever is the later), the ICA should destroy securely all relevant case documents they hold. The Department and/or DfT Body will be responsible for the destruction of any documents stored centrally.

## Reporting by ICAs

44. The ICAs will report every year to the Department on complaints they have handled in the previous year ending 31 March. The report will include:

- how many complaints were referred to them
- how many complaints they upheld, partially or fully
- what recommendations and suggestions, if any, they made to the Department and/or DfT Body
- what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of the Department and/or DfT Body complaints procedures and their role
- a selection of anonymised complaints the ICAs have concluded during the year, to
    - highlight issues found in service delivery,
    - encourage others similarly affected to come forward, and to
    - demonstrate the independence of the ICAs' work
- any other matter the ICAs consider the Department and/or DfT Body should know about.

45. The ICAs will invite the Department and/or DfT Body to check a draft of the report for the accuracy of sections dealing with its cases.

46. The Department will publish the ICAs' Annual Report and its response to it on its website following receipt.

47. The ICAs will also produce quarterly summary reports to an agreed format. These will also be provided to the Department and/or DfT Bodies in draft form before submission to DfT Governance Division ICA sponsor.

## Target timescales

48. Target timescales for the DfT ICA scheme are set out below.

| | |
|---|---|
| Department and/or DfT Body to provide ICA with completed referral and all supporting documents | 15 working days of receipt of request for an ICA review |

| | |
|---|---|
| ICA to acknowledge referral to complainant and Department and/or DfT Body and to inform complainant and delivery body of proposed timescale for review | 5 working days from receipt of completed referral |
| Department and/or DfT Body to answer queries raised by ICA | 15 working days of receipt of query |
| ICA to issue draft report to Department and/or DfT Body | 3 months from receipt of completed referral. |
| Department and/or DfT Body to respond to draft ICA report | 10 working days of receipt of draft |
| ICA to issue final report to the complainant and Department and/or DfT Body | 5 working days from response to draft report and within three calendar months of initial referral. |

49. If an ICA thinks they might miss any of these targets, they will tell the DfT and the Department and/or DfT Body as early as possible and explain their reason(s).

**Equality**

50. The scheme should be as widely accessible as possible to all sectors of the community, in the same way DfT's services are. If while making a referral the DfT Body considers the complainant has any protected characteristic as outlined in the Equality Act that might require the ICA to adjust their approach to handling the case, it will tell the ICA as soon as possible.

**Annex A**

## ICA Protocol

1. Information delivery bodies should give to complainants at or before the final delivery body complaint response.

## ICA referral

2. You can ask us to pass your complaint to one of the independent complaints assessors (ICAs) if you've been through the final stage of our complaints process and aren't happy with the response.

3. The ICA is:
   - independent of DfT and [insert name of DfT body]
   - a Public Appointment not a civil servant.

4. The ICA looks at whether we've:
   - handled your complaint properly
   - given you a reasonable decision.

5. It doesn't cost you anything for the ICA to assess your complaint.

6. 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.

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

8. If you and we both believe referral to the ICA won't resolve your complaint, then with the agreement of the ICA, the ICA doesn't have to consider it. Instead you can ask an MP to refer your case to the Parliamentary and Health Service Ombudsman (PHSO).

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

10. When the ICA has reviewed your case, they'll tell you the outcome and if they've made any recommendations. This ends their involvement with your case.

11. 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.

12. The ICA can't look at:
    - disputes where the principal focus is upon Government, DfT, or DfT Body policy
    - complaints arising from contractual and commercial disputes
    - complaints about the law
    - matters considered by Parliament
    - 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 for, the Secretary of State
    - legal cases that have already started and will decide the outcome
    - an ongoing investigation or enquiry
    - how we handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
    - how we handle subject access requests made under the Data Protection Act
    - personnel and disciplinary decisions or actions
    - any professional judgment by a specialist, including, for example, the clinical decisions of doctors.

13. Also, the ICA can't usually look at any complaint that:
    - hasn't completed all stages of our complaints process
    - is more than three months old from the date of the final response from us.

14. If your complaint falls within either of the two categories that the ICA can't usually look at, please tell us why you believe the ICA should review it. We shall send your explanation with your complaint to the ICA.

15. The ICA can't look at any complaint that has been, or is being, investigated by the PHSO.

**Annex B**

**Referral form for Department or DfT Body completion**

**ICA review referral form**

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

| | |
|---|---|
| 1. Department or DfT Body and 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?)<br>If so, what? | yes/no |
| 6. Has the complainant identified as having a protected characteristic under EA 2010? If yes, please state what | yes/no |
| 7. Date complaint made and by what means? | |
| 8. Summary of complaint (attach letter/email if appropriate) | |
| 9. Date of initial response to the complaint? | |
| 10. Summary of initial response (attach letter/email if appropriate) | |
| 11. Date of 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 (e.g. apology, reimbursement of expenses, ex gratia payment)? | |
| 4. 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? | yes/no |
| 17. Is the complainant's request for ICA review late?<br>If so, does the delivery body think the ICA should waive the time bar? | yes/no<br><br>if late: waive/don't waive |
| 18. Does the complaint concern systems or processes which have since changed or will change in the near future? | yes/no |
| 19. Confirm the complainants preferred method of communication and that these details have been agreed, are current, and valid | |
| Date: | Person making referral (if different from email) |

***I confirm that the above information has been verified.***

**Any other comments:**