Department for Transport

Independent Complaints Assessors
Annual Report, 2018-19

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

We are pleased to submit our Annual Report covering the period April 2018 to March 2019.

Stephen Shaw

Jon Wigmore

Foreword

We have served as the two Independent Complaints Assessors (ICAs) contracted by the Department for Transport (DfT) since 2013.[1] We can review complaints against more than 20 delivery bodies (as well as the Department itself) once the internal complaints processes have been exhausted. This report describes how we have gone about our duties during 2018-19.

As in previous years, the report details the input and output of cases, and our personal productivity. Perhaps more significantly, it includes detailed case histories demonstrating the wide range of issues that we cover, and the approach we have taken to them. We have redacted the case histories to ensure that no complainant is identifiable.

It is a convention of complaint-handling that, where an injustice or maladministration has occurred, the aim is to return the complainant to the position in which they would have been had that unfairness or procedural failing not occurred.[2] However, putting people exactly back into the position they would have been in without the service failure is usually an impossibility. The challenge of complaint handling is stark when people feel that their lives have been irretrievably damaged by public bodies. They will often experience the response to their complaint as a further humiliation.

That is true for many of those who complain to the DfT and its delivery bodies (DBs). The revocation of a driving entitlement, in particular, is often devastating for people who need to drive to be independent, to care for others and to work.[3] Vocational drivers and elderly people with limited support networks living in rural locations are particularly affected. Few can afford or face the risks and overheads of challenging a revocation in court.[4] When new medical evidence and the complaints process has no apparent effect, people are often left with feelings of deep anger and despair.

The most entrenched DfT complaints we see are made by those who feel their rights have been violated and cannot be recovered. In a small but significant minority of cases, people do not seem to know when or how to stop complaining, and the original issue giving rise to their complaint gets lost in the process. We are all too conscious that a remote, paper-based, independent review – however sympathetically conducted – may not provide a sense of resolution and closure.

Fortunately, the majority of the complaints we review do not concern life-changing events. Most complainants take an instrumental approach. Their aim is to get back what they perceive has been unfairly taken away. This may be a financial penalty that they feel was unjustly levied, an entitlement removed or denied without justification, a driving test conducted unfairly, or their quality of life marred by road use and construction.

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[1] Our contracts were extended in early 2019.

[2] The Parliamentary Ombudsman's *Principles of Good Complaint Handling* includes this section: "Where a public body has failed to get it right and this has led to injustice or hardship, it should take steps to put things right. That means, if possible, returning complainants and, where appropriate, others who have suffered the same injustice or hardship as a result of the same maladministration or poor service, to the position they were in before this took place. If that is not possible, it means compensating complainants and such others appropriately."

[3] Some 23 per cent of all of the cases referred to us in the year related to the DVLA's Drivers Medical Group (DM).

[4] The litigant will be cautioned in the early stages of going to law that the DVLA will seek costs if it wins.

Few people want to complain or enjoy the role. As well as compensation, people expect redress for their non-financial losses; for the stress, anxiety and frustration arising from the original experience and from then having to pursue their grievance.

This is a reminder that the way that staff communicate can readily be experienced as uncaring and impersonal. The very term 'customer', although well-intentioned, may jar when the service in question enjoys monopoly status. There is also a risk that the complaints process itself may amplify feelings of powerlessness or reduce people's confidence that they can influence the services they receive.

We have annexed to this report our latest terms of reference which are correct as of July 2019. 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:

- government, departmental or delivery body policy
- contractual 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 handles requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- how the DfT handles 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.

The majority of our reviews concern complaints against the Driver and Vehicle Licensing Agency (DVLA). The other DfT delivery bodies in our jurisdiction from whom we received complaints during 2018-19 were:

- Civil Aviation Authority (CAA).
- The Driver and Vehicle Standards Agency (DVSA)

- Highways England
- High Speed Two Ltd
- Maritime and Coastguard Agency (MCA)

We also received two complaints regarding the Department for Transport's central functions (DfTc).

This year we have seen an increase in complaints concerning the DVLA's approach to vehicle identity – both in respect of classic vehicles and those vehicles imported from other countries (usually the USA, Australia and South Africa) which have markers for salvage. Drivers Medical cases have continued to grow, and there have been a number of reviews focusing on the DVLA's and DVSA's adherence to their duties under the Equality Act 2010.

In the other delivery bodies, it is of note that complaints against the DVSA by Approved Driving Instructors (ADIs) have increased. It is our view that ICA reviews are not well-suited to what often amount to professional disagreements between instructors and examiners and ADIs' registration-related grievances. The number of Highways England complaints has also increased – we suspect in consequence of the big infrastructure projects for which the company is responsible, and which inevitably cause disruption for road-users and noise, vibration and light pollution for those living close by.

In the main, we are impressed with the quality of service provided by DfT bodies, and their commitment to putting things right if an administrative failure has occurred. We particularly admire the genuinely two-stage complaints procedures operated by Highways England and HS2 Ltd, and we hope that the DVSA can reduce the number of its formal stages from three to two as a matter of urgency.

We should conclude by expressing our gratitude for the support offered to us by the DfT and its DBs, and the part we play in quarterly Complaint Handlers Improvement Group meetings organised by the Department. We place great emphasis upon that aspect of our role which is to help drive improved performance and customer care across the DfT family.

The impact that we have may perhaps be measured by the following statistics. At the time of writing, our understanding is that the Parliamentary and Health Service Ombudsman (PHSO), to whom the vast majority of DfT complaints have recourse after our independent review, has accepted 15 DfT cases from 2018-19 for investigation (out of the 79 they assessed). Of the eight cases the PHSO completed, seven were partially upheld. The eighth was concluded without the need for re-investigation when the delivery body agreed to implement a recommendation we had made a year earlier. In the same year (2018-19) we conducted 322 reviews of DfT complaints.

1: Overview of our year's work

Input

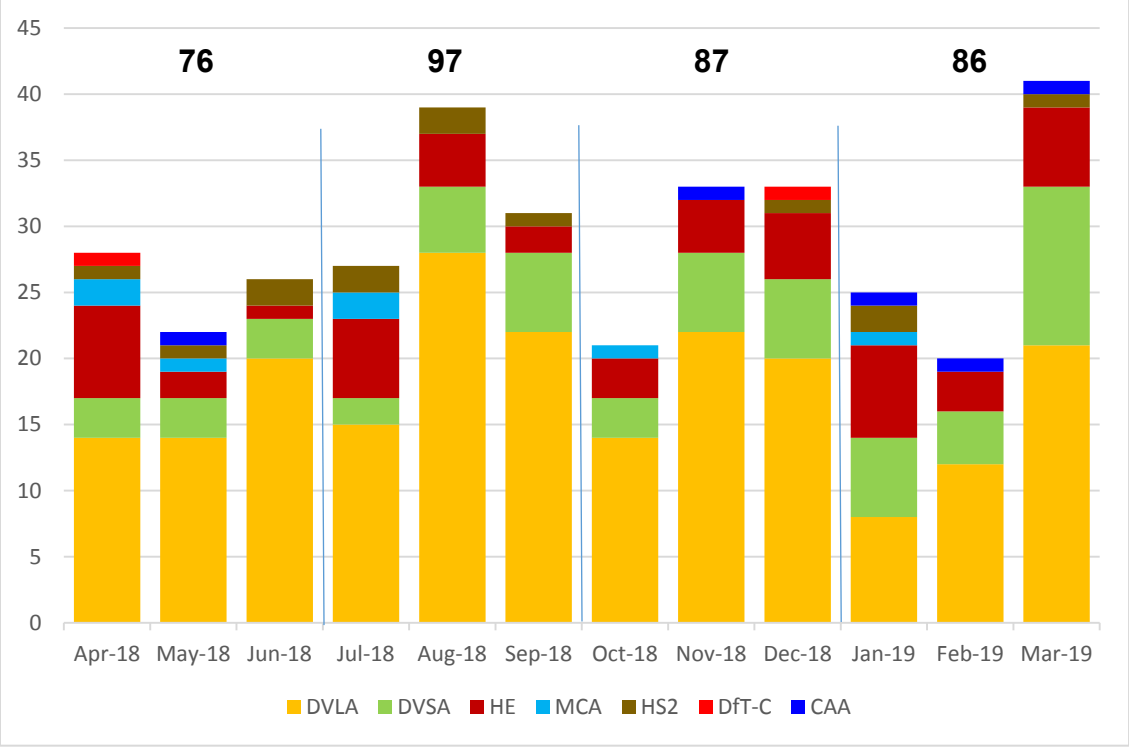
1.1 This has been our busiest year with a record 346 new cases being referred to us, a 37 per cent increase from 2017-18 and 28 per cent up from our previous record (271 cases in 2016-17). During the year we completed 322 cases, a 30 per cent increase from last year (247 cases).

1.2 Our caseload has consisted of referrals from the following DBs:

- **DVLA** – 211 cases: 28% up (from 2017/18)
- **DVSA** – 59 cases: 31% up
- **HE** – 49 cases: 53% up
- **HS2 Ltd** – 13 cases: (9 more than 2017/18)
- **MCA** – 7 cases (7 more)
- **CAA** – 5 cases (2 more)
- **DfT** – 2 cases (1 less).

1.3 Figure 1 charts the year's incoming cases.

Figure 1: Incoming cases April 2018 - March 2019, by month, referrer and quarter

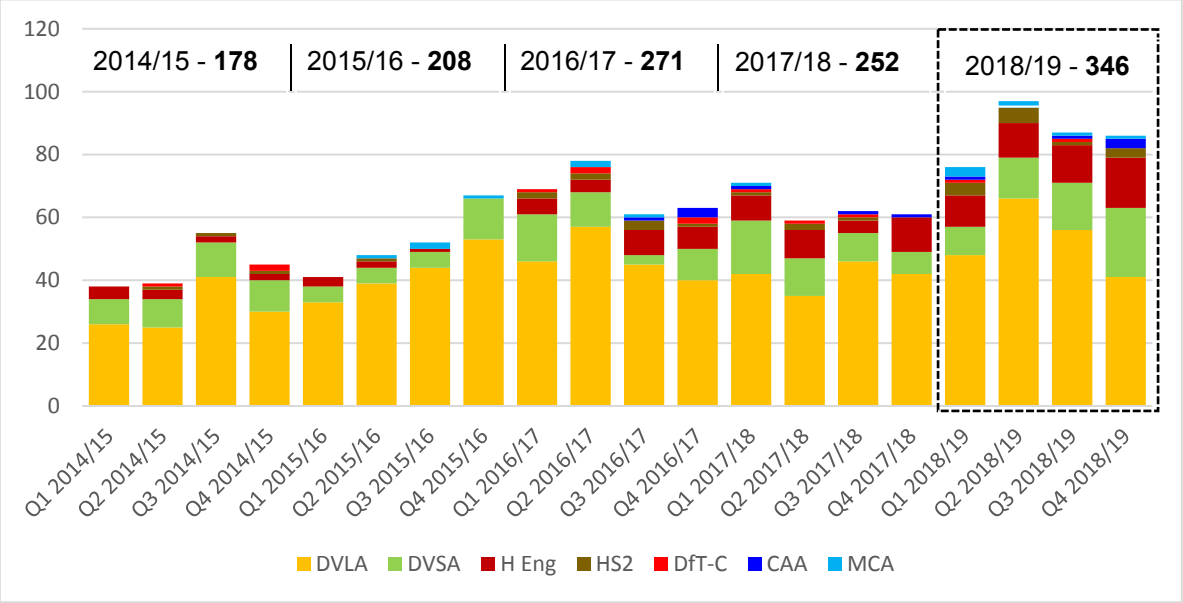


1.4 In terms of workload management, and given that we are contracted on a part-time basis, month-by-month variations in the number of incoming cases can present significant problems. New records were set on two occasions in 2018-19 for the monthly number of referrals. March 2019 was our busiest month ever with 41 new cases arriving, surpassing the previous record of 39 in August 2018.

1.5 The referral levels and patterns established in 2018-19 seem to have continued into 2019-20.

1.6 Figure 2 charts our caseload over the last five years, illustrating the upward trend in referrals.

Figure 2: Incoming cases April 2014-March 2019, by month, referrer and quarter



1.7 As has been the case in all the years since our appointment, the majority of referrals came from the DVLA. However, the percentage of DVLA complaints in our postbag has again dropped slightly (to 61 per cent, from 65 per cent last year and 69 per cent the year before). Nonetheless, as our single biggest referrer, it is the additional 46 DVLA cases that largely account for our having had such a busy year.

1.8 The sub-set of DVLA referrals regarding its Drivers Medical (DM) branch has continued to rise. The increase in 2018-19 over 2017-18 was 23 per cent, resulting in a total of 81 DM cases (accounting for over 38 per cent of all DVLA referrals). DM cases tend to be among the more complex we receive (and the files frequently run to many hundreds of pages), with the result that over half of our DVLA case-working time was spent on DM complaints. DM casework accounted for over one-quarter (28 per cent) of our total DfT case-working time.

1.9 We experienced a much smaller but still significant increase in cases received from the DVSA. This is explained to some extent by a growth in complaints from Approved Driving Instructors (ADIs) (17 in total, compared to last year's 9).[5] These accounted for over a quarter of this year's DVSA referrals. In our experience, ADI-related complaints often prove intractable and difficult to resolve, particularly if they relate directly to the complainant's reputation or livelihood. In a number of reviews, we have suggested that disputes between professionals (an ADI and a driving examiner or the Registrar) might be better addressed through a form of mediation rather than a written complaints process that is designed to address service delivery.

[5] Including complaints by ADI candidates about the conduct of the three stage examination process.

1.10 The increase in Highways England complaints appears to be related to the nuisance and disruption arising from its significant network upgrade programmes. These cases too can prove hard to remedy.

1.11 We consider the trends on incoming work for each DB in more detail in later chapters.

Output and outcomes

1.12 We completed 322 reviews in 2018-19. This meant that the number of cases awaiting a review was higher at the year-end than at 1 April 2018. The queue of cases would have been greater but for the support we have received from our designated substitutes (caseworkers whose reviews we oversee).

1.13 We continued to discuss with the Department and its DBs the ternary system whereby we summarise our review outcomes by upholding, partially upholding or not upholding a complaint. These are standard measures across almost all Ombudsman and complaint-handling bodies, and we understand their importance both to complainants and to the organisations in remit. However, in practice, they often obscure as much as they reveal.

1.14 Factors we consider include the extent and impact of service failure, the effectiveness of the DB at remedying it before sending us the case, and the scope of the complaint as presented. The latter consideration means that we could rarely, if ever, fully uphold a complaint that encompassed policy matters or clinical decision making, given the limits on our jurisdiction.

1.15 The summary outcomes of the 346 cases we received in the year are shown below (with last year's figures bracketed):

- **Fully upheld** **33** – **9.5%** (23 - 9%)
- **Partially upheld** **109** – **31.5%** (82 - 33%)
- **Did not uphold** **199 – 57.5%** (145 - 58%)
- **Discontinued** **5 – 1.5%** (no 2017-18 figures).

1.16 Aggregating the full and partial upholds (and treating discontinued cases as not upheld), we upheld 41 per cent of the cases referred to us compared to 42 per cent in 2017-18 and 46 per cent in 2016-17.

1.17 We welcome the fact that DBs increasingly use the request for an ICA referral as an opportunity for a further internal review of the outstanding areas of complaint. This has resulted in remedial action being taken in many cases. If we assessed that there was no remaining injustice to remedy, we were accordingly much less likely to uphold such cases when the complainant chose to escalate them to us. Of particular value in Drivers Medical cases is a final case review by the Agency's senior doctor.

1.18 The outcomes of the 346 cases referred to us in 2018-19 are set out in Table 1 (the figures include cases received in 2018-19 and completed in 2019-20).

Table 1: Outcomes of cases received in 2018-19, by delivery body (with last year's percentages in brackets)

DB	Fully upheld		Partially upheld		Not upheld / dis.	
DVLA	21	10% (10%)	77	36% (33%)	113	54% (57%)
DVSA	5	8% (3%)	7	12% (26%)	47	80% (71%)
HE	7	14% (19%)	13	26% (37%)	29	60% (44%)
HS2 Ltd	0	0% (0%)	7	54% (25%)	6	46% (75%)
DfTc	0	0%	1	n/a	1	n/a
CAA	0	0%	1	n/a	4	n/a
MCA	0	0%	3	n/a	4	n/a

1.19 The data in Table 1 equates to the following (with last year's percentage bracketed):

- **DVLA**: 46% upheld to some extent (43%)
- **DVSA**: 20% upheld to some extent (29%)
- **HE**: 40% upheld to some extent (56%)
- **HS2**: 54% (25%)
- **DfTc**: 1 upheld to some extent (3)
- **CAA**: None upheld to any extent (0).

Productivity

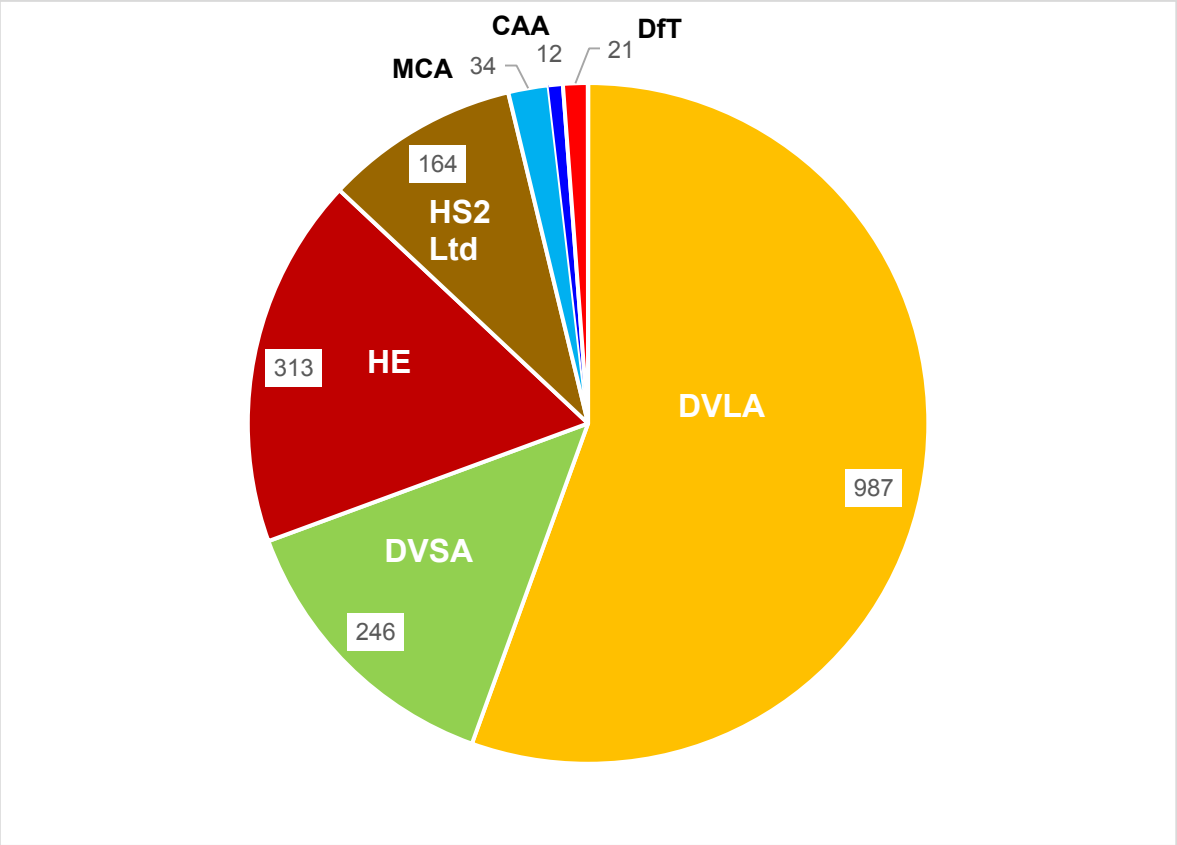
1.20 We took an average of five hours and 36 minutes per case, with 43 cases taking longer than 10 hours (compared to 26 cases last year). Within that sub-group of cases, those involving HS2 Ltd, novel and contentious decision-making (for example, about discretionary property purchase), and DM were heavily represented. In many of those cases, we deployed our substitutes thereby introducing a degree of duplication. Cases involving significant telephone contact with parties are also taking longer (the DfT issued us with telephones in Spring 2017 in order to improve our accessibility to complainants).

1.21 The time between our receiving the referral documentation and issuing our review increased to 40 working days compared to 33 days in 2017-18. (The target in our terms of reference is no more than three months which equates to just over 60 working days.) Our average case completion times for each DB for 2018-19 cases are presented below (with last year's figures in brackets followed by average completion times in hrs:mins):

- DVLA: 41 working days (35) – 5:07
- DVSA: 32 working days (21) – 4:23
- HE: 37 working days (38) – 6:23
- HS2: 52 working days (19) – 4:55
- DfTc: 78 working days (29) – 21:14
- CAA: 32 working days (25) – 11:57.

1.22 Our case-working time in the year is expressed in Figure 3.

Figure 3: ICA time (in hours) spent case-working in 2018/19, by delivery body

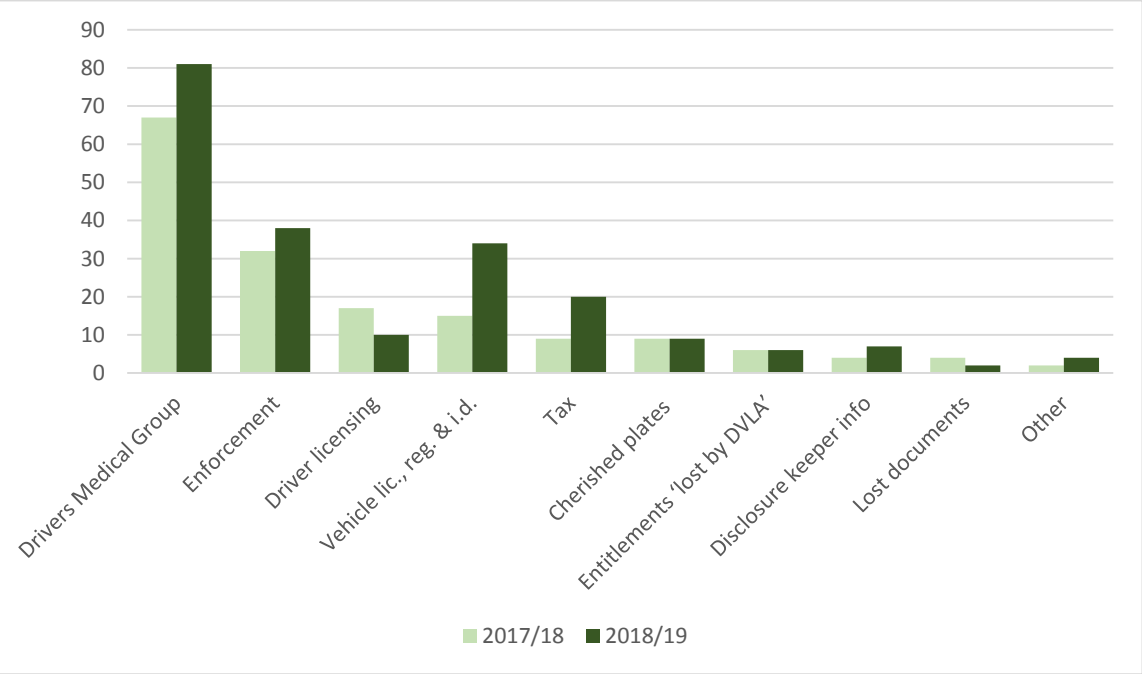


2: DVLA Casework

2.1 We have already noted the 28 per cent increase in DVLA referrals between this year and the previous one (from 165 to 211 cases), although, non-DVLA referrals actually increased at a higher rate (39 per cent). As shown in Figure 2, the DVLA's quarterly totals dropped after a peak in Quarter 2. Unfortunately, this pattern has not continued into the 2019-20 financial year.

2.2 In Figure 4 we set out the DVLA complaints we received by main business function alongside last year's tally.

Figure 4: DVLA complaints, 2017-18 and 2018-19, by business function



2.3 The vehicle licensing, registration and identity section featured 19 complaints about the DVLA's refusal to accept a keeper's evidence about the provenance of their vehicle. We are concerned that the standards of proof required by the DVLA are almost impossibly high. In addition, there have been cases where DVLA staff have not understood the Agency's own policy positions, some of which are unpublished. We have been critical when the Agency has unreasonably applied a "one size fits all" approach without applying discretion to look at the merits of an individual registration application. We have also reviewed a series of complaints involving imported vehicles that have a salvage marker from abroad. We have criticised the DVLA's lack of transparency in respect of its approach to such vehicles. We have argued that if the Agency is serious about protecting consumers, it needs to publish clear information about the registration process for imported vehicles explaining when and how questions about age and provenance are resolved. We have been assured that steps are being taken to ensure that customers are better informed and that the information they receive at every stage is clear and consistent.

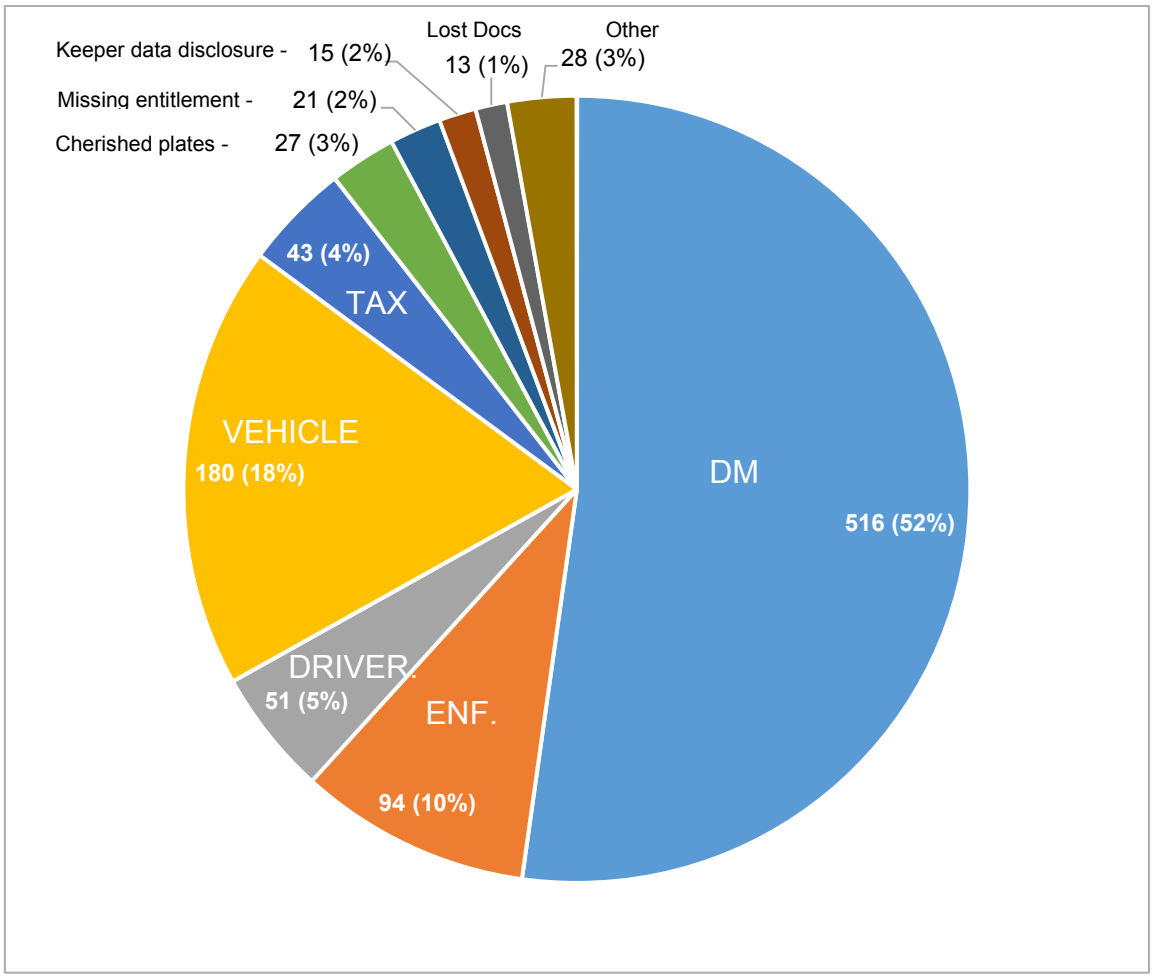
2.4 Of the 16 non-DM cases concerning driver licensing, six were complaints that the DVLA had lost all records on its systems of a previously-granted entitlement. The

'Other' category this year included two complaints about the DVLA's response to evidence of fraud.

2.5 In figure 5, we chart the 987 case-working hours we devoted to DVLA reviews in the year against Agency functions:

- "Enf" refers to enforcement activity against the keepers of unlicensed and/or uninsured vehicles
- "Driver" covers all non-medical aspects of driver licensing
- "Vehicle" refers to vehicle registration and licensing (not including enforcement).

Figure 5: ICA time spent on DVLA complaints, 2018-19, by business function



2.6 The increased number of complaints about tax (or vehicle excise duty – VED) included a number relating to payments by direct debit. There have been complaints that the DVLA has not refunded direct debit payments on the ground that a disposal notification has not been received in Swansea. In some cases, as we noted last year, the Agency has frustrated customers by collecting tax for several months from a new keeper while retaining the overpayment by the previous keeper. The inability of the DVLA's systems to enable VED to be collected by direct debit at the reduced rate from customers in receipt of personal independence payments (PIPs), has also been of concern.

2.7 Any increase in Drivers Medical (DM) cases has a significant impact on our workload. As noted, over a quarter of our total DfT case-working time was spent on DM referrals.

2.8 This year we upheld 54 per cent of DM cases (the same as last year – the 2016-17 figure was 62 per cent).

2.9 We have noted the benefits of the senior doctor's review of cases before their referral to us. In addition, the DVLA has been more willing to remedy service shortfalls with consolatory payments before our involvement. The Agency's recruitment of more doctors, as well as nurses, to make decisions in complex cases has also reduced delay.

2.10 We also judge that the DVLA has become much better at dealing with complaints about third party organisations (its franchise opticians, Specsavers, and Driving Assessment Centres). We have applauded the more direct involvement of DVLA doctors in complaints and in providing explanations to customers of the Agency's requirements and decisions. Concerted efforts to improve the recording of medical decisions by DVLA doctors are bearing fruit: this in turn helps other DVLA staff to explain decisions to customers. As before, we have seen vocational casework effectively prioritised, reflecting the importance of licensing decision-making for many people's livelihoods.

2.11 The fitness standards are clearly codified in the DVLA's regularly updated manual (*"Assessing fitness to drive: a guide for medical professionals"*) that is supported by a much-improved suite of resources on the gov.uk website. However, the process for obtaining a new licensing decision without going to court remains unclear to many complainants and their clinicians. The DVLA will often repeat the generic advice that the driver should discuss the licensing decision with their doctor. In some of the cases we reviewed, however, the driver's doctor did not understand or agree with the decision. On occasion, we have been concerned by the DVLA's deflection of queries about its own decision-making to GPs who are already under well-documented workload pressure.

2.12 Many of the DM complaints we see relate to drivers' frustration that the advice of their own doctors appears to have been over-ruled by DVLA doctors who have never seen or spoken with them. Related difficulties expressed by complainants whose entitlements have been revoked include:

- The misapprehension that new medical evidence they provide will lead the DVLA to relicense them (in practice, the DVLA will either deem the evidence insufficient or re-open the case and commission new evidence itself)
- Generic advice that evidence they provide does not change the position
- A lack of condition-specific information about the DVLA's evidence requirements.

Steps are being taken under new leadership in DM to address these problems. In our view, the DVLA should publish clearer and more detailed information for revoked drivers about its evidence requirements and procedures.

2.13 In the case studies that follow this narrative, we have highlighted five cases where DVLA enquiries have been triggered by anonymous notifications.[6] Such notifications are often, understandably, regarded as malicious by the driver and in the fourth such case study the driver took his case against revocation (for refusing to cooperate with medical enquiries) to court. While we are of the view that a properly conducted DVLA investigation is a safeguard against unjust outcomes for drivers, we also acknowledge that such investigations may feel intrusive and create anxiety.

2.14 In most of the 44 DM cases we upheld to some extent, we made multiple recommendations, including changes to the way DM works. However, we must acknowledge that a constraint of our case tracker spreadsheet is that multiple recommendations are not readily captured. The single main recommendation areas in DM cases (with last year's number in brackets) were:

- Consolatory/compensation payment 36 (27)
- Change systems 8 (3)
- Apology 4 (3).

2.15 In DM cases, as in the other areas of DVLA casework, we have particular concerns about the Agency's current policy of not engaging its complaints procedure when a complaint is first received (unless the complaint is authored or referred by an MP). In principle, the DVLA operates a two-stage system, but before accessing the formal complaints procedure a complainant without MP support must first receive a response or responses from the relevant DVLA business unit (referred to by the DVLA as a Business as Usual complaint, or as an informal complaint). There are of course good reasons for expecting operational staff to take responsibility for their actions and decisions. But some of the complainants whose cases we review have been bemused, having received one or more replies from the DVLA to correspondence they clearly marked as complaints, only to be told that they have yet to engage stage 1 of the complaints procedure. Customers think their complaint has been classified and counted as such when it has not.

2.16 The quality of response from DM in this Business as Usual stage has improved considerably. But there is a lack of consistency in decision-making across the DVLA about when to escalate a complaint into the formal complaints procedure. This leads to confusion and frustration later on when the customer thinks they have exhausted the complaints procedure but have a further stage or stages to get through. The complaints team will often exercise common sense and allow the customer to skip a formal stage if there is nothing more to be said. The labelling of the second stage itself as the CEO stage is, in our view, also problematic as – of necessity – the vast majority of complaints at that stage will be funnelled back to the complaints team, and are never seen by the Chief Executive.

2.17 The DVLA has assured us that the number of people criticising its complaints procedure is relatively low, but in our view the procedure requires additional clarity

[6] This is the provision where anyone (most often a member of the public, a driver's relative, a medical professional or the police) may trigger a Drivers Medical investigation by reporting a driver to the DVLA. The informant's identity will usually be protected by the DVLA. https://live.email-dvla.service.gov.uk/w2c/en_gb/forms/EFTD%20Enquiry?button=none&decision=I+have+concerns+over+a+person%27s+fitness+to+drive+and+I+wish+to+tell+the+DVLA&lang=en_gb.

and amendment. We have been encouraged in the year by the DVLA's openness to our feedback about these matters, and we expect to be able to report improvements in our 2019-20 annual report.

CASES

(i): DRIVERS MEDICAL GROUP

Licence revocation on medical grounds

Complaint: Mr AB complained about the revocation of his licence on medical grounds. He challenged the medical evidence provided to the DVLA and said the Agency had not carried out a proper investigation into the issues he had raised.

Agency response: The DVLA said that it had applied the relevant medical standards and evidence it had received suggested Mr AB had suffered a blackout with seizure markers.

ICA outcome: The ICA said that he could not challenge the revocation or clinical judgements. However, he observed that the decision to revoke could be regarded as very marginal. He was also critical of the time taken by the DVLA to make a licensing decision.

Sequential inquiries in Drivers Medical case

Complaint: Mr AB complained that his licence had been revoked for alcohol or substance abuse. He subsequently complained about delays in the DVLA's procedures.

Agency response: The DVLA said that its licensing decisions and medical enquiries had been correct. It had acknowledged one period of delay when it conducted medical enquiries sequentially rather than in parallel, and had made a £50 consolatory payment.

ICA outcome: The ICA could not comment directly on clinical decisions, but found that the DVLA's initial decision that Mr AB's first seizure was secondary to alcohol use was not strongly evidenced; likewise, the Agency's continued emphasis upon Mr AB's drinking habits. The Agency's continued concern about sleep apnoea also seemed perverse given that it had been informed that this diagnosis was incorrect. The ICA said he could understand why Mr AB had been upset by the standard wording in the DVLA letter linking alcohol and substance abuse and suggested that at a suitable opportunity the wording should be amended. But he agreed with the DVLA that the only period of bureaucratic delay was when the Agency conducted enquiries sequentially. (Had it not conducted some of these enquiries the licensing decision would have been quicker, but that was the result of clinical decision making.) Given that sequential enquiries had been so frequently criticised by the ICAs over the past five years, he increased the consolatory payment to £100 for the two months delay that was caused.

Third party notification #1- protecting the identity of informants

Complaint: Mr AB complained that his licence had been revoked on grounds of non-compliance following a third party notification. He had not received the DVLA's

correspondence as he was in prison at the time. He asked for details of the third party, and questioned the Agency's right to continue its medical enquiries (which resulted in his licence being revoked for non-compliance a second time).

Agency response: The DVLA said it would not reveal third party details, and that it had restored Mr AB's licence as soon as it knew he had not received its correspondence. However, the further revocation followed correctly from Mr AB's non-compliance.

ICA outcome: The ICA said it was not maladministrative for the DVLA to apply the law relating to medical enquiries in line with s.94 of the Road Traffic Act. Its decision not to reveal third party details also appeared to be in line with data protection legislation.

Third party notification #2 – compensation claim

Complaint: Mr AB complained about the medical enquiries conducted by the DVLA following a third party notification. Amongst other things, he asked for compensation of over £8,000 for a car he sold at a loss after his licence was revoked.

Agency response: The DVLA had acknowledged delay between its receipt of medical information and review by a DVLA doctor amounting to seven months. It had made a consolatory payment of £350.

ICA outcome: The ICA endorsed the payment made by the DVLA. However, he also identified a further period when Mr AB's correspondence went unanswered, and recommended a further consolatory sum in respect of the poor customer service. As far as the loss on Mr AB's vehicle was concerned, the ICA did not think this was the responsibility of the DVLA. It was Mr AB's choice to purchase an expensive vehicle while medical enquiries were underway. In practice, the sum he had sold it for was the wholesale value compared with the retail price he had paid some months previously.

Third party notification #3 – unwanted medical enquiries

Complaint: Mrs AB complained in relation to the DVLA's medical enquiries following an anonymous notification - later believed to have been malicious and part of a campaign of harassment against Mrs AB. She said she felt threatened by those enquiries.

Agency response: The DVLA said it was required to carry out such enquiries and Mrs AB had been entitled to drive throughout.

ICA outcome: The ICA said he could not offer an authoritative legal view, but he was content that the DVLA was right to say it was required to conduct medical enquiries when notified of a possible issue. However, all his sympathies were with Mrs AB. He also identified a three-week period of delay caused by an unnecessary letter to Mrs AB's GP, and other elements of poor service that amounted to level 2 injustice in guidance issued by the PHSO. He therefore recommended a consolatory payment. The DVLA had shown good practice in adding a note to the CASP (Casework and Specialist Processes) case log to exercise considerable caution were Mrs AB to be the subject of any further notification.

Third party notification #4 – a driver resists DVLA investigations after a malicious report

Complaint: Mr AB had his entitlement revoked after refusing to comply with DVLA medical enquiries. These had been triggered by an anonymous report that he was not fit to drive. He argued that this was groundless and part of a long-standing campaign of malicious harassment. The police were involved and he was taking legal action against the person allegedly responsible. This episode had been subject to a separate ICA report that concluded that the DVLA had acted reasonably and in line with policy (however, the ICA had been unable to make any determination on its data handling as this was not in his jurisdiction). In this new complaint, Mr AB requested a repayment of his court fees for progressing the matter to the magistrates' court. Eventually, he had withdrawn his case after the DVLA accepted medical evidence he had provided of his fitness to drive. Within the legal process, the DVLA had been asked to disclose the identity of the informant by the court. It had resisted this request and the court had withdrawn it. However the DVLA had released the full text of the informant's allegations against Mr AB. Mr AB compared this with what had been disclosed to him in his earlier complaint, and alleged that the DVLA had misinformed him that he had been given the full disclosure. He also questioned the basis on which part of the disclosure had been withheld and other aspects of the way the DVLA had presented its case to the court.

Agency response: The DVLA had urged Mr AB to provide medical evidence of this fitness to drive in order to obviate court proceedings. As the court had requested this anyway, the Agency felt that the entire legal process need not occur. The Agency declined the request for the reimbursement of Mr AB's legal fees. It stated that court costs were properly a matter for the court to determine after a case had been decided.

ICA outcome: The ICA concluded that the DVLA's handling had been reasonable. A ruling of the Information Commissioner provided by Mr AB did not assist his case that the DVLA should have disclosed the identity of the informant. The DVLA's conduct of the court case had been reasonable and evidence from Mr AB's GP, as the ICA had noted in his first review, would in all likelihood have prevented the whole revocation process and subsequent complaints. The ICA remained of the view that the investigation process initiated by the DVLA was a legitimate safeguard against inaccurate notification that a person was unfit to drive. He did not uphold the complaint.

Third party notification #5 – an elderly driver has her entitlement revoked

Complaint: Mrs AB was reported to the DVLA as an unsafe driver. She complained that the investigation process that followed was discriminatory, discourteous, riddled with delay, unnecessary, punitive and did not take proper notice of the clear evidence that she was safe to drive.

Agency response: In its responses, the DVLA explained the basis of its fitness to drive regime and its policy of investigating reports that drivers are unsafe. The DVLA insisted that Mrs AB should attend a driving assessment. After she had failed it, the DVLA doctor accepted her account that she had been disadvantaged by her unfamiliarity with the controls and discomfort in the test vehicle. He therefore arranged a driving appraisal which Mrs AB also failed. Her entitlement was therefore revoked.

ICA outcome: The ICA found that the basis of Mrs AB's objection to DVLA service and administration related to policy and clinical judgement: matters over which he had no jurisdiction. In other regards, he found the DVLA approach reasonable and its administration timely. Allowances had been made for Mrs AB's inability to attend some of the assessment and appraisal appointments. The ICA also commended the DVLA doctor for taking on board Mrs AB's objections to the driving assessment by deferring a licensing decision until a driving appraisal had occurred. Although some of the DVLA's communications were abrupt, the ICA judged that Mrs AB needed to have clear information about the consequences of not complying with the investigation process. On balance, while he was critical of some aspects of administration, he did not uphold the complaint.

Medically restricted licence for diabetes sufferer

Complaint: Mr AB, who has suffered from diabetes since childhood, complained about issues relating to the revocation of his licence on medical grounds, and that he was subject to one-year licences. He sought compensation for the legal costs he had incurred.

Agency response: The DVLA said that Mr AB was treated under the 'exceptional case' provisions, and that as one of the criteria is that conditions should not be progressive its insistence on annual reviews was reasonable. It had declined to pay compensation.

ICA outcome: The papers were voluminous (dating back to 2005), but the ICA was limited in what he could contribute given his terms of reference. However, he did not feel it was unreasonable for the DVLA to decline to pay Mr AB's legal expenses, and identified no periods of delay amounting to maladministration. Indeed, given that the DVLA now believed a decision to grant Mr AB a licence in 2014 was not justified, Mr AB had benefited from that element of DVLA mishandling.

Failure to inform driver that revocation had been lifted

Complaint: Mr AB complained that the DVLA had failed to inform him when the revocation of his licence was removed. He said he had sold his vehicle at a loss and sought compensation.

Agency response: The DVLA said the initial revocation was the result of an error by Mr AB's doctor. When the doctor had corrected his mistake, the revocation was removed. However, the DVLA accepted that Mr AB had not been informed at the time. (The licence expired shortly thereafter.) The DVLA said it was Mr AB's choice to sell his vehicle, but had offered a total of £300 as a consolatory sum – £50 initially (accepted by Mr AB) and a further £250 he had rejected.

ICA outcome: The ICA said this was an unfortunate matter and Mr AB had not been well served by his clinicians (given the error and their slowness in completing DVLA questionnaires). The DVLA had acknowledged its own mistake, but the ICA was content that the total sum offered was adequate and proportionate. His recommendation was for the reinstatement of the additional £250 that Mr AB had hitherto rejected.

Maladministration in Drivers Medical case

Complaint: Mr AB complained about the refusal of his licence application on grounds of visual inattentiveness. He said he did not suffer from this condition.

Agency response: The DVLA had been told by Mr AB's GP that he had completed the Agency's questionnaire incorrectly. However, it had then commenced other enquiries leading to a driving assessment that had been unsuccessful. The assessment team had not recommended further training, and the Agency had said that without evidence of cognitive improvement a renewed application could not be accepted.

ICA outcome: The ICA said that the grounds for the DVLA's continued refusal to accept an application from Mr AB had nothing to do with visual inattention, and were not themselves maladministrative. But Mr AB was very unfortunate in that, in initially refusing his application, the DVLA had not followed its own Operating Instructions. The Agency had failed to refer the matter to a manager or medical adviser, and this did amount to maladministration. It was also unfortunate that the advice given by the senior doctor to apologise to Mr AB had not been followed. As a side issue, the ICA criticised a decision to send Mr AB a questionnaire relating to alcohol use which he said was based on very limited evidence that Mr AB's stroke could have been related to past relatively high alcohol intake. However, even that report had said that Mr AB had moderated his drinking by two-thirds, and the GP had said Mr AB had had no alcohol problems for three years. The process of sending and reviewing medical questionnaires was not costless, and unnecessary enquiries should be avoided.

A case where the DVLA correctly identified a missed opportunity to relicense a professional driver and agreed to pay compensation

Complaint: Mr AB, who ran businesses based on his group 2 (vocational) driving licence, had his ordinary and vocational licences revoked several years previously after he disclosed mental ill-health episodes. Under the rules that applied at the time, he needed to demonstrate three years of stable mental health for his group 2 entitlement to be restored. Towards the end of the three-year period, Mr AB reapplied for his licence but unfortunately was readmitted to hospital. The rules had now changed meaning that the period he needed to demonstrate stable mental health was reduced to 12 months. However, when Mr AB reapplied, the DVLA neglected to consider his group 2 entitlement. His MP complained on his behalf later on in the year, and the DVLA admitted that Mr AB had been prevented from working for 10 months due to its error. However, it could not agree with Mr AB about the level of evidence required in support of his compensation claim, and the case arrived at the ICA stage in deadlock.

Agency response: Once the error had been spotted, the DVLA wasted no time in assisting Mr AB in regaining his group 2 entitlement. It offered him a £500 consolatory payment, but would not pay compensation in the absence of clear evidence of his losses and income during the period when he could have been working.

ICA outcome: The ICA reviewed all the licensing decision-making from scratch and broadly confirmed the DVLA's analysis (his calculation as to the amount of time that Mr AB had been mistakenly prevented from working on his group 2 licence was slightly longer). The ICA found that some of the DVLA's communications about its evidence requirements

had been unclear and not wholly relevant but genuine efforts had been made to assist Mr AB. The ICA considered that the best indication of what Mr AB would have earned in the time that his licence was wrongly revoked was his earnings in his first 10 months of being relicensed. The ICA's view was that the DVLA should subtract Mr AB's earnings and benefits from that sum. After further information was provided by Mr AB, a satisfactory compensation sum was paid and Mr AB reported that the matter was settled.

A precipitate decision to revoke a licence

Complaint: Mr AB complained about the revocation of his licence – first on grounds of non-compliance, then because of medical enquiries revealing the abuse of diazepam. He had appealed against the latter revocation unsuccessfully through the courts.

Agency response: The DVLA had said that the first revocation was precipitate as there were doubts whether the paperwork had been sent to the correct address. It had offered a consolatory payment of £200 that Mr AB had rejected. The DVLA also accepted he had been misinformed during a phone call as to the earliest a new licence could be issued.

ICA outcome: The ICA found that the DVLA's key decision to revoke the licence on grounds of misuse of drugs was entirely in line with the *Assessing fitness to drive* guidance. He noted the elements of maladministration that the DVLA had acknowledged. However, at fact check stage the Agency indicated that the address to which the medical questionnaires had been sent was appropriate, that Mr AB had not been given incorrect information, and by implication that the offer of £200 was over-generous. This appeared to indicate a disagreement between Drivers Medical and the DVLA Complaints Team that the ICA would not adjudicate upon, given that Mr AB had now been issued with an unrestricted licence.

A catalogue of errors and poor service in an investigation into a driver with mental health problems

Complaint: Mr AB, who had a history of epilepsy, was reported to the DVLA by the police as having a potentially debarring health condition. In fact, Mr AB's health condition was already known to the DVLA. Its standard enquiry process was launched and the Agency established that Mr AB had mental health problems, and later that he had disclosed using illicit drugs in the previous year. DVLA medical enquiries progressed but then stalled for three months during which time Mr AB's driving licence expired. He complained and enquiries were reactivated into his mental health and drug use. The latter took the form of a witnessed urine sample which Mr AB described as disgusting and likened to a sexual assault. The sample revealed two prescription drugs that Mr AB had not informed the DVLA about. The DVLA therefore asked Mr AB why they were in his system and asked him to undergo a second witnessed urine sample. Mr AB complained that this was abusive and that the DVLA's process had been fraught with delays and threats of licence revocation. He reluctantly submitted to the second sample but the DVLA franchise doctor mishandled the process, meaning that the sample could not be used. The DVLA decided to licence Mr AB for a year on the information it had, including additional material from his GP.

Agency response: The DVLA's medical enquiries were stop/start but priority was applied effectively after Mr AB had complained following the expiry of his licence. The DVLA explained that its process for advising franchise doctors about how to take samples had changed, but for some reason the doctor who took the second sample had not been aware of this. There had been an option for the doctor not to fully witness the sample.

ICA outcome: The ICA was very critical of the DVLA for, on the one hand, allowing the timescale for its medical enquiries to slide for months, while on the other repeatedly threatening Mr AB with revocation if he did not meet its deadlines. He also felt that the decision to refer Mr AB for a second witnessed urine sample was flawed. Given Mr AB's traumatic response to the first witnessed sample, the ICA felt that every opportunity to obviate this process should have been sought. He had no doubt that the second franchise doctor concerned should have been made aware of Mr AB's reaction to the first witnessed sample. He should also have been told that the guidance had changed such that the second sample did not need to be witnessed. All of this added stress and delay to the process. The ICA recommended that the Chief Executive of the DVLA apologise to Mr AB, and that a consolatory payment of £400 should be made to him. Following the finalisation of the review, the DVLA reflected that it should increase the consolatory sum and the DVLA doctor involved offered his personal apologies. Nonetheless, Mr AB escalated the matter to the PHSO.

The accuracy of carbohydrate deficient transferrin (CDT) testing

Complaint: Mr AB complained that his applications to renew his licence following a disqualification for drink driving had been refused improperly. He said that his CDT results were flawed.

Agency response: The DVLA said that Mr AB could undergo hair testing at his own expense, and it would consider the results.

ICA outcome: The ICA said he could offer no views on why Mr AB's CDT results were so high, or the judgement of the DVLA doctors that the most likely reason was that he had continued to abuse alcohol. He did not think it maladministrative that the responsibility was on Mr AB to demonstrate that the CDT findings were false. However, he recommended that a future iteration of *Assessing fitness to drive* should include a specific reference to hair testing, and criticised aspects of the DVLA's complaint handling.

A second complaint about CDT tests

Complaint: Mr AB complained that his licence applications following a disqualification for drink driving had been refused because of elevated CDT levels. He said these tests were unreliable, and he denied drinking to excess.

Agency response: The DVLA had agreed that Mr AB could arrange for a hair test at a reputable laboratory, and said it would consider the results. It said its decisions so far were in line with the standards in *Assessing fitness to drive*.

ICA outcome: The ICA agreed that the decisions to date were in line with the guidance. However, he noted that this was the second recent case that called into question whether CDT levels were an infallible guide to alcohol misuse or dependence. He recommended that his report be shared with the Secretary of State's Honorary Advisory Panel on Alcohol, Drugs and Substance Abuse and Driving, and said he hoped that the results of the hair testing would lead to Mr AB being issued with a licence.

A customer in denial about his visual field loss encountering poor service from his own ophthalmologists and the DVLA

Complaint: Mr AB suffered a stroke, and several months later was reported to the DVLA. He was sent for vision testing and extensive field loss on one side was identified. Mr AB's licence was revoked, a decision that he contested actively for many months. In his correspondence he emphasised that revocation was preventing him from undertaking his charity and church obligations, and costing him many hundreds of pounds.

Agency response: Eventually, Mr AB's case was reviewed by the DVLA's senior doctor. He found that Mr AB met most of the criteria as an exceptional case under the 2013 driving regulations. A letter was written to his ophthalmology team requesting an assessment in relation to full functional adaptation. The ophthalmology team misunderstood the request, and simply reiterated that Mr AB's visual field loss was static and that he did not meet the licensing standard. Meanwhile Mr AB's correspondence rumbled on, and he repeatedly submitted new field charts showing the same static loss, which had no impact on his case that he should be allowed to drive.

ICA outcome: The ICA agreed with the DVLA that the decision to revoke Mr AB's licence had been correct. He also felt that the possibility of relicensing as an 'exceptional case'[7] should have been identified much sooner. After this option had been identified, the case started to drift again when Mr AB's ophthalmology team would not undertake the requested assessment of functional adaptation. The ICA suggested in an early draft of his report that the DVLA should break the deadlock by commissioning its own assessment of Mr AB's adaptation. The DVLA refused. The ICA therefore concluded the case by making recommendations of a £250 consolatory payment, and that the DVLA should take additional steps to ensure that exceptional criteria are known and understood by the health community. He also wrote a letter for Mr AB to hand over to his doctors explaining how they could assist him in his reapplication. The ICA was at pains to emphasise that nothing in his report should be construed as a recommendation that Mr AB should be allowed to drive, and that the outcome of any further medical enquiry process could not be predicted.

A complaint from a vocational driver following loss of consciousness

Complaint: Mr AB complained about the revocation of his ordinary and vocational licences following a loss of consciousness at the wheel. His consultant had suggested that this might have been 'a dissociative episode caused by severe stress and depressed mood at the time'.

[7] Under law originating in the EU, people who cannot meet the visual field standard for driving may be licensed exceptionally on ordinary (not vocational) driving licences if they meet a stringent set of 'exceptional case criteria': https://www.gov.uk/guidance/visual-disorders-assessing-fitness-to-drive.

Agency response: The DVLA said its decisions followed exactly from the guidance in *Assessing fitness to drive*: six months off driving for an ordinary (car) licence, 12 months for a vocational (bus and lorry) licence, following a blackout for which there was no clear diagnosis.

ICA outcome: The ICA agreed that the decision making was exactly in line with the guidance, and therefore there had been no maladministration by the DVLA. Nor had there been undue delay and Mr AB had been kept properly informed. There were no recommendations the ICA could make, although he expressed the hope that Mr AB would speedily regain his vocational licence once the 12 months off driving had expired.

A retired EU national contesting a licensing decision based on mental health

Complaint: Mr AB applied to exchange his non-GB driving licence for a GB licence. He held both ordinary and lorry and bus entitlements. Mr AB, many years earlier, had been diagnosed with schizophrenia. Mr AB's GP disclosed that he had been recently assessed by a consultant psychiatrist who had felt he had thought disorder. Following this assessment Mr AB's group 2 entitlement was revoked. Mr AB complained that this had been the result of conspiratorial and unprofessional medical involvement in his life. He made a series of wide-ranging allegations against individual doctors in and out of the DVLA, and contested the suggestion that he had ever suffered from mental health problems.

Agency response: The DVLA attempted to obtain a new consultant assessment to see whether Mr AB's ordinary licence should also be revoked. Eventually, after problems with the referral, the assessment concluded that there was no reason why Mr AB should not drive. However, Mr AB was advised that for his vocational licence to be restored he would need to commission or obtain a consultant-level psychiatric assessment testifying to his stability for the requisite period of time (12 months). The DVLA also offered a £50 consolatory payment in recognition of the fact that it had misinformed Mr AB about his right to reapply for his group 2 licence when in fact no application could be accepted in the absence of the consultant report.

ICA outcome: The ICA reviewed the medical decision-making over a five-year period, and the associated administration, and found it broadly within the published rules. He queried the extent to which Mr AB's refusal to go along with suggestions based on a single consultant appointment could be seen as "non-compliance with an agreed treatment plan". However, he noted that this decision had been made by a DVLA doctor taking into account the full range of evidence available including Mr AB's own GP's concerns about his safety behind the wheel. Nonetheless, Mr AB had been given false hope that his group 2 entitlement would be subject to further review, due to errors in the DVLA correspondence which stated that the consultant appointment related to his ordinary licence would also cover this. In consequence, the ICA recommended that the consolatory payment should be increased from £50 to £100. He partially upheld the complaint.

A complaint following the DVLA's receipt of third party information

Complaint: Mr AB complained about the DVLA's enquiries into his fitness to drive following the receipt of third party concerns about his driving. He said the delays meant that he had sold his car and therefore could not take part in a driving appraisal. When asked to attend a driving appraisal he had not attended and his licence was revoked for non-compliance.

Agency response: The DVLA had acknowledged a delay of four months after receipt of a medical questionnaire.

ICA outcome: The ICA said it was unavoidable that the DVLA's enquiries would cause some inconvenience, and Mr AB could not expect that he would incur no costs at all. But it was at least possible that he would have had a successful appraisal in his own vehicle were it not for the delay in reviewing his doctor's questionnaire. In consequence, he recommended a consolatory payment of £200. (Mr AB had also criticised the practice of the Drivers Medical Group in sending unsigned letters, but the ICA said this was done to reduce delay – reflecting his own practice – and was not maladministrative. The ICA also criticised Mr AB's disparaging remarks about DVLA staff.)

Re-licensing following a ban for drink driving

Complaint: Mr AB complained about the time taken to issue him with a new licence following a drink driving ban.

Agency response: The DVLA had apologised for the eight months delay but said this was the consequence of its necessary medical enquiries.

ICA outcome: The ICA noted that Mr AB's conviction had engaged the High Risk Offender (HRO) definition and he could not regain his licence until he had proved his fitness to drive at some expense to himself.[8] The time taken for these enquiries was not entirely within the DVLA's gift, and there had been delays on the part of Mr AB's clinicians. Only one short period of delay could be said to have been the responsibility of the DVLA (the medical adviser had asked for Mr AB's case to be referred but had done nothing for six weeks). The ICA also identified some carelessness in the DVLA's correspondence.

Restricted length licences cause confusion

Complaint: Mrs AB complained about the DVLA's decision making in respect of her ordinary driving licence. She had been revoked, then reissued with a three-year licence. This had been rescinded to a one-year licence and then the three-year one was restored.

[8] HRO status, that imports more stringent DVLA medical enquiries conducted at the driver's expense, is applied to drivers who: were convicted of 2 drink driving offences within 10 years; or were driving with an alcohol reading of at least 87.5 microgrammes of alcohol per 100 millilitres (ml) of breath, 200 milligrammes (mg) of alcohol per 100 ml of blood, or 267.5 mg of alcohol per 100 ml of urine; or refused to give the police a sample of breath, blood or urine to test for alcohol; or refused to allow a sample of their blood to be tested for alcohol (for example if it was taken when they were unconscious) – https://www.gov.uk/driving-disqualifications/disqualification-for-drink-driving.

Agency response: The DVLA said that it had acted in response to questionnaires completed by Mrs AB's clinicians.

ICA outcome: The ICA said that he was limited by his terms of reference, but it was clear that there had been poor handling of Mrs AB's case. She was right to say that she had never received an explanation for the restrictions on the lengths of her licences (a matter not covered in *Assessing fitness to drive*), and the DVLA's correspondence must have caused her distress and alarm. Although he did not believe Mrs AB had been discriminated against for complaining, he recommended a consolatory payment of £100 in recognition of the maladministration.

A complaint that the option of an extended Provisional Disability Assessment Licence was not publicised nor offered

Complaint: Mr AB suffered a stroke resulting in significant visual field loss in the central field on one side. His driving entitlement was revoked, but eventually he was able to establish that he met the criteria to be considered as an exceptional candidate. Delays set in due to the non-availability of a driving assessment appointment, a national problem. In the assessment, the assessors found that Mr AB overcompensated for his visual loss resulting in his being unable to maintain a steady driveline, and he ran the risk of missing hazards on the opposite side of his field to where he had suffered the loss. Based on this assessment, his reapplication was refused. Mr AB complained that prior to the driving assessment, he had been unaware of the fact that provisional disability assessment licences (PDALs) could cover practice and refresher driving lessons as well as the assessment itself. At the time of the assessment he had been off the road for 18 months. Mr AB also complained that aspects of the assessment report had been contradictory and he called into question the assessment and competence of the assessors.

Agency response: The DVLA eventually explained that the extent of Mr AB's field loss was such that it was felt that he would not have benefited from refresher lessons and that the risk to road safety was significant. Mr AB was given the standard advice to obtain medical evidence to support a reapplication.

ICA outcome: The ICA considered that the DVLA's decision-making had been predominantly clinical, both at the initial stage when the provisional licence was issued by a DVLA doctor and during the complaint when that decision was subject to review by the DVLA's senior doctor. The DVLA's senior doctor had noted that the extent of Mr AB's visual field loss obviated tuition as a safe option for improving his driving. The clinical element meant that the ICA could not call into question the decisions made. However, the ICA expressed concern that information about the possibility of tuition being offered was not readily available, even though it had been subject to a recommendation by the vision panel. He therefore recommended that the DVLA publish information for the benefit of drivers in Mr AB's position. The ICA also considered that the DVLA had contributed some delay to the process by not explaining to Mr AB at an earlier stage that his application was incomplete. The ICA recommended a consolatory sum of £50 to reflect this lapse in administration. (Since this case was concluded, the DVLA has reviewed the legalities of issuing PDALs – as it been doing in many cases - with the stipulation that practice tuition must occur in a car with dual controls under the supervision of an ADI. It has concluded that the rules do not allow for the enforcement of such stipulations. Its policy now is

therefore *not* to issue PDALs for practice tuition if there is significant concern about driver safety in an ordinary vehicle without an ADI supervising.)

A complaint that the DVLA had not implemented a PHSO recommendation

Complaint: The Parliamentary and Health Service Ombudsman (PHSO) had determined that delay by the DVLA amounting to seven months in reissuing an HGV licence to Mr AB following its medical revocation amounted to maladministration and that the Agency should pay him compensation for financial and other losses due to this. Mr AB's accountant presented a claim for losses in excess of £1.0m including for lost earnings, losses on asset sales, debts arising from HMRC enforcement, mortgage penalties and interest and professional fees. The claim encompassed the whole time Mr AB had been without a licence, not just the seven months mentioned above. Mr AB asked the ICA to review the Agency's refusal to offer any compensation for financial losses and to increase its offer of a £1,500 consolatory award for non-financial losses.

Agency response: The DVLA refused to make any offer either because Mr AB had not sufficiently established he had suffered the loss claimed, or that the loss(es) experienced could not be said to be the result of the Agency's maladministrative delay.

ICA outcome: The ICA was not professionally qualified (in accountancy) to be able to assess what sum (if any) was fair compensation for Mr AB's financial losses. It was noted that the PHSO appointed independent accountants in this role. Another ICA had already determined the issue of compensation for non-financial loss before the case went to the PHSO, and the ICA was therefore *functus officio* on this point. Nevertheless, several observations were made on Mr AB's claim and in particular its current weakness viz. his reluctance to argue his claim with reference to the seven months delay in issuing the licence. The ICA told him he could revise his claim and, if further dissatisfied in the light of the Agency's response to this, return to the PHSO. Alternatively, he could return to the PHSO directly.

The exceptional case criteria in relation to vision

Complaint: Mr AB complained about the application of the exceptional case criteria following the revocation of his licence for not meeting the visual field standards. He said the process had been subject to delay.

Agency response: The DVLA said that its medical enquiries were ongoing.

ICA outcome: The ICA identified a long period when the DVLA was waiting for a consultant ophthalmologist to reply to its request to see Mr AB privately. Even when the medical adviser suggested that another consultant be identified, a further two to three months were lost. The ICA described this as a 'lack of grip' – although in fairness we should record that the DVLA's senior doctor did not agree. A whole year had now passed since Mr AB had submitted his licence application. For this reason, the ICA recommended a consolatory payment of £300 and that the senior doctor personally review progress on Mr AB's case.

Customer complains of lost earnings following refusal of vocational application

Complaint: Mr AB complained about the refusal of his vocational licence application on grounds of high blood pressure. He said he had lost earnings amounting to over £10,000.

Agency response: The DVLA had referred to the guidance in *Assessing fitness to drive*. The Agency had acknowledged some poor service and offered a consolatory payment of £100.

ICA outcome: The ICA said the Agency's decisions did seem to follow from the guidance. But he also shared Mr AB's view that high blood pressure is very often successfully treated with medications. It was strongly arguable, therefore, that revocation of a licence should only take place after enquiries into a customer's use of medication, if any. This was especially so in the case of vocational drivers. He recommended that the senior doctor review if the Operating Instructions in regard to hypertension were in need of amendment. The DVLA's approach had not been maladministrative, however, and the offer of £100 was in line with the elements of poor service that had been identified.

Customer's expectations falsely raised

Complaint: Mrs AB complained in respect of the revocation of her licence following her notification of a brain tumour.

Agency response: The DVLA said that its decisions were in line with *Assessing fitness to drive*. It acknowledged that the initial revocation letter had wrongly suggested that Mrs AB could reapply after six months.

ICA outcome: The ICA said that not one but two of the DVLA's letters had wrongly suggested that Mrs AB could reapply earlier than was in fact the case. As a consequence, she had had her expectations falsely raised and been put to the inconvenience of submitting a licence application that had no chance of success. He recommended an apology and a consolatory payment of £250. The ICA added that it was for the Agency to determine how best to ensure that revocation letters accurately reflected the actual clinical decision making by its doctors.

A complaint about delay in a medical case involving a vocational driver #1

Complaint: Mr AB complained about the time taken by the DVLA to issue his vocational licence. He said that this had cost his employer many thousands of pounds as he could not do his job.

Agency response: The DVLA said that as a Group 2 driver with insulin-dependent diabetes, it was necessary for Mr AB to undergo an examination with a specialist consultant. In addition, Mr AB's blood pressure had been found to be elevated.

ICA outcome: The ICA said Mr AB was fortunate to have an understanding employer; this was not always the case for vocational drivers. He also sympathised with Mr AB over the time that had passed before a decision could be made. However, he did not think that the

time taken in his case amounted to unreasonable delay or was therefore maladministrative. But the ICA added that, while three weeks to send a diabetes questionnaire may be within normal processing times, it was a long time for any vocational driver to be without a licence. The ICA looked forward to a time when processing times within the Drivers Medical Group were reduced.

A complaint about delay in a medical case involving a vocational driver #2

Complaint: Mr AB complained about the time taken by the DVLA to conduct medical enquiries in relation to his vocational driving licence application. He said his loss of earnings was £20,000 and that he nearly lost his job.

Agency response: The DVLA said that in the circumstances of Mr AB's case it was unable to entertain a claim for compensation.

ICA outcome: The ICA said that he had a lot of sympathy for Mr AB as a vocational driver who had lost his entitlement to drive lorries for a period of seven months. However, the DVLA's actions had been in line with *Assessing fitness to drive* and could not be deemed maladministrative. The DVLA had acknowledged a period of delay between its receipt of Mr AB's application and it being reviewed by a DVLA doctor. A consolatory payment of £100 was therefore appropriate.

Short period licence leads to renewed medical enquiries

Complaint: Ms AB complained about the expiry of her three-year licence and the fact she would have to re-apply and undergo any medical enquiries required by the DVLA.

Agency response: The DVLA had sent Ms AB the relevant forms but no re-application had been received.

ICA outcome: The ICA said there had been no maladministration on the part of the DVLA. Ms AB's previous licence had expired, and it had been of short duration so that the DVLA could be certain of her medical fitness to drive. There had been no discrimination on grounds of mental ill-health. The DVLA had simply applied its statutory responsibilities.

No improper delay in assessing fitness to drive

Complaint: Mrs AB complained about the time taken by the DVLA to adjudicate upon her fitness to drive and the tests she was asked to undertake. Mrs AB has glaucoma in both eyes.

Agency response: The DVLA said that its decisions were in accord with *Assessing fitness to drive*.

ICA outcome: The ICA said he could find no maladministration in the DVLA's approach. There had been very short periods of delay, but not such as to constitute maladministration given the volume of transactions for which the DVLA is responsible.

Mrs AB's correspondence and that from her MP had also been handled in a timely and appropriate manner.

Revocation for alcohol dependence

Complaint: Ms AB complained in relation to the revocation of her driving licence for alcohol dependence. She had been without a licence for a year before a one-year licence was granted.

Agency response: The DVLA said that its decisions flowed from the standards in *Assessing fitness to drive*.

ICA outcome: The ICA said Ms AB deserved much credit for the way she had stopped using alcohol entirely. However, the evidence in front of the DVLA was sufficient to demonstrate alcohol dependence and the standards in *Assessing fitness to drive* had to be followed (i.e. a year off driving and abstinence). He could identify no maladministration on the part of the DVLA, nor any improper delay.

Alleged delay in restoring licence after conviction for drink driving

Complaint: Mr AB complained about the time taken to renew his driving licence following a disqualification for drink driving. He was a High Risk Offender. Mr AB sought compensation for earnings he said he had lost as a consequence of being unable to drive.

Agency response: The DVLA had initially indicated that there had been delays in its processes, but subsequently said processing times did not amount to improper delay and had declined to pay compensation.

ICA outcome: The ICA said Mr AB had been required to undergo carbohydrate deficient transferrin testing. When the initial results were received, he was invited to take a second test (albeit the Agency's senior doctor subsequently judged that this had been a lenient – but not improper – decision). The ICA could not identify any delays amounting to maladministration, although he understood why Mr AB felt any delay was unacceptable. However, he did not think any compensation was payable. The ICA said that information should be published explaining the Agency's approach to CDT levels in the amber zone of 2.3% to 3.0%.

Revocation following medical notification

Complaint: Mr AB complained about the revocation of his vocational licence following his doctor notifying that he had suffered from pre-syncopal symptoms.

Agency response: The DVLA said that Mr AB did not meet the medical standards. It had apologised for incorrect information provided in some of its letters.

ICA outcome: The ICA said that he could not comment on the clinical decision making, save that it derived from a broad reading of the relevant section of *Assessing fitness to*

drive. He said he did not know if this broad approach had been endorsed by the relevant advisory panel and recommended that it should be referred to the panel for advice. The ICA criticised the DVLA for twice providing Mr AB with incorrect information about the length of his revocation. Mr AB had been given false hope and put to the inconvenience of submitting an application that had no chance of success.

Reasonable handling of the case of a driver with Parkinson's disease

Complaint: Mr AB complained that the decision to revoke his licence on the grounds of uncontrolled fluctuations in Parkinson's disease was indefensible medically, and that the process of being relicensed was delayed and laborious. Mr AB felt that it was unreasonable that it had fallen to him to obtain evidence of his fitness to drive for his case to be reopened, when it was the role of the DVLA to do so. Had the DVLA investigated properly, he argued, he would not have suffered the inconvenience and stress of revocation. Mr AB also made wide-ranging criticisms of DMG systems, and the panel process for providing the DVLA with specialist clinical advice.

Agency response: The DVLA explained its decision-making, in particular that the revocation had been made by a doctor with reference to evidence from Mr AB's consultant neurologist. This had pointed to fluctuations in his condition that may have affected his driving. Further, it was judged that Mr AB's condition was such that a driving assessment would not have been necessarily safe. This decision was reviewed by a DVLA doctor who endorsed it.

ICA outcome: The ICA noted that much of Mr AB's complaint concerned clinical judgement that was outside his jurisdiction. Some DVLA doctors would, he observed, have sought more information before making a revocation decision in these circumstances. However, in this case the information informing the decision had come from a consultant neurologist who had indicated that he did not feel able to comment on Mr AB's safety behind the wheel. This was a clinical judgement that had been quite properly subjected to review by the senior doctor. The ICA noted that there had been inefficiency and administrative failings, particularly in the handling of Mr AB's request for information. However, he did not feel that these required further apology or that maladministration had occurred such that Mr AB should be compensated. He did not uphold the complaint. However, he recommended that Mr AB should receive a further explanation of the senior DVLA doctor's rationale for upholding his colleague's judgement.

Changes to policy follow a complaint about confusing rules on when to reapply for a licence after detoxification

Complaint: Mr AB complained that, following a period of alcohol detoxification, he was given confusing and conflicting information by the DVLA about when and how he should reapply for his entitlement.

Agency response: The DVLA had originally told Mr AB that he could reapply after six months of abstinence. As a result, he made repeated reapplications that the DVLA then declined on the basis that his detoxification engaged the 12-month period off drinking (in

line with the alcohol *dependency* as opposed to alcohol *misuse* rules). The DVLA emphasised that the 12-month period off driving was correct.

ICA outcome: The ICA agreed with Mr AB that there had been clear evidence in his early applications that he had recently undertaken detoxification. This meant that the 12-month period off driving should have been engaged and he should have been informed accordingly. In response to the draft report, the DVLA agreed that it had fallen into error in this regard. The ICA also noted that Mr AB had been confused by the fact that the DVLA would not allow him to apply eight weeks in advance of the expiry of the period off driving, as drivers with other medical conditions were entitled to do. At the time, DVLA policy had been that the eight-week advance period should not apply to drivers needing to demonstrate specific periods of sobriety (or of being off drugs). The ICA found that this had not been properly explained to Mr AB. He welcomed the DVLA's reflection that this unwritten policy was not in line with the legal provisions determining the eight-week rule. The Agency had, therefore, standardised the process so that drivers with any medical history had the option of applying up to eight weeks before the earliest licensing date. Concluding, the ICA found that Mr AB and his GP had been subject to mixed messages about the point at which he could reapply for his entitlement. This had been frustrating and vexing for Mr AB. The ICA recommended that the DVLA should make a consolatory payment of £150 to reflect this.

Requirement for a further driving assessment

Complaint: Miss AB complained that the DVLA required her to undertake a driving assessment (that unlike an appraisal involves a battery of clinical tests and an on-road occupational therapy assessment). She said that a driving appraisal would be more appropriate and much more convenient (driving assessments were at that time only offered at one site in Scotland where Miss AB lives). Her doctors were supportive of her ability to drive.

Agency response: The DVLA said that the results of a previous driving assessment had raised issues about cognition, and that an appraisal would not be appropriate. Miss AB's licence application had therefore been refused for non-compliance.

ICA outcome: The ICA could not consider the clinical decision making or the licence application refusal. However, he said that the DVLA's requirement for a further assessment followed directly from the outcome of the previous one where it was said that Miss AB's medical condition was probably affecting her ability to drive. It was unfortunate that the only centre then offering assessments was a long way from Miss AB's home, and did not offer assessments on the one day of the week she said she could attend. However, the former was the result of a decision of the Scottish Government to centralise driving assessments and he could not comment on their opening hours. The ICA said he was surprised that driving assessments in Scotland took place without the presence of an Approved Driving Instructor.

Excessive daytime sleepiness

Complaint: Mr AB complained that his driving entitlement had been revoked, without any warning, on the basis of obstructive sleep apnoea syndrome, even though he had not seen his consultant for over a year. He also said that the letter informing him had been sent second class, the appeal had taken too long, and that the complaints handling procedure had been inadequate.

Agency response: The DVLA explained that the revocation decision had been made correctly given the sleep consultant's statement that the obstructive sleep apnoea syndrome had not been controlled. It also stated that the consultant had said that Mr AB was not compliant with treatment.

ICA outcome: The ICA found the administration of the case to have fallen within DVLA policy. He noted that the sleep consultant had reported a mild sleep apnoea for which compliance is not required, but he accepted that DVLA policy decreed that uncontrolled sleep apnoea was debarring. Mr AB differed from his consultant in his statement as to when he had last been seen. The ICA considered that the Agency had acted reasonably in working from the date provided by the consultant. He felt that there had been some deficiencies in complaint handling, and recommended that the DVLA should apologise. But his overall conclusion was that the case had been adequately prioritised and decisions made within the published framework. He was pleased to note that the DVLA was introducing a new consultant questionnaire for sleep that would clear up any ambiguity in relation to the nature of the condition being reported.

Investigation into heart problems

Complaint: Mr AB, a professional driver, had reported mild arrhythmia to the DVLA that he attributed to the herbal remedy he had taken. DVLA enquiries revealed a more serious condition for which treatment by ablation was to occur. Mr AB complained of delays in the medical investigation and of a devastating decision to revoke his entitlements. This had flown in the face of the opinion of his own doctors. When he presented evidence that the ablations had been successful, he felt that it had taken far too long for the DVLA to reopen his case and relicense him.

Agency response: In response, the DVLA explained that the case was on priority and its questionnaires were designed to obtain the most up-to-date information. Mr AB had been able to drive for the initial months while information was sought from his new GP. The revocation was justified with reference to the medical standards and Mr AB's reapplication was prioritised.

ICA outcome: The ICA identified some areas where he felt the DVLA could have acted more quickly, namely in the restoration of Mr AB's ordinary licence and in the medical review of the echocardiogram that had been commissioned by the Agency in order to check that he fully met the vocational standard. However, the ICA balanced this with a recognition that Mr AB himself had provided very little information about his previous treatment and the extent of his atrial fibrillation. Had this been provided from the outset, the ICA judged that enquiries could have been targeted more speedily. On balance, therefore, he did not uphold the complaint.

Re-licensing following a seizure

Complaint: Mr AB complained that the DVLA had taken many months to reach a licensing decision following a seizure, and he had been prevented from learning to drive and from applying for jobs as a result.

Agency response: The DVLA explained its medical enquiry process and apologised for the delays that had occurred in referring clinical documentation from Mr AB's consultant to a DVLA doctor. It offered a consolatory payment of £20.

ICA outcome: The ICA considered that the root cause of the DVLA not licensing Mr AB within the six month period following the first seizure, as allowed in the fitness standards, was because Mr AB waited for four months before notifying the Agency. This was despite advice from his consultant that he should do so straightaway. The ICA therefore did not find that compensation was due to Mr AB. The ICA also noted that the DVLA had provided sufficient information that Mr AB was able to drive during its enquiries. Paradoxically, one effect of the delays, most of which related to Mr AB's late notification, was that Mr AB's entitlement was not revoked. The ICA did not uphold the complaint.

Delays in medical enquiries

Complaint: Mr AB complained that, as a result of the DVLA's delays and poor handling, his licence was not returned to him in time to go on a driving holiday. He said that he incurred increased costs in having to limit his holiday to one week, rather than the one month he had planned to be away.

Agency response: The DVLA accepted that there had been some poor handling: the provision of incorrect advice about the status of Mr AB's licence, and a failure to respond to some of his emails. It apologised and offered a £50 consolatory payment.

ICA outcome: The ICA found that there had been a number of shortcomings in the progress of the licence application. Most notably, the application was not treated with the urgency that it warranted as a Priority 1. Instead the DVLA had continued to send requests for information by second class post, and returned the application for consideration to a doctor who was annual leave, even though the progress of the application was time critical at that point. The ICA accepted that this would have been frustrating and worrying for Mr AB, and recommended an increased consolatory payment of £150. The ICA did not recommend that the DVLA should meet the increased costs incurred in shortening the planned holiday, as it was a risk Mr AB took in booking the holiday when he did. The ICA also recommended that the DVLA improve the information provided in its standard letter about how to apply for a licence.

Revocation after blackout

Complaint: Mr AB passed out the morning after an evening of drinking alcohol. He reported the event to his GP who asked him if he had fainted before. Mr AB disclosed losing consciousness after giving blood two years earlier. He reported this to the DVLA and stopped working as a professional driver. The DVLA revoked Mr AB's vocational and

ordinary driving licences after making further enquiries. Mr AB complained that the blackouts had been provoked and therefore the rules on blackout with no prodromal or seizure markers should not apply.

Agency response: The DVLA repeatedly referred Mr AB to the fitness to drive framework and stated that the licensing decision had been correct. However, the Agency did not spell out precisely why the decision should stand in the face of Mr AB's challenges.

ICA outcome: The ICA requested that the case be reviewed by the DVLA's senior doctor. He concluded that the blood donation event, which had been reportedly accompanied by Mr AB suffering a fit, clearly was a blackout with seizure markers which meant that Mr AB could not drive on his vocational entitlement for five years. The senior doctor agreed that the DVLA should commission a neurology review of Mr AB in order to look again at the basis of its licensing position. The ICA welcomed this. However, he detected a slight delay (of two weeks) in the reissuing of Mr AB's ordinary driving licence after a six month period off driving. The ICA also noted that there had been a delay in that revocation caused by an error by a DVLA clerk who had sought a cardiologist's opinion when the necessary information to revoke had been on file for several months. The ICA recommended that Mr AB receive a £50 consolatory payment to reflect this lapse in service.

Incorrect completion of medical questionnaire

Complaint: Mrs AB complained about the revocation of her driving licence on grounds of alcohol abuse. Her GP subsequently confirmed that a medical questionnaire had been completed incorrectly.

Agency response: The DVLA said that it had made appropriate licensing decisions on the basis of the information to hand.

ICA outcome: The ICA said he could not adjudicate on licensing decisions but he had a lot of sympathy for Mrs AB. The only evidence of alcohol abuse was a letter from a consultant psychiatrist that contained no details of how much alcohol was being consumed or when this had occurred. Decisions to consider Mrs AB for CDT tests were marginal ones and had added to the time taken. The ICA said CDT tests were an inconvenience for customers and a charge against DVLA income, and should not be arranged in the absence of recent evidence of alcohol misuse. However, the time taken and the eventual length of licence issued were not maladministrative, and the ICA could not uphold the complaint.

Challenge to results of driving assessment

Complaint: Mr AB complained in relation to the DVLA's decision making when he applied to renew his driving licence. He said the DVLA had bullied a consultant into changing his mind about his fitness to drive.

Agency response: The DVLA said its initial decision to refuse the licence application was based on the results of a driving assessment. Mr AB had then been offered another

assessment but had declined. A supporting letter had been sent by a consultant, but when the consultant was shown a copy of the driving assessment he changed his mind, noting that judgments were better made in an assessment than in a clinic. Although Mr AB had then said he would now take the assessment, the DVLA declined this suggestion as he no longer had supporting medical evidence.

ICA outcome: The ICA said he could identify no maladministration in the DVLA's decision making. It could not be said what the outcome would have been if Mr AB had taken the second assessment when it was offered. By the time he agreed, some nine months later, the medical information had changed. The ICA criticised two DVLA letters as not providing sufficient information or answering Mr AB's questions. He also criticised one period of delay but, as two years had then passed, he felt sufficient redress was provided by the findings of his independent report.

Insulin-dependent vocational driver

Complaint: Mr AB was a lorry driver who had started taking injectable insulin. Given the requirement for three months of satisfactory monitoring, his entitlement was revoked. Mr AB complained that, although he had been told that the medical evidence (medical confirmation of three months of satisfactory blood glucose monitoring) accompanying his reapplication for his vocational driving licence was sufficient, his application was rejected after his GP had seen him and had been unable to confirm that he had monitored in the required way.

Agency response: The DVLA's initial responses from Drivers Medical did not engage with Mr AB's point that, on one hand, he had been told that his evidence was sufficient, while on the other he was told that it was not. He was pointed to the DVLA's published information informing drivers that three months of continuous blood sugar readings needed to be available before an application could progress beyond stage 2 to stage 3 (independent consultant examination). The DVLA took various steps to expedite Mr AB's application after his complaint and he was eventually relicensed eight and a half months after starting insulin.

ICA outcome: The ICA noted that the information sent to Mr AB had been clear about the requirements to get through stages 2 and 3 of the three stage process for vocational drivers who are dependent on insulin. However, he did not find sufficient evidence that the DVLA had been clear that evidence of three months of satisfactory readings provided at stage 1 would not be sufficient at stage 2 or stage 3. This had contributed significant confusion and delay in Mr AB's application and the complaints process had not served him well in understanding the DVLA's requirements. Given this, the ICA recommended that a consolatory payment of £150 should be made. He partially upheld the complaint.

Revocation following driving assessment

Complaint: Mr AB had been diagnosed with a degenerative neurological condition. He approached his local driving assessment service with a view to obtaining advice on physical adaptations to his car but was advised to stop driving. He understood from this advice that the driving assessment centre itself had revoked his licence. He appealed to

the DVLA and an investigation was launched resulting in the actual revocation of his licence. Mr AB asked that the decision should be reviewed in light of the advice of a consultant neurologist, and he underwent two driving assessments over the following year but without the benefit of practice sessions. Mr AB was not successful on either occasion. He complained of delays, a lack of responses to his correspondence, and the lack of due weight being given to the advice of his neurologist.

Agency response: It was decided that Mr AB should have the opportunity of practising in a vehicle with hand controls before another assessment. Unfortunately, the outcome was the same. Through the complaints process, the DVLA set out the basis of the fitness to drive regime and its involvement in Mr AB's case.

ICA outcome: The ICA judged that the delay of most significance (nine months) was a product of a lack of resources at the driver assessment centre over which he had no jurisdiction to comment. In other regards, he found the pace of DVLA administration reasonable. The ICA considered that the DVLA's decision to revoke Mr AB's entitlement on the basis of the driving assessment report, and without reference to the views of his own GP, was defensible. His case had been reopened appropriately and the advice of the driving assessors had been taken, resulting in Mr AB having the opportunity of ten practice lessons prior to his second DVLA-commissioned driving assessment. The ICA acknowledged Mr AB's reservations about the way the driving assessment centre had communicated with him, but he did not judge that this amounted to miscommunication to the extent that the DVLA should take action. However, he asked the DVLA to apologise for not answering Mr AB's correspondence and questions with sufficient alacrity and clarity.

Long delays lead to improved practice

Complaint: Mr AB, who suffered from mental health problems, complained that his attempt to get the revocation of his driving entitlement reviewed had been thwarted by failures in the DVLA's administration, delays, unreasonable requirements of obtaining information from GPs, and repeated referral to a succession of GPs who refused to comment. Mr AB had been unable to drive for four years and it was affecting his ability to obtain work.

Agency response: The DVLA had invited Mr AB to reapply in light of the report of mental health problems, but had difficulties in finding a doctor to complete the examination and questionnaire that was required in policy to inform the new licensing decision. Mr AB was no longer in the care of mental health services and had not seen the GP for some time. His own GP refused to assist the DVLA. Delays then set in exceeding a year during which Mr AB's attempt to have his case reopened was unsuccessful. Eventually he was referred to two franchise doctors, neither of whom would see him. Finally he was assessed by a GP found by the DVLA some three years after the revocation. He was adjudged fit to drive on the basis of his mental health but was then required to undergo further tests following a report of blackouts going back several years. Once again, Mr AB's application petered out and no licensing decision was reached. His case was, however, reviewed and a consolatory payment of £300 in total was made.

ICA outcome: The ICA did not uphold Mr AB's complaint that his request to have the decision reviewed had been initially delayed and mishandled. The DVLA's published

requirement was that a doctor should provide evidence that a driver who had undergone a severe mental health episode should meet its requirements (including stability for a three month period and engagement with treatment). The ICA noted that the questionnaire sent to doctors in these cases was based on a presumption that they had ongoing knowledge of the driver and access to their medical records. This would not be the case for a franchise doctor, and the ICA therefore understood why there had been difficulties persuading franchise doctors to complete the paperwork. The DVLA's senior doctor explained to the ICA that cases like Mr AB's where no doctor could provide evidence represented one of his department's greatest challenges. He reflected that the process would be improved if DVLA doctors were to spell out exactly what information was needed. The ICA agreed and recommended that the Agency should look further into how to address the problem highlighted by Mr AB's experience. The ICA was very critical of the DVLA for the 16 month delay between the DVLA doctor being asked for advice and the senior doctor being approached in order to break the deadlock. This failing was all the more concerning given the fact that Mr AB had attempted to chase things up in the meantime. The ICA recommended that a further £200 consolatory payment should be made and that the DVLA's Chief Executive should apologise. He recommended that the DVLA's suggestion that a DVLA doctor writes to the GP to explain the position and requests an examination should be taken forward.

Mistake by Specsavers

Complaint: Mr AB, a bus driver, complained that errors by Specsavers in testing his visual field led to the revocation of his driving licence. Mr AB needed to commission his own visual field test and apply consistent pressure to the DVLA over a three-month period before he was relicensed. He was critical of DVLA explanations for its decision-making and highlighted the fact that the field loss evident on the Specsavers charts was not replicated in his private tests or by the DVLA's appointed optician.

Agency response: The DVLA explained in standard wording that Mr AB had not met the visual field standard and would need to submit evidence that he did before his case would be reopened. When he put forward evidence from the consultant he had seen privately, his case was reviewed by a DVLA doctor and priority retesting was arranged using a different methodology. On receipt of charts from the DVLA commissioned tests, Mr AB's entitlement was restored. The DVLA emphasised that its approach had been in line with its standard policy and that an erroneous reference to glaucoma on the Specsavers assessment had had no part in decision-making.

ICA outcome: The ICA obtained further information from the DVLA's medical team explaining why Mr AB's visual field had been adjudged deficient. The DVLA also provided an assurance that borderline cases like Mr AB's would be subject to specific guidance from the vision panel in future. The ICA accepted the DVLA's conclusion that the reference to glaucoma had no effect on decision-making. The ICA felt that the DVLA's explanation of decision-making could have been better in some regards. However, he was reassured by the involvement of a senior doctor and felt that reasonable steps had been taken to prioritise a new licensing decision. He did not conclude that maladministration had kept Mr AB out of work and could not therefore recommend compensation or consolation. He did not uphold the complaint.

Communicating complex clinical presentations

Complaint: Mrs AB, who had had successful surgery for brain cancer in the past, had a biopsy following signs of tumour recurrence. The biopsy was negative and Mrs AB was told that the cancer had not returned. However, she would be regularly scanned and remained under the care of the neurosurgery team. Mrs AB informed the DVLA that the biopsy had excluded the cancer. She was then told that her entitlement was revoked for a 12 month period because she had a brain tumour. This information was repeated to her, bluntly, when she rang the DVLA. Mrs AB was distressed by this information and complained that the wrong revocation standard had been applied (the standard for a biopsy with no cancer was six months).

Agency response: The DVLA subjected Mrs AB's challenge to further medical review and obtained more information from her neurosurgeon. This assuaged medical concerns that there was a margin of doubt about whether or not the cancer had returned. The six month revocation period was therefore applied. Mrs AB then complained that, late in the day, she had been required to go for vision testing. She assumed that this was further obstruction by the DVLA.

ICA outcome: The ICA noted that decision-making about the application of the medical standards had been made by DVLA doctors. While Mrs AB's neurosurgeon had excluded tumour recurrence, a margin of doubt existed as to the true situation (hence the biopsy in the first place). Unfortunately, the very nuanced clinical assessment and consideration by a DVLA doctor, was represented in blunt terms in the standard letter used. The ICA was very critical of the DVLA for using a letter that told Mrs AB that she had a brain tumour. He noted that the member of contact centre staff who had said the same thing to Mrs AB had been "spoken to" but he did not feel that the handling of that call was the root cause of the problem. Drivers Medical needed to have far better system for conveying licensing decisions arising from complex circumstances. He recommended that the senior doctor review her case with colleagues. The ICA noted that priority status had been applied to Mrs AB's case after she had challenged the licensing decision. Medical record keeping was of a good standard from that point onwards and the involvement of the neurosurgery opinion in the licensing decision-making was appropriate. The visual testing referral was a clinical decision based on the former tumour site and the ICA had no grounds to criticise it. Mrs AB had been relicensed within the six month period and the ICA therefore could not uphold a complaint that she had been kept off the road by DVLA maladministration.

Exceptional case criteria

Complaint: Mr AB complained that he had been given unhelpful and incorrect information about how to reapply for his driving entitlement after losing a small area of his visual field. This field loss meant that he did not meet the ordinary driving licence requirements. In the event it took two years for Mr AB to provide evidence of full functional adaptation and get his case reopened. Shortly after this, he was referred for a driving assessment that he passed.

Agency response: The DVLA repeatedly sent Mr AB a letter setting out the criteria through which his case could be considered exceptionally. This unfortunately included spelling mistakes in relation to the requirement for clinical confirmation of full functional adaptation.

ICA outcome: The ICA felt that the DVLA had flagged both the option of consideration as an exceptional case, and the requirements to provide evidence against each of the criteria before the case could be reopened. He was critical, however, of the fact that the legal exceptional criterion relating to full functional adaptation was misspelled and he demonstrated how this had in all likelihood confused Mr AB's GP. Given this failing, and the delay that occurred in the DVLA clarifying what its requirements were in this regard, the ICA judged that the DVLA had failed to meet the Ombudsman requirements of clear and timely information about how to appeal or complain. He therefore partially upheld the complaint and recommended that the Agency should make a consolatory payment £500. In other regards, the ICA was complimentary of DVLA involvement. He was pleased that the DVLA doctor had quickly identified when evidence of full functional tests had been made available. He also commended the DVLA for reviewing the information available about full functional adaptation and noted that improvements would shortly be made available to assist drivers in Mr AB's condition.

Minor error leads to enquiry into phantom serious illness

Complaint: Mr AB inadvertently ticked a box indicating serious illness when he was applying for a new licence after moving house. This triggered DVLA medical enquiries which he complained were delayed and mystifying. When he telephoned to chase things up, he was told that he had cancer. This was alarming and surprising news as he did not have cancer. He complained about the DVLA's handling of the call, and about the fact that it had taken five months in the end to be relicensed during which time he had believed that he had no entitlement to drive.

Agency response: The DVLA explained that its enquiries had been triggered by information supplied by Mr AB that suggested serious illness. Once the potential mistake had been identified, focused enquiries were made of his GP that eliminated any question around Mr AB's fitness to drive.

ICA outcome: The ICA emphasised to Mr AB that he been told from the outset that he could drive during DVLA medical enquiries. He also explained how one error in Mr AB's change of address notification had activated medical enquiries. The ICA noted that a Kafkaesque sequence of events had followed where the DVLA was attempting to conduct a major medical investigation into a driver who had absolutely no idea why his health was under scrutiny. Things had been further confused by delays in case progression in Drivers Medical caused by pressure on DVLA doctors' time. The ICA did not judge that the person who had told Mr AB he had a serious illness had acted in bad faith. She had identified a blockage in the progression of Mr AB's case (the need for a consultant opinion on the cancer) and taken the opportunity of his call to inform him of it. This had clearly and understandably been surprising and distressing. The ICA recommended that the DVLA should take steps to ensure that communications in relation to life-threatening illnesses should be conducted with great care and caution by its call centre staff. Given the delays that occurred, he also recommended that a £50 consolatory payment should be made to Mr AB. Looking at his complaint as a whole, the ICA did not feel that the DVLA should be held responsible for events given the fact that the whole medical enquiry process had been triggered by an error on Mr AB's part.

Failure to answer questions or reply to letters

Complaint: Mr AB lost consciousness behind the wheel and crashed his car at low speed. Nobody was hurt. He informed the police who notified the DVLA. Mr AB's entitlement was revoked on the grounds of an unexplained loss of consciousness without a reliable prodrome. He complained that, despite information from his consultant cardiologist explaining why he had, in all likelihood, lost consciousness, the DVLA did not relicense him until five and a half months had passed after the incident. He also complained of inefficiency and a failure by the DVLA to answer his questions about the basis of its decision-making.

Agency response: The DVLA reopened Mr AB's case on receipt of information from the consultant but its doctor judged that the cause of the blackout was not sufficiently established to change the fitness standard applied to the event. Eventually, after delays caused by administrative failures, the DVLA approached Mr AB's consultant cardiologist who reaffirmed his opinion that the cause of the loss of consciousness related to various medications that he had stopped taking. The risk of recurrence was under 20 per cent per year and accordingly the DVLA doctor decided to relicense Mr AB without further enquiries been made. Apologies were given for poor handling and a £50 consolatory payment was offered.

ICA outcome: The ICA noted that all of the key decisions in Mr AB's case had been made by a DVLA doctor. It was not, therefore, for him to call these judgements into question. However, the ICA was critical of the DVLA for not answering Mr AB's question about why his consultant's explanation of the event had been insufficient. He also noted that a number of letters had not been answered by the DVLA. He balanced this with a recognition that Mr AB's entitlement had been restored as a priority within five and a half months of the index event. He recommended that a consolatory payment of £75 should be made in addition to the £50 already offered to Mr AB.

Loss of implied entitlements

Complaint: Mrs AB had surrendered her driving licence in the late 1990s. She had been licensed prior to this for short periods only due to an epilepsy diagnosis. When she renewed her licence, unbeknownst to her, her C1 entitlement was not transferred because of changes to the law following the Second European Directive on Driver Licensing. The effect of the second directive was to prevent implied C1 and D1 entitlements from transferring with ordinary entitlement when medically restricted licences were renewed after 1 January 1998. Mrs AB was unaware of this for 20 years. She complained that she had not been told before she had surrendered that her new licence would not include the C1 entitlement. In fact she had not been told by the DVLA at all. She had a very mild manifestation of epilepsy and had not had a fit for many years while taking anti-seizure medication. Had she been aware of the need to be seizure-free for 10 years of medication, she might have considered this option.

Agency response: The DVLA pointed Mrs AB to documentation where it had informed her of the changes to her entitlement. It stated that it had no discretion in her case because the epilepsy standards were written into law.

ICA outcome: The ICA told Mrs AB that she would have lost C1 at the first point at which her licence had been reissued after 1 January 1998. The fact that she had surrendered her licence prior to that date did not affect the fact that the entitlement was rescinded. The ICA pressed the DVLA for information about how drivers in Mrs AB's situation had been informed of the changes. The DVLA produced records showing that Mrs AB had been informed in 1999 that her entitlement had not carried across. Mrs AB denied ever receiving this letter. The ICA regarded the DVLA's responses as reasonable and accurate and he did not find evidence of error. He could not resolve the disparity between the DVLA's records of letters sent to Mrs AB and her own recollection of whether or not they had arrived. He did not uphold the complaint.

Unclear guidance in *Assessing fitness to drive*

Complaint: Mr AB complained in respect of the DVLA's medical enquiries into his fitness to drive, and its decision to refuse his licence application.

Agency response: The DVLA said that it had been trying to contact Mr AB's consultant but he had not replied. It had agreed an alternative way of addressing the medical enquiries.

ICA outcome: The ICA did not think there had been any delay amounting to maladministration. Given that much of Mr AB's complaint related to medical decision-making, he was unable to address the core aspects of the complaint which he did not uphold. However, noting that the licence refusal had been made by a non-clinician on the basis of the Agency's Operating Instructions, and that the guidance in *Assessing fitness to drive* was not as clear as it might be, he recommended that the DVLA review that section of *Assessing fitness to drive*.

A year of delay

Complaint: Mrs AB complained about the time taken by the DVLA to complete its medical enquiries into her fitness to drive.

Agency response: The DVLA said that Mrs AB had a rare condition and it had needed to consult the relevant advisory panel secretary and a panel member.

ICA outcome: The ICA upheld the complaint in the strongest terms. He found that five months had elapsed between the case being referred to the panel secretary and her advice that a panel member be asked for an opinion. Eight months (and counting) had then elapsed and still no opinion had been forthcoming. This amounted to a year of delay. The ICA said it was for the DVLA to determine how to organise its panels, and he appreciated that panel members gave their time in a voluntary capacity. But it had transpired that the Agency had not even been aware that the particular panel member had actually retired. He recommended an apology, the largest consolatory payment at his disposal, and that Mrs AB's case now be taken forward in other ways.

Complexities of a claim for compensation

Complaint: Mr AB complained about the offer of compensation he had received from the DVLA following an earlier ICA review of his revocation on medical grounds. He said he wanted the ICA's view before deciding what to do.

Agency response: The DVLA said that it had faced great difficulty in assessing Mr AB's claim. He had not explained the basis for it, and had just started his business so takings were very low. He had now decided to discontinue the business, so there was nothing to show the net earnings after the revocation either. Instead the DVLA had offered to meet Mr AB's drawings on his director's loan used to set up his company.

ICA outcome: The ICA said he could understand the difficulties the DVLA had faced. His own analysis of Mr AB's accounts provided no basis for assessing what earnings he would have lost. The DVLA could have guessed at his daily takings, and the number of days he would have worked, and subtracted its assessment of his likely costs. However, such an approach would have been very speculative and might not have satisfied HM Treasury or the National Audit Office. On the other hand, the ICA could see no necessary logic in the DVLA's position as there was no obvious link between Mr AB's drawing on his loan to make ends meet and his possible earnings had he not been mistakenly revoked. The ICA felt the DVLA had engaged with Mr AB in line with the spirit of his original recommendation, and it was no one's fault that they could not substantiate the claim Mr AB had made. In these circumstances, the ICA did not think there had been maladministration.

(ii): VEHICLE REGISTRATION AND IDENTITY

Registration of historic vehicle

Complaint: Mr AB complained that information on his registration certificate relating to his historic vehicle was incorrect. He said the date of first registration should have been 1988 and not 2017. He was also unhappy that the make and model information was all on one line and that the date of manufacture was incorrect.

Agency response: The DVLA said it could not amend the make/model details. More significantly, it said the date of first registration should remain as 2017 notwithstanding that Mr AB's vehicle had an age-related plate.

ICA outcome: The ICA said that he could not assist Mr AB in respect of the make and model details. This was the result of a computer glitch that cannot be corrected manually. The DVLA had attempted to overcome the problem, but was entitled to say that this was not a flaw of such significance that it should be a priority for system change. No one looking at the V5C could be in any doubt as to the details of the vehicle. However, the ICA found flaws in the DVLA's complaint handling and a letter explaining the DVLA's decision seemed to make no sense. Most importantly, while it was clear that the registration details for the vehicle held by the DVLA had been wrong for nearly 30 years, the ICA said that the vehicle had in fact been properly registered under the rules in operation at the time in 1988. In these circumstances, the ICA could see no merit in the DVLA's contention that the date of first registration should be shown as 2017 when a new plate was issued.

However, his recommendation that the record be further amended to show a date of first registration as 1988 was rejected by the DVLA.

Incorrect formatting of number plate

Complaint: Mr AB complained that the DVLA had told him the formatting of his number plate had been incorrect. He had been caught by an ANPR camera when driving untaxed, but the enforcement case had been dropped. He said the DVLA had no right to tell him how the plate (for which he had paid £1,000) was to be laid out and was not willing to carry out 'unpaid work' changing it.

Agency response: The DVLA had quoted from the statutory regulations, and from s.23 of the Vehicle Excise and Registration Act 1994 under which the Secretary of State can withdraw the rights to display a registration mark.

ICA outcome: The ICA said the law was clear and not in doubt. There could be no maladministration when the DVLA had simply applied the law as Parliament intended. The DVLA had explained the consequence of Mr AB's non-compliance and had been generous in the time allowed to him to comply. The fact that the enforcement action in relation to unpaid VED had been stopped was irrelevant to the separate matter of the formatting of the plate.

Customer seeks a capital plate

Complaint: Mr AB complained that the DVLA would not allow him to swap his number plate for one with a London location identifier. He said he had been initially told that this was possible, and criticised the Agency for not retaining the recording of his telephone call.

Agency response: The DVLA acknowledged that Mr AB had been given incorrect information, and had offered a consolatory payment of £50. However, it said it could not provide Mr AB with the plate he wanted, although he was free to purchase one.

ICA outcome: The ICA said Mr AB was probably right to say that the DVLA had a material interest in not allowing customers simply to swap number plates. However, this did not amount to maladministration on the Agency's part. Nor was it maladministrative for the DVLA not to want to set a precedent in Mr AB's case (although plates can exceptionally be re-allocated – for example, if the plate is deemed offensive). The ICA did not agree that the wrong information first given to Mr AB amounted to gross maladministration, and was content that the offer of £50 was appropriate. Nor could he criticise the policy of only retaining phone calls for 90 days. However, he recommended that the call centre retain calls dealt with as 'business as usual' that could escalate into formal complaints.

An age-related plate apparently agreed to and then withdrawn

Complaint: Mr AB bought a classic mid-70s American convertible that had been registered on a Q plate. In March 2017 he furnished a tranche of evidence that the vehicle had been manufactured in 1975 and requested that the DVLA review the registration. A

holding email was sent soon afterwards and then, several months later, Mr AB was told that DVLA policy was that appeals against Q plate registrations had to be lodged by the first keeper within 12 months of the registration decision.

Agency response: The DVLA held the line throughout its correspondence with Mr AB that the vehicle could not be reregistered.

ICA outcome: The ICA established that the original DVLA policy had indeed been that only the initial registrant could appeal a Q plate within a year of registration. However, this had been relaxed over the years to the extent that information about how to appeal against a Q plate registration had been published on gov.uk and was still available. Between February and November 2017, the DVLA's policy team had reviewed this position in light of concerns about fraud. In November 2017, it had been decided that the original restrictive policy should be reinstated. The ICA noted that Mr AB had made his application before this policy change had been formalised. He therefore considered that it should be looked at within the framework that had enabled similar appeals to be considered at the time. The ICA noted the extensive evidence as to the age and identity of the vehicle, and recommended that it should be issued an age-related registration. The DVLA initially agreed the draft review. However, after it had been issued its policy team refused to implement the recommendation. The case was being investigated by the PHSO at the time of completing this Annual Report.

Confusing responses to a complaint about imported salvage

Complaint: Mrs AB imported an accident damaged car from Australia. She complained that the DVLA refused to register it under its original identity.

Agency response: The DVLA told Mrs AB that, because the car had been marked as a statutory write-off by the Australian authorities, it could only be registered under a Q plate unless Mrs AB could obtain evidence from the Australian authorities that it could be returned to the road under its original identity. In correspondence with Mrs AB, the DVLA told her repeatedly that the identity of her car was in question.

ICA outcome: The ICA noted that the rules on imported salvage were not enshrined in a clear policy statement available to the public. In practice, the well-publicised first registration process was cut across if the car had a salvage categorisation. The DVLA said its policy amounted to a presumption that imported vehicles with certain salvage classifications would be equivalent to category A or B salvage under the UK regime, in other words the vehicle would be unable to retain its original identity and would need to be issued with a DVLA VIN (vehicle identification number). The ICA was critical of this position because in reality category A and B salvage cannot return to the road under any UK regime. Nor did the guidance on Q plates make it clear that a vehicle whose true age and identity was not in doubt could still be issued with a Q plate if it was foreign salvage. The ICA understood that the DVLA's position was based on its view that road safety and consumer protection were of paramount importance. However, in his view an unpublished policy cut across the Ombudsman requirements of transparency and clarity. He therefore recommended that the DVLA publish clear guidance about its approach to registering foreign salvage, and review the information that its complaints handlers provided to customers. This information majored on vehicle identity when in reality the identity of the vehicle *per se* was not the root cause of the registration problem. He also recommended

that Mrs AB should receive a consolatory payment of £50 to reflect the poor quality of responses she'd received from the DVLA during the course of her complaint.

A Q plate appeal is reconsidered by the vehicle policy team

Complaint: Mr AB acquired a rare classic vehicle registered on a Q plate and appealed against the registration on the grounds that there was ample evidence of the car's age and identity. He furnished this evidence to no avail, being told at one stage that DVLA policy was that Q plate appeals could occur only within 12 months of first registration, provided the appeal was brought by the keeper. He was then told that the fact that his car had a Ford engine meant that it did not meet the criteria for originality anyway.

Agency response: The DVLA held the line that Mr AB's appeal could not progress.

ICA outcome: Both ICAs met with the DVLA's Head of Policy who had expressed the view that an authoritative 'suite' of evidence as to the age and identity of a car should not be discounted in every case. The ICA noted that the presumptive policy limiting the window in which Q plate appeals could be lodged was unpublished and out of line with the Ombudsman transparency principles. In response to his draft report in which he recommended that Mr AB's case should be reconsidered, the DVLA agreed that it would inspect the vehicle and asked that Mr AB obtain an inspection by the British Motor Museum whose evidence he had furnished in his early correspondence. The ICA regarded this as a reasonable way forward, although Mr AB complained quite reasonably of the cost of getting the car shipped to the museum.

12-month rule not debarring for Q plate appeals

Complaint: Mr AB complained that the DVLA would not allocate an age-related plate to a vehicle he had imported in 1986 when it was given a Q plate.

Agency response: The DVLA said that appeals against Q plate could only be made within 12 months.

ICA outcome: The ICA said that it had been agreed that where a customer had a 'suite' of evidence, the 12-month rule should not be debarring. In this case, it was clear that the DVLA would grant an age-related plate at first registration. The ICA therefore recommended that Mr AB be granted his age-related plate and that the unpublished internal guidance be revised to make clear that the 12 month rule was presumptive but not debarring.

A retirement restoration project that fell foul of the change in the salvage rules

Complaint: Mr AB had bought a classic sports car some years ago without a logbook, knowing that it had been involved in an accident. At the time he sought advice from the DVLA who said that, if it was restored and met the vehicle identity requirements, it could be registered under its original plate. Five years later, having rebuilt the car, Mr AB tried to have it registered. He was then told that, because it had been classified as category B

salvage, under rules introduced in October 2015 the car could not be registered under its original plate. It would have to be inspected and issued with a Q plate. Mr AB complained that this was contrary to the advice he had been given, and that the DVLA was inconsistent and unclear about its requirements.

Agency response: The DVLA responses at times referred to the identity of Mr AB's car, and asked him for evidence relating to the provenance of its parts, and at other times referred to its salvage status. The Agency explained that the change in the rules that had abolished the vehicle identity check (VIC) test in October 2015 meant that no category A or B salvage could be registered under its original identity.

ICA outcome: The ICA could not ask the DVLA to depart from its stated policy position that drew from the relevant legislation. He could not see any way that the car could be registered under its original identity. However, he criticised the fact that Mr AB had received conflicting information about his claim to the original or an age-related registration.

The costs of retaining a personalised plate

Complaint: Mr AB complained about the fee to retain a personalised number plate. He said the actual administration cost was far less than the £80 he was charged. Indeed, FOI requests had revealed that the actual cost was a tenth of the fee charged.

Agency response: The DVLA said that the fee was set in legislation.

ICA outcome: The ICA said that the DVLA had rightly said that the fee was set in statutory regulations (Regulation 11 of the Road Vehicles Licensing and Registration Regulations 2002) and had remained unchanged since then. For his part, Mr AB was also right to say that the fee was much greater than the costs of conducting the transaction in a digital age, but that was an argument to pursue politically – as it would require a change in the law – rather than through the complaints system.

Lost postal order delays personalised plate application

Complaint: Mr AB complained that the DVLA had lost the postal order he had sent to retain a personalised number plate. The transaction had been delayed in consequence.

Agency response: The DVLA said there was no evidence that the postal order had arrived at the DVLA or been lost by them. The initial transaction had been correctly refused.

ICA outcome: The ICA noted that Mr AB had not retained the counterfoil for the postal order - albeit he had provided a bank statement showing that £90 had been paid to the Post Office on the day he said. This meant he could not use the Post Office procedures for lost postal orders and it was not possible to say if it had been cashed and where. However, responsibility for this did not rest with the DVLA. The ICA felt unable to say, on the balance of probabilities, that the postal order had been lost by the DVLA and therefore could not uphold the complaint.

DVLA practice in publishing prices obtained for cherished plates

Complaint: Ms AB complained about the DVLA's policy of publishing the prices obtained at auctions of personalised number plates. She said this affected her own business of selling on plates to the public.

Agency response: The DVLA said its policy was longstanding, and no other complaint had been received. The practice of publishing prices obtained was in the wider consumer interest.

ICA outcome: The ICA said that he could identify no maladministration. The prices obtained were routinely published for all sorts of auctions, and everyone understood there was a difference between the wholesale and retail prices of goods. It was Ms AB's business choice if she no longer wished to take part in DVLA auctions; the wider consumer benefit was in openness about the prices obtained by the DVLA.

Loss of a cherished plate appropriately resolved

Complaint: Ms AB complained about the loss of a cherished plate on a vehicle she had sold.

Agency response: The DVLA said that Ms AB should have applied to retain the plate before selling the vehicle. The right to display the plate was now in the hands of the new keeper.

ICA outcome: The ICA said there had been no maladministration on the part of the DVLA. The mistake was on the part of Ms AB. However, there was no reason to suppose that the new keeper had any interest in the plate (having bought the vehicle when it was displaying another number entirely). He proposed therefore that the DVLA approach the new keeper on Ms AB's behalf. Pleasingly, this was agreed, Ms AB being invited to supply a covering letter to go with the DVLA's own letter. The ICA suggested to Ms AB that she might wish to offer to meet the new keeper's expenses or make a one-off payment in recognition of the inconvenience caused.

No maladministration in handling of cherished plate transaction

Complaint: Mr AB complained about the loss of a cherished plate on a vehicle he had bought some years ago.

Agency response: The DVLA said that Mr AB had not notified the Agency that he was the registered keeper. It had processed an application from the keeper to transfer the plate and it since been reassigned to another vehicle.

ICA outcome: The ICA said he could offer no comfort to Mr AB. There had been no maladministration by the DVLA, and it had correctly processed a transaction to remove the number plate when asked to do so by the registered keeper. Although Mr AB had owned the vehicle for some while, he did not register as the keeper for four years.

Removal of right to display a cherished plate

Complaint: Mr AB complained that the DVLA had removed his right to display a personalised number plate. He argued that the Agency had taken sides in a civil dispute with the company from whom he had bought the plate.

Agency response: The DVLA said that it had reversed the transaction because a mistake had been made. The application to assign the plate to Mr AB's vehicle should have been rejected as the latest version of the V750 (Certificate of Entitlement) had not been used. It accepted that what was termed a 'Business as Usual complaint' had not been formally responded to.

ICA outcome: The ICA part upheld the complaint. He said that the root cause of the problem was the mistake made by the DVLA in processing the application without checking that the most recent V750 was being used. According to the company that had sold the registration, Mr AB had successfully charged back his payment from his bank; however, if there was any civil dispute between Mr AB and that company this was not a matter for the DVLA. In any event, the Agency had not taken sides; it had simply reversed a transaction made in error. Mr AB had asked for compensation but this was not warranted. The ICA also criticised some of the language used by Mr AB in his complaint.

Entitlement of a classic vehicle to its original registration

Complaint: Mr AB complained about the DVLA's decision not to register his classic vehicle under what he believed to be its original registration number.

Agency response: The DVLA said that the evidence supplied by Mr AB was insufficient, and that he needed to supply a single document showing both the chassis number and the registration number on the same document.

ICA outcome: The ICA said the DVLA had misinterpreted its own guidance, and that there was overwhelming evidence that Mr AB's vehicle should have the plate he had identified. The guidance said that in the absence of a log book, the pre-1983 evidence that could be considered was that linking the chassis number and the registration number. There was nothing about this being on a single document. Indeed, as in this case, it was much more likely that there would be a chain of evidence not a single piece of paper. The ICA recommended that Mr AB's application for the original number be accepted, and that staff be reminded that documentary evidence sufficient to link a chassis number and a registration did not need to be on a single piece of paper.

Question marks over the appropriate age-related plate

Complaint: Mr AB complained about the decision of the DVLA to refuse him an age-related plate with a G suffix. He said the evidence suggested that the vehicle had been registered after 1 August 1968 and thus the current F suffix was incorrect.

Agency response: The DVLA said that it had no evidence of when the vehicle was first registered. The number cited by the heritage centre was not one that had ever been issued.

ICA outcome: The ICA said there were aspects of this complaint that remained a puzzle. However, the circumstantial evidence supported the view that a G suffix was appropriate. He recommended that the DVLA conduct further research for the number cited by the heritage centre – and for similar numbers issued in the city concerned at the same time. If these records could not be traced, the principal argument against issuing a G plate would fall. The ICA said that in those circumstances, a G plate should be issued. He criticised aspects of the DVLA's handling and made a further recommendation in respect of the DVSA's MoT record that was not consistent with the DVLA's records – and which was a further source of uncertainty.

Imported vehicle must wait to be treated as historic

Complaint: Mr AB had imported a vehicle from the United States. He criticised the fact that it could not be treated as a historic vehicle (and therefore exempt from road tax) until April 2019.

Agency response: The DVLA said this reflected the law (Schedule 2 of the Vehicle Excise and Registration Act 1994) and that it had no discretion.

ICA outcome: The ICA said he could not agree with Mr AB that it was 'spurious' of the DVLA to say that its decision was bound by legislation. The Agency operated within a framework of law. That law may be poorly drafted or make no sense – but that was a political matter not a question of maladministration. The ICA said he could not recommend that Mr AB be 'paid back' the tax he had incurred and would incur until April 2019.

A complaint about a salvage marker

Complaint: Mr AB complained about the 'salvage marker' entered on the special notes of the registration certificate for his vehicle that he had imported from the USA. He said that this was symptomatic of a wider problem in respect of imported vehicles, and that to suggest that his vehicle had been assembled from used parts was simply incorrect.

Agency response: The DVLA said that the marker would stay on the vehicle as it was bought abroad as salvage, and so that future keepers of the vehicle would be aware of its history.

ICA outcome: The ICA said it was clear that the US certificate of title had the word 'salvaged' upon it. However, he also acknowledged that the term 'salvaged' could cover a wide variety of situations. But that was the DVLA's position as well. Given that there was no global definition of 'salvaged' and no way for the DVLA to be expert in every part of the world – or every part of the US – it was entitled to take a risk averse approach. It was evident that the DVLA's approach to 'salvaged' vehicles imported into the UK was causing discontentment amongst the DVLA's customers and it would clearly be useful the more the

Agency knew about different countries' approaches. However, the current approach was not maladministrative.

Registering imported salvage again

Complaint: Mr AB imported a very high value historic car from America that had 'salvaged' marked on its registration document. After extensive recommissioning of the vehicle, he established that it was completely as first built, to the extent that the original paint colour was visible in different areas of the bodywork and all the glassware was also original. Mr AB complained that the DVLA's first registrations team placed a marker on the logbook stating that it was "rebuilt – assembled from parts some or all of which were not new" and also gave an incorrect date of first registration, contrary to the verified factory record.

Agency response: The DVLA accepted that it was appropriate to issue an age-related plate, but refused to remove the marker without evidence about the extent of the damage that had given rise to it in the first instance. The DVLA admitted that its systems did not yet allow an accurate marker to be placed on the logbook, and therefore it was forced to use a marker that might not be correct. It said its overriding duty was to protect consumers.

ICA outcome: The ICA noted the compelling evidence presented by Mr AB that, in his vehicle's case, the original event triggering the salvage categorisation had been minor. The salvage designation in the US could apply to superficial bodywork damage or theft of a vehicle. The ICA said that keeping an accurate vehicles register was a founding objective of the DVLA as well as a legal obligation. However, he concluded that there was no evidence to suggest that the car had been "rebuilt from parts all of which were not new". He therefore recommended that this wording should be removed from the logbook. If the DVLA had to make a record of the salvage status then it should do so when its systems allowed for accurate wording to be used. He also recommended that the DVLA should revisit the date of first registration in light of the factory record produced by Mr AB. The DVLA declined to implement the first recommendation, explaining that there must have been an element of rebuild work given the salvage designation that it needed to flag. The DVLA agreed to look again at the date of first registration and it assured the ICA that it would publish its policy position on importing foreign salvage as no information existed on the gov.uk website.

Yet more discontentment about registering imported salvage

Complaint: Mr AB imported a car from the United States that had been flood damaged. He complained that the DVLA: (a) did not issue it with an age-related plate that reflected its exact date of manufacture; (b) insisted on applying an "H" marker to the logbook stating incorrectly that the vehicle had been rebuilt from parts some or all of which were not new; (c) had omitted key information about the car from the logbook; and (d) had mishandled its communications throughout the process, with long delays between stages necessitating him chasing the matter up repeatedly.

Agency response: The DVLA resolved the complaint about the omission of information by rectifying the entry and reissuing the logbook. It accepted that Mr AB's vehicle was entitled to an age-related plate (in other words it was not the equivalent of category A or B salvage). However, in the absence of unequivocal first hand evidence from the title-issuing authority in the US as to why the vehicle had been classified as salvage, and confirming its condition at that stage, the DVLA would not remove the rebuilt marker. It explained that its systems were being upgraded to enable the more precise capturing of information about a vehicle's history. Until then, it had a duty to alert consumers to the fact that a vehicle had a salvage history, even if the wording available to it did not capture that history precisely.

ICA outcome: The ICA referred further information to the DVLA about the date of manufacture of the car and it amended its records accordingly. The ICA and the DVLA did not end up agreeing about the appropriateness of the rebuilt marker. The ICA noted the DVLA's commitment to consumer protection. On the other hand, "rebuilt vehicle" was a designation that was statutorily defined and clearly was not intended to define vehicles with an overseas salvage history. The ICA also noted that it was ordinarily an offence to register incorrect or false information into the vehicle record. He could not see that this could be justified in any circumstances. The DVLA remained of the view that it was duty-bound to place a question mark over the salvage event. The ICA was critical of the way the complaint had been handled, noting that Mr AB had struggled to obtain answers to his questions and had needed to keep the pressure on in order to keep his case moving. Some of the explanations Mr AB had been given were confusing. In addition, he had needed to keep pressing before the substantive complaints procedure was eventually activated. Further delays followed even after his MP had become involved. It then took the DVLA well over a month to answer the ICA's questions about the date that would be recorded on the logbook. The ICA upheld this aspect of the complaint. The ICA's recommendation about removing the rebuilt marker was declined by the DVLA. However, it agreed to pay Mr AB £50 in recognition of its poor handling of his case. Two months after the case was closed by the ICA, correspondence rumbled on between Mr AB and the DVLA complaints team.

Registration of classic car

Complaint: Mr AB complained that he had been given inconsistent rationales for the DVLA's refusal to amend the date of first registration on his classic pre-war car to reflect County Council records.

Agency response: The DVLA told Mr AB that it could not record any first registration date that preceded its own existence. After Mr AB challenged this position with reference to another one of his vehicles that recorded the first registration date 60 years previously, the Agency stated that he would need to produce the original 80-year-old logbook before it would amend the date.

ICA outcome: The ICA was critical of the DVLA for its confusing and inconsistent communications. In his draft report he recommended that the Agency accept the compelling evidence that the vehicle was indeed first registered before World War II. The DVLA refused, explaining that it was happy to stand by its most recent registration decision (whereby the link between the plate and the vehicle identification number had been accepted at face value when the vehicle was first registered with the DVLA). It did

not regard that as sufficient to accept the link between the registration and the date of first registration that Mr AB had shown through County Council records. The ICA expressed his bewilderment and disappointment with this outcome. He recommended that the DVLA spell out in detail with reference to relevant guidance and legislation the basis of its position, and take steps to ensure that its registration team responded in a timely and consistent fashion to future enquiries. He upheld the complaint.

Another Q plate complaint

Complaint: Mr AB had bought a sports model of a historic popular saloon with its original age-related plate. He complained that another person's false claim to the plate had led to the DVLA unfairly and unreasonably deregistering his car from it. He also complained that, despite two inspections and repeatedly furnishing the DVLA with evidence about its authenticity, the DVLA refused to reallocate the original plate to him and said he would need to display a Q plate on the vehicle.

Agency response: The DVLA's responses did not explain why Mr AB's claim to the plate had been dismissed before the 14 day response period to its enquiries, prescribed in policy, had elapsed. In reality, it had in error granted the right to display the plate to another individual whose vehicle was no more than a collection of parts. It later reversed this decision but Mr AB was never informed. As a result, he remained under the impression that the other keeper's claim to the car had been preferred to his. The DVLA then told Mr AB that a decision on registration of the vehicle would be considered once additional work was completed on it. Mr AB did this but an expert review of the DVLA's own inspection pointed to key components not being original. Mr AB's claim to the original plate was therefore rejected.

ICA outcome: The ICA had repeatedly to revert to the DVLA and Mr AB given the paucity of information on the file referred to him. He established that an error had been made in the first instance in allocating the plate to the other keeper without reference to Mr AB's own claim. Although this represented a major error, it did affect the outcome for Mr AB because significant doubt had been raised about the authenticity of his own vehicle anyway. The ICA was critical of DVLA explanations. Mr AB should have been told clearly, early on, that there was doubt about his right to display the original plate. DVLA correspondence did not properly spell out the basis of its decision-making even after the expert report had been commissioned looking into the provenance of the vehicle. However, the ICA noted that Mr AB had continued renovating the vehicle in the knowledge that doubts still existed. The ICA was very critical of the explanations provided by the DVLA and recommended that a consolatory payment of £250 be made. He also clarified with the DVLA that it was open to considering the registration of Mr AB's vehicle as a reconstructed classic in the event that it met the published criteria.

More challenges over imported car

Complaint: Mr AB imported a car from Australia that had a designation of statutory write-off. He complained that the DVLA refused to register it with an age-related plate. In his complaint, Mr AB noted that DVLA published policy about Q plates did not refer to his situation as it related only to vehicles where the identity and/or age of manufacturer were

in question. He repeatedly asked the DVLA to spell out its policy on registering foreign salvage. He also alleged that the DVLA's first registration team had been accepting bribes in order to falsely register imported salvage from Australia.

Agency response: DVLA explained that it would only register the car with an age-related plate on proof that the jurisdiction that had issued the salvage title would permit the vehicle to be registered for road use with its original identity. Over the course of many months, the DVLA attempted to explain its position on imported salvage but was unable to do so clearly. The allegations of fraud were referred to its fraud team but an investigation could not be progressed without details of the vehicles allegedly involved in the fraudulent activity.

ICA outcome: The ICA explained the DVLA's twin track approach to the registering of foreign salvage. Evidence of repairable salvage (in other words vehicles that have been written off for economic rather than safety reasons) would be regarded as equivalent to UK salvage categories N or S meaning that they could be registered under their original identity but with a marker on the logbook. Any other imported salvage would have to be reregistered with a Q plate. Any debate about which category applied would be dealt with by inviting the driver to provide evidence that the car could have been returned to the road in its original jurisdiction under its original identity. The ICA noted that these requirements were not published and seemed to represent a clampdown on the part of the DVLA. He recommended that they should be published without delay so that drivers were clear about the regime applied to imported salvage. The ICA upheld Mr AB's complaints that the DVLA had been unclear and that avoidable delays had arisen during his correspondence. He did not uphold the complaint that the registration decision had been contrary to policy; the problem was not that it was a departure from policy but rather that the policy was unknown to the general public. He recommended that Mr AB should be given a consolatory payment of £50 to reflect the inconvenience he had experienced in his dealings with the DVLA.

Waiting for an age-related plate

Complaint: Mr AB had applied for an age-related plate for his Q plated vehicle. He waited a year to be told that this would not be agreed. There was then a further delay before the case was referred for ICA review.

Agency response: The DVLA had offered £50 for poor service. On the core element of the complaint it referred to its new approach to Q plate appeals (that is, that they had to be within 12 months by the first registered keeper).

ICA outcome: The ICA said that the new approach had been misinterpreted. It was not clear if Mr AB could show a 'suite' of evidence, but if he could then the ICA hoped his application would be accepted. He recommended reconsideration of the application with an inspection. In light of the poor service, he also increased the consolatory payment.

Transfer of cherished plate

Complaint: Mrs AB complained that the DVLA would not allow her to transfer a plate of great sentimental value.

Agency response: The DVLA complaints team had handled this very sad matter with great sensitivity. Mrs AB had been offered consolatory payments totalling £250 for the Agency's failure to explain to her the rules relating to the transfer of plates. She had had to wait eight months before this was done and had received a series of rather unhelpful stock letters. However, the record for the vehicle from which Mrs AB wished to transfer the plate had been void for many years. The vehicle was not taxed nor was capable of mechanical propulsion.

ICA outcome: The ICA said the plain fact of the matter was that the vehicle currently bearing the plate did not come within the terms of the transfer scheme as established by Parliament. He sympathised greatly with Mrs AB, but he could not ask the DVLA to act outside the law. Mrs AB would have to decide now how to proceed, and the ICA provided details of an owners club that might be able to advise her as to the value of her vehicle were it restored.

Age-related plate for a historic vehicle

Complaint: Mr AB acquired a 40 year old historic ex-MOD vehicle on a Q plate and applied to the DVLA for age-related registration. He complained the information he was given was contradictory, perverse and ran contrary to documentary evidence supporting the date of manufacture of his vehicle.

Agency response: The DVLA initially suggested that Mr AB submit a certificated copy of the manufacturer's record so that the vehicle could be registered as historic. It then stated that the vehicle could not be so designated unless an application was made within 12 months of the date of initial registration by the first keeper. It made a consolatory payment of £70 in recognition of the expense and hassle created by this error. In response to Mr AB's challenges, in which he provided evidence about the provenance of the vehicle including the stamped in vehicle identification number, the DVLA maintained the position that the window for an appeal against the plate registration had closed.

ICA outcome: Shortly after receiving the case, the ICA discussed the DVLA's policy on Q plate appeals with senior management within the organisation. It was agreed that, exceptionally, appeals to Q plate registrations could be considered if a suite of evidence supporting the age and provenance of the vehicle was provided. The ICA initially recommended, in his draft report, that Mr AB's evidence was sufficient to support the reregistration of the vehicle. Given the fact that restoration work was ongoing, and the provenance of the vehicle's components had not been confirmed, the Agency was not prepared to reconsider the Q plate registration. The ICA therefore deferred his review while Mr AB corresponded directly with the DVLA in an effort to substantiate his case for an age-related registration. The outcome was the DVLA suggestion that Mr AB could apply to register his vehicle as a reconstructed classic. The problem, however, was the fact that MOD and DVLA records showed the vehicle linked to the same VIN as being registered simultaneously in the UK and in service overseas for the army for a two-year

period. The ICA offered his own view that the most likely cause of this discrepancy was an error in the MOD records. He recommended that his analysis should be considered when Mr AB had completed the restoration of his vehicle. He also recommended that the DVLA should update its published information relating to Q plate appeals as soon as possible. Finally, he recommended that the DVLA make a consolatory payment of £50 to reflect delays in its handling of this case.

Mistaken notification of scrappage

Complaint: Mr AB complained that he had been unable to sell his car because its record had been marked on the DVLA's register as scrapped. It transpired that an insurance company had made the notification in error. Mr AB went on to complain that the DVLA's responses were inefficient and inconsistent. Although the original problem was clearly created by the insurance company, Mr AB had been able to tax the vehicle despite the fact that it was registered as scrapped. He argued that an opportunity to identify the anomaly had been missed.

Agency response: The DVLA referred the matter to its casework team who rectified the error and got the marker removed from the record. It informed Mr AB that a certificate of destruction had been issued. The complaints team later realised that this had not been the case and that the problem had been that the car had been marked as category B salvage by the insurer. Mr AB was offered a £50 consolatory payment which he declined.

ICA outcome: The ICA was concerned that the DVLA's investigation had laid all the responsibility for the error with the member of staff who had overridden the Agency's systems in order to tax the car. The ICA felt that the DVLA did not have sufficient safeguards in place to prevent genuinely unroadworthy vehicles from being taxed. He recommended that the DVLA should write to Mr AB explaining how it was going to ensure that there was no repetition. Given the impact on Mr AB, in particular the problems he had tried to sell his car, the ICA recommended that the consolatory offer should be increased to £150.

Restorative outcome to complaint about motorcycle identity

Complaint: Mr AB complained about the decision of the DVLA to void his vehicle's registration number and apply a Q plate. He said the chassis and engine numbers showed his motorbike was original, and that the VIN recorded at first registration in the 1970s was in error (one number had been misarranged).

Agency response: The DVLA said it would not reissue the registration as there was a difference between the VIN on the vehicle and that on its register. If Mr AB could supply additional information then an age-related plate could be considered.

ICA outcome: At fact-checking stage, the ICA had been provided with a police notification from 1983 indicating the total loss or potential loss of the vehicle with the original registration. Notwithstanding Mr AB's evidence, this suggested that the vehicle could indeed be constructed from parts. Pleasingly, however, the DVLA agreed to arrange an

inspection, and the ICA took the view that this meant the complaint had been settled restoratively.

(iii): VEHICLE TAX AND ENFORCEMENT

Clamping of car sold to relative

Complaint: Mr AB complained that his vehicle had been clamped and impounded notwithstanding that he had paid a year's vehicle excise duty (VED). He said he had been misinformed by DVLA staff.

Agency response: The DVLA said that the tax had automatically cancelled when it received online notification of a change of keeper (to Mr AB from a relative). It said the enforcement action had been correct and that its staff had been polite and given accurate advice.

ICA outcome: The ICA found that Mr AB had paid the tax using the V11 (reminder letter) sent to his relative. As a consequence, the tax had cancelled (and a refund been paid to the relative) when the DVLA was informed of the new keeper. From that point on the vehicle was untaxed and the enforcement action was lawful. However, while the DVLA staff had been polite in the calls to which the ICA could listen, it was clear that after the event wrong information had been given. On the balance of probabilities therefore, it seemed likely that the same wrong information had been given to Mr AB when he taxed the vehicle. In these circumstances, the ICA recommended a consolatory payment equal to the Out of Court Settlement (OCS) that Mr AB had paid.

The clamping of a vehicle of sentimental value

Complaint: Mr AB complained about damage to his late father's campervan that had been impounded by a sub-contractor of the DVLA's national wheel-clamping contractor, NSL, as the direct debit to pay the road tax had been cancelled following the death of Mr AB's father.

Agency response: The DVLA said that the matter was in the hands of NSL's insurers who had denied liability for the damage but offered £300 as a goodwill gesture.

ICA outcome: The ICA sympathised with Mr AB as it must have seemed that his father's memory had been trashed along with his vehicle. However, while the DVLA could not escape all responsibility for the actions of its contractors, it could not be expected to take on what amounted to an insurance claim against NSL in regard to which liability had been denied. There had been no maladministration on the part of the DVLA. Indeed, it was commendable that one of its staff had offered to mediate between Mr AB and NSL to try to find a resolution.

A complaint about clamping on an unadopted road

Complaint: Mr AB complained about the clamping and lifting of a car he owned (but of which he was not the registered keeper at the time in question). He questioned the regulations relating to SORNing (Statutory Off-Road Notification) and the status of the unadopted road on which the enforcement took place.

Agency response: The DVLA said that the vehicle was neither taxed nor subject to SORN, and was not in the curtilage of a dwelling.

ICA outcome: The ICA said that there was no doubt that the clamping had been lawful, but in his view the DVLA's explanations had been flawed. He part upheld the complaint on that basis.

Double charging for road tax

Complaint: Mr AB complained that he and his mother had both paid road tax for the same vehicle for a period of five months. He had sold the car to his mother, but his father had been ill and had forgotten to send the notification of a change of keeper to the DVLA. Mr AB's direct debit had continued to run. Meanwhile, his mother had taxed the vehicle in her own right at the Post Office.

Agency response: The DVLA said refunds could only be paid once notification of a change in keepership had been received.

ICA outcome: The ICA said this was an unfortunate affair, and it was also unfortunate that DVLA systems do not identify when double tax is being paid on the same vehicle. However, he did not think this amounted to maladministration and he could not tell the DVLA where its IT investments could be made. However, Mr AB was far from the only customer who was caught up in this way, and the ICA hoped that in time the computer system would be able to identify automatically when two lots of tax were being paid for the same car. There was of course a responsibility on keepers to ensure they meet their obligations under the law. But in the real world all sorts of circumstances may mean that customers do not follow the procedures anticipated of them. The customer-friendly approach is to assist customers rather than relying upon them to identify themselves when something has gone wrong.

Compensation claim following mistaken clamping

Complaint: Mr AB complained about the level of compensation he had been offered following the mistaken clamping of his work vehicle. He said he had lost work totalling £400 and that his customer had to pay an extra £100 to have the work undertaken in his absence.

Agency response: The DVLA had acknowledged that the 12 months road tax had been cancelled in error. It had offered a consolatory payment of £100 plus £5 for phone calls, but had not been persuaded by Mr AB's claims to have lost work as a result of its error.

ICA outcome: The ICA said the only issue for him was whether the sum of £105 represented appropriate redress. There was no evidence of Mr AB being aware that his vehicle was clamped before 6.00pm or thereabouts, so the ICA was not persuaded that his claim for lost earnings for that day was made out. Nor was the DVLA responsible for the decisions taken by Mr AB's customer. While the consolatory payment was at the lower end of what the ICA might have anticipated, it was not so low as to be maladministrative.

A month's tax pays for 32 hours on the road

Complaint: Mr AB complained that he had purchased VED when taking possession of a vehicle on the 30th day of the month but had been charged for a full month. He asked for a refund of one month's tax amounting to £9.

Agency response: The DVLA had explained that by law VED is for whole months only. As VED is no longer transferable, had Mr AB not taxed his car on the 30th it would have given rise to an offence. For these reasons, it had declined to pay a refund.

ICA outcome: The ICA agreed that there had been no maladministration. It was easy to understand Mr AB's sense of grievance in having paid a month's tax for a matter of 32 hours. But if he continued to feel aggrieved, this was something he would need to pursue through the political process rather than the complaints procedure.

Customer's own error leads to Late Licensing Penalty

Complaint: Mr AB complained about a Late Licensing Penalty (LLP). He said that the V11 had been sent to the wrong address – an error he attributed to the DVLA. He asked for the LLP to be refunded.

Agency response: The DVLA said that the V11 had been sent to the address on record, and that it had made no mistake.

ICA outcome: The ICA attached to his report a screen grab of the V5C that had been completed by Mr AB (or someone on his behalf). This showed without any question that the wrong address had been entered. For this reason, he could identify no maladministration on the part of the DVLA. However, the ICA observed that, as the complaint rested entirely upon a factual issue, it might have been resolved without ICA involvement had the Agency itself sent Mr AB a copy of the V5C he had previously submitted.

Direct Debit did not renew but customer was unaware

Complaint: Mr AB complained about the clamping of his vehicle when a direct debit did not auto-renew. He said that the failure to renew was not at his request or with his knowledge.

Agency response: The DVLA said that the V5C had been returned by the Royal Mail because of a minor difference in the address details. In consequence, its systems did not allow the direct debit to auto-renew.

ICA outcome: The ICA said it was clear that Mr AB had not contacted the DVLA when the V5C was not received. Nor had he chased when the schedule of future direct debit (DD) payments was not received. However, the question for the ICA was whether the DVLA's systems for managing DDs were maladministrative. He did not think they were. The system does not allow a DD to auto-renew when there is a doubt over the registered keeper's address. This is a security measure intended to ensure that the register is as accurate as possible. However, it was arguable that the information on gov.uk could be strengthened to make this absolutely clear, and the ICA recommended accordingly.

More direct debit grief

Complaint: Mr and Mrs AB complained that the DVLA had collected tax by direct debit from Mrs AB's account for eight months after she had disposed of her car. It also provided conflicting and inconsistent accounts of the steps she should take to recover the overpayment. In the end, the DVLA refused to repay her the money (a sum in the order of £200) because it had not received a notification of disposal until several months after she had sold the car.

Agency response: The DVLA established that Mrs AB had never received the logbook and had not followed this up with the DVLA in the two years in which she owned the car. When she sold the car she did not cancel the direct debit or notify disposal. After nine months she noticed the direct debits were going out of her account and she cancelled, expecting the DVLA to refund the overpayment. The DVLA refused on the basis that the notification of disposal arrived late by which time the direct debit mandate had been cancelled by Mrs AB anyway. The DVLA regarded itself as bound by the legislation to only issue rebates based on the date of notification.

ICA outcome: The ICA could not require the DVLA to act contrary to policy, but was not happy with the initial handling of Mr and Mrs AB's enquiries. They had been told at one point to complete documentation to ensure the issue of a new logbook to them even though they were no longer keepers. The clear impression given at one point was that the money could be refunded. However, the true policy position was that it could not. The ICA asked that the DVLA make a consolatory payment of £75 in recognition of its poor administration.

Another case of a keeper of a nil-rated car facing draconian enforcement for not "taxing"

Complaint: Mr AB bought a new car but for unknown reasons was not issued with a logbook. Mr AB sought advice from the DVLA and understood this as being that there was no need to license the car because it was nil-rated for tax. He also understood that the DVLA told him that changing his address on his driver's licence would have the effect of changing the registration address to which the car was recorded on the DVLA's register. When the licence for his car approached expiry, notifications were sent to his previous

address and he was subject to a Late Licensing Penalty, a clamping and an OCS. Mr AB complained that he must have been targeted, meaning that the DVLA knew his address all along.

Agency response: The DVLA explained the statutory and policy basis of its enforcement regime. It declined to reimburse Mr AB the £170 he had paid in enforcements as the lapse in vehicle licensing had been correctly identified. The DVLA set out the distinction between taxing and licensing a vehicle, and explained that notifications of a change of address need to be made separately in relation to the driver and the vehicle registers.

ICA outcome: The ICA saw no purpose in the draconian enforcements but acknowledged that they had been imposed in line with DVLA policy. He was therefore unable to uphold the complaint.

Vehicle impounded while keeper was abroad

Complaint: Mrs AB had returned from holiday abroad to find that her vehicle had been impounded and disposed of for being untaxed. She said she had been treated in a heavy-handed fashion. She also questioned the DVLA's account that her vehicle had contained no possessions of value, saying that it had included a sat nav.

Agency response: The DVLA said that it had sent all correspondence relating to this matter to the address on the vehicle record. Unfortunately, while Mrs AB had updated her driving licence with her correct address, she had never done so in writing in respect of the vehicle. In any event, Mrs AB herself acknowledged that, by oversight, she had not taxed the vehicle when the VED expired.

ICA outcome: The ICA said that he sympathised with Mrs AB. It was clear that the failure to tax the vehicle was a one-off, and had she not been abroad she would likely have seen that the vehicle had been clamped and would have sorted things at the time. The ICA said he hoped that in time the DVLA could communicate with its customers by email. However, some failures in the correspondence handling aside (Mrs AB had been told that the vehicle had been destroyed when in fact it had been sold at auction), there had been no maladministration. Unfortunately, the records provided to the DVLA via its wheel-clamping contractor, NSL, said that there was nothing of value in the car. While the ICA had no reason to doubt Mrs AB's account, he could not therefore say that compensation was due.

Customer-friendly approach to enforcement action taken in respect of scrapped vehicle

Complaint: Ms AB complained about the Fixed Penalty Notice (FPN) and Late Licensing Penalty she had received for a vehicle she had scrapped nearly a year earlier.

Agency response: The DVLA said that the law on Continuous Insurance Enforcement (CIE) and vehicle taxation allowed no discretion.

ICA outcome: This was a Kafka-esque story as Ms AB had received both an FPN and a LLP for a vehicle that does not exist. In contrast, the DVLA had benefited from direct debit

payments for eight months after the vehicle was scrapped. What had occurred was that Ms AB had relied on the company that scrapped the vehicle to notify the DVLA. She did not chase when no notice of disposal was received, and also did not check that the direct debits for road tax were still being taken. The ICA assumed she also did not respond to the insurance advisory letter and reminder to tax – presumably judging that they were junk mail generated by the computer. The ICA appreciated that the law on CIE and Continuous Registration (CR) is in very strict terms. But he could not believe that Parliament intended it to apply to vehicles that no longer exist. He asked the Agency take the customer-friendly course and, given the exceptional circumstances, to waive the FPN and LLP, thus also saving the costs of him continuing the review. Very pleasingly, the DVLA agreed.

The need to update both vehicle and driver records after moving home #1

Complaint: Ms AB complained about the DVLA's failure to process her change of address on her V5C. She said that she had sent it in the same envelope as her driving licence - the change of address on the licence had been processed but not that on the registration certificate. In consequence, she had accrued FPNs from her council of which she was unaware.

Agency response: The DVLA said it had no record of receiving the V5C and Ms AB had not chased for it. It said it could not refund penalties it was not responsible for enforcing.

ICA outcome: The ICA said there had been delays on the part of Ms AB as she had candidly acknowledged. But at points in the correspondence the DVLA had said that it had indeed received the V5C (admissions the Agency now said were in error). On the balance of probabilities, the ICA said he believed that both documents had been sent in the same envelope but only the driving licence had been amended. The DVLA was not responsible for the penalties, but he recommended a £250 consolatory payment for the poor service.

The need to update both vehicle and driver records after moving home #2

Complaint: Mr AB complained that he had been told by the DVLA contact centre that updating his driving record with his new address would update his vehicle record. He had been chased for a County Court Judgment of which he had been unaware.

Agency response: The DVLA said that it could not listen to the call in question as it had long since been deleted, but it was made clear to customers that both vehicle and driver records had to be updated.

ICA outcome: The ICA said that he was content the DVLA had acted properly (save for a failure to reply to one piece of correspondence). It was clear that Mr AB had not sought to avoid a parking fine, but responsibility for ensuring the register was up to date rested with the registered keeper. He did not think that the costs Mr AB had incurred were the responsibility of the public purse.

Removal of address from vehicle record

Complaint: Mr AB complained that his address had been removed from the DVLA's vehicle register without his consent or knowledge. His vehicle had been clamped for non-payment of VED while on the public road and subsequently disposed of when Mr AB refused to pay the release fees. He sought compensation.

Agency response: The DVLA said that it had received a notification from the householder at the address on the record that Mr AB had not lived there for 12 years. It said it was the vehicle keeper's responsibility to ensure their vehicle was correctly taxed.

ICA outcome: The ICA said it appeared to him that the DVLA was entitled to amend the register under Regulation 14(3) of the Road Vehicles (Registration and Licensing) Regulations 2002. It seemed that, sadly, there was a dispute between mother and son in which neither the ICA nor the DVLA could become involved. This was not to say that changing the record without consulting the vehicle keeper was good practice, but whatever action the DVLA took in such circumstances could be subject to criticism. In time, physical addresses would become less important as the DVLA increased the proportion of transactions completed digitally.

Direct debit continues to run after disposal of vehicle

Complaint: Mr AB disposed of his vehicle, but no notification of disposal was received by the DVLA and his direct debit for road tax continued to run. He asked for a refund.

Agency response: The DVLA said that by law refunds could not be made and that rebates followed from the terms of s.19 (8) of the Vehicle Excise and Registration Act as amended. The Agency also drew attention to the fact that keepers were advised to contact the DVLA if an acknowledgement of disposal was not received within four weeks. It also said that it had written to Mr AB to let him know that the DD would automatically renew, but had heard nothing more.

ICA outcome: The ICA said that he was not a lawyer, but it appeared to him that the DVLA was right in its interpretation of the statutory position. He could not, therefore, recommend a refund.

Direct debit continues to run after repossession

Complaint: Mr AB's vehicle had been repossessed by a finance company. However, no notification of disposal had been received by the DVLA and his direct debit for road tax continued to run. He asked for a refund. He also said he was confused that he had received four responses but had only reached stage 2 of the complaints process.

Agency response: The DVLA said that by law rebates followed from the terms of the Vehicle Excise and Registration Act as amended.

ICA outcome: The ICA said he shared the DVLA's interpretation of the law. He could not, therefore, recommend a refund. The ICA said he sympathised with Mr AB in respect of

the DVLA's complaints process, and its policy of not treating grievances as formal complaints until the business area had had a chance (in this case, two chances) of dealing with the matter. However, as this was a matter of DVLA policy, he could not comment further.

Direct debit taken as notification of disposal not received until first day of month

Complaint: Mr AB had sold his vehicle on the thirtieth day of the month. His direct debit had been taken on the first day of the next month as notification of disposal had not been received until the morning of the 1st. He said that the DVLA had received two payments of vehicle excise duty for the month (one from him and one from the new keeper) and asked for a refund.

Agency response: The DVLA said that by law rebates were for whole months only.

ICA outcome: The ICA said he could find no flaw in the DVLA's interpretation of the statutory position. He could not, therefore, recommend a refund. The ICA said he entirely understood Mr AB's sense of grievance, but what the law said and what flexibility and common sense might require were two different things.

Continued tax collection for a vehicle disposed of to trade

Complaint: Mr AB complained that, despite the fact that he had notified the DVLA of the disposal of his car to trade, the Agency continued to collect tax by direct debit for three months. Mr AB complained that the DVLA's communication systems were obstructive and customer-*un*friendly. He also complained that, when the case was referred to the ICA, the DVLA supplied the wrong email address meaning he had to chase the ICA up as well, having not received an acknowledgement.

Agency response: During the complaints correspondence, the DVLA explained that Mr AB needed to notify disposal using the prescribed part of the logbook. It would only consider refunding tax with reference to the date at which the disposal notification had been received. As the notification was received three months after Mr AB had disposed, and he was paying by direct debit, no refund was due. However, the DVLA accepted that it had compounded Mr AB's disenchantment with its service by providing the ICA with the wrong address for him. It therefore agreed to make a consolatory payment of £100.

ICA outcome: The ICA noted that the DVLA had followed its standard policy in declining to reimburse the tax in the absence of a disposal notification. He was pleased to note that Mr AB accepted the DVLA's apology for the poor administration and the consolatory payment of £100. He partially upheld the complaint.

Out of Court Settlement wrongly imposed

Complaint: Mr AB's derelict car was subject to SORN. However, it was misidentified as having been on the road through an error in transposing an ANPR (automated number plate reader) photograph of a number plate. As a result he returned home from holiday to

find an OCS letter from the DVLA waiting for him. In it, the Agency accused him of using his car unlawfully and threatened him with court action. Mr AB immediately notified the police, fearing that his vehicle had been cloned and that all manner of unlawful activity could be brought to his door. In the few days it took the DVLA to explain its error, he had travelled hundreds of miles notifying police of the possibility of cloning as well as, he said, hundreds of fuel stations. He complained that the DVLA's consolatory offer of £200 was insulting. He pressed the Agency for £500, a sum which itself considerably underplayed the expense and stress experienced.

Agency response: The DVLA replied to Mr AB's initial letter within five days but without any particular urgency. Eventually, its compensation team took over the case and made the offer of £200. However, the Agency did call into question the extent to which Mr AB's own actions had been reasonable, a suggestion that further enraged him.

ICA outcome: The ICA referred to the relevant guidance on remedy and police advice on what to do if you suspect you are a victim, or potential victim, of fraud. The ICA judged that the extent of Mr AB's response to the misdirected enforcement exceeded the published police advice. He did not feel that the claim for £500 was tenable. However, taking on board the very real stress and inconvenience that Mr AB suffered, he recommended that the offer of a consolatory payment should be increased to £300.

Practical difficulties in SORNing vehicle

Complaint: Mr AB complained that his son had become keeper of a car late in the month and could not notify SORN in time to obtain a refund of the following month's vehicle excise duty. In his correspondence, he highlighted what he felt were systemic flaws in DVLA systems, not least the fact that the Agency's policy is to date the rebate from receipt of a piece of paper in Swansea rather than the real-life triggering event. He highlighted the refusal of the DVLA to accept emailed documents, and he refused to bank the £20 consolatory cheque the Agency had sent on the grounds that it should be able to credit his account with the money. He emphasised that his son was currently on a low wage and losing a month's VED rebate was the equivalent of several hours of hard work.

Agency response: The DVLA explained that policy related to tax collection resided with the Exchequer. A tax refund could be only issued to the registered keeper, and the system for new keepers to tax was not the same as full registration of the new keeper against the vehicle. However, it was possible for a new keeper to declare SORN online within seven days of notifying keeper change if the keeper change notification had itself been made online. Exceptionally, a £20 consolatory payment had been arranged for Mr AB. In a letter to his MP the Agency explained that it did not have a facility to receive emailed V890s (the form used to make an off-road notification), and there was a risk of a SORN notification being mis-applied before keeper change had been fully registered.

ICA outcome: The ICA had sympathy with many of Mr AB's points, particularly his frustration that the Agency would not transact SORN by email (or routinely correspond by email). However, he noted that these were policy matters about which he could not comment. He could not therefore uphold the complaint.

A clamping complaint involving GPS coordinates

Complaint: Mr AB complained that the DVLA, along with its clamping contractor NSL, had unlawfully threatened him with court action when his car was parked legitimately under SORN on a private road adjacent to his home. Mr AB was convinced that the enforcement case, that cited an incorrect location for the vehicle (on the public highway), had been maliciously concocted by the DVLA. After he had pointed out the true location of the car, the DVLA wrote to him with a far-fetched explanation about why the GPS coordinates provided in the enforcement data did not correspond with the car's location (the Agency explained the disparity by saying that the enforcement van had been some distance away from the target vehicle). The fine was once again demanded on pain of court action. After Mr AB had pleaded not guilty, the prosecutor checked the status of the road and realised that it was not public highway and the case was dropped on the eve of the hearing. Unfortunately, an error by the DVLA's clamping contractor a year later meant that the car was clamped and then impounded.

Agency response: The DVLA provided various explanations of why the case had been set up for court with false information. It did not engage with Mr AB's argument that the original mistake had been compounded by the DVLA changing its story and claiming that the incorrect GPS coordinates related to the position of the enforcement van. The case was considered by the DVLA's compensation team but, although a consolatory payment offer was increased from £50 to £300, along with a payment of £100 by NSL, deadlock set in. (Mr AB sought just under £2,000 but could produce no documentary evidence of his losses.)

ICA outcome: The ICA obtained new information from NSL and the DVLA about the sequence of events that had occurred the first time the car was sighted by an ANPR van. The clamping crew had evidently identified the likelihood that the road was not a public highway. The enforcement data were referred to the DVLA routinely anyway but no clamping or impounding occurred at the vehicle location. Somehow, NSL's systems had populated the enforcement data with details of the adjoining road – which was a public highway. In Swansea, the usual checking procedures did not work and an enforcement case was created. For unknown reasons, Mr AB did not learn of this until he was sent the Single Justice Procedure notice at which point he commissioned his own advice and established that the GPS information attached to the enforcement pictures confirmed his account that the car had not been on the public highway. The ICA was very critical of the DVLA for then saying that the mismatch in data had been a product of the way the enforcement was conducted. It appeared to be fear of losing the case alone that had led the prosecutor to check the information and cancel the hearing. The ICA was also very critical that the DVLA's initial complaints responses did not answer Mr AB's questions. He considered that the pursuit of the case against Mr AB with fabricated information represented maladministration and he recommended a consolatory payment of £500 as well as a £250 payment from NSL given its instrumental role in both of the false enforcements pursued against Mr AB. He also recommended that the DVLA's head of enforcement should review the case in order to ensure that innocent parties were not subject to aggressive enforcement activity. Another vehicle belonging to Mr AB had been clamped in the same bit of road. While a live complaint about this had not been received by the ICA, he suggested that NSL and the DVLA release the vehicle without charge as a goodwill gesture. The DVLA agreed to waive all fees on condition that the vehicle was MOTed and taxed.

Direct debit difficulties

Complaint: Ms AB complained that, after her direct debit had failed, the DVLA's online system had repeatedly cautioned her that her vehicle was already taxed when she attempted to re-tax it. By the time she did re-tax it, enforcement action had already been initiated.

Agency response: The DVLA explained that Ms AB had been warned that her vehicle was untaxed and had every opportunity to re-tax it before enforcement was applied.

ICA outcome: The ICA noted that this had been the third occasion within a year in which Ms AB had been subject to enforcement action over failed direct debits. On the first occasion, enforcement had been cancelled. On the second, she had paid the fine. The ICA acknowledged that the DVLA's online system had suggested that she was in danger of making a double payment. On the other hand, she had been given fair warning that her vehicle was untaxed and the ICA felt that she could have picked up the phone to clarify the situation or check with the bank. He recommended that the DVLA leave open the option of payment at the reduced £40 rate for a further fortnight.

SORNing on private land

Complaint: Mr AB claimed that his car had been clamped unlawfully on private land. He said he had telephoned the DVLA when he first acquired it to explain that it was for spares and scrap only. His understanding of the advice he received from the Agency was that there was no need to notify SORN formally.

Agency response: The DVLA explained that its enhanced powers (Schedule 45 of the Finance Act 2008 had amended the Vehicle Excise and Registration Act 1994) enabled it to immobilise vehicles on private land when they were unlicensed. It had no record of ever telling Mr AB that he had no reason to notify SORN.

ICA outcome: The ICA explained to Mr AB that his belief that the Protection of Freedoms Act 2012 prohibited clamping on private ground did not apply to DVLA enforcement. He did not think that any of the other exemptions were in play and he therefore was unable to uphold the complaint that the vehicle should not have been clamped.

Enforcement for failure to pay VED

Complaint: Mr AB temporarily moved out of his home address but did not tell the DVLA. He did not therefore receive reminders to tax his two vehicles and the DVLA enforced against them repeatedly. Both were clamped and attracted fines and Late Licensing Penalties. Mr AB complained that, despite transacting what he had been given to understand was tax for one of the vehicles, he was clamped again shortly afterwards, accruing further fees and fines.

Agency response: The DVLA set out the basis of its enforcement regime. The Agency explained that Mr AB had never been told in the crucial telephone call that he had taxed the vehicle in question.

ICA outcome: The ICA listened to the call in question and took a different view from both the DVLA (who had concluded that Mr AB had received reasonable service) and Mr AB himself (who was adamant that he had been given a clear understanding that his vehicle was taxed). In his consideration the ICA noted that no reference to taxing the vehicle was made by the DVLA adviser. However, Mr AB had clearly indicated a wish to tax it. The DVLA's conclusion that the lack of reference to taxing supported its case was therefore double-edged. The ICA noted that Mr AB had been paying multiple sums for taxes and fines, and was clearly confused that the surety fee he had paid at the pound for the recovery of his two vehicles did not include tax. The ICA felt that the DVLA should have orientated Mr AB to the fact that the £160 surety could have been reclaimable had he approached the pound with evidence of having taxed the vehicles. The ICA also concluded that the DVLA should have taxed the vehicle after Mr AB had clearly stated an intention to do so. He therefore partially upheld the complaint and recommended that the DVLA should make a consolatory payment of £100 to Mr AB to reflect the lapses in service he had identified. The ICA also recommended that contact centre staff should routinely remind staff that the surety fee is reclaimable on proof that the vehicle has been taxed.

Direct debits fund someone else's vehicles

Complaint: Mr AB established that direct debits had been taken from his bank account for two vehicles that were not his, and with which he had no connection. He complained about the DVLA's systems for checking direct debit mandates, and of poor customer service while he was reporting the fraud and trying to establish whether further monies had been removed from his account.

Agency response: From the outset, the DVLA advised Mr AB that he should contact his bank without further delay in order to obtain repayment of the funds taken. Such repayment was assured under the Direct Debit Guarantee Scheme.

ICA outcome: The ICA contrasted Mr AB's understandable urgency and anxiety about live fraud with the business-as-usual responses from the DVLA. He recommended that the DVLA should create a resource for customers reporting crime that provided them with details of the steps to take and the Action Fraud database run nationally by the police. The ICA noted that the direct debits had been set up in the normal way without any deficiencies in the DVLA's handling. He relayed the DVLA's assurance that the matter had been reported to the police, and that further direct debit transactions against both vehicles had been blocked.

Delay in taxing vehicle

Complaint: Mr AB complained that he had not been provided with a V11 reminder to tax letter which he habitually relied on in order to tax his car. As a result, he had been unable to use it for two months for which he sought compensation of £560. He was particularly angry and disappointed that the DVLA had failed to reply to his first two letters requesting assistance in taxing the vehicle.

Agency response: The DVLA set out the various ways in which registered keepers can tax their vehicles. The V11 was a complimentary service and the non-receipt of it was not a DVLA service failure. The reason why the V11 had not been dispatched was that the vehicle was marked on the DVLA register as stolen. This marker had been placed by the police but not removed after the recovery of the car. The DVLA waived the requirement to pay arrears of tax.

ICA outcome: The ICA considered that Mr AB had clear opportunities to tax his vehicle in the absence of the V11. Information was readily available in the Post Office where he habitually taxed as well as through other means. The ICA agreed with Mr AB, however, that the DVLA should have looked properly into his complaint that correspondence had not been answered. He therefore recommended a consolatory payment of £15 should be made to Mr AB.

Car wrongly SORNed

Complaint: Through an error in its systems, the DVLA transferred SORN status along with a private registration number to Mr AB's new car. This meant that his old car fell outside of the continuous licensing regime and his new car was, unknown to him, subject to SORN while he was driving it around. Mr AB assumed that the tax rebate that had been made in relation to his new car applied to the tax on his old one. The new car was clamped at great inconvenience and embarrassment to Mr AB and his partner.

Agency response: Eventually, Mr AB's costs were refunded and he was offered a £100 consolatory payment.

ICA outcome: The ICA felt that the quality of the DVLA's consideration at the compensation and claims team level had been rather disappointing given the clear evidence of a failure in its systems. Rather than encouraging Mr AB to substantiate a claim for his losses, the DVLA had spent a lot of time trying to establish whether or not he had really attended court (due to an error by the court, the DVLA's decision to withdraw the enforcement case had not been communicated to Mr AB). The ICA judged that the case should never have got to court and he therefore concluded that the DVLA was, to a large extent, responsible for the stress and inconvenience Mr AB had experienced. The ICA recommended a consolatory payment of £400, and that Mr AB should be invited to submit a compensation claim for his losses should he wish to do so.

Continuous Insurance Enforcement for scrapped vehicle

Complaint: Mrs AB complained about the FPN she and her husband received under CIE for a vehicle they had gifted to someone else and which had then been scrapped.

Agency response: The DVLA said that the Agency had received no notification of change of keepership and therefore the law on CIE applied.

ICA outcome: The ICA asked the DVLA to reconsider. It was pursuing a vulnerable couple for failing to insure a vehicle they had given away and which now did not exist. It was clear that Ms AB had not chased when no acknowledgement of change of keepership

had been received, and she and her husband had presumably ignored the insurance advisory letter (IAL) they would have received. But this was a case that needed resolving informally, and the DVLA agreed. Indeed, the Agency indicated that it should have been settled at stage 1 or 2 and never have reached the ICA.

Delayed notification results in loss of tax rebate

Complaint: Mr AB complained that the DVLA refused to refund him three months tax after he had disposed of his car. He was particularly aggrieved by the fact that, for two of those months, it had also collected tax from the new keeper of the car. Mr AB did not accept the DVLA's rationales for its handling of his refund request.

Agency response: The DVLA explained that the delayed notification of keeper disposal meant that it had been unaware that Mr AB was not the keeper until the final month for which he had purchased tax. It quoted the legislation in support of its position that it was unable to refund him.

ICA outcome: The ICA had a slightly different perspective on the extent to which the DVLA had discretion, but he accepted that this was an established policy position that he had no leeway to challenge.

A complaint about enforcement following abolition of the tax disc

Complaint: Mr AB complained about enforcement activity in respect of his vehicle. He said he had provided the DVLA with notice of his change of address but this had disappeared without trace. He said the abolition of the tax disc had meant that keepers no longer had a visual reminder when tax was due.

Agency response: The DVLA said it was simply applying the law. Mr AB had in fact been driving around untaxed for approaching two years.

ICA outcome: The ICA said he sympathised with Mr AB, an elderly driver, and it was likely he had sent the V5C alongside his driving licence but only one had been processed. However, it was manifest that an offence under s.29 of the Vehicle Excise and Registration Act had been committed, and it was the responsibility of the keeper to ensure that the DVLA is properly informed of changes in address. The DVLA cannot pick and choose which of its customers to believe, and therefore the ICA could not properly recommend any waiving of the penalties or other redress.

Old address on registration certificate

Complaint: Mrs AB moved house and notified a change of address on her driver record. For reasons unknown, a notification to the DVLA about her vehicle was not processed and, as a result, she was not reminded to tax. She was issued with an LLP to her old address which was eventually cancelled after the documents were returned unopened. Ten weeks after the tax had expired, she was clamped and then experienced huge problems taxing the car. She complained that she had been unable to claim back the

£160 surety fee, and that the quality of customer service she had received from the DVLA was woeful.

Agency response: The DVLA explained that it had fallen to Mrs AB as keeper to ensure that her vehicle was taxed throughout. It cancelled the LLP and confirmed to the ICA that it would not pursue the OCS because the three-month period for pursuing prosecution had closed. It examined Mrs AB's phone records and was satisfied that there was no evidence that she had contacted the clampers within the prescribed 15 day period within which she could reclaim the surety fee.

ICA outcome: The ICA considered that the enforcement action had been conducted in line with policy and there was no ground to uphold the complaint. Reasonable efforts had been made to establish whether or not Mrs AB had notified the clampers of the fact that the tax had been paid in order to reclaim the surety. The ICA also established that the MoT had expired for the vehicle in this period which added to Mrs AB's difficulties; this was not the DVLA's fault. He did not uphold the complaint.

Failure by insurance company leads to customer complaint

Complaint: Mr AB was sent fixed penalty notices by the DVLA after his insurer failed to update the motor insurance database meaning that his vehicle looked uninsured. Mr AB was critical of the DVLA for delays in ceasing the enforcement case against him, and for the impersonal tone and content of its communications.

Agency response: The DVLA apologised for the lapses in its dealings with Mr AB but referred him to his own insurer as it was a problem there that had triggered enforcement activity by the Agency.

ICA outcome: The ICA felt that such lapses as had occurred in the DVLA's handling of Mr AB's case had been remedied by its apologies within the complaints correspondence. The root cause of Mr AB's aggravation had been a failing on the part of his insurer for which he had the opportunity of redress through the Financial Services Ombudsman. The ICA therefore took no action in relation to the complaint and did not uphold it.

Penalty for car already scrapped

Complaint: Mr AB complained about a Late Licensing Penalty he had received for a vehicle he said had been scrapped following a no-fault accident. He said he had informed the DVLA that the vehicle was no longer in his possession.

Agency response: The DVLA said that Mr AB still showed as the registered keeper. The direct debit had been cancelled.

ICA outcome: The ICA had endeavoured unsuccessfully to have the enforcement action halted without the need for a formal report. He said that Mr AB had clearly informed the DVLA that he was no longer the keeper, but was the recipient of enforcement action because he had not informed the Agency in the approved manner. The DVLA had also benefited from one month's tax when the vehicle was in all likelihood already scrapped by

the insurance company. The DVLA declined to close the case, and after much to-ing and froing it said it stood to the view that its actions had been correct but would agree to the ICA recommendation that the enforcement action be halted.

Post Office problem results in penalty notice

Complaint: Mr AB complained that he had paid for his vehicle tax at the Post Office but then been sent a warning letter and LLP.

Agency response: The DVLA had explained that, because of a problem at the Post Office in question, the vehicle record had not been updated. The DVLA had apologised, and its chief executive had offered a consolatory payment of £400. Mr AB had reluctantly accepted this sum, but wanted more.

ICA outcome: The ICA said that, bearing in mind where the issue had originated, and the relevant guidance on the proper use of public money, he did not think that £400 was unreasonable or maladministrative. Although not making a formal recommendation, the ICA also said that the DVLA would wish to consider how it could improve its liaison with the Post Office in the best interests of customers.

Technical glitch causes direct debit to fail

Complaint: Mr AB complained that he had been clamped despite having set up a direct debit to pay vehicle tax some two years earlier.

Agency response: The DVLA had acknowledged that the direct debit had not rolled over for a second year. The Agency had apologised, rescinded all the costs and fees, and offered a consolatory payment of £100. Mr AB had then asked for an ICA referral, but this was not actioned for 12 months. The DVLA then offered a further consolatory payment of £50.

ICA outcome: The ICA had been told that the failure to roll over the direct debit was because of a partial postcode recorded on the V5C. This technical glitch was not one of which a vehicle keeper could reasonably be aware and is not referred to on gov.uk. Although Mr AB's vehicle had been lawfully clamped, and vehicle keepers have legal responsibilities to ensure their vehicles are taxed or SORNed at all times, the ICA's sympathies were with Mr AB. Given the series of problems Mr AB had encountered, and a lack of candour in the DVLA's correspondence, the ICA recommended a further consolatory payment of £150.

An abusive customer

Complaint: Mr AB complained that he had been stopped by the police as a result of the DVLA failing to update the records to show that his vehicle was licensed. He said he had removed SORN status online and taxed the vehicle at the same time. The vehicle had been impounded and had suffered damage while in the pound. Mr AB sought £800

damages. He also complained of failures in the DVLA's administration, in terms of his correspondence not being answered and information not being provided to him.

Agency response: The DVLA eventually discontinued its enforcement action against Mr AB as the case was out of time. It did not therefore collect the £30 out of court settlement (OCS) that it had levied. It explained to Mr AB that its systems showed that he had aborted the transaction while trying to tax the vehicle. The enforcement had therefore been justified. The Agency could not take responsibility for any damage that had occurred while the vehicle was in the custody of the pound. However, a £50 consolatory payment was offered to reflect delays in Agency responses to Mr AB's communications. Throughout the episode, the DVLA asked Mr AB to desist from swearing at and verbally abusing its staff.

ICA outcome: The ICA saw no merit in Mr AB's claim and dismissed it accordingly. He told Mr AB that he would probably experience a better standard of service from public and private sector bodies if he was civil in his dealings with them. The ICA had no evidence that supported Mr AB's view that the DVLA had failed in any regard. He did not therefore uphold the complaint.

Sympathetic treatment of young vehicle keeper

Complaint: Mr AB complained that he had received a LLP for failing to tax a vehicle he had sold over a year previously.
Agency response: The DVLA said that Mr AB was still shown as the registered keeper. Although he said he had informed the DVLA, their records only showed notification after the LLP was imposed.
ICA outcome: The ICA asked the DVLA to look at the matter again. He said that although Mr AB was partly to blame as he had not responded to the last chance letter, all his sympathies were with him as a young man who had sold his vehicle a year previously. Exceptionally, the DVLA agreed to waive the enforcement action.

(iv): OTHER CASES - DRIVERS

A complaint about a lost motorcycle entitlement

Complaint: Mr AB complained that the DVLA had lost his entitlement to ride motorcycles. He said that when his paper licence was converted to a photo card he noticed that category A was missing. He said he had passed his test in the mid-1960s and that he had successfully hired motorcycles abroad in the 1980s and 1990s. He also said the DVLA had lost his identity documents.

Agency response: The DVLA had conducted its standard searches of the historic records but found no trace of ever issuing Mr AB with a licence showing motorcycle entitlement. It said that any ID documents would have been returned, but as he provided his passport number on the application to exchange his paper licence there would in fact have been no need to supply ID in the first place (and the Agency therefore doubted that he had done so).

ICA outcome: The ICA said he could not uphold either limb of Mr AB's complaint. He speculated that Mr AB might have only converted one of his red book licences (those issued by local authorities before the establishment of the DVLA), but could offer no other views. Likewise, he could not say if ID documents were sent or, if so, if they were returned. (An interesting feature of this case was that Mr AB had completed his compulsory basic training a couple of years before complaining about his lost entitlement. However, the ICA's conclusions were based not on this but the extent of the DVLA's searches demonstrating no maladministration.)

Driver alleges that recording of call was tampered with

Complaint: Mr AB complained that a DVLA adviser had told his insurance company that he had a clean licence. He also said that the recording of the call had been tampered with and the words 'with no convictions' removed.

Agency response: The DVLA said that Mr AB had given consent for his details to be released (in respect of a no-fault insurance claim), but that its adviser should not have volunteered that Mr AB had a clean licence without specifically having been asked.

ICA outcome: The ICA said that it could be argued that Mr AB had in fact given consent for all his details to be shared, but as the DVLA had not argued this (and had accepted that its adviser was wrong), it was disappointing that no apology had been offered to Mr AB. However, the ICA could find no evidence that the recording had been doctored – he could not see what possible purpose this would have served since the words 'clean licence' and 'with no convictions' amount to the same thing. The ICA did not feel that any additional redress was required beyond the findings of his report.

Disqualified driver unable to access View Driving Licence (VDL) online system

Complaint: Mr AB had been Disqualified 'Til Extended Test Passed (DTETP'd) following a motoring offence. When he reapplied for his provisional licence he found he could not access the VDL system or obtain a check code for a third party to enable him to satisfy his insurers or take the extended test.

Agency response: The DVLA has acknowledged a ''system problem' with VDL, and acknowledged that Mr AB had been given some incorrect information by the contact centre. It had offered a total consolatory payment of £70.

ICA outcome: The ICA was greatly assisted by additional work carried out by a member of the DVLA complaints team before making the ICA referral. This revealed that an investigation had been undertaken by the business area – unbeknownst to the complaints staff who had replied to Mr AB. As a consequence, it was now clear that Mr AB had been given further incorrect information in reply to his complaint. The ICA was able to reproduce in full the authoritative technical account of the computer glitch, and recommended a further consolatory payment of £30. He said the lesson for the DVLA was that complaints that engage complex, technical IT issues should be signed off at a senior level to ensure that the information given to a customer is as accurate as possible.

Weaknesses in the View Driving Licence (VDL) procedure

Complaint: Mr AB had been disqualified following a conviction for driving or attempting to drive while unfit through drugs. He appealed against the conviction and the disqualification was suspended and he was able to drive. However, the VDL system continued to show that he was disqualified and his insurance company would not accept other evidence from the DVLA that he was eligible to drive.

Agency response: The DVLA said that its online system did not have the capacity at present to show information regarding appeals. This was a 'known issue' affecting Mr AB and other customers. This was being reviewed as a priority but the DVLA said it could not say when it would be remedied. As noted, both the business and the complaints team had tried to provide Mr AB with other evidence that would satisfy his insurers.

ICA outcome: The ICA said he upheld the complaint as the VDL system was not currently fully fit for purpose. However, he could not instruct the DVLA on its investment priorities. However, he recommended that a copy of his report be shared with the Chief Executive. He also suggested that Mr AB might wish to share his report with his insurance company or alternative providers.

Proportionate response to complaint about photo card

Complaint: Ms AB complained about a restriction on her ordinary driving licence to drive automatic cars only and matters relating to the issuing of a photo licence showing that restriction. She also suggested at various points in her correspondence that the DVLA had failed to return her birth certificate, supplied as proof of identity.
Agency response: The DVLA had acknowledged poor service and offered a consolatory payment of £200 that Ms AB had declined. She suggested that £1,000 would be more appropriate.

ICA response: The ICA said he could not endorse significant parts of Ms AB's complaint. The delay in issuing her photo card had been half what she had said, and much of the responsibility rested at her own door. However, some of the delay was the fault of the DVLA. The DVLA's advice in respect of Ms AB's ability to drive notwithstanding that her photo card had not been issued was also flawed. However, the ICA felt the offer of £200 was proportionate and in line with others he had reviewed. He recommended that the DVLA re-invite Ms AB to accept its offer of £200.

An irretrievable driving entitlement #1

Complaint: Mr AB had passed his driving test two decades years previously but the DVLA had no record of receiving an application for a full driving licence within the two-year window following the practical driving test pass. At various points over the following years Mr AB had tried to resolve the matter. He explained that a combination of illness, and his successful discovery of the photo card driving licence showing full entitlement, meant that he had not persisted. At various points he had needed to produce a full licence including when dealing with the police, legal authorities and in order to hire and drive cars. He

produced evidence that his full entitlement had been corroborated by third parties but the DVLA did not regard this as sufficient.

Agency response: The Agency could find no record of Mr AB applying for his full entitlement within the statutory two-year period. Its first record was of an application he had made several weeks after the two-year window had closed. The DVLA did not feel that a sufficient threshold of evidence had been reached to reinstate the test pass and issue a full licence to Mr AB.

ICA outcome: The ICA reviewed all the evidence and liaised extensively with Mr AB. He felt that, on the balance of probabilities, Mr AB had been able to demonstrate full entitlement over the years and therefore must have been issued with a full licence. However, it fell to the DVLA not the ICA to make the licensing decision on behalf of the Secretary of State. The ICA recommended that the DVLA should reconsider its position and it did so, reaffirming that there was insufficient evidence that Mr AB had ever held full entitlement. Mr AB therefore needed to pass the theory and practical tests in order to be relicensed.

An irretrievable driving entitlement #2

Complaint: Mr AB complained that the DVLA refused to issue him a licence that reflected his entitlement to drive buses even though he had worked as a bus driver for most of his working life. Mr AB produced evidence from his former employers to support his case but the DVLA did not consider that sufficient

Agency response: The DVLA searched its records manually and electronically for evidence that Mr AB had held a full bus driving entitlement. No such entitlement could be found. The DVLA explained to Mr AB that responsibility for the bus driving licensing had passed over from local traffic area offices in 1991. At that stage, only entitlements that had been renewed up to and including 1986 had been referred to Swansea. The DVLA asked Mr AB to prove that he had held a bus driving entitlement prior to 1986 but he had no documents to support his case.

ICA outcome: The ICA noted that a thorough records search had been undertaken. Mr AB himself had stated that he had been unaware of the fact that the entitlement had needed to be renewed every five years. The ICA concluded that it was more likely than not that Mr AB had not renewed his licence at the crucial point, and that it had expired before the DVLA had even become involved in bus driver licensing. In the absence of evidence of error or maladministration by the DVLA, the ICA could not uphold the complaint or make any recommendation.

Enabling customers to register email addresses in addition to physical ones

Complaint: Mr AB had proposed to the DVLA that it improve its interaction with customers by allowing email addresses to be registered. He said he spent a lot of time abroad and that he did not see post until he returned. Mr AB also said that the DVLA website did not allow customers to make suggestions to the Agency.

Agency response: The DVLA said that the capturing of email addresses was being considered as part of its wider business transformation. However, there were strict rules regarding the sharing of data with outside agencies.

ICA outcome: The ICA said that there had been some failings in the handling of Mr AB's correspondence. But unlike Mr AB, the ICA did not think the responses he had received had lacked empathy or had failed to respond to the feedback he had given. However, the ICA agreed that the DVLA pages on gov.uk did channel complaints and feedback on particular lines, and recommended that consideration be given to adding a general category of comment or feedback.

DVLA loses irreplaceable documents

Complaint: Mr AB complained that the DVLA had lost his birth certificate and marriage certificate when he applied to renew his driving licence at the age of 70. He said the marriage certificate was of special sentimental significance. It had been framed above the fireplace for almost 50 years and was irreplaceable.

Agency response: The DVLA had accepted that the documents had gone missing while in its care. It had offered a consolatory payment of £50.

ICA outcome: The ICA said it was unfortunate that Mr AB had sent his marriage certificate when other non-sentimental documents (e.g. a letter showing eligibility for state pension) would have been sufficient to buttress the birth certificate. But all his sympathies were with Mr AB. The loss of the documents had caused Mr AB and his family great distress, and this was not adequately recognised in the offer of £50. The ICA could not restore the lost certificates but recommended an increase in the consolatory payment to £200.

DVLA changes address record and documents go astray

Complaint: Mr AB had submitted a driving licence application with his passport. Unfortunately, the first line of the address and the postcode did not match. The DVLA amended the postcode to reflect the first line and then sent the licence and the identity documents to that address. When Mr AB complained that he had not received his licence, the DVLA referred him to the VDL system – but this was of no use as he did not have the address now on the licence.

Agency response: The DVLA had tried to get the documents returned but without success. It had said that it could not provide Mr AB with a copy of his application.

ICA outcome: The ICA discovered that the DVLA had changed its Operating Instructions in regard to customers' requests for copies of applications following an incident of impersonation. However, if VDL was not satisfactory as an alternative, there was an additional safeguard in place that could result in details being released. This safeguard had not been followed in Mr AB's case. The ICA agreed with the DVLA that it would invite Mr AB to make a renewed application for a copy of his application and would then fast-

track it. He also recommended a consolatory payment of £150 in recognition of the DVLA's maladministration and the inconvenience of Mr AB having to make an ICA referral.

DVLA returned passport and identity documents to wrong address

Complaint: Mrs AB complained that as a result of the DVLA returning her passport and identity documents to her previous address, she incurred costs in replacing the relevant documentation. She also complained that as a result of the loss of her documents she could not obtain work or travel for a family funeral and that this impacted on her mental health.

Agency response: The DVLA accepted that they had lost Mrs AB's documentation and met the costs of replacing it. They offered her a consolatory payment of £200 in recognition of the impact the loss of the documentation had had on her.

ICA outcome: The ICA was not persuaded that the loss of the documentation resulted in Mrs AB not being able to obtain employment during the period in question and noted that Mrs AB had not taken action to mitigate matters. The ICA sought medical evidence to support Mrs AB's complaint that the loss of her documents had impacted on her mental health but the evidence supplied was inconclusive. However, the ICA considered that in any event the consolatory payment of £200 was not adequate and so he recommended that the DVLA increase the consolatory payment to £350 in the light of the fact that the loss of her documentation would have caused her worry and distress over a three to six month period.

Another complaint about lost entitlements

Complaint: Mr AB submitted his driving licence to the DVLA for the reissue of a licence after his 70th birthday. The licence was not returned and he was unable to produce it after being involved in a collision. He complained that the DVLA had lost all record of the motorcycle and motorcar qualifications he had obtained in the army and converted to UK entitlements. He also complained that the DVLA refused to accept evidence from the MoD that he had passed the tests while in the Services.

Agency response: The DVLA reiterated throughout the correspondence that the service records did not demonstrate that Mr AB had passed the relevant tests to have ever held a motorcycle entitlement. It subjected its manual and analogue records to exhaustive searches and could find no record using Mr AB's details or variations thereof.

ICA outcome: The ICA was unable to take the matter forward through independent review. He noted that the Agency had followed its standard policy of searching exhaustively for records of the entitlement and cited its standard criteria that would be acceptable for the reissue of the entitlements to Mr AB. These were evidence of having held a red book licence and/or an image of his DVLA issued driving licence or a relevant valid driver number.

Validity of provisional licence

Complaint: Mr AB complained that his practical driving test pass had been voided by the DVLA. He said he had shown his provisional licence to the DVSA and passed his test. But the DVLA refused to recognise this and had told him that the pass was void.

Agency response: The DVLA said that Mr AB's provisional licence had been revoked the day before his practical test. In consequence the test pass was not valid.

ICA outcome: The ICA asked a number of questions about the exact order of events. After internal discussions on the part of DVLA staff, it was agreed to reactivate Mr AB's pass. His licence would have remained valid until midnight on the day he took the test, and therefore the pass was acceptable. He was issued a full one-year licence.

Revocation of the licence a driver living under a false identity

Complaint: Mr AB complained that his full driving licence had been unfairly revoked and should be restored to him. The DVLA had ended his licence when it discovered that Mr AB had (unknowingly) entered the UK with a false identity (that of a deceased relative) when he was 13 years of age. Mr AB admitted this had happened but stated there were good grounds for the Agency to exercise discretion in his favour because of his personal circumstances and those who depended on his being permitted to drive. He said he was unaware that he had used a false ID to pass his driving test and to obtain a licence. Mr AB also complained that an Agency manager's phone call to him which confirmed the revocation decision was "abominable".

Agency response: The DVLA had not been able to open the audio file recording the phone call complained about so did not respond to this allegation. It argued there were good grounds for its revocation decision. It could not restore his licence until the Home Office had granted his application for a residence permit in his true ID. If this happened then he could meet the legal residence test required of Non UK passport holders. He would also have to retake and pass his driving test using the correct ID.

ICA outcome: The ICA concluded that the DVLA's decisions firstly to revoke Mr AB's driving licence and secondly to insist on residence conditions and a fresh test pass before restoration were reasonable and fair ones and could not be criticised. There were no grounds for Mr AB's case to be handled exceptionally and, in any event, legal provisions prevented the Agency from exercising discretion once his true immigration status was discovered. The ICA had listened to the recording of the phone call and the manager's conduct could not be criticised or judged unfair in any way. As ancillary observations, the ICA recommended that the Agency clarify to Mr AB the specific legal provision under which revocation had occurred and ensure that, in future, standard correspondence included specific reference to the legal appeal rights of those whose licence had been revoked.

More documents go astray

Complaint: Mrs AB complained that as a result of the DVLA returning her passport and identity documents to her previous address she had incurred costs in terms of replacing the relevant documentation. She also complained that as a result of the loss of her documents she could not obtain work or travel for a family funeral and that this impacted on her mental health.

Agency response: The DVLA accepted that they had lost Mrs AB's documentation and met the costs of replacing those. They offered her a consolatory payment of £200 in recognition of the impact the loss of the documentation had had on her.

ICA outcome: The ICA was not persuaded that the loss of the documentation resulted in Mrs AB not being able to obtain employment during the period in question and noted that Mrs AB had not taken action to mitigate matters. The ICA sought medical evidence to support Mrs AB's complaint that the loss of her documents had impacted on her mental health but the evidence supplied was inconclusive. However, the ICA considered that in any event the consolatory payment of £200 was not adequate and so the ICA recommended that the DVLA increase the consolatory payment to £350 in the light of the fact that the loss of her documentation would have caused her worry and distress over a three to six month period.

(v): OTHER CASES – VEHICLES

Vehicle stolen then scrapped the same day

Complaint: Mr AB's vehicle had been stolen and then scrapped in an Authorised Treatment Facility (ATF) the same day. A Certificate of Destruction (COD) was then sent to the DVLA and the vehicle record updated. Mr AB complained to the DVLA. He asked for £2,000 in compensation and for the ATF to be investigated.

Agency response: The DVLA said that it did not license or regulate ATFs: this was the responsibility of the Environment Agency. It said that CODs were a one-way process, and the ATF had no access to DVLA data. In the absence of any responsibility for this matter, it declined to pay compensation.

ICA outcome: The ICA said he had a lot of sympathy for Mr AB who was the innocent victim of a crime the police said was part of a well organised criminal enterprise. And it might well be that there was a case for greater safeguards before vehicles were scrapped. However, this was not the responsibility of the DVLA and Mr AB would have to pursue that case elsewhere. The ICA criticised the DVLA for misspelling Mr AB's name three times (and on two occasions wrongly assuming he was a woman) despite holding correct details on record, and despite a letter from Mr AB correcting the initial errors.

Request for other vehicle details badly handled

Complaint: Mr AB complained about the DVLA's failure to process his request for other vehicle details (form V888) following his van being hit by a car. He had sent repeated correspondence that had been unanswered.

Agency response: The DVLA had apologised and offered a consolatory payment of £20 to cover postal charges.

ICA outcome: The ICA found there had been successive failures, and he felt the customer-friendly approach would have been to have picked up the phone rather than expecting Mr AB to submit yet more forms. Although he could not endorse Mr AB's claim for the cost of repairs to his vehicle (that was a matter for Mr AB, his insurers and the courts), he felt that the consolatory sum offered was not proportionate to the extent of the maladministration and recommended an additional sum of £150.

Delays in registering a vehicle SORN online

Complaint: Mr AB complained about the difficulties he faced when endeavouring to declare one of his vehicles as SORN. He had made four unsuccessful attempts to do so online.

Agency response: The DVLA had manually SORNed the vehicle. However, it took the best part of nine months before it had acknowledged that this was a 'known issue' with its computer system. The Agency had offered two consolatory payments totalling £70 in recognition of the poor service it had offered.

ICA outcome: The ICA said that 'known issues' that disadvantage customers may take time and money to rectify. However, it was difficult to regard them as other than maladministrative. It was also maladministrative that it had taken so long to provide Mr AB with a full and candid explanation. The ICA also found other mishandling of the complaint, and concluded therefore that the offer of £70 was insufficient. A lesson for the DVLA was that it could not always rely on business areas to provide candid and comprehensive responses to customers' complaints treated as 'business as usual'. It was not until the involvement of the complaints team that Mr AB was offered a full account of what had happened.

Cloning and theft of vehicles

Complaint: Mr AB complained that the DVLA had been slow in acting on reports of cloning in relation to the registration details of a high value car. He had exchanged his own car in good faith for the high-value model, using the DVLA's online keeper change portal. This showed that the vendor had, apparently, legitimate control of the registration. The car was then stolen from him shortly afterwards and the car he had exchanged was also disposed of by the criminal. Mr AB's second complaint was that the car that he had lost had been re-registered by the DVLA despite the fact that the police had put a marker on indicating that it was involved in crime. In addition, Mr AB had written to the DVLA

asking them not to allow any third parties to transact against the vehicle record for his old car as he had hoped that the police would be able to recover the original vehicle.

Agency response: The DVLA explained that it had acted correctly on notification of potential cloning and re-allocated the plate to the correct car. The registration document was not proof of ownership. The DVLA did not respond to Mr AB's complaint about the way it had handled the transactions relating to his old car as he had ceased to be keeper after exchanging it for the cloned vehicle.

ICA outcome: The ICA was very critical of the DVLA for not responding to Mr AB's correspondence relating to the car he had lost. He should have been told that the vehicle had been de-registered from him and the Agency should have liaised with the police. In the event, it turned out that no marker was visible on the DVLA systems relating to the car that Mr AB had exchanged. The criminal had somehow obtained the unique code on the logbook of the genuine vehicle and was able to transact against the vehicle register electronically. Although he upheld the complaint that the DVLA had mishandled communications about Mr AB's original car, the ICA did not find its poor administration had been instrumental in the inability of the police to recover that vehicle. However, given the very poor administration and communication from the DVLA, he recommended that a consolatory payment of £300 should be made. He also recommended that senior staff within the DVLA should urgently review systems for acting on reports of cloned vehicles given the apparent ease with which the existing checks had been bypassed.

Address changed on licence but not on V5C

Complaint: Ms AB said she had changed her driving licence address online with the assistance of a DVLA adviser, but she had not been told to change the address on her registration certificate. In consequence, correspondence relating to a traffic violation had gone to her old address and instead of a fine of £70 she had had to pay accumulated fines and fees of £700. She wanted the DVLA to reimburse her the difference.

Agency response: The DVLA said that it no longer had the recording of the conversation between its adviser and Ms AB, but in any event the responsibility was on her to ensure her V5C was up to date not the DVLA. It referred to the copious information available about this – including on the V5C itself and the form D741 to which her new driving licence was attached. Following Ms AB saying that the matter had exacerbated her anxiety, the Agency had sent her a medical questionnaire (which angered Ms AB as she said she and her doctor were well aware of their responsibilities).

ICA outcome: The ICA said that he sympathised with Ms AB and felt it most likely that, as she had said, the DVLA adviser had not told her about updating the V5C. Although the legal responsibility was on the vehicle keeper, the ICA said he assumed that giving the advice was part of the Agency's Operating Instructions (if not, this should be remedied forthwith) and thus any failure to do so would be a service failure. However, this was not sufficient to say that the DVLA was responsible for subsequent events. There was much other advice readily available. The ICA said it could not be maladministrative for the DVLA to remind drivers of their responsibility to report medical conditions (including anxiety) but in retrospect it might have been better not to have included the questionnaire.

Processing registration changes after change to engine capacity

Complaint: Mr AB complained that the DVLA's systems for processing the registration document for his scooter after he had fitted a cylinder expansion kit was onerous, and had prevented him from disposing of the vehicle when he had wished. He highlighted what he regarded as burdensome and unnecessary requirements and poor published advice that did not make clear what was required. He disposed of the scooter after reversing the upgrade.

Agency response: The DVLA explained that its procedures were published and it had not fallen into error. It declined to pay Mr AB compensation.

ICA outcome: The ICA did not think that the DVLA's requirements were particularly burdensome. The requirements for updating the register did not exactly encompass the circumstances of the keeper undertaking conversion themselves, but the DVLA had been willing to accept evidence in this regard. The ICA agreed with Mr AB that the DVLA should make it clear in its published advice that arrears of tax arising from the change of engine capacity would need to be paid before the V5C would be issued. He also suggested that Mr AB's feedback about how the onerous nature of its requirements meant that many kit converted vehicles are incorrectly registered to be taken forward to the relevant department. The ICA did not agree that Mr AB was due compensation. He did not uphold the complaint.

Change of keeper details

Complaint: Mr AB complained that the DVLA unreasonably refused to correct the keeper details on the logbook for his new digger. This was preventing him from using the machinery because he could not insure it through his own policy and benefit from his no claims bonus.

Agency response: The DVLA told him that it would only change the details if he could produce proof that the digger had been insured in his name since he had bought it, or a statement from the dealer confirming that an error had been made in stating who the keeper was. Mr AB was unable to provide either form of proof.

ICA outcome: The ICA could not recommend that the DVLA acted contrary to an established policy position. However, after an intercession from Mr AB's Member of Parliament, the DVLA changed its mind and allowed the name of the keeper to be changed without affecting the number of keepers recorded on the logbook.

(vi): OTHER CASES – ACCESS TO DATA

A complaint about data sharing

Complaint: Ms AB complained that her data had been shared with a parking company in relation to parking outside a marked bay. She said such companies appeared to be unregulated and her complaints to them had received no reply.

Agency response: The DVLA said it was empowered to share data where there was reasonable cause in line with Regulation 27 (1) (e) of the Road Vehicles (Registration and Licensing) Regulations 2002.

ICA outcome: The ICA said he agreed. He also agreed that the DVLA could not get involved in a dispute between Ms AB and the parking company; nor could he offer any views on whether she was correctly parked on the day in question.

A complaint about being denied access to DVLA data

Complaint: Ms AB complained that she had been denied access to details of the previous keeper even though she had 'reasonable cause'. She said that she wanted to make contact for copies of spare keys, service records etc. She also said that the vehicle had a tracking device fitted and thus her own right to privacy was being breached.

Agency response: The DVLA said that previous keeper details no longer appeared on the V5C following the introduction of the General Data Protection Regulations (GDPR) and that Ms AB's reasons did not amount to reasonable cause.

ICA outcome: The ICA could not offer a definitive legal judgement on the extent of 'reasonable cause', but he had seen nothing to suggest that the DVLA had misinterpreted the Regulations or was in breach of the information uploaded to gov.uk in June 2018. If Ms AB felt the DVLA was in error she would need to refer the matter to the Information Commissioner or take her own independent advice. The ICA also felt that the DVLA could not be involved in a private dispute regarding the tracking device. Although he noted some minor errors in the DVLA's correspondence with Ms AB, she had received no fewer than seven replies on the issue she had raised (four from the business, and three from the complaints team). While he recognised that Ms AB was dissatisfied with the content of that correspondence, it could not be argued that she had received a poor level of service.

Release of data to private parking company #1

Complaint: Mr AB complained that the DVLA had released his data to a private parking company on the basis of an unlawful request. His wife had been driving the car at the time of the alleged incident and had disclosed her identity to the private parking company when she appealed. Mr AB therefore argued that there was no provision under the Protection of Freedoms Act 2012 (PoFA 2012) for a request for keeper data.

Agency response: The DVLA explained that the circumstances of the request had appeared to have been in line with the reasonable cause provision. It told Mr AB that Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 required the Agency to release information from the vehicle register. In law, it could not refuse requests from individuals or organisations who have a legitimate right to receive the information.

ICA outcome: The ICA noted that on the V888/3 (the request for information) the private parking company had presented itself as appropriately registered with an accredited trade association (ATA) as well as for data protection and Companies House purposes. The

stated basis of the request was parking enforcement. The landowner agreement and requisite fee were enclosed. There was no information at the time of disclosure that suggested that PoFA 2012 keeper liability requirements were not met. The disclosure was therefore made in line with DVLA policy. As such, the ICA was not in a position to call it into question. The ICA noted that between April and September 2018, the DVLA had released keeper details on 3.2 million occasions. Data disclosure by the DVLA through the regulations is a high-volume operation and the ICA concluded that the level of bespoke handling that Mr AB proposed where full PoFA 2012 eligibility is checked in individual cases was simply not practical. Of necessity, given the data release regime it has been tasked with operating by the Government, requests are dealt with by the DVLA in good faith rather than investigated. The ICA therefore did not uphold the complaint that the disclosure of Mr AB's details had been maladministrative. He did, however, point out that the DVLA was not, as it had stated, required to release data.

Release of data to private parking company #2

Complaint: Ms AB complained that the DVLA had released data to a private parking company contrary to the framework whereby keeper data may only be disclosed with reasonable cause. She had challenged the parking enforcement in court and the judge accepted her argument that the private parking company undertaking the enforcement had no creditor status on the relevant site. This meant that the enforcement rights it was claiming fell away and the case was dismissed.

Agency response: The DVLA provided stock wording about its policy of disclosing information to private parking companies. It told Ms AB that it had investigated the matter with the company concerned and established that sufficient evidence had been provided to justify disclosure. At no point did the DVLA engage with Ms AB's argument that it was colluding with poor practice by declining to involve itself in a clear case where data had been disclosed contrary to the rules.

ICA outcome: The ICA agreed with the DVLA that disclosure had been made in line with the applicable framework and policy. The disclosure had been effected through the DVLA's electronic portal, access to which was controlled and audited and subject to a keeper at date of event (KADOE) contract with each private parking company accessing the data. There was no requirement for creditor status for any given piece of land to be provided with the request for keeper data when the electronic portal was used. The ICA therefore accepted that the disclosure was made in good faith and in line with 'reasonable cause'. However, the ICA was critical of the DVLA for failing to engage with Ms AB's arguments relating to the lack of creditor status for the private parking company concerned. Instead she had been repeatedly referred back to the Agency's Data Sharing Strategy and Compliance Team's response that had also declined to engage with her arguments. The ICA noted that the DVLA was not set up to regulate private parking companies. This was the non-statutory responsibility of accredited trade associations. But he found that the DVLA had a duty to take action when evidence of the breach of its own requirements was put to it. He therefore recommended that the DVLA should ask the relevant accredited trade association to set out the basis on which the private parking company was enforcing on a site where it had no creditor status, and its arrangements for ensuring future compliance.

(vii): OTHER CASES – EQUALITY ISSUES

Adherence to Equality Act

Complaint: Mr AB complained in relation to the DVLA's adherence to the Equality Act. He held the Agency responsible for the fact that he had not been notified of speeding fines - leading to further court action under the totting up procedure about which he said he was also unaware. He sought compensation within the top band of the Vento scale (used in the courts in relation to discrimination claims) – meaning between £25,700 and £42,900.

Agency response: The DVLA said that it had placed a marker on Mr AB's record to ensure that all communication from the Agency was by telephone or email. However, it acknowledged that this procedure had broken down in 2017 and Mr AB was not therefore aware of a disqualification. However, it said this was only a courtesy service. Moreover, while it had now agreed to notify other authorities of the need to communicate with Mr AB other than by letter, its previous decision not to do so was a reasonable one.

ICA outcome: The ICA said this was a complaint at the margins of his jurisdiction as he could not offer a judgment on the extent to which the DVLA had met its legal obligations under the Equality Act. It was clear that the measures put in place to assist Mr AB had broken down. But he could identify no other maladministration. The fact that there had now been a welcome change of heart did not mean that the original decision was unreasonable. The ICA said he could see no case for compensation.

Services for those in receipt of PIP

Complaint: Mr AB complained that customers in receipt of the Personal Independence Payment (PIP) were not able to use the full range of DVLA services. In particular, that he could not exercise his entitlement to a 50 per cent reduction in VED by direct debit or at the Post Office. He said this amounted to unlawful discrimination under the Equality Act.

Agency response: The DVLA acknowledged that it could not currently process VED discounts across all its systems. It said it had no electronic link with the Department for Work and Pensions to check PIP entitlement. The Agency said that it intended to continue the digitalisation of services, but could not say when full functionality in respect of PIP would be achieved.

ICA outcome: The ICA said he could not offer any judgment as to whether the DVLA was in breach of the Equality Act. However, there had been poor handling of Mr AB's correspondence, including a failure to respond to an FOI request that was identified in consequence of the ICA review. He part upheld the complaint, but made no recommendation as the DVLA would in any case need to respond to the FOI and would have to apologise for its mishandling.

Breach of Equality Act raised in clamping case

Complaint: Mrs AB complained that a representative of NSL had wrongly tried to clamp her husband's car. The details the NSL staff member had were incorrect. She said this was unlawful. Mrs AB also said that her rights under the Equality Act had been breached

as the member of staff had said that he often encountered problems with people of her age and size (and living in the leafy suburbs).

Agency response: The DVLA said that NSL had apologised and had offered £50 as a goodwill gesture.

ICA outcome: The ICA said he was not a lawyer and could not say that Mrs AB's rights under the Equality Act had been breached. However, he quoted the law relating to clamping and said that he did not believe there was any illegality involved. He was content that the apology and offer of £50 were sufficient.

Poor handling of a DM complaint that a reasonable adjustment was not made

Complaint: Mr AB had suffered from Parkinson's disease for over a decade. The main impact was a reduction in fine motor control meaning that he could not write by hand. He complained that, when he applied to renew his medically restricted licence, the DVLA unreasonably insisted that he would have to make his own arrangements to complete the paper form. Mr AB characterised this as a failure to abide by the reasonable adjustment requirements within the Equality Act 2010 (EA 2010). No support, assistance or adjustment was made. He also complained that his completed forms had been returned in error, and that the DVLA's complaints responses were unsympathetic and uninterested.

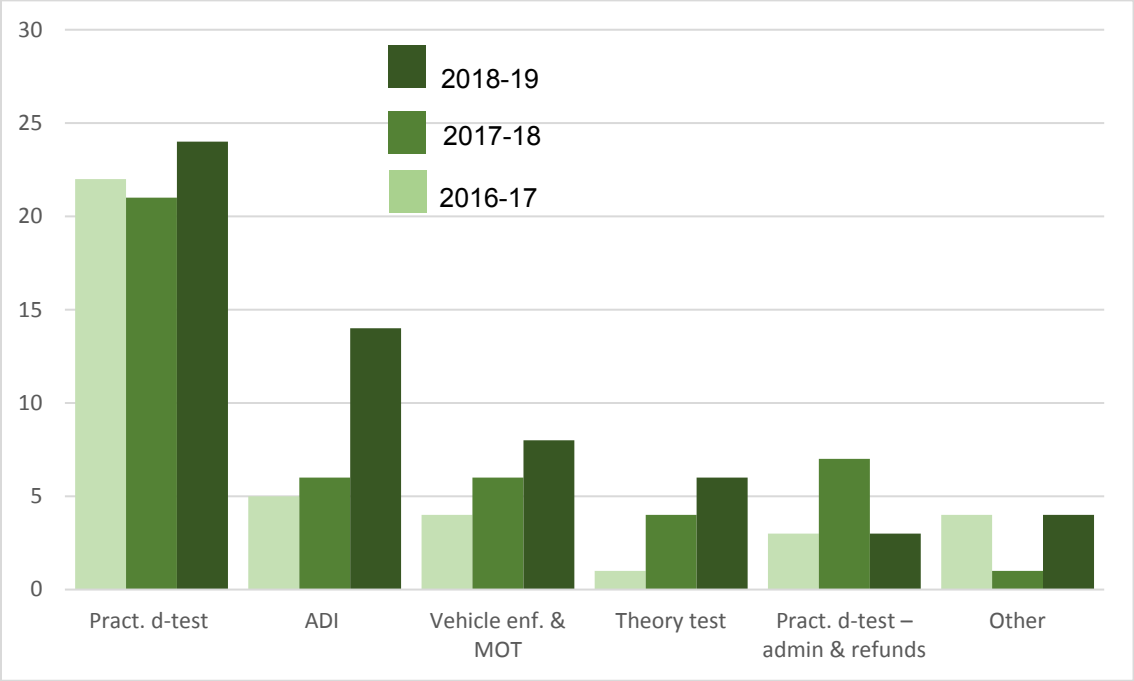
Agency response: The DVLA suggested that Mr AB obtain help from family or Citizens Advice. He was told that the Agency did not intend to discriminate or treat drivers with medical conditions differently, but the online service for completing notifications of Parkinson's disease was not yet ready. The DVLA said that it took its EA 2010 duties seriously and made reasonable adjustments when and where possible.

ICA outcome: The ICA had no jurisdiction to make legal determinations. He regarded the requirements of EA 2010 as congruent with good customer service standards. Mr AB, as a customer, had needed and asked for extra help and was denied it. The ICA highlighted the DVLA's equality statement that included an undertaking to provide information in other formats on request. Had this been applied, Mr AB could have completed the form in an electronic format at home or could have provided the information in a typed document. The ICA upheld Mr AB's complaint that he should have been given assistance in completing the form. The ICA also upheld his complaint that his initial application had been refused in error. The ICA estimated that approximately a month and a half of avoidable delay had occurred. Mr AB could have driven in this time but he was not told this quickly enough. The ICA also felt that the complaint responses had been poor. Although the staff involved had been genuinely sympathetic, they had not taken positive action and, as a result, the responses had seemed hollow to Mr AB. The ICA made a series of recommendations. First, the Chief Executive should apologise to Mr AB for the errors he had identified. Secondly, the Agency should make a consolatory payment of £100. Finally, the DVLA should refer a copy of his report to its officers dealing with EA 2010 duties.

3. DVSA casework

3.1 We received 59 cases from the DVSA in 2018-19, a 31 per cent increase from the year before. In Figure 6 we compare the year's incoming DVSA complaints, by topic, with the previous two years.

Figure 6: DVSA complaints, 2016-17, 2017-18 and 2018-19, by main topic



3.2 Practical driving test conduct and outcome, the main complaint area, has remained steady.

3.3 Many of those who complain to the DVSA about the conduct of driving tests argue that the internal investigations led by the manager of complained-about staff member are weighted against them. A 'not upheld' conclusion can feel like the Agency's version of events being preferred unfairly over the complainant's. However, in cases that turn on one person's account of events versus another's, we are rarely able to arrive at conclusive findings on the facts. Where a reasonable internal investigation has taken place, and has been reflected in clear and helpful complaint responses, we are unable to uphold such complaints.

3.4 We noted earlier in this report the increase in ADI-authored complaints, 17 of which arrived in 2018-19 (29 per cent of the year's ICA postbag from the DVSA).[9] These have traditionally been rarities, addressed to the main complaint area within the Agency's driving standards operations – the conduct of driving tests. However, this year has seen a marked increase in complaints from qualified ADIs who objected to

[9] The figure of 14 in the ADI category Figure 6 includes 13 ADI-authored complaints and one made about an ADI (and the DVSA's handling) by a member of the public.

the conduct of standards checks[10] as well as one from a prospective ADI about the part 3 practical driving test.[11] There have also been four complaints about the way the DVSA has handled complaints against ADIs. One of the originating complaints was made by a pupil, another by a member of the public and two by DVSA staff.

3.5 The 17 ADI-authored complaints related to:

- 6 – Standards check conduct & outcome
- 4 – The handling of allegations made about ADI conduct
- 1 – Part 2 test (eyesight test conduct)
- 1 – Part 3 test conduct & outcome
- 1 – Accreditation, administration
- 1 – Standards check administration
- 1 – Conduct of ADI pupil's practical test
- 1 – Driving tests, policy
- 1 – Mismanagement of a test centre.

3.6 We upheld to a large extent the two complaints about the way that the DVSA had responded to its own staff's concerns about the conduct of ADIs. In both cases we found that the investigation process had been fundamentally unfair and we made a series of related recommendations. We did not uphold either of the complaints against the DVSA for its handling of allegations made against ADIs by members of the public. We continue to harbour strong reservations about the applicability of the ICA review process to complaints that relate to registration and ADI conduct.

3.7 As in complaints related to practical driving tests, we were generally unable to adjudicate over the contested facts at the heart of ADI complaints about Part 3 and standards checks. Here, candidates have an appeal route to the Magistrates' or Sheriff's Court under section 133 of the Road Traffic Act 1988. However, the court has no power to substitute a pass for a fail (but it may quash the outcome of a test, thereby enabling candidates to re-sit). One notable exception, however, concerned a complaint that the examiner had not given due regard to a candidate's special needs in a standards check; we agreed. Another complaint that we fully upheld related to the apparently dismissive approach of DVSA staff to the ADI/candidate's explanation of his pupil's disability in a check test.

3.8 In line with previous years, we received only a handful of complaints (9) about the DVSA's vehicles operations. Those we did receive concerned:

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[10] All qualified ADIs must pass a standards check during each four year period in which they are registered in line with the requirements of the *Motor Cars (Driving Instruction) Regulations 2005*. An ADI may be removed from the register if they do not attend. The marking system is the same as in the reformed part 3 ADI test (see footnote 11 below). Candidates have three opportunities to pass; if they do not pass, they face removal from the register.

[11] The third and final stage of the process of being tested to enter the ADI register. The part 3 test is aimed at instructional ability. In December 2017, the DVSA made a series of changes to the three-stage ADI test sequence. In the part 3, rather than the examiner role-playing a pupil, the instructor brings a pupil to the test and gives them a driving lesson. If the candidate does not pass the part 3 test on or before a third attempt, they have to either restart the three stage process from scratch or challenge the DVSA in court (if they think they have a case that the regulations were not followed by the examiner). Marking in 17 areas of competence occurs across three domains (lesson planning, risk management and teaching and learning strategies). To pass, candidates must score 8/15 or above in risk management and at least 31/51 overall (https://www.gov.uk/government/news/driving-instructor-qualifying-test-changes-december-2017).

- 5 – Vehicle examiner conduct and/or sanctions
- 3 – MOTs
- 1 – Emissions scandal.

3.9 In Table 2 we summarise the outcomes of our reviews of the 59 DVSA cases that arrived in the year compared with the year before. We upheld 12.5 per cent of driving test complaints to some extent and 35 per cent of ADI-authored complaints.

3.10 The overall average of fully and partially upheld complaints was 20 per cent compared to 29 per cent last year.

Table 2: DVSA complaints, 2018-19 (and 2017-18), by main topic & ICA outcome

Business area	**Not upheld**	**Partially upheld**	**Fully upheld**	**Total**
Practical driving test – examiner conduct	21 (16)	1 (5)	2 (0)	24 (21)
Vehicle enforcement & MOT	7 (4)	1 (2)	0 (0)	8 (6)
Practical driving test – admin & refunds	2 (6)	1 (1)	0 (0)	3 (7)
ADI grievance	7 (2)	3 (3)	3 (0)	13 (5)
Driving theory test	6 (2)	0 (1)	0 (1)	6 (4)
ADI other	1 (1)	0 (0)	0 (0)	1 (1)
Other	3 (1)	1 (0)	0 (0)	4 (1)
Total	**47** (32)	**7** (12)	**5** (1)	**59** (45)

3.11 Our main recommendation areas in DVSA cases were:

- Consolatory payment (6, between £50-£500)
- Provide a better explanation (4)
- Change published information (3)
- Change systems (2)
- Apology (2)
- Complaint handling (1)
- Other (3).

CASES

(i): THEORY AND PRACTICAL DRIVING TESTS

Challenge to identity

Complaint: Mr AB complained about the decision of the DVSA"s contractor, Pearson Vue, not to allow his son to sit a theory test as there were concerns about his identity. He asked for the test fee to be refunded.

Agency response: The DVSA said that Mr AB's son had been given ten opportunities to sign his name, but the signatures did not match those on his driving licence (or on his passport). It said the checking of signatures was to prevent impersonation and fraud.

ICA outcome: The ICA said he sympathised with Mr AB and his son, but the DVSA had not acted in a maladministrative manner. The process of checking signatures was mandated by the Agency and was for a good purpose. The ICA was content with the extent of the DVSA's own investigation of the complaint and did not believe that a refund could be justified.

Flat battery in headset during practical motorcycle test

Complaint: Mr AB complained that the headset provided for a practical motorcycle test had had a flat battery. In consequence, he asked for repayment of all his costs.

Agency response: The DVSA had initially resisted Mr AB's claim. At stage 3 of the internal process, it had offered to refund the test fee of £75.

ICA outcome: The ICA said the only issue for him was whether the sum of £75 represented appropriate redress. For two reasons, he concluded that it was not. First there had been a significant delay in answering Mr AB's complaint and a less than candid explanation had been given for the reasons (the DVSA had cited a backlog of correspondence when the information provided suggested that Mr AB's correspondence had been overlooked ('lost'). This involved three elements of maladministration: mishandling of correspondence, delay, and a misleading explanation. Second, as it was apparent from the outset that there had been an equipment failure (it was recorded on the driving test report (DL25)), it should not have taken three separate responses before the test fee was refunded. In recognition, he recommended the DVSA offer a further consolatory payment of £150.

Complaint about manager of test centre

Complaint: Mr AB, an approved driving instructor, made a series of complaints about the attitude and professional conduct of the manager of a driving test centre. He also made allegations against examiners working at the centre, complaining that they socialised with instructors and were part of a disreputable organisation.

Agency response: The DVSA had looked into those parts of the complaint that referred to evidence and took action where necessary. It repeatedly asked Mr AB to corroborate his allegations against the driving test centre manager. Mr AB did not do so.

ICA outcome: The ICA stated that serious complaints about impropriety and personal conduct should be supported by evidence. He did not regard Mr AB's complaints as supported by evidence. He noted that they had been responded to appropriately by the DVSA, and concluded that there was no purpose in subjecting them to detailed review at the ICA stage.

Complaint against driving examiners

Complaint: Mr AB complained that his son had been unsuccessful in three practical driving tests. He said there had been poor performance and poor behaviour on the part of the examiners.

Agency response: The DVSA had carried out its standard procedures. It said complaints about the test centre were low and it had a good reputation.

ICA outcome: The ICA quoted the pass rate at the centre in question and said that it showed no systematic biases against young drivers or anyone else compared with centres serving similar population mixes. The number of complaints was slightly above the national average, but not alarmingly so. He could not say exactly what happened during the tests in question, but did not uphold Mr AB's complaints of corruption, malpractice and unprofessionalism.

A complaint about a failed practical driving test

Complaint: Mr AB complained that the serious fault he had accrued on his practical driving test had been incorrectly marked. He said he had entered the roundabout in the 6 o'clock position and left at 12 o'clock. The manoeuvre had been completed in the left-hand (outside) of the roundabout after he had approached in the left-hand lane of the slip road. He argued that the satnav had showed the exit as being straight ahead and this was supported by Google Maps images of the junction and signage.

Agency response: The DVSA insisted that the satnav had instructed him to exit right from the roundabout and that the exit was at 1 o'clock not 12 o'clock.

ICA outcome: The ICA examined the evidence and was unable to reach a firm conclusion in relation to Mr AB's claim that the satnav had instructed him to exit on the second exit, and had not referred to this being a right-hand exit from the roundabout. On close examination of the Google Maps evidence, the ICA did not consider that the exit was at 12 o'clock. He agreed with the DVSA that the evidence pointed to it being closer to 1 o'clock. He did not therefore consider that it supported Mr AB's position.

Cancellation of short notice driving test

Complaint: Mr AB had booked a driving test online. The same day he re-booked a short notice test, but then cancelled it when he realised his instructor's car would not be available. He said he had not realised you need to bring a car to a test and asked for a refund. He said the information on the booking screen on gov.uk did not include anything about bringing a car.

Agency response: The DVSA said that Mr AB would have received information about bringing a car in the confirmation of his initial booking. It said that the advice was also readily available on gov.uk. Likewise, a warning that no refunds were payable following the cancellation of short notice tests was shown four times during the booking process.

ICA outcome: The ICA said that this was an unfortunate matter, but he could identify no maladministration by the DVSA. There was ample information available both about the need to bring a car and about the no refund rule. However, while the ICA was surprised that any candidate did not realise you must bring a vehicle for a practical test, he agreed with Mr AB that customers are not reminded of the requirements for taking a practical test before a booking is started on gov.uk. He recommended that the DVSA consider whether such information, or a link to it, should be provided before a booking commences.

Complaint about staff at a driving theory test

Complaint: Mr AB complained about the attitude and behaviour of staff of Pearson VUE at a theory test centre when he had accompanied a candidate. He said that he had been told to turn off his mobile phone and when he said he would put it to silent he was asked to leave.

Agency response: Pearson VUE had said that staff had behaved properly, but on escalation the DVSA had said that staff should not have told Mr AB to turn off his phone and should simply have asked him to leave. They were to be reminded of the correct procedure.

ICA outcome: The ICA said that, in the circumstances, there was only a small amount he needed to add. Most of the regulations understandably concerned candidates (who must place phones and personal items in lockers before entering the examination room). However, Mr AB was not a candidate or in the examination room. The ICA noted that the regulations said that candidates could not be accompanied but he inferred that, in many centres, some flexibility was allowed for people to wait for family and friends inside the centre rather than outside. However, Pearson VUE staff were entitled to ask Mr AB to leave, and the DVSA had identified how any future such incidents should be handled. In these circumstances, there was no maladministration and nothing the ICA could contribute directly.

Complaint about test route in practical driving test and allegation of racial discrimination

Complaint: Ms AB complained that the DVSA would not disclose details of the test route taken by her daughter in her failed practical test. She subsequently argued that her daughter's failed tests might have been the result of racial discrimination.

Agency response: The DVSA said that it was not required to release test route details as the exemption in the Freedom of Information Act relating to the effective conduct of public affairs applied. It said all Ms AB's tests had been correctly conducted.

ICA outcome: The ICA said that there was nothing to suggest that the practical tests had been conducted improperly. He was also content that the DVSA had correctly applied the FOI Act exemption – the whole point of the 'independent driving' part of the test would be negated if candidates could practise on the routes in advance. The ICA said the available statistics on ethnicity and test results were based on a small, non-random sample and

were not meaningful in consequence. He said the DVSA should encourage candidates to provide details of ethnicity so that the published data could be more useful.

Complaint about motorcycle training and alleged racism of trainer

Complaint: Mr AB's son had undergone Compulsory Basic Training (CBT) motorcycle training with an instructor. His son had not been allowed to undertake the on-road part of the training. Mr AB criticised the instructor's decision (and the fact that he would charge for any renewed CBT training). He also said that the instructor had posted information on his Facebook page that was of a racist nature.

Agency response: The DVSA said that its enquiries showed that the CBT had been delivered in accordance with the regulations. The instructor should not proceed to the on-road training if the trainee had not shown a competence in the off-road training. It said that any question of racism should be addressed to the police.

ICA outcome: The ICA said that he had no evidence that the training had not been provided properly. Indeed, there was evidence on the DVSA file that Mr AB's son had acknowledged that he was not at the level where he could safely take to the road. The DVSA was also right to say that the charging practices of the training supplier were not a matter it could oversee. However, the ICA was concerned that the DVSA had taken too narrow a view of its responsibilities under the 'fit and proper person' test. At least one of the posts to which Mr AB had drawn attention was Islamophobic in intention. It was not the ICA's role to act as arbiter of who is a fit and proper person, but he recommended that a copy of his report be shared with the Chief Driving Examiner.

Complaint about new manoeuvres in driving test

Complaint: Mr AB, an Approved Driving Instructor (ADI), complained about the introduction of two new manoeuvres (pulling in to the right, and forward parking) in the practical driving test. He said they were unsafe and ran counter to the guidance in the Highway Code.

Agency response: The DVSA said the new manoeuvres had followed extensive trialling and consultation.

ICA outcome: The ICA said he could not offer any views on Agency or Government policy. But he was content that the DVSA had conducted a detailed consultation exercise and had engaged with many interested parties. Although the specific consultation questions regarding the new manoeuvres were in general terms, the consultation document contained three specific references to what the DVSA planned, so no one responding could have been in any doubt as to the Government's intentions. The ICA was also content with the way the DVSA had handled Mr AB's extensive correspondence.

Complaint about examiner conduct during practical driving test

Complaint: Mr AB, an ADI, complained that the examiner for one of his pupil's tests had failed to apply the dual brakes and the vehicle had therefore hit a barrier in a parking bay. He said the examiner had refused to tell him who to complain to.

Agency response: The DVSA said the test report recorded two dangerous faults including the incident to which Mr AB had referred. However, the DL25 also recorded that the examiner had applied the dual controls, but too late to prevent the collision. Examiners were expected not to intervene to allow faults to develop. The DVSA said that any damage to Mr AB's vehicle was minimal, and there was no question of it needing to be taken off the road as Mr AB had suggested. He had provided no receipts or anything else to justify his damage claim, and the photographs taken by the examiner showed evidence of other minor damage on the bumper that was pre-existing.

ICA outcome: The ICA said he could not say what had passed between Mr AB and the examiner, nor whether the examiner had applied the dual brakes at the last moment as he had recorded. However, he was content that the DVSA had conducted a proportionate inquiry, and the photographs the ICA had seen – although not in high definition – showed that any damage was very minor. Any suggestion that the vehicle would be taken off the road seemed greatly exaggerated. The ICA said that Mr AB might want to take up the offer of a face-to-face meeting with the Local Driving Test Manager.

Outcome of practical driving tests

Complaint: Ms AB complained about the outcome of two practical driving tests. She accepted that during one of the tests she had rolled back while in stationary traffic, but said this had not been a serious problem and the driver behind had over-reacted when sounding his horn. At one point in her correspondence, she said the examiner was a 'racist man' and in another that he had lied about what had happened.

Agency response: The DVSA had conducted its standard inquiries. Unusually, a senior official had also rung Ms AB – although Ms AB said she had not done so with an open mind. The DVSA said it would investigate the allegation of racism if Ms AB submitted further evidence, but she did not.

ICA outcome: The ICA said he could not know for certain what happened in the car, but the two serious faults recorded by the examiner were sufficient for the test to have been failed. He was content with other aspects of the DVSA's handling, and did not believe the Agency could take the allegation of racism any further.

Requirement that future practical test be accompanied

Complaint: Mr AB complained about the action taken by the DVSA to insist that his future practical tests should be accompanied. This followed a report by an examiner that Mr AB had raised his voice and sworn. Mr AB admitted 'a serious tone of frustration' and 'measured annoyance' but denied swearing. He accused the examiner of fabricating the allegation of swearing.

Agency response: The DVSA had conducted its standard inquiries. It said the requirement that future tests be accompanied was proportionate.

ICA outcome: The ICA said the DVSA had a duty of care to its staff. But he agreed that the requirement for accompanied tests could not remain in place indefinitely if there was no repetition of the alleged misbehaviour. The ICA said that if Mr AB was in the same position in a couple of years' time, having taken further tests without incident, he would be entitled to ask the DVSA to drop its requirement for accompanied tests and could quote the ICA's report in his support.

An examiner chatted far too much in two driving tests

Complaint: Ms AB complained that the examiner who took her two driving tests (in which she failed the first and passed the second) spoke too much and discomfited and distracted her. In support of her complaint she provided very detailed information about the examiner's family life, leisure activities, opinions, preferences, commentary during the tests and personal tastes. She was not impressed by the DVSA's defence of the examiner's conduct at all three of its complaint stages. She argued that, on the balance of probabilities, Mr AB had clearly talked far too much and distracted her.

Agency response: The DVSA conducted a standard investigation, establishing that the examiner had no comparable complaints and was generally quietly spoken and held in high professional regard by colleagues. The examiner stated that Ms AB had led the conversation and that he had tried to create a comfortable environment for the two tests. The DVSA stated that Ms AB had the option of asking the examiner to speak less. It also denied Ms AB's complaint that on the second test she had, in effect, been guided by the examiner in her responses to the road conditions.

ICA outcome: The ICA noted that there were some aspects of the complaint that he could not resolve, in particular the complaint that Ms AB had been guided in the second test. However, he thought it was clear enough that the examiner had strayed over the professional boundary in his chatter and disclosures. The ICA saw nothing improper in the content of what the examiner had said (this had not been alleged), but it seemed to cut across the published guidance for instructors which is that they should not initiate inappropriate discussions about their own personal relationships. The ICA was surprised by the DVSA's determination to defend its examiner in the face of compelling evidence that he had disclosed too much information about himself. The ICA thought it more likely than not that this had been a distracting factor in the first test. He recommended that the DVSA should make a consolatory payment of £100 given its refusal to accept a clearly justified complaint.

Theory test questions

Complaint: Mrs AB complained that the DVSA would not tell her the specific questions that her daughter had failed during her driving theory test.

Agency response: The DVSA and its contractor Pearson Vue had said that the specific questions were not published as to do so might undermine the integrity of the test. In addition, the Agency did not want to encourage rote learning but a deeper understanding of road usage and road safety.

ICA outcome: The ICA said that this was a matter of Agency policy and therefore at the margins of his jurisdiction. However, the policy appeared to be based on reasonable grounds and was not maladministrative. In addition, the correspondence from Pearson Vue and the DVSA had been courteous and comprehensive. While he sympathised with Mrs AB and her daughter (who had failed her theory test on five occasions), he could identify no maladministration and could not uphold the complaint.

Cancelled driving test

Complaint: Mr AB complained that the DVSA would not reimburse his son the cost of additional driving lessons after his practical test was cancelled at short notice. He also complained that the DVSA was incompetent, tardy and self-serving in its responses and generally unfit for purpose.

Agency response: The DVSA explained that its policy did not include reimbursement for driving lessons. It said that its deployment team had learned of the non-availability of the examiner very late in the day, and had attempted to find a substitute but without success. Mr AB's son had been phoned and the situation explained.

ICA outcome: The ICA could not criticise the DVSA for following its established policy. The ICA view was that the cancellation had not been predictable or avoidable, and that the DVSA's complaint responses had met a reasonable standard. He did not therefore uphold the complaint.

Distraction during practical van driving test

Complaint: Mrs AB complained that a cone located close to the manoeuvring area when she was undertaking the reverse exercise in her C1 (van) driving test had been a distraction. It had caused her to fail the test. Mrs AB argued at the time that she should be offered an opportunity to undertake the manoeuvring again with the distraction removed from the vicinity of the manoeuvring area. The examiner had declined and she terminated the test.

Agency response: The DVSA said that the manoeuvre and the test area had been explained to Mrs AB before she had attempted the reverse. If she had any concerns about the positioning of cones that were not in the manoeuvring area, she had had an opportunity to raise it.

ICA outcome: The ICA looked at pictures provided by Mrs AB as well as materials related to the exercise. He could not see how a cone placed behind the barrier against which the van was to be reversed could have deflected Mrs AB's attention from the cone near to her that she eventually struck. He did not therefore uphold the complaint. However, he

recommended that the DVSA should take steps to ensure that no distractions were present in the test area.

Allegation of poor conduct by examiner

Complaint: Mr AB complained about the conduct and behaviour of a driving examiner during the course of three practical tests. He asked for a different examiner and refund of the test fees.

Agency response: The DVSA said that the examiner was regularly monitored and observed, and enjoyed the confidence of his manager. It could not allow a candidate to choose the examiner to protect the integrity of the tests, and would not agree a refund.

ICA outcome: The ICA said an ICA review was not best designed to arbitrate on conduct he had not observed. However, he had made further enquiries about other complaints and was content that there was nothing that suggested disciplinary action was warranted. He agreed with the DVSA about candidates not being able to choose their examiner, and since there was no reason to suppose the tests had been marked unfairly a refund could not be agreed. However, while he could not uphold the complaint, the ICA was clear that Mr AB's experience in taking the tests was not as it should have been – hence a modest consolatory payment had been agreed by the Agency.

Late arrival for practical test

Complaint: Ms AB complained that the examiner did not allow her to take her practical driving test as he said she was late. She asked for the refund of the test fee of £62.

Agency response: The DVSA said that that it had to consider the interests of subsequent candidates if tests were allowed to start late. It said that the examiner had said that Ms AB had not been in the waiting room on time and that the five minute grace period had elapsed.

ICA outcome: The ICA said he could find no maladministration in the DVSA's approach or its handling of Ms AB's complaint. However, in light of uncertainty about the exact timing of events, the Agency had agreed an ex gratia payment of £50. The ICA considered that to be an entirely appropriate way of resolving the complaint.

The need for a direct link between a theory pass and the module 1 and 2 motorcycle tests

Complaint: Mr AB passed his module 1 motorcycle driving test a few days before the two-year window following his pass in the theory test closed. He therefore re-sat the theory test and obtained a new pass certificate and presented for his module 2 motorcycle driving test. His complaint was that he was denied the opportunity of sitting the test because his module 1 pass was linked to an invalid theory test pass certificate. He accused the DVSA of being pedantic, obstructive, and incomprehensible, and of being scoundrels and con-artists.

Agency response: The DVSA examiner on the day had double-checked his understanding of the rules with senior colleagues and policy advisers. The position came back that both practical tests had to be linked to the same valid theory test pass. Mr AB therefore forfeited his test fee and was unable to undergo the module 2 on-road drive.

ICA outcome: The ICA looked at the published information on gov.uk and confirmed that the DVSA's requirements were adequately specified. The DVSA's policy was that both the module 1 and the module 2 motorcycle driving test should be passed in that sequence within a two-year window of a single theory test pass. The ICA did not have any scope to require the DVSA to depart from this policy. He therefore could not uphold the complaint.

Allegation of rudeness against examiner

Complaint: Mr AB complained that the rudeness of the examiner who took his practical test had put him off to the extent that his performance was far below his usual standard and he had committed to serious errors at an early stage. The rudeness had begun in the test centre after the examiner had repeatedly called his name and he had not heard. The examiner was so rude that bystanders were actually laughing.

Agency response: The DVSA investigated the complaint through two local driving test centre managers and concluded that the conduct of the test had been appropriate.

ICA outcome: The ICA could not adjudicate over the different accounts of the test and was unable to reach firm conclusions of fact. He reflected that the complaint would remain on the examiner's record for two years and that this was a reasonable outcome for the complaint.

Reasonable adjustments for dyslexia

Complaint: Mr AB, who had notified the DVSA of his diagnosis of dyslexia, complained that the examiner in his car and trailer driving test did not make reasonable adjustments for his disability. In particular, Mr AB complained that he had been given three instructions in a row after having explained that he had difficulties processing multiple instructions. He said that this, and the examiner's extreme rudeness throughout, had contributed to the serious faults that had caused him to fail the test. He requested a refund of his total costs for the test (£307), that he had subsequently passed.

Agency response: The DVSA subjected the complaint to investigation, obtaining comments from the examiner and his manager. The examiner's account of events was significantly different from Mr AB's and it was impossible to make firm findings of fact. Nonetheless, on the balance of probabilities the DVSA concluded that the test had been conducted in line with the relevant guidelines. During the latter stages of the complaints investigation, the examiner accidentally referred his comments by email to Mr AB rather than to his manager, the intended recipient. Mr AB reported this to the Information Commissioner who eventually upheld his complaint that a data breach had occurred and that the DVSA had acted in error in not conceding this point at an early stage. The DVSA

increased its offer of a consolatory payment from £50 to £200. Mr AB remained dissatisfied.

ICA outcome: The ICA felt that, on balance, the DVSA was justified in its conclusion that a threshold of evidence sufficient to call the examiner's conduct into question had not been reached. However, he suggested that the Agency had appeared over-confident in its statements about how well the examiner had taken account of Mr AB's disability. He was also critical of the DVSA for referring to third-party evidence that Mr AB had not required adjustments in his driving lessons. The Agency agreed to take steps to ensure there would be no repetition. The ICA noted that the investigation had been thorough and exhaustive and he felt that, overall, the DVSA had acted reasonably. He did not therefore uphold the complaint. He set out in his conclusion the steps the DVSA had in place to ensure that its examiners understood their duties under the equality legislation.

Verifying a Certificate of Professional Competence

Complaint: Mr AB, a professional truck driver, complained that the DVSA and its agent Pearson VUE had failed to take advantage of the many options for verifying his Certificate of Professional Competence (CPC) entitlement in order to book him into the part 2 CPC case study test. Mr AB was blocked from booking in the normal way due to a glitch in the system that should have allowed the DVSA's contractor to obtain his driving licence status from the DVLA. In his dealings with the DVSA and its contractor, he repeatedly suggested that his entitlement be checked using the DVLA's online licence information sharing facility. Mr AB became infuriated with responses from Pearson VUE and DVSA staff.

Agency response: The DVSA explained that it had verified Mr AB's entitlement on the day that Pearson VUE had referred the matter to it, comfortably within its five day target. It did not address his complaints that other ways of verifying his entitlement could have been employed. He had had to wait five days before he was able to book onto the test.

ICA outcome: The ICA could not reach a conclusion that the DVSA had fallen into error, given that it had confirmed Mr AB's entitlement comfortably within its own internal five day target. However, he did not judge that the explanations provided before and during the complaints communications addressed Mr AB's criticisms of the process. In particular, the ICA did not understand why the DVSA had not availed itself of the DVLA system for checking entitlement using a one-time access code. The DVSA responded, explaining that staff had not been aware that all of the necessary information was available through this route and it was taking steps to look into whether this approach might be used in future. It accepted that its complaint responses had not addressed the points that Mr AB had made and it agreed to make a consolatory payment of £50 to reflect this.

Behaviour of staff at theory test centre

Complaint: Mr AB complained about poor treatment and discourtesy by staff of Pearson VUE when he attended for a theory test. He said he was shouted at because he did not pick up his results, and that reference had been made to candidates hiding items in prosthetic legs (Mr AB had a fractured foot and was wearing a cast). He alleged that the DVSA was in breach of the Equality Act 2010.

Agency response: The DVSA said that Pearson VUE staff had tried to attract Mr AB's attention and had not shouted at him. It was also unclear why he felt he had been discriminated against.

ICA outcome: The ICA said that it was not unreasonable for the DVSA to have concluded that no improper discrimination had occurred. The Agency had also carried out a proportionate investigation. It had refunded the test fee and reminded staff of the need to behave more discreetly in the future. These were sufficient outcomes. There was also evidence that Mr AB himself had not behaved well during the security check process.

(ii): ADI PART 3 AND STANDARDS CHECKS

A failure at the test stage to consider a candidate's claim to have a protected characteristic under the Equality Act 2010

Complaint: Mr AB, a former DVSA employee, wished to resume instructing. He complained about the conduct of his part 3 ADI test. First, he complained that the examiner was someone with whom he "had history" in relation to an event that had occurred many years earlier when they had both been colleagues. Mr AB alleged that the examiner had then called into question his claim to disabled status. Secondly, Mr AB complained that the examiner had not made a reasonable adjustment for his disability before or during the practical test. Thirdly he complained that the examiner had deliberately exposed him to complex road conditions in the form of a broken temporary traffic light and had then, during the examiner role-play (that was a feature of the part 3 test at the time), taken on a particularly challenging persona. Mr AB also complained about delays and inadequacies in the Agency's responses.

Agency response: The DVSA responded to Mr AB's complaint after four months during which its complaints staff had struggled to obtain information from their operational colleagues. The Agency admitted that its examiner had not looked at the logbook where Mr AB's declared disability, and request for a reasonable adjustment, were written down. However, Mr AB had not mentioned a disability on the day and the examiner did not feel that his performance in the test was affected. The DVSA provided a detailed account of the area of the test involving the temporary lights where Mr AB had accrued major faults. After further communications with Mr AB, the DVSA declined to guarantee to him that the examiner would not preside over his third and final opportunity to sit the test. It did, however, before its third stage, attempt to obtain information about his prior dealings with the examiner by seeking information from Mr AB, and his former DVSA line managers. Only Mr AB could recall any incident. The DVSA remained of the view that its failure to recognise and adapt for Mr AB's disability had not been instrumental in his performance either at the first test or the second (which was conducted by a different examiner, after the complaint, which Mr AB also failed).

ICA outcome: The ICA was very critical of the DVSA's handling, noting the delay in the stage 1 response. The ICA recommended that the DVSA should improve the leverage its complaints handlers have over their operational colleagues to ensure full participation in complaint investigations. The ICA could make no firm finding of fact in relation to the historic dispute between Mr AB and the examiner as only Mr AB could recall it and there were no written records. However, he criticised the Agency for suggesting that the same

examiner could preside over future tests before the complaint against him had been determined. He recommended that the DVSA should ensure its examiners were aware of their professional and legal duties in relation to disability and protected characteristics, and that it should revise its guidance in this regard. The ICA upheld the complaint that an adjustment had not been made (although he passed no opinion on the extent to which Mr AB's disability engaged the Equality Act 2010). He was less sympathetic to Mr AB's complaint about the complex scenario he faced in the drive. The ICA felt that novel and confusing scenarios would inevitably crop up and that it was reasonable for the DVSA to test candidates' ability to handle them. He noted that the role play element of the part 3 test had been replaced by a real pupil. On balance, the ICA upheld the complaint and recommended that the Chief Executive of the DVSA should apologise for the shortcomings he had highlighted. Mr AB went on to pass on his third attempt.

ADI standards check where pupil had special needs

Complaint: Mr AB, an ADI, complained that his standards check had been mishandled. First, the examiner had disregarded his briefing at the beginning of the test where he explained that his candidate had a disability and should not be subject to interruption unless absolutely necessary. Second, he complained that she had intervened inappropriately during the check causing his candidate distress and danger to everyone in the car and other road users. Finally, he complained that the DVSA's responses to his correspondence failed to engage with the points he had made. He also said that the feedback session had been inadequate.

Agency response: The DVSA affirmed its confidence in the examiner's competence, and throughout the correspondence chided Mr AB for what it felt had been a personal attack on her. It explained that examiner interventions were a fairly regular occurrence as ADIs could become too engrossed in the lesson to notice the passage of time.

ICA outcome: The ICA was very critical of the DVSA for not engaging with the disability element of Mr AB's complaint, an aspect that was absolutely critical to his grievance. He felt that the complaint handling was defensive and seemed to be focused on cocooning the examiner from feedback rather than supporting her in developing her practice. The ICA was unable to reach any view on whether the examiner shared Mr AB's view that the pupil had suffered a "meltdown" during the test. He upheld the complaint and recommended that the DVSA should consider improving its complaints function so that staff in the complaints team were able to challenge operational colleagues if investigation outcomes were insufficient. He also asked the DVSA to consider referring explicitly to the need for examiners to think about varying their approach in the event that a pupil has special needs. The ICA recommended that the DVSA should consider whether staff involved in complaint handling could be supported by additional resources or training in relation to disability. He recommended that the DVSA apologise to Mr AB for its inadequate responses.

Complaint about ADI test

Complaint: Mr AB complained about the conduct of his ADI test, part 3, on the grounds that the briefing had been carried out in a public space making him feel uncomfortable, the marking had been unfair and there was no rational explanation for the low grades.

Agency response: The DVSA referred the complaint to a manager who interviewed the examiner and obtained an account of why the faults had been recorded, resulting in an overall fail. This differed significantly from Mr AB's account of his performance in the test. Mr AB pointed out some discrepancies between the DVSA's accounts at different stages, but the Agency insisted that the overall assessment had been correct, and that Mr AB had further work to do in order to demonstrate the competence and pass the test.

ICA outcome: The ICA was unable to adjudicate over the differences of judgement and fact between Mr AB's account and that of the DVSA. While he agreed that there were some anomalies, these had been recognised and remedied by the Agency and were not sufficient to call the overall conduct of the test into question. He did not uphold the complaint.

Handling of ADI's grievance

Complaint: Mr AB, an ADI, complained about a standards check that he said had not been conducted properly, and about the conduct of the examiner.

Agency response: The DVSA said that the examiner disputed Mr AB's version of events.

ICA outcome: The ICA said that he had been presented with two accounts that were different from one another, but two accounts that were equally strongly held. He suggested that the DVSA consider inviting Mr AB to face-to-face meeting. Such disputes between professionals might be better dealt with through a form of mediation rather than the complaints system – which seemed to entrench opposing views.

Disputed standards check

Complaint: Ms AB disputed the outcome of an ADI standards check. She said that the examiner was negative and sexist.

Agency response: The DVSA had conducted its normal enquiries. It said it was satisfied the standards check had been conducted properly, and there was no evidence that Ms AB had been discriminated against on grounds of gender. The Agency declined to offer Ms AB a new test.

ICA outcome: The ICA had invited Ms AB to supply supporting evidence in the form of a statement from her client and the dashcam footage and a separate complaint against the examiner from a colleague. Only the latter was available, and this was of limited evidential value (and gave no support to the allegation of sexism). In these circumstances, the ICA could not uphold the complaint. However, as in a similar case, the ICA said there were grounds for mediation when a dispute involved differing perceptions on the part of fellow

professionals. Use of the formal complaints system seemed to have encouraged intemperate language that should have been avoided. The ICA also said that the DVSA should monitor the outcome of standards checks to make sure there were no improper biases in scoring and outcomes.

A voided standards check

Complaint: Mr AB complained about the decision of the DVSA to void his ADI standards check pass after the DVSA conceded his legal challenge to the conduct of the test (which he had passed at Grade A). He also complained that he had been invited to attend further standards checks only for them to be cancelled without explanation.

Agency response: The DVSA said that the test result could not be reinstated.

ICA outcome: The ICA said that, although not a lawyer, it seemed self-evident that the result of a test that was not conducted properly could not stand. However, he felt that the DVSA had failed to explain why future tests had been arranged and cancelled. He recommended that his report be shared with the Registrar and that a letter of explanation be sent to Mr AB.

Prospective ADI disputes failed eyesight test

Complaint: Mr AB complained that he had been unfairly failed during the eyesight test on his second ADI part 2 practical test. He said he had read the test plate correctly on his second attempt after the precise distance (26.5 m) had been measured out by the examiner (he had not managed to read the plate from the approximate distance). The examiner had said he needed to take his first answer and therefore he failed. He also complained that the conditions on the day (drizzly, foggy and wet) reduced visibility and made it difficult. He requested the reimbursement of his £111 test fee.

Agency response: The DVSA gave a different accounts of events. It stated that the reason the examiner had said that he had to take Mr AB's first answer was because he stepped over the line and entered on the second occasion while too close to the plate. The DVSA accepted that the conditions had not been perfect but maintained that they were not so bad that the test should not have gone ahead.

ICA outcome: The ICA could not reconcile the significant difference in recollection between Mr AB and the examiner. The examiner was clear that there was no requirement to take the first answer. He had only told Mr AB that he had to do so because he had stepped closer to the plate than permitted, meaning that his second answer could not stand. Other disagreements (including about the digits on the plate used for the test) were also irreconcilable.

Further complaints about standards checks

Complaint: Mr AB, who had been registered as an approved driving instructor for 18 years, complained that the conduct of his three standards check tests was rude to the

point of being overtly hostile, thereby undermining his performance. He also complained that the marking had been inconsistent, and that the DVSA's responses to his complaints and challenges had been contradictory and biased. He felt that he had been discriminated against due to his nationality. He attempted to appeal to the Transport Tribunal, but this was rejected on the ground that the Tribunal was not an appellate body (the appeal should have been heard in the Sheriff's court).

Agency response: The DVSA replied in increasing detail following four investigations that included a letter from the chief executive to Mr AB's MP. It explained that the two examiners involved had not conferred, and that similarities in their marking reflected the fact that they were working within the same regime having been trained in the same way. Neither had attracted complaints about attitude and approach over hundreds of standards check tests. The DVSA also responded in detail to Mr AB's allegations of inconsistent marking, explaining why its examiners had reached the conclusions they had. It did not uphold the complaint.

ICA outcome: The ICA explained from the outset that he could not adjudicate over different recollections of how the standards checks had been conducted. Nor did he have the technical skills to offer a plausible opinion on the grading of Mr AB's checks, even had he been there. The ICA felt that, on a purely administrative level, the DVSA had responded adequately to Mr AB's complaints and challenges. There had been a couple of inconsistencies, but these had been remedied in later responses which went into considerable depth in relation to the decisions made. The ICA did not uphold the complaint.

Complaint about ORDIT test

Complaint: Mr AB complained about his Official Register of Driver Instruction Training (ORDIT) test. He said he had been discriminated against because his standards check was Grade B, and that he had been assessed on the wrong lesson plan.

Agency outcome: The DVSA said it stood by the examiner. Mr AB had failed to adapt his approach in respect of emerging risks.

ICA outcome: The ICA said he could identify no unfairness. He said he understood why Mr AB felt he had been wrongly assessed, but it was not Mr AB's lesson that was being marked but how he performed in the 17 areas of competence, within the lesson he delivered.

(iii): COMPLAINTS AGAINST APPROVED DRIVING INSTRUCTORS

Mishandling by the Registrar of a complaint made by DVSA staff against an ADI who had started examiner training

Complaint: Mr AB, an ADI, decided to train as an examiner and enrolled on the DVSA's course. Following a meeting with a trainer and supervisor when he had been given feedback on his poor progress, he left the office for the car park before the others, got in his car and drove away. At the same time the DVSA staff arrived to get in their own

vehicles. Two staff members stated that Mr AB either deliberately or recklessly drove his car so close to one of them that they feared being hit. When told of this, Mr AB resigned from the course. The incident was reported to the Registrar of ADIs who wrote to Mr AB stating that his behaviour was below the standard expected of an ADI and asking for his comments. Mr AB replied directly to the (then) Registrar asking for more information about the incident and allegations before he gave his comments. The DVSA did not reply to this initial communication, nor to later letters (sent by recorded delivery and first class post). Mr AB therefore complained about the lack of response which he suspected was deliberate because the Registrar had discovered the allegation to be false and malicious. When a reply was eventually received from the Registrar (four months after his initial letter) discontinuing his enquiry without receiving any comments from Mr AB and closing the matter, Mr AB complained further. Later, when sent information about the incident he complained that Agency staff had conspired and fabricated their allegation that he had driven dangerously.

Agency response: In response to his first complaint, the DVSA's Chief Executive wrote to Mr AB acknowledging that his correspondence had been mishandled and apologising. The Registrar would in future ensure that a repeat incident was avoided. Mr AB asked for a Second Stage Review, which repeated these conclusions and apology. In response to Mr AB's complaint of conspiracy against him, the DVSA appointed one of its Fraud Investigators to investigate. The results of this investigation were reported to Mr AB some ten months after he had made the allegation, and only after he chased the Agency. The allegation of dangerous driving was said to have been an unfortunate incident that Mr AB was unaware of at the time and was misconstrued by others present. There was no evidence to show he had driven deliberately so as to cause fear and distress. There was no evidence that DVSA staff had fabricated the incident. There was no evidence that the mishandling of Mr AB's correspondence had been done deliberately or that the (then) Registrar attempted to cover up or deliberately ignore his communications. The letters were scanned to a central system rather than passed to the Registrar directly which was the cause of the delay. The Agency had learned from what had happened.

ICA outcome: 1. Handling of initial report and correspondence by the DVSA: although the Agency had fully accepted that correspondence was mishandled, the ICA concluded that the Registrar's response to the initial report and the subsequent handling reflected a complete failure in the system of fair and effective ADI regulation and amounted to maladministration. 2. Allegation of deliberate failure by the Registrar to respond/deal with report: the ICA did not uphold this complaint. There was no evidence to show that the Registrar deliberately ignored correspondence. The matter was simply not actioned within the necessary timescale by the person responsible for doing this. 3. Handling of Mr AB's complaints by the DVSA: the Agency had lost important correspondence from Mr AB which was maladministration. When this was discovered, copies were not sought by the DVSA from Mr AB despite their contents being essential for the investigation into his complaint of conspiracy. This also amounted to maladministration. That investigation lacked the required thoroughness and the timescale for dealing with Mr AB's complaint could not be justified and his complaint of unreasonable delay was upheld. 4. Allegation of deliberate fabrication by DVSA staff of complaint about Mr AB's driving behaviour: Mr AB based his complaint on a video clip from the car camera which he said showed that the "incident" did not happen. He supplied this video clip to the ICA who concluded that it provided no relevant evidence of the incident since it did not cover the time when he was alleged to have driven dangerously. There was nothing to show that the initial report was falsely made and no grounds for the ICA to require the Agency to acknowledge that this

happened. The ICA recommended that:
1. The Agency make a consolatory payment to Mr AB in the sum of £500 to provide the redress required for the numerous failings identified.
2. The Agency's Chief Executive acknowledge his findings and apologise for the failings.
3. The Agency review its procedures for the handling of complaints and reports about the conduct/performance of ADIs in the light of Mr AB's experience. The procedures should clearly define roles, responsibilities and the steps that should be taken to ensure that regulatory action will be prompt, fair, thorough and objective.

A very well-handled complaint about the DVSA's response to a complaint against an off-duty ADI

Complaint: Ms AB had complained to the DVSA about the public behaviour of an ADI who she had identified by the decals on the car they were driving. She then complained that the DVSA had exceeded her consent in the extent of information it disclosed to the ADI in its investigation process (it should be emphasised that the Agency did not disclose her identity, address or contact details). The disclosure had exposed her to potential intimidation, she felt. She was also unhappy with the DVSA's decision that further investigation would be unlikely to resolve the difference in her account of the ADI's conduct and that provided by the ADI in the response.

Agency response: The DVSA initially investigated the originating allegation against the ADI in line with its standard procedure. It sent a copy of the allegation to the ADI for comment. When Mrs AB challenged the extent of information disclosed, the DVSA referred the matter to its Information Management and Security Team who made a report to the Information Commissioner. They conducted an internal investigation and upheld Ms AB's complaints that the disclosure had exceeded her stipulation. A range of remedial measures were put in place. The DVSA also informed the ADI that aspects of their conduct were of concern. A copy of the complaint would be accessible on the ADI's record for a two-year period. Unreserved apologies were offered to Ms AB for disclosing information over and above that which she had requested.

ICA outcome: The ICA felt that robust actions had followed the complaint, particularly through the involvement of the Information Management and Security Team. He commended this and the Corporate Reputation Team whose stage 2 letter to the complainant was sympathetic, informative and reflective. The ICA agreed with the DVSA that further investigation would be unlikely to resolve the difference in evidence. He noted that the complaint would be admissible evidence in light of further allegations against the ADI for two years, and that the ADI had been cautioned that their conduct was of concern to the Registrar. Given this, he could not uphold the complaint that there was un-remedied injustice.

Alleged failure to investigate complaint against ADI

Complaint: Mr AB, an ADI, complained that the DVSA had failed to undertake a proper investigation into a complaint made about him by a former pupil. In failing to do so, Mr AB alleged, the DVSA had in effect harassed him. Rather than putting the pupil to proof, the DVSA had invited the ADI's comments and allowed the complaint to remain on his entry in

the ADI register even though it had not upheld it. Mr AB furnished evidence in support of his contention that he had not been in a position to act as alleged. Mr AB widened his complaint to cover systematic harassment and victimisation by specific DVSA staff based on his opinion that a complaint he had raised some years earlier against senior staff had been upheld. He argued that the DVSA was failing to protect ADIs from harassment by customers who were levelling vexatious and fictitious complaints in order to make money.

Agency response: The DVSA had invited Mr AB to comment on the original allegation against him. It did not consider his evidence to be sufficient to dismiss the complaint because it did not seem to cover the relevant period of time. The DVSA stated that it would reconsider the position on receipt of suitable evidence that Mr AB could not have acted as alleged. However, Mr AB refused to provide further evidence and added complaints against the conduct of the staff involved to his broader complaint of harassment and victimisation.

ICA outcome: The ICA undertook a review days after receiving the referral, concluding that standard policy had been followed and there was no evidence of harassment, discrimination or victimisation. At Mr AB's request, he reopened the case to take in evidence from the previous ICA review of an earlier complaint and Mr AB's subsequent dealings with the DVSA. The ICA considered carefully accepted definitions of bullying and harassment (taken from ACAS documents) and judged that Mr AB's sense that he was being victimised was not sufficient for his complaint to succeed – evidence was needed. He did not think that the DVSA's actions approached a threshold of evidence to justify the complaint. Nor did he agree that the events and conclusions of the previous ICA review particularly supported his new complaint. Mr AB argued that references to complaints against him, held on his record, going back more than two years (contrary to what he had been told about the DVSA policy) was proof that he had been singled out for harsh treatment. The ICA established that this was standard procedure, applied to all ADIs, and that in making decisions about acting on complaints only those lodged in the previous two years were considered. The ICA did not consider that any of the arguments or evidence put forward by Mr AB had any merit. He did not uphold the complaint, but recommended that the DVSA revise what it says about the way it records complaints on its ADI register to ensure clarity.

Mishandling of concerns expressed by an ADI about allegations against him made by an examiner

Complaint: Ms AB claimed that local DVSA management had unfairly and wrongly handled allegations concerning the conduct of an ADI after an examiner stopped his pupil's test, believing it was being audio recorded. This she said amounted to "corporate bullying". Her central complaint was that the Agency's policy on relationships at work had not been properly applied since there was a clear conflict of interest in the way the matter was handled. Separately, Ms AB also alleged that DVSA staff investigating complaints against ADIs wrongly referred to the Police and Criminal Evidence ("PACE") Act 1984 Code of Practice standards in correspondence and working practices, since these governed the investigation of criminal offences not professional regulatory action. She said that the references to crime inquiry standards were heavy handed and intimidating.

Agency response: The DVSA said there were no grounds for either complaint, arguing that written accounts given by staff justified managers' actions in the first instance, which

complied with Agency policy. In relation to the second allegation, it was said that the DVSA could refer to the PACE Act and Codes of Practice made under it since the Agency needed to investigate serious complaints to obtain a good standard of reliable evidence, in the public interest.

ICA outcome: The ICA decided that the policy on relationships at work was not properly and fully applied although there was no evidence of the "corporate bullying" Ms AB had alleged. The ICA decided there were no grounds for the matter to be reopened and reinvestigated. He noted that the PACE Act and its Codes only governed investigations conducted by police officers or into criminal offences, and much of their content applies only to the treatment and interviewing of persons held in police custody. They could not, he judged, apply to the actions of DVSA staff since their regulatory investigations were not conducted by police officers, were not into criminal offences and ADIs subject to investigation were not held in police custody for the purpose. The ICA recommended that: (i) the DVSA's Chief Executive personally apologise for the identified failings; (ii) the Agency should make a consolatory payment to the ADI in question in the sum of £100; (iii) the DVSA should look into ways of reducing the likelihood of disputes arising from the implementation of its policy on the recording of driving tests, by, for example providing information to examiners about how to tell when equipment was in recording mode; and (iv) the Chief Executive should write with his personal apology for the inappropriate reference to PACE and the effects which this had had on those affected. The DVSA was asked to review its working procedures and standard documents to remove any suggestion that provisions of the PACE Act (or the Codes made under it) had legal validity or force in a non-criminal DVSA regulatory investigation.

Application of a warning marker

Complaint: Mr AB complained about the imposition upon his record of a warning marker (HS1) following a practical driving test, the conduct of an examiner at a second test, and the extent of the DVSA's investigation.

Agency response: The DVSA said it had applied the HS1 marker following concerns expressed by the first examiner, and had removed it following the second test. It said it was content that the second examiner had behaved professionally.

ICA outcome: The ICA said the initial decision to impose the marker was a marginal one, but it reflected how the examiner felt as much as how Mr AB had behaved. He had no evidence beyond what Mr AB had said that the second examiner was biased, and he was content that the DVSA's investigation had been proper and proportionate.

(iv): VEHICLE STANDARDS

Complaint that vehicle should not have passed its MoT

Complaint: Mr AB complained about the MoT on the car he had purchased. He said that corrosion on the sills showed that the vehicle should not have passed its MoT and he would not have bought the car.

Agency response: The DVSA had carried out an inspection, judging that the vehicle was roadworthy. The vehicle examiner also judged that the corrosion had suffered some interference (i.e. the holes had been enlarged).

ICA outcome: The ICA said that he could not offer any views on the technical aspects of the DVSA examination of the vehicle. The Agency did not have to inspect the vehicle but had done so, and the decision not to take further action involving the garage that carried out the MoT was reasonable. While the ICA sympathised with Mr AB if he had bought a car he no longer wanted, there had been no maladministration.

A complaint about the inspection of a brake pad that attracted a sanction

Complaint: Mr AB complained on behalf of his company that the issue of a PG9 (roadworthiness prohibition) for an excessively worn brake pad on an HGV had been based on guesswork, and that subsequent examination of the brake had shown that the thickness had been 3.5 mm at the lowest point (as opposed to below 1.5 mm which the vehicle examiner had judged it to be).

Agency response: The DVSA explained that the defect had been assessed using a mirror and that vehicle examiners were not permitted to dismantle components. The examiner concerned had been sure that most of the pad had worn off at the time of the inspection, and that the issue of PG9 had therefore been justified. Because the vehicle had been subject to dismantling and repair work by the operator, the vehicle examination outcome and sanction could not be reviewed.

ICA outcome: The ICA explained that he was not an expert on the practical assessment of compliance with the Categorisation of Defects framework. Nor could he say whose account of the condition of the brake pad was correct on the day of the inspection. In fact the DVSA's vehicle examination manager could not answer this question either as, understandably, the operator had dismantled the part after the inspection. The ICA could not therefore uphold the complaint. However, he judged that more information should be made available to operators wishing to contest the outcome of vehicle examinations. This should include a reference to the fact that a re-inspection could not occur unless the vehicle was in the same condition in which it had been inspected by the examiner in the first place.

The DVSA not responsible for damage to an immobilised vehicle

Complaint: Mr AB's lorry had been subject to enforcement action by the DVSA due to faulty lights. He complained that the vehicle had been damaged in a collision with another vehicle and that his insurer would not meet the cost. He blamed the DVSA for immobilising the lorry in a motorway services area rather than at its own check site.

Agency response: The DVSA explained that the check site had no driver facilities and would not have been a safe place to immobilise the lorry. It said that its standard risk assessment for the area had been followed and Mr AB had been required to immobilise the vehicle at a nearby services where there were facilities.

ICA outcome: The ICA asked the DVSA about its "risk assessment" and the Agency reflected that this was not a wholly appropriate description of the process followed. A formal risk assessment had not occurred, but rather the Agency had followed its standard procedure for vehicle enforcement at that location (i.e. it had followed Mr AB's driver to the services having issued the enforcement notice). The Agency has now codified its expectations of inspectors in future guidance to be circulated to all of its sites. Taking this into account, the ICA could not uphold the complaint. His view was that Mr AB had, unfortunately, been the victim of crime in the form of somebody colliding with his vehicle and not stopping to provide insurance details. This was very unfortunate but there was no evidence of negligence or malpractice on the part of the DVSA. The ICA could not therefore see that the Agency was in any way liable. He did not uphold the complaint.

The actions of a vehicle examiner

Complaint: Mr AB complained about the actions of a vehicle examiner who had carried out an unannounced inspection of his firm's vehicles. He said the Maintenance Report was inaccurate and that the examiner was in breach of the Civil Service Code.

Agency response: The DVSA said that the inspection was in line with its procedures. It identified no breaches of the Civil Service Code.

ICA outcome: The ICA said the DVSA was clearly entitled to carry out the inspection, and there were no delays amounting to maladministration. The Agency had properly engaged with Mr AB, and its complaint handling had been courteous and professional. The ICA could not adjudicate upon the inspection findings – these were matters Mr AB would have to discuss with the Traffic Commissioners.

Complaint about a failed MoT

Complaint: Mr AB complained that his car had failed an MoT on the spurious ground of faulty windscreen wipers when in fact there had been nothing wrong with them. He felt this had been a deliberate ruse by the MoT testing station. He was dissatisfied with the DVSA's responses and went on to call into question the integrity of the entire MoT testing regime.

Agency response: The DVSA explained that, because the vehicle was not in the same condition that it had been in immediately after the MoT, its policy meant that it could not consider the MoT appeal. This point was reiterated throughout the correspondence.

ICA outcome: The ICA noted the policy position and was unable to uphold Mr AB's complaint that the DVSA's position was unreasonable. He felt that the responses had been, generally, of a good standard. However, he criticised the Agency for not answering Mr AB's questions about the actions it would take in the event that he had appealed before the wiper blades had been replaced. The ICA explained the approach of the DVSA in his review, noting that a re-inspection need not occur in the original testing station and that the DVSA undertook to process appeals with haste given owners' need to use their vehicles. He did not uphold the complaint.

Safety recall not related to fire in car

Complaint: Mr AB's vehicle was the subject of a safety recall. Unfortunately, before the recall took effect, a fire broke out in his engine and the car was written off by his insurers. An inspection by two engineers concluded that the cause of the fire was not related to the cause of the recall. Mr AB disagreed and criticised the DVSA's handling of the matter.

Agency response: The DVSA said that it was content with the engineers' findings. It advised Mr AB to approach the manufacturer.

ICA outcome: The ICA said he was concerned by the stop-start nature of the recall, and the DVSA might need to consider taking a more robust approach to manufacturers - especially if they would not share inspection reports with 'third parties' like the DVSA. However, the ICA saw no reason for the DVSA to commission its own report - it was known that there was a safety issue, but whether that was behind the fire in Mr AB's car was another matter. Mr AB could commission his own report, at his own expense, but the ICA said that if this came to a different conclusion then he would expect the Agency to respond sympathetically to a request from Mr AB for reimbursement.

Complaint about prohibition notice

Complaint: Mr AB complained about a prohibition notice imposed on his trailer for faulty brakes. He also said he had been left all night with the trailer, and denied being offered refreshments or use of the toilet facilities.

Agency response: The DVSA said the prohibition notice had been correctly imposed. It added that it was Mr AB's choice to stay with his vehicle overnight (he was carrying a valuable load), and repeated that its staff had done everything to make Mr AB comfortable.

ICA outcome: The ICA said he could not say authoritatively that the prohibition notice had been correctly imposed, but he was entitled to rely on the vehicle examiner's expertise. It was clear that repairs had subsequently been carried out. The various accounts of DVSA staff also all suggested that Mr AB had been offered refreshments.

Complaint about fixed penalty notice

Complaint: Mr AB complained about a fixed penalty notice (FPN) imposed by a DVSA vehicle examiner (VE) for a faulty tyre on a trailer. He accused the examiner of being rude and patronising, and of trying to be intimidating.

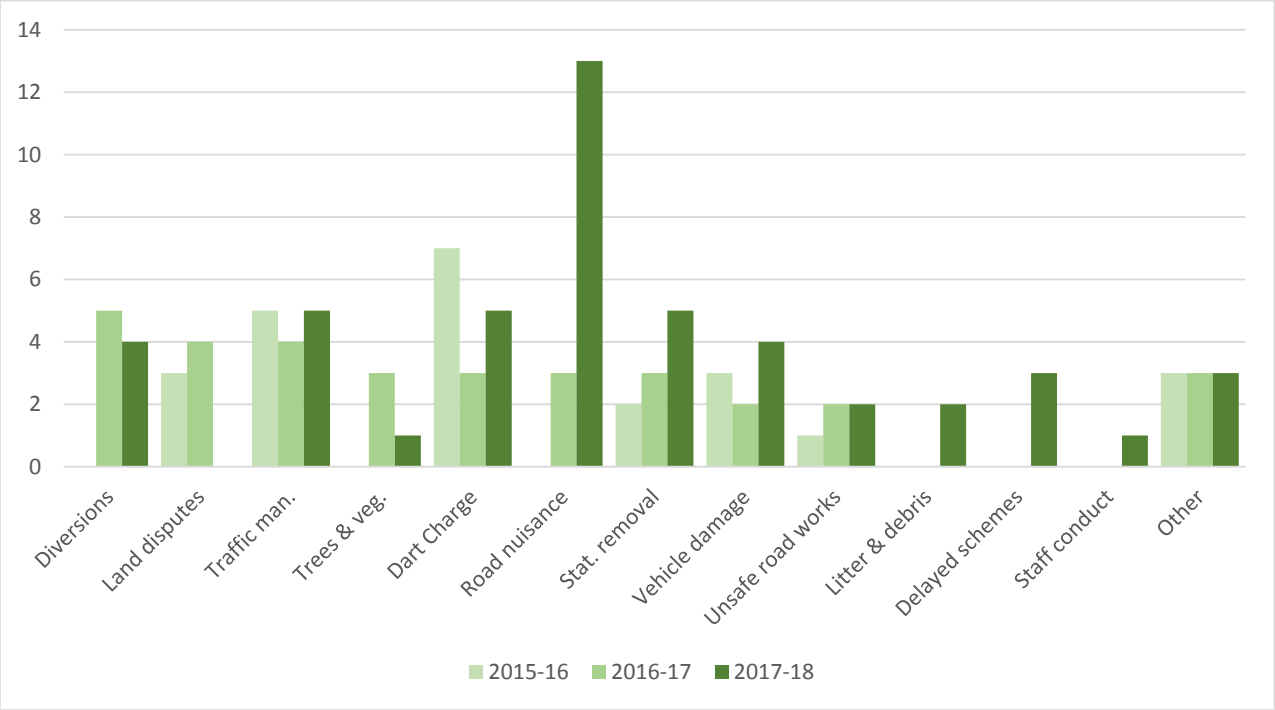
Agency response: The DVSA said the fixed penalty notice had been correctly imposed by the VE. Mr AB was challenging the FPN though the courts, but he was also entitled to use the complaints procedure in line with the Enforcement operations manual Section 58 – Graduated fixed penalty and deposit scheme.

ICA outcome: The ICA said the question of whether the FPN was correctly imposed was one for the courts. However, the ICA acknowledged that there appeared to be a significant difference of opinion between the DVSA's vehicle examiner and the four independent tyre companies consulted by Mr AB as to the depth of the tread on the tyre in question. Moreover, while the DVSA had properly reviewed Mr AB's complaint, its correspondence had failed to answer all his questions. For this reason the ICA part upheld the complaint, and recommended further correspondence from the DVSA to cover the outstanding matters.

4. Highways England casework

4.1 The 49 complaints we received from Highways England in the year represented a continuation of the steady increase of recent years, as illustrated by Figures 2 and 7.

Figure 7: Highways England complaints, 2016-17, 2017-18 and 2018-19, by main topic



4.2 The most significant rise in ICA-reviewed complaints is in the category of road-related nuisance (vibration, pollution and noise). Six of these cases were about the nuisance created by normal road use (and Highways England's failure or refusal to mitigate it satisfactorily by road surface improvements or property-specific measures). Others concerned specific programmes undertaken on the network including smart motorway works and road widening schemes. Clearly Highways England's significant infrastructure investment is not welcomed by all of its neighbours, several complainants having had dealings with staff and contractors spanning years.

4.3 The ICA administrative justice and customer service foci do not mesh readily with many Highways England complaints. This is partly because Highways England's response to contested matters – for example the timing and extent of noise from works – will often be informed by local Customer Plans and Project Control Frameworks rather than administrative quality measures. The PHSO Principles are not readily applicable to the underlying grievance (as distinct from Highways England's administrative responses to it). We are not in a position, for example, to insist that nuisance is excessive if HE shows that its own triggers are not met. Nor can we test claims made by Highways England that its measures are working well and in line with the relevant standards and rules.

4.4 Technical matters – such as the most appropriate road surfaces – or the decisions of professional Traffic Officers also do not sit easily within the ICA remit. And it is a

simple statement of fact that a degree of delay, disruption and inconvenience is the lot of every road-user when major construction schemes are in place.

4.5 Although we actually handled more DVSA cases, our average completion time for Highways England complaints was two hours longer per case (6hrs:23mins for Highways England cases and 4hrs:23mins for DVSA cases). This reflects the greater variability of Highways England referrals, and the fact that many involve those with interactions with the company going back many years.

4.6 Table 3 compares the ICA review outcomes from the year with those of 2017-18.

Table 3: Highways England complaints, 2018-19 (and 2017-18), by main topic & ICA outcome

	Not upheld	**Partially upheld**	**Fully upheld**	**Total**
Road nuisance	9 (2)	3 (1)	1 (0)	13 (3)
Traffic management	3 (4)	2 (0)	0 (0)	5 (4)
Dart Charge	3 (1)	0 (2)	2 (0)	5 (3)
Stat. removal	4 (1)	0 (1)	1 (1)	5 (3)
Diversions	1 (2)	1 (1)	2 (2)	4 (5)
Trees & veg.	1 (0)	0 (1)	0 (2)	1 (3)
Vehicle damage	2 (0)	1 (0)	1 (1)	4 (1)
Unsafe road works	0 (0)	2 (2)	0 (0)	2 (2)
Litter & debris	2 (0)	0 (0)	0 (0)	2 (0)
Delayed schemes	2 (0)	1 (0)	0 (0)	3 (0)
Staff conduct	1 (0)	0 (0)	0 (0)	1 (0)
Land disputes	0 (2)	0 (2)	0 (0)	0 (4)
Other	1 (2)	3 (2)	0 (0)	4 (4)
Total	**29** (12)	**13** (12)	**7** (6)	**49** (24)

4.7 Our main recommendation areas in Highways England cases were:

- Consolatory payment (8, between £75-£350)
- Compensation (3)
- Provide a better explanation (3)
- Change published information (3)
- Change systems (2)
- Apology (2)
- Complaint handling (3)
- Other (3).

4.8 In the case studies that follow, we refer occasionally to Highways England as the company.

CASES

Poor complaint handling following a complaint about lack of signage

Complaint: Mr AB complained about the lack of signage on the motorway regarding a road closure. He said that in consequence he had to make a long detour and was caught in heavy traffic.

Highways England response: Highways England had drafted a stage 2 response but had neglected to send it, so Mr AB had to chase. An apology had been offered. The stage 2 response accepted that the signage could have been better.

ICA outcome: The ICA upheld the complaint in full. An opportunity had been missed to prevent Mr AB becoming entangled in traffic. The stage 1 response was incomplete. The stage 2 was not sent and might never have been had Mr AB not chased. And the opportunity of making a consolatory payment at stage 2 had been missed. The ICA said that in like complaints in the future, he hoped that Highways England would offer a consolatory payment as this would be in line with the PHSO Principles and might avoid the inconvenience for the complainant of an ICA referral.

Faded white lines on the carriageway

Complaint: Mr AB complained that white lines on a section of the trunk road network were obscured. He said this presented a road safety hazard, especially at night.

Highways England response: Highways England agreed that the white lines were in need of repair, and had arranged a temporary fix. But it said that a full repair would have to stand alongside other priorities for resources.

ICA outcome: The ICA said it was not maladministrative for Highways England to take a different view than Mr AB about how bad was the stretch of road in question, or a different view of the priorities for public spending. The company had engaged with Mr AB several times over the phone, and this was good practice. However, it appeared this had meant that Mr AB's formal requests for escalation had not been acted upon. (The company subsequently agreed that good practice would be to phone and then follow up in correspondence.)

Removal of litter from the motorway

Complaint: Mr AB complained about the performance of Highways England in removing litter from the motorway network. He said the company was not meeting its statutory duty under the Environmental Protection Act 1990.

Highways England response: Highways England and its contractor had apologised that some litter clearance had not gone ahead as planned. It agreed that the level of litter in some places was unacceptable.

ICA outcome: The ICA said many motorists would sympathise with Mr AB's campaign. However, as an ICA he could not say whether statutory obligations were being met, nor whether the company was exercising sufficient oversight of its contractor, nor whether the policies it followed in respect of litter clearance were the correct ones. However, he was able to report changes in Highways England's approach to these matters that could well have resulted from Mr AB's correspondence. The company's handling of that correspondence had been courteous, but the ICA was concerned that the contractor had used stock wording in two of its letters, and therefore recommended that a copy of his report be shared with them to help prevent any recurrence.

Delay in completing repairs to a trunk road

Complaint: Mrs AB complained about delays in completing repairs to a trunk road. She said that it would be more than two years by the time they were completed, and drivers were ignoring the temporary speed limit. She accused Highways England and its contractor of failing to take responsibility.

Highways England response: The company said that the repairs had indeed taken longer than first anticipated. However, this was because there had been complications and a like-for-like repair would not meet current standards.

ICA outcome: The ICA said he could not assess the technical aspects of the road repair, but it was clear that Highways England's initial expectations of how long the works would take had not been met. He did not agree that Highways England and its contractor had not taken responsibility, and commended the way they had engaged with Mrs AB. However, he identified two delays in the correspondence with Mrs AB and part upheld the complaint on that basis.

Speed limit on a section of smart motorway

Complaint: Mr AB complained that the 50mph speed limits set on the M25 had been unnecessary, and that the limits signs had been illuminated too early.

Highways England response: Highways England had initially said that the restrictions followed the unconfirmed report of an obstruction. In its much more comprehensive stage 2 reply, it said that the restrictions were a consequence of both the reported obstruction and the operation of the MIDAS (Motorway Incident Detection and Automatic Signalling) system in response to congestion.

ICA outcome: The ICA said the operation of MIDAS and the longstanding practice of imposing 50mph limits if there is an unconfirmed report of an accident or incident were Highways England policies on which he could not comment. He was content with the stage 2 reply which was comprehensive, but critical of the stage 1 which was brief and did not refer to MIDAS at all.

Highways England's traffic management after a tragic multi-vehicle accident

Complaint: Mr AB complained that Highways England had completely mismanaged diversions implemented in the aftermath of a catastrophic accident on the M5 in which four people died at the scene. In particular, he disputed the site of the junction at which traffic was diverted off the northbound carriageway, arguing that it contravened established and agreed procedures. Through FOI and enquiries of the police and Highways England, Mr AB conducted his own investigation and highlighted inconsistencies between the Highways England incident bulletin, the incident debriefing notes, diversion planning documents and the complaint responses. Mr AB felt that Highways England had completely failed to monitor the impact of the diversions it had imposed. He thought that the site of the diversion had been a mistake made in the aftermath of the emergency, compounded by a failure to monitor and revise the diversion strategy. Mr AB sought a public apology for the mismanagement of the post-accident scene. He also argued that Highways England had acted unlawfully in maintaining a diversion after the critical incident had been managed, and failed in its duty to reduce congestion.

Highways England response: Highways England responded over a six month period to Mr AB's questions and requests for documentation. He attended the Regional Control Centre and was shown the CCTV and MIDAS technology used to relay data to operational staff. In its formal complaint responses, Highways England explained that it had worked in close partnership with the police throughout, and that it had been the police that had requested the location of the original closure. Highways England reflected that it should have reconsidered the location of the closure on the night after the accident. However, it concluded that the closure would have remained in the same place because of safety considerations and to avoid collateral accidents related to diversions.

ICA outcome: The ICA spoke with Mr AB and Highways England and examined the documents. He agreed with Mr AB that the corporate responses to the complaint did not encompass the full breadth of information disclosed through FOI and through Mr AB's enquiries. However, he also noted that Mr AB had fallen into error in his analysis of the documentation. In this regard, the ICA noted that the "cards" setting out the approved diversion routes were not prescriptive in terms of where the diversion should be located, but rather tools to employ after an incident-specific decision had been made. The ICA also attached more credibility to Highways England's concerns about diversions causing accidents because the company had many years of experience of managing the network. The ICA could not adjudicate upon Mr AB's contention that Highways England had acted unlawfully, but he did not think it plausible. The ICA argued that Highways England should not be afraid to be upfront with customers that its own post-incident analysis process is iterative, and that frank exchanges of views are necessary in order to deal with similar situations in the future. Mr AB's complaint had intersected with Highways England's post-incident internal dialogue. The ICA recommended that Highways England should introduce steps to ensure that its complaint responses were proportionate to the level of detail presented in the complaint. He commended Highways England for the resolution meeting, but noted that his own review would have been considerably assisted by a record of it. Finally, he recommended that Highways England should address Mr AB's outstanding five questions. He partially upheld the complaint.

A complaint about noise from barrier removal

Complaint: Mr AB complained about noise from motorway roadworks carried out at night. He said the workmen had spoken to him discourteously, his address had been excluded from a letter drop, emails had gone astray, the phone had been put down on him and there had been bullying by Highways England in its response to him and his neighbours.

Highways England response: Highways England had acknowledged there had been noise (angle grinders had been used to remove old barriers). It said staff were to be trained in being courteous to residents, and that Mr AB's address would be included in any future letter drop. It said it had found no evidence that the phone had been put down on Mr AB, and had re-sent emails that had not arrived.

ICA outcome: The ICA said that he could not sensibly comment on the time the works were carried out, the use of angle grinders, or means to reduce the noise pollution. These were technical matters. On the service elements of Mr AB's complaint, the ICA said he was content with the actions of Highways England, and the actions taken, and could discern no maladministration. It was clear that Mr AB's sleep had been disturbed and he had been inconvenienced. But he could discern no 'bullying' by the company, and assumed the term had been used rhetorically.

A complaint about noise insulation

Complaint: Mr AB complained that he had been excluded from a noise insulation programme as Highways England had miscalculated the number of properties in the Noise Important Area (NIA) in which he lives.

Highways England response: Highways England said that it could only offer noise insulation in NIAs with fewer than ten properties. The mitigation for Mr AB was re-surfacing. Highways England said that the NIAs were drawn up by the Department for Environment, Food and Rural Affairs (Defra).

ICA outcome: The ICA found some delay in handling Mr AB's complaints, but it was not maladministrative for Highways England to use limited funds to achieve the greatest benefits in the highest priority areas. However, he identified a disparaging remark about Mr AB in the paperwork, and recommended that the chief executive remind staff that such remarks about customers should never be made and that internal emails are potentially disclosable (as they were here). He also recommended an apology. On the substantive issue, the ICA found that there had been uncertainty amongst Highways England staff about the number of properties in Mr AB's NIA, and this did not command confidence. He was also impressed by data supplied by Mr AB that showed that one part of the NIA was not suffering from undue noise pollution. However, this was a matter for Mr AB to pursue with Defra. It was not for Highways England to develop its own noise maps or re-align those produced by Defra. The ICA recommended that, if Mr AB could persuade Defra to realign its NIA, then Highways England should sympathetically reconsider whether he and other residents were now entitled to noise insulation.

Flooding of a property caused by a blocked drain

Complaint: Ms AB complained about flooding to her home caused by a blocked drain that was the responsibility of Highways England. She said the company had knowingly allowed her property to remain vulnerable to flooding by not carrying out the remedial works in good time. She also complained that Highways England was developing plans for a stretch of smart motorway with a silo mentality, and without proper consideration of what she believed would be increased surface water run-off.

Highways England response: Highways England said that the necessary repairs had been completed within five months of the first flooding incident. It said that plans for the smart motorway would include measures to restrict water run-off, and that it was engaging with local stakeholders.

ICA outcome: The ICA could not make technical judgements about the impact of the smart motorway or the manner in which flood mitigation measures had been implemented. However, it was clear that Highways England was engaged with the local community and intended to continue doing so. It was also apparent that remedial works had been carried out to clear the drainage. It was unclear whether those works could have been conducted more quickly, and whether Ms AB had been told this would happen, as the relevant records had been auto-deleted after two years. (The fact that the contractor had no knowledge of the flooding or Ms AB's call to the contact centre suggested, on the balance of possibilities, that this was the case.) However, given the uncertainties, the ICA did not feel able to offer any redress beyond the findings of his report. He also found some of the complaint handling to be odd, but Ms AB had suffered no detriment in consequence, and Highways England had revised its complaints procedure since the events giving rise to Ms AB's complaint.

Resurfacing alleged to have increased noise pollution

Complaint: Mr AB complained about the noise from part of the strategic road network. He said it had actually increased since resurfacing had been carried out.

Highways England response: Highways England had initially said that Mr AB might be eligible for noise insulation, but had subsequently acknowledged that this was in error. A meeting had been organised between Mr AB and one of Highways England's environmental specialists and a member of staff from the contractor. It said the resurfacing had been done to the appropriate specification, and that no noise mitigation measures were currently planned for the stretch of road concerned.

ICA outcome: The ICA said he had a lot of sympathy for anyone affected by road noise. However, he could not offer a view on the technical specifications of the road surface, nor question the spending priorities of Highways England in respect of noise mitigation. However, he part upheld the complaint because of the incorrect information Mr AB had originally received, and because there were some flaws in the complaint handling. In response to his recommendation, Highways England had taken measures to ensure that there was always escalation to a more senior member of staff when a customer deployed various avenues to complain.

The costs of statutory removal

Complaint: Mr AB complained about the costs that his company incurred when an LGV was subject to statutory removal from a slip road on the motorway. He said his company's engineers were en route to the scene.

Highways England response: Highways England said that the removal was reasonable as the traffic officers did not know when Mr AB's technicians would arrive and the vehicle was blocking a live lane. The company said the charges were laid down in statutory Regulations.

ICA outcome: The ICA agreed that the decision of the traffic officers was reasonable, and that the charges (some £4,500) were set out in statute. There was no discretion available to Highways England in respect of these fees. While he sympathised with Mr AB, he identified no maladministration on the part of Highways England.

Information about statutory removal from motorway

Complaint: Mrs AB complained about the disposal of a vehicle removed from the motorway. She accepted that the removal was correct but said the vehicle's foreign driver and owner had never been told that the vehicle would be disposed of.

Highways England response: Highways England had referred to the statutory powers under which vehicles can be removed and disposed of if not claimed. However, its internal messages acknowledged that there was no standard wording used in its texts to vehicle owners, and it was agreed to include wording referring to the Secretary of State's powers to dispose of vehicles not collected within seven days. There was also internal debate about the best way to respond to the complaint.

ICA outcome: The ICA said that Highways England had followed its standard procedures but those procedures had been found wanting. The texts sent to the vehicle owner gave no indication there was a time limit within which he had to recover his vehicle. This had now been remedied - for which Highways England deserved credit - but at the time in question there was a gap in the process. The current text of the leaflet given to drivers was also unsatisfactory as it too made no mention of the power to dispose of vehicles and the time limits that apply. And the leaflet had references to secondary legislation which, while doubtless well intentioned, would defeat the vast majority of drivers. He recommended that the leaflet be revised as a matter of urgency and that Mrs AB be invited to submit a compensation claim. The level of compensation was not for the ICA to adjudicate upon, as Highways England would obviously wish to see evidence of any sums paid by the driver's insurance company.

Property blight near site of possible lorry park

Complaint: Mrs AB and her family live close to a site that Highways England had considered for a lorry park to replace Operation Stack. When that scheme was abandoned by the Government, Mrs AB said that her property remained blighted. She sought the help of Highways England in purchasing her property at the un-blighted price.

Highways England response: Highways England said it had no powers to purchase Mrs AB's property or to compensate her for the reduced proceeds from a private sale. The company had offered Mrs AB a lot of personalised support, but there was now no lorry park scheme in place and no possibility of buying the property.

ICA outcome: The ICA was impressed by the support offered to Mrs AB. However, it appeared that her property remained very significantly blighted as a result of potential buyers' fears that the lorry park scheme - or a variant thereof - would be reinstated. He said that he had a lot of sympathy with Mrs AB and fellow villagers. However, he could not say that Highways England had acted maladministratively. The only option that had not been explored was to ask HM Treasury if they would consider a special scheme to compensate Mrs AB and other villagers. Although unable to uphold the complaint, he recommended accordingly.

Damage caused by debris

Complaint: Mr and Mrs AB complained about damage to their vehicle which they said was caused by debris on the carriageway as a result of a road scheme. They asked for compensation**.**

Highways England response: Highways England said there was no evidence that the damage was caused as a result of maladministration on its part or its contractors. Responsibility rested with whoever had placed the debris on the ground or allowed it to be deposited there.

ICA outcome: The ICA said he could not be certain how the damage was caused. But photographs provided by Mr AB seemed to show debris on the carriageway and an absence of the wheel-washing that Highways England had said was in place. He recommended that Highways England make an ex gratia payment to Mr and Mrs AB and this was agreed. Unfortunately, it was many months before the payment was made, and Mr AB had to approach the ICA once more before the matter was finally resolved.

A dramatic improvement in the handling of a customer's concerns about noise nuisance following the involvement of a Highways England director

Complaint: Mr AB complained of years of noise, intrusive behaviour from contractors that included trespass on his property, and a general lack of consideration of his situation living close to a motorway that was being turned into smart motorway. He felt that his complaints had been dismissed and that the contractor and its insurers had been particularly discourteous. Mr AB told the ICA that matters had improved considerably during the span of the review. However, he remained dissatisfied with the overall quality of community engagement and responsiveness that he had experienced in the preceding two and half years.

Highways England response: Highways England and its contractor undertook various works to attempt to address Mr AB's concerns including site inspection, tree planting, providing new fencing and instructing staff about the correct way of accessing Highways

England land. Mr AB was also told how to apply for noise insulation. Highways England and its contractors repeatedly met Mr AB on site before referring his case to a director, an approach which was highly effective in ensuring speedy and effective responses to his concerns. In addition, the company took steps to reduce the visual impact of lighting, fencing and rails installed near to Mr AB's home.

ICA outcome: The ICA welcomed recent developments, in particular director level liaison. However, he felt that a good level of service should have been forthcoming much sooner in the process. It had taken a long time for the penny to drop that Mr AB owned the private road as well as the land that Highways England contractors were using freely to access the site. The ICA recommended that Highways England take further steps to ensure that its contractors understood that they could not just turn up at Mr AB's property unannounced and tramp over his land. The ICA commended the many genuine efforts to address Mr AB's concerns. Like Mr AB, however, he could not believe Highways England's claim that noise had reduced when it had opened up a new live lane closer to the curtilage of Mr AB's property. He welcomed the fact that Highways England was engaging specialist staff to provide a further review of the noise nuisance complaint, and he recommended that Mr AB's complaint about poor acoustic fencing be addressed. He also made recommendations relating to the handling of outstanding complaints, including those relating to Mr AB's claim to the contractor's insurers. Given that Mr AB consistently had to push for responses, the ICA felt that his complaint was justified and upheld it accordingly. He recommended that a consolatory payment of £350 should be made to underline Highways England's regret at the failings highlighted, and that his case should be used to review the quality of stakeholder engagement provided by its contractors.

Complaints about construction nuisance handled in an exemplary way

Complaint: Mrs AB complained that Highways England and its contractors were creating unacceptable noise and air pollution in the vicinity of her home close to a major infrastructure project on a trunk road. She objected in particular to night working during the run up to her children's exams. She said that Highways England was in breach of its communication duties under the relevant construction code, and she highlighted poor and inconsiderate practice by contractors. She also said that Highways England had victimised her by reducing its level of community engagement in response to her representations.

Highways England response: Highways England accepted that its communications had been poor at times. It developed a system of providing updates through a weekly telephone conference as well as daily and weekly emails to residents. Highways England also made public exhibitions available, and liaised with the local Council (the authority with responsibility for policing noise pollution) and the Member of Parliament and local councillors in addressing concerns from the community where Mrs AB lived. Highways England also provided secondary glazing to Mrs AB and her neighbour's home. It apologised repeatedly for the failings highlighted by Mrs AB. In addition, Highways England established an anonymous online register of complaints raised against it and the local Council, so that members of the community could see easily what had been complained about and the actions taken as a result.

ICA outcome: The ICA spoke to Mrs AB and to Highways England. He agreed with Mrs AB that the initial communications from Highways England had not been compliant with

the construction code. He was pleased to note the changes that were implemented as a result of Mrs AB's complaint. He also commended Highways England's own reflection that it could have done better. Many residents had only become aware of the major upgrade scheme when an extensive programme of tree removal was implemented. Highways England had, the ICA judged, been working hard to win back the trust of the community after this inauspicious start. The ICA also spoke to the national director with responsibility for engagement and agreed that Highways England could do more to ensure that learning was disseminated to its stakeholder liaison teams, particularly given the scale of construction that was envisaged over the coming years. He recommended accordingly.

Another complaint about construction nuisance

Complaint: Mr AB, who lived very close to a smart motorway construction scheme, complained of noise and vibration nuisance. He called into question the evidence put forward by Highways England and its contractor that nuisance levels were within acceptable thresholds. He argued that cracks had developed in his walls and ceiling as a result of works, and that the fact that the fourth lane (previously the hard shoulder) would be permanently open had not been made clear.

Highways England response: Highways England maintained that it was working within the relevant thresholds and that mitigation was not necessary. The project manager visited Mr AB with the contractor and steps were taken to minimise noise in the vicinity of his home. Mr AB had the right to apply for compensation under part 1 of the Land Compensation Act 1973. Highways England and its contractor placed vibration monitoring equipment in his garden and established that levels were considerably below the threshold for damage to buildings. It therefore declined to compensate him.

ICA outcome: The ICA considered that although there were some lapses, Highways England's administration had been of a reasonable standard. The ICA did not see that there was any ground to criticise Highways England for holding the line that mitigation measures were not indicated. He did not uphold the complaint.

Hole in the road surface after director intervenes personally

Complaint: Mr AB lived close to a bridge with a hole in the road surface that had persisted despite numerous efforts at repairing it. He complained of significantly intrusive banging noises that kept him and his wife awake.

Highways England response: Highways England and its contractor visited the site and confirmed that, although the hole was safe and was being maintained within the parameters of the contract, it was creating a nuisance and a repair needed to be effected. Mr AB was initially given an assurance that a lasting repair would occur within the coming financial year but, after a personal intervention by the responsible director, a lasting repair was made approximately six months after Mr AB had complained.

ICA outcome: The ICA considered that the root cause of the problem may well have been related to technical matters concerning the construction of the bridge and the road surface. He was not competent to comment on those issues. He considered that he administrative

aspects had been handled extremely well, with clear evidence of customer focus and concern displayed by the senior staff involved. He hoped that the repair would be lasting and that Mr and Mrs AB would not be troubled in future.

Speed limit on smart motorway

Complaint: Mr AB complained that an inappropriate 20 mph speed limit had been set on a smart motorway in the early hours of the morning (following a recent severe crash where four people had died) when he was driving in his lorry. He had been prosecuted for exceeding the limit. Mr AB said the sequence of limits preceding a total motorway closure had been 60, 40, 20 and then 40 mph on the exit slip road. He argued that this sequence was not logical nor justified as he approached the exit - the motorway ahead was closed and coned off anyway and the presence of cones on the highway should have obviated the imposition of a speed limit. Although Highways England had admitted its staff made the wrong decision, he remained dissatisfied because he did not feel an apology alone was sufficient remedy. The prosecution had cost him over £1,500 as well as four penalty points and two days off work attending court and staying in a hotel.

Highways England response: Highways England explained how variable speed limits worked and underlined the fact that it fell to the police to make the final decision on enforcement action. The circumstances where a 20mph limit might be imposed were outlined including total carriageway closure. Highways England initially defended the variable speed signalling before admitting that its operator should have applied a motorway divert which would have orientated drivers to the need to leave the carriageway. This had been identified in the post incident debrief. Highways England accepted that its earlier responses had been substandard.

ICA outcome: The ICA noted that a court had imposed the penalty on Mr AB for breaking a legally enforceable speed limit. The ICA had no jurisdiction to challenge a decision made with legal authority. The ICA upheld the complaint to the extent that a serious error was made by Highways England that contributed to the situation whereby enforcement was applied to Mr AB and hundreds of other drivers. He welcomed Highways England's apologies and admission that the variable mandatory speed limit (VMSL) in contention was due to a local misunderstanding of the process that should be followed after 'hard' temporary traffic management (cones and signs) is fully installed. He also welcomed the fact that the staff involved had been instructed in the correct procedure (and also that the clear deficits in the stage 1 complaint response had been admitted and rectified). He recommended that Highways England issue a public apology to all those drivers affected, along with contact details to encourage drivers in future to let Highways England know when they think the company has got it wrong in its operation of VMSL. He also recommended that Highways England review its debriefing procedures to ensure that the potential speed enforcement aspects of errors in VMSL are identified and mitigated as far as they can be (given the instrumental role of other agencies in the prosecution process). Given the significant contribution by Highways England to the delay in the issuing of the review, he also recommended that Highways England made Mr AB a consolatory payment of £50.

Noise nuisance from motorway

Complaint: Mrs AB complained about noise nuisance from the motorway near her home and repeatedly asked Highways England to provide a close boarded fence on the boundary to mitigate the sound. She lived in a designated Noise Important Area. Highways England refused to do this, proposing instead enhanced glazing for the doors and windows in her home. Mrs AB contested this decision.

Highways England response: Highways England's asset managers reiterated the view over the years that glazing was the most appropriate noise mitigation. Mrs AB contrasted the company's messages with what one of her neighbours had been told, and requested a review of the position and a site visit. One of Highways England's divisional directors wrote to her explaining why a visit and site measurements would not provide genuine or credible reflections of the long term noise levels, but rather a snapshot. Unfortunately, there was then a delay in the referral of the case to the ICA of several months due to an error by Highways England's complaints team.

ICA outcome: The ICA referred to Highways England's approach to assessing eligibility and arranging mitigation of noise nuisance. It emphasised that eligible properties will be identified by Highways England and the owner/occupiers informed about how to apply. This policy did not include noise barrier fencing. The ICA concluded that Mrs AB was not eligible for noise barrier fencing under Highways England's policy. However, he found that she should have been approached directly with an offer of noise insulation; it was an administrative oversight that this had not happened. He recommended that this, and the delay in ICA referral, meant a consolatory payment of £250 should be made to Mrs AB. He also recommended that Highways England should provide a suitable apology, and that a senior manager should monitor the performance of the company's contractors providing noise mitigation works to Mrs AB and her neighbours to ensure a prompt and effective response.

Penalty notices from Dart Charge

Complaint: Mrs AB complained that she and her husband had received Penalty Charge Notices from Dart Charge to their address but in the name of someone who did not live there. They said that the enforcement agents had stopped sending the notices but, when Dart Charge had changed enforcement agents, the whole process had started again. She said that Dart Charge had told her that the new agents had obtained the address for the vehicle keeper from the DVLA, but Mrs AB said this was not possible as the DVLA had amended its record.

Highways England response: Highways England had apologised and ensured that the new agents would send no further correspondence to Mrs AB's address.

ICA outcome: The ICA said it was clear why Mrs AB had found this matter so wearisome. However, the initial contact from the enforcement agents was not maladministrative as they had approached the person and address shown on the DVLA vehicle record. On the other hand, insufficient care had been taken when new enforcement agents had been contracted. And, having approached the DVLA, the ICA said he did not think what Mrs AB had been told was correct. He put this to Highways England who acknowledged that the new agents had not approached the DVLA as Mrs AB

had been told. The ICA recommended a further apology and a consolatory payment of £100 for the inconvenience caused.

Entitlement to Dart Charge discount

Complaint: Mr AB had applied to join the Dart Charge Local Resident Discount Scheme, and his application had been accepted. However, it subsequently came to light that his home was outside the eligible area and his entitlement was withdrawn. Mr AB said that as the mistake had been made by Dart Charge he should have been allowed to remain on the scheme for the full 12 months.

Highways England response: The company said that it had refunded Mr AB the fee he had paid, and he had benefited from the reduced charges for six months. However, while apologies were offered, the company said that only those who came within Thurrock and Dartford councils were eligible for the scheme.

ICA outcome: The ICA said he sympathised with Mr AB - who lived closer to the Dart Crossing than some of those who were eligible for the scheme. However, its terms were not something he could address, and he could not endorse Mr AB's claim to be made a special case. However, the ICA was not satisfied that the information relation to the scheme on gov.uk was sufficiently clear. Eligibility did not derive from living in Dartford or Thurrock (Mr AB had a Dartford postcode), but from coming within the relevant local authority boundary (which Mr AB did not).

Errors by Dart Charge

Complaint: Mr AB complained that because of two errors by Dart Charge (his auto top-up facility for Dart Charge was not activated, and credit card details were not updated) he received 15 FPNs. He wanted to be reimbursed for his time in making his complaint.

Highways England response: Highways England had waived all the FPNs, apologised, and offered £50 as what it called 'compensation'.

ICA outcome: The ICA referred to the relevant guidance and said that Highways England was not responsible for meeting the costs of Mr AB's time in pursuing his complaint. However, its offer of £50 was too low given the two acts of maladministration and the inconvenience caused. He therefore increased the consolatory payment to £150.

Allegation of roadworks misery

Complaint: Mr AB complained about traffic management affecting a motorway. He described "roadworks misery" and said those working on the scheme were "out of control". He listed ten separate issues he wanted addressing.

Highways England response: Highways England said that it had consulted with local authorities and others. Cones were removed once this process of consultation was complete.

ICA outcome: The ICA said he had found no maladministration on the part of Highways England. The company had provided detailed answers to Mr AB's questions, and the quality of its correspondence was very high, although it would wish to consider further how best it engaged with road users.

Vibration and noise problems

Complaint: Mr AB had lived near a major trunk road for 20 years. His home is 200 years old with, he said, minimal foundations. When the case was considered by the ICA, Mr AB had been in contact with Highways England for four years in relation to vibration and noise problems from the road that had significantly reduced his quality of life. The essence of his current complaint was that Highways England had failed to solve a vibration problem that had led him to feel trapped in his home, suffering increasing stress and mental health problems.

Highways England response: Highways England 's newly appointed Service Delivery Manager undertook to arrange vibration testing at Mr AB's property but procurement problems delayed this for six months. Highways England staff visited Mr AB's home repeatedly, including with an independent testing company who found no evidence of vibration that could affect the structure of the building or cause nuisance to humans. Over the four years concerned, Highways England undertook repeated repairs to the road surface near Mr AB's home in an effort to mitigate noise and vibration, but he consistently reported worsening problems.

ICA outcome: The ICA noted that, at various points, Mr AB had needed to chase matters along himself. The ICA felt that the Service Delivery Manager in particular had not been sufficiently resourced to provide the necessary level of service to Mr AB. He commended Highways England for arranging the independent testing and saw no grounds to doubt the outcome. He asked Highways England to be specific about the repair of cat's eyes near Mr AB's home, but could not uphold the complaint nor see any scope for a more detailed review to reach a different conclusion given the technical considerations at the heart of the complaint.

Delays caused by roadworks

Complaint: Mr AB complained about delays caused by roadworks. He said that at times very little work seemed to be taking place.

Highways England response: Highways England said that there were times when the new road surface could not take traffic for a period after resurfacing, and that it was not always safe or efficient to remove and then replace cones.

ICA outcome: The ICA said he could not substitute his lay view for the professional judgement of road engineers. He could identify no maladministration on the part of Highways England, and commended the company's efforts to try to resolve the matter by a phone call or face-to-face meeting. Any driver would understand Mr AB's frustrations, but inconvenience and delay were the almost inevitable consequences of major infrastructure

schemes. The ICA also commended Highways England's courteous and comprehensive replies to Mr AB's complaint, and the fact that he had been able to access the third, independent tier within one month.

Communication with customers

Complaint: Mr AB complained about scheduled motorway closures. However, his principal grievance was about the way that Highways England communicates with its customers. Mr AB cannot use the internet and electronic devices, and said that Highways England was in breach of the Equality Act.

Highways England response: Highways England had acknowledged that previous agreements as to the way the company would engage with Mr AB had not been met. But it argued that it had answered all his questions.

ICA outcome: The ICA considered that Mr AB had been given comprehensive and accurate information on the scheduling of planned roadworks on the motorway. However, while he could not adjudicate on Mr AB's contention that the Equality Act had been breached, it was apparent that past commitments had not been met. The ICA also identified other shortcomings in Highways England's correspondence with Mr AB. On those grounds, he part upheld the complaint but he judged that sufficient redress was afforded by the findings of his independent report.

Lack of signage

Complaint: Mr AB complained that a lack of hard signage indicating the planned closure of part of a motorway meant that he was significantly delayed in getting his son to a pre-booked train. In the event he missed the train. This necessitated the purchase of a new ticket and considerable frustration and stress as well as fuel costs occasioned by the fact that Mr AB had to double back on himself with hundreds of other motorists. Mr AB had spoken to someone he thought was a contractor for Highways England at the roadside who told him that Highways England did not have enough money for the necessary signage.

Highways England response: Highways England refuted the suggestion that the person at the roadside was a contractor and that there was a shortage of signage. It set out the various means through which people are advised of planned closures (Twitter, the web, email and the local media, as well as signage in Mr AB's town operated by the County Council). It declined to reimburse Mr AB as to do so would be contrary to its policy.

ICA outcome: The ICA considered that Highways England's initial response to Mr AB's complaint was rather irrelevant as it did not take into account the fact that he was complaining about the lack of signage *before* he had got onto the motorway, not the actual substantive diversion signage that was in place for people already there. The stage 2 response was much more helpful, and the ICA welcomed the fact that it contained an undertaking to consider whether additional hard signage in the area of Mr AB's home would be appropriate. Given the fact that information about the closure was, in the ICA's

view, sufficiently available, he did not feel in a position to recommend that, exceptionally, Highways England should make a consolatory or compensation payment.

Interference to television signal from tree

Complaint: Mr AB complained about a self-set tree in a narrow border between his house and a trunk road that caused interference with his television signal. He asked Highways England to remove the tree.

Highways England response: Highways England acknowledged that the tree was its responsibility, but said it was not its policy to prune or remove healthy trees that present no hazard.

ICA outcome: The ICA said that Highways England's policy could not be deemed unreasonable as trees are a security and sound barrier, remove toxins from the atmosphere, and pruning them can encourage top growth. The ICA found that the complaint handling had been flexible and, one or two criticisms aside, did not uphold the complaint.

Actions of traffic officers

Complaint: Mr AB complained that Highways England traffic officers had unreasonably forced him to drive some distance on flat tyres, thereby destroying them, when his own recovery arrangements would have been safer and better. He also complained that traffic officers had inappropriately reported to the police that his tyres were below the legal tread limit.

Highways England response: Highways England said Mr AB had been stationary in a live lane when police officers had stated that he was trying to change a tyre. Traffic officers had attended and judged that the quickest option was for him to "limp" to a refuge area by driving the car slowly with them in attendance. Their observation was that two of the tyres were below the legal limit for tread with one of them showing wire protruding from it.

ICA outcome: The ICA could not adjudicate between the two different versions of the condition of Mr AB's tyres. Mr AB himself said that he had checked all four before setting off that morning. The traffic officers were consistent in saying that two of them were below the legal tread level. Neither had any hard evidence to support their position. The ICA added that Mr AB's account that he had been on the hard shoulder was not corroborated by the police or the traffic officers. This had clearly been an unsafe situation and getting Mr AB out of the live lane as quickly as possible was wholly defensible. However, the ICA could reach no firm conclusions on the complaint.

Signage relating to a closure

Complaint: Mr AB complained about the signage on a motorway regarding the closure of a major trunk road. He said the information overhead and by the roadside was insufficiently detailed.

Highways England response: Highways England said that the signage was in line with its policy. Research had shown that too much information was not helpful to road users. It had accepted some failures in correspondence handling.

ICA outcome: The ICA said he understood why Mr AB thought the information was insufficient. But it derived from DfT and Highways England policy, and the company was also right to say that its communications around the roadworks included a variety of mechanisms not just the signs. He part upheld the complaint in respect of correspondence handling.

Allegation of theft following accident

Complaint: Mr AB complained that, after a motorway accident in which he had crashed down an embankment, over £1000 worth of his property had been stolen from the scene by contractors involved in the recovery of his vehicle.

Highways England response: Highways England spoke to its recovery contractor as well as the company that routinely conducted maintenance on the motorway. It obtained logs of all the materials recovered. The recovery firm had needed to stop because of limited light, and before the recovery could be concluded the maintenance crew had removed the remaining debris. This had not been part of the plan and had resulted from poor communications. After extensive checks and a further site inspection, none of Mr AB's missing property was recovered.

ICA outcome: The ICA could not see that subjecting Mr AB's complaint to detailed review had any prospect of resolving matters for him. This was because the ICA's jurisdiction was focused on the response of Highways England to his grievance. The ICA was unable to conduct or arrange a further search himself. He judged Highways England's responses to have been of a good standard and was pleased to see that Mr AB was kept informed throughout the two-stage process. Given the seriousness of the allegations Mr AB was making, the ICA considered that a high standard of evidence was required. Such evidence had not been uncovered during the investigation, and the ICA saw no prospect for the further review to change that position. He did not therefore uphold the complaint.

Huge problems for a community created by long term technical problems in repairing a pedestrian bridge

Complaint: Mr AB complained over a four month period that Highways England and its contractor had failed to put in place adequate and safe measures for members of his community to cross a busy A road while the pedestrian footbridge was undergoing engineering measures to prevent it from shaking while people used it. Mr AB's two young children were reliant on the footbridge in order to get to school every day. He initially

complained that the temporary pedestrian crossing was unsafe. The following day a cyclist was killed nearby. He went on to complain that the alternative way of getting across the road put in place by Highways England's contractor (a link to the pedestrian footpath along the side of the canal running under the road) was unsafe due to criminal activity and that his representations in relation to it were not responded to. He complained that the bus service provided by the contractor was not staffed by people who had passed DBS checks and was not in the correct or the advertised place, much of the time. Mr AB characterised the contractor and Highways England's operations as unsafe and chaotic. The reopening of the footbridge was consistently delayed after new dates were provided and the whole episode had caused immense concern and despair amongst Mr AB and his neighbours.

Highways England response: The contractor and Highways England fielded many telephone calls with Mr AB over the course of the repair work on the bridge. They attempted to assure him that the measures they had put in place were safe and they responded to complaints from him and others about the safety of the measures put in place. In two formal complaint responses they addressed Mr AB's complaints about diversion measures, safety and the efforts to modify the bridge to prevent it from wobbling.

ICA outcome: The ICA agreed with Mr AB that Highways England had not provided enough information about its efforts to get the bridge usable again and about the way that complaints from members of the public fed into its risk management measures in place on site. The ICA obtained the risk management log from the contractors and was satisfied that it indicated a high level of risk awareness and compliance with policy. What was less clear to him was the role that feedback from the public played in improving safety and he was unable to give Mr AB very much assurance that his concerns had resulted in concrete changes on the ground. He agreed with Mr AB that people were entitled to know how Highways England and its contractor had learned from their experience on this site and he recommended that Mr AB should be provided with a copy of any review documentation setting out how the performance of the contractor had been measured given the big overspend and delay in the reopening of the bridge. He also recommended that Highways England should issue guidance to its staff to ensure that reasonable records were kept of on-site meetings (the use of which the ICA commended in this case). Finally, he recommended that the performance of Highways England's contractor and the company in responding to complaints during the period of the bridge closure should be reviewed to ensure that risk concerns were not subject to the standard three-week complaint response time scale and explanations were tailored to the nature of the complaints presented.

Noise and vibration from diverted traffic

Complaint: Ms AB complained that her home had been subject to intolerable noise and vibration all through the night as a result of diverted traffic from Highways England roadworks on a nearby trunk road.

Highways England response: Highways England explained that it had made every effort to ensure that its official diversion routes were well advertised and subject to good signage. The particular diversion of concern to Ms AB was not a prescribed route, and Highways England had taken all the steps it could in association with other public bodies to discourage traffic from using it. It had liaised with the main satnav companies and the police and council in relation to the possible implementation of a temporary traffic restriction order.

ICA outcome: The ICA noted that the matter had been subject to high-level consideration within Highways England. He found no fault in Highways England's administration and was unable to uphold the complaint.

Multiple complaints about major roadworks

Complaint: Mr AB complained about major roadworks being carried out close to her home. She complained of noise, light pollution, slip road changes, and being given incorrect information.

Highways England response: Highways England had engaged with residents through a variety of means. It had shared the intended schedule of works, and given details of the noise and air monitoring procedures.

ICA outcome: The ICA could not comment on the more technical aspects of Mrs AB's complaint. So far as the handling of Mrs AB's correspondence was concerned the ICA said that not everything was best practice and there had been some delays. However, that had to be balanced against the extensive engagement between Mrs AB and fellow residents and Highways England. The ICA said that the company should now reply to further detailed comments that Mrs AB had submitted, but did not believe that Highways England had acted unreasonably or in a maladministrative manner.

Automated message sent by Dart Charge

Complaint: Ms AB complained that the wording in the automated email sent by Dart charge to customers whose account fell below a balance of £10 was unnecessarily threatening. She complained that the subject line (in red capitals) implied that the account holder had breached the rules and that immediate action was necessary when it may not be so. She said that for occasional users of the crossing, a £10 balance may be sufficient for several months. She was more than happy for an automated notification to be dispatched, but suggested that it should be more accurate and clearer.

Highways England response: Dart Charge and Highways England explained that the purpose of the notification was to warn people that they were approaching the point at which their account would be closed or, if they continued to cross without topping up, they could be subject to enforcement action. The wording was being reviewed and Ms AB's comments will be taken forward as part of that process. One officer in Dart Charge told Ms AB that they were regulated by the Financial Conduct Authority.

ICA outcome: The ICA was cautious about commenting in an area that amounted to policy. He could understand why Dart Charge was eager to prevent customers from falling foul of its enforcement regime. He could also understand why it wanted to get people's attention. He thought that the handling of the correspondence had been of a reasonable quality, although Dart Charge had fallen into error in referring to the Financial Conduct Authority. The review of the wording was almost complete and Ms AB's comments would be taken to into account. The ICA did not uphold the complaint.

Delays caused by roadworks

Complaint: Mr AB complained of significant delays on the roundabout which he had to cross twice a day to and from work. Considerable tailbacks had occurred despite a multi-million pound scheme at that roundabout to speed up traffic.

Highways England response: Highways England asked its contractor to check that the sequencing of traffic lights at the roundabout was optimal, and a survey and research was undertaken. The outcome of this was to affirm the sequencing in situ. Highways England regretted that Mr AB was inconvenienced, but could do no more.

ICA outcome: The ICA reminded Mr AB that he had no competence or jurisdiction to call into question Highways England's technical traffic management operations. He felt that the responses to Mr AB's complaint had been sympathetic and timely and that the review of traffic lights sequencing had been appropriate. The ICA was mildly critical of Highways England for not referring the outcome of the review to Mr AB, and recommended that the company should do so together with an explanation of any technical terms.

Customer abandons vehicle subject to statutory removal

Complaint: Mrs AB complained about the statutory removal of her vehicle from the motorway. She said that the Highways England operator had not told her that the vehicle was liable to removal. She had phoned the breakdown service numbers she had been given but found the prices extortionate (she had no breakdown cover of her own in place). She had therefore left the vehicle overnight and arranged her own (much cheaper) recovery the next morning. However, by then the vehicle had been removed.

Highways England response: Highways England had quoted the law relating to statutory removal. They had also said that the operator had followed standard procedures. Mrs AB had been advised to ring back if unsuccessful in arranging removal, but had not done so. The company's own efforts to ring Mrs AB had been unsuccessful as her phone was dead and there was no voicemail facility.

ICA outcome: The ICA said it was Mrs AB's risk to travel on the motorway without breakdown cover, and he was surprised that any driver believed they could abandon a vehicle on the motorway overnight. He did not think the taxpayer should meet Mrs AB's expenses for statutory removal. However, he recommended that the standard text used by operators be revisited to ensure that all drivers were aware of the risk of statutory removal if their vehicle was not removed within a reasonable period (normally meaning a window of two hours). The ICA also commended a member of Highways England staff for his efforts in handling Mrs AB's complaint.

A noisy road surface

Complaint: Mr AB complained about the noise from the road outside his house. He said that the road surface needed to be replaced, and challenged the noise reducing qualities of the surface that was present.

Highways England response: Highways England said that it relied on manufacturers to ensure the specification of their products. It said that the resurfacing of Mr AB's street was not currently a priority.

ICA outcome: The ICA said he could not adjudicate upon the technical aspects of Mr AB's complaint. But it was not maladministrative for Highways England to prioritise its spending on new road surfaces on areas of greatest need. However, he sympathised with Mr AB for his noise problem, and it was not in doubt that road surfaces become more noisy as they wear.

Weed and debris removal

Complaint: Mrs AB complained about inadequate weed and debris removal along a stretch of trunk road near her home. The effect of this was to reduce visibility and increase the risk to road users as well as being unsightly. Mrs AB was dissatisfied with the response of Highways England and its contractor because she did not feel that undertakings to address the problem resulted in timely and effective action.

Highways England response: Highways England and its contractor explained that road closures were necessary to undertake clear-ups of litter and debris. Trained staff were needed for weed killer spraying and this had been a limiting factor. Highways England explained that clearances of litter and grass had followed Mrs AB's contact repeatedly. Highways England offered to make a consolatory payment of £50 to reflect the fact that its referral of the case for ICA review had been several months late.

ICA outcome: The ICA judged that Highways England's and its contractor's responses had been, in the main, timely and sympathetic. Weeds and debris would not usually attract category 1 defect status (in other words defects that require prompt attention because they represent an immediate or imminent hazard or risk of short-term structural deterioration). There was also an established contract in place that included amenity cutting. The ICA referred the programme of clearances to Mrs AB. In the six months since her dialogue with Highways England had closed, Highways England had visited the area on 108 occasions removing 835 bags of litter and 598 items of debris. The ICA welcomed the offer of £50 in consolation.

Collection of vehicle following statutory removal

Complaint: Mrs AB complained about the statutory removal of her vehicle (in which all the evidence suggested she was not travelling). She said that her AA membership would have covered the removal. She also said that she had been unable to collect her vehicle at the weekend.

Highways England response: Highways England said that its Traffic Officers had decided to remove the vehicle when repeated attempts to contact the driver's insurance company were unsuccessful, and at the request of the driver's father. It said that, had Mrs AB contacted its national contractor, FMG, then she would have been able to have the yard opened at the weekend.

ICA outcome: The ICA said that he endorsed the Traffic Officers' decision in the circumstances that they encountered. However, he criticised the wording of the leaflet that Traffic Officers hand out to drivers whose cars are subject to statutory removal. He said it should make clear that the first action of a driver should be to ring FMG. (Mrs AB had located the yard of the sub-contractors, but had no means of ensuring that it would open at a weekend unless she had rung FMG). This was a complicated affair, and it was not entirely clear when Mrs AB had learned of the accident. Had she been in the vehicle as a passenger, she could of course have readily contacted the AA.

5. Other DfT and delivery body casework

(i): HS2 Ltd

5.1 We received 13 complaints related to HS2 Ltd in the year, compared with just four in 2017-18. Five of those 13 were made by a single customer about whose prior complaints we reported in our 2016-17 Annual Report.

5.2 The subject matter of complaints and the ICA outcomes (fully, partially or not upheld) were as follows:

- Customer information, service and administration (3/partial)
- Engagement (2/not, 1/partial)
- Information about compensation code (1/partial)
- Property acquisition (1/not)
- Discrimination against tenants and delays (1/partial)
- Property management (1/not)
- Residents' Commissioner (1/not)
- Other (1/not, 1 partial).

5.3 As we have noted before, HS2 Ltd cases can be very resource intensive at our stage given the technical framework and protracted dealings some people have with the company when their homes are on or close to the route. Our case closure times ranged between one hour 16 minutes and nearly 42 hours.

CASES

Purchase of a neighbouring property

Complaint: Mr AB complained that HS2 Ltd's purchase of a neighbouring property did not qualify under the relevant guidance. He said this was an unacceptable use of public funds.

HS2 Ltd response: HS2 Ltd said that it could only divulge limited details under the Data Protection Act as Mr AB's complaint related to a third party. It said that the decision had been taken by one of its property panels, but did not specify under which scheme.

ICA outcome: The ICA said that issues relating to DPA and FOI were for the Information Commissioner. Nor could he act as an appellate body for one of the property panels. The ICA was able to share with Mr AB that he had seen the paperwork relating to the purchase, and was content that it was procedurally proper.

Request for payment of Spanish property tax following sale of blighted property

Complaint: Mr AB complained that, when he used part of the proceeds from the blighted sale of his property to fund a second home in Spain, HS2 Ltd declined to pay the Spanish property tax. Amongst other things he said he had been misinformed about the terms of

the Compensation Code, and that his time and cost had not been adequately compensated.

HS2 Ltd response: HS2 Ltd said it believed Mr AB had been fairly advised about allowable costs relating to property purchase, and that the compensation claim had been accepted by Mr AB in full and final settlement.

ICA outcome: The ICA said that it was for the Land and Property Panel to determine if the costs of a second home came within the terms of the Compensation Code, and the complaints procedure was not a means of appeal against their decisions. Equally, the ICA could not overturn Mr AB's legal agreement to accept a compensation payment in full and final settlement. However, the ICA felt that the company's literature could be more specific in emphasising what can and cannot be covered in a disturbance claim (a recommendation now implemented), and should consider if there was a case for a consolatory payment given the long delay at stage 2 of the complaints process.

A complaint about late payment

Complaint: Mr AB complained about the terms of a Schedule 2 notice (a notice giving HS2 Ltd statutory access to land) served upon him. He also said that HS2 Ltd had failed to pay for surveys carried out on his land.

HS2 Ltd response: HS2 Ltd said that it would review the terms of its correspondence with landowners along the route of the railway. It had not addressed the question of outstanding sums owed to Mr AB.

ICA outcome: The ICA criticised HS2 Ltd for the long delay in forwarding the relevant papers (a delay that meant that his review was late by a few days). He said the Schedule 2 notification was very legalistic, but he was content that the accompanying letter was satisfactory and not intimidating. He said he hoped that the question of the outstanding monies could have been settled without ICA involvement, but this had not proved to be the case. He said the matter had been very badly handled. He recommended the full payment of Mr AB's claim.

A complaint about community engagement

Complaint: Mr AB complained in respect of HS2 Ltd's engagement with his family over a period of years. He also criticised the manner in which HS2 Ltd had applied its policies - in particular, he argued that his property should be subject to safeguarding as his circumstances were exceptional, and that HS2 Ltd and the DfT had failed to recognise this.

HS2 Ltd response: HS2 Ltd said that Mr AB's case was not atypical. Amongst other things, it said that there were other properties currently outside the safeguarding area that might in future come within safeguarding (when statutory blight terms will apply).

ICA outcome: The ICA said he was not empowered to act as an appellate body in respect of decisions taken by property panels or the DfT acting on behalf of the Secretary of State.

Nor could he comment upon the terms of the non-statutory schemes. The ICA felt that HS2 Ltd's engagement with Mr AB had in fact been of a high order, and that the decisions taken in regard to his claim to be atypical were in line with the procedures laid down by Government. The quality of those decisions were not within his remit. But the considerations that had been borne in mind were not improper or irrational ones.

Multiple complaints about HS2 Ltd's engagement with those affected by the route of the new railway

Complaint: Mr and Mrs AB complained about multiple aspects of their engagement with HS2 Ltd.

HS2 Ltd response: HS2 Ltd had acknowledged failures in respect of the organisation of surveys at Mr and Mrs AB's home, and that there had been some mishandling of their complaints.

ICA outcome: The ICA considered a dozen separate complaints under the three ICA references. He concluded that the organisation of environmental surveys had been very poor, and that the handling of Mr and Mrs AB's correspondence had frequently been at variance with the company's complaints procedure. However, he sympathised with HS2 Ltd given the volume of correspondence and its overlapping nature. The ICA did not feel he could adjudicate on professional exchanges between surveyors contracted by Mr and Mrs AB and HS2 Ltd respectively, and was content with the company's approach to mitigation measures in respect of the route of the new railway. The ICA did not feel it was improper for HS2 Ltd to decline to change the team working on Mr and Mrs AB's case.

Multiple complaints against HS2 Ltd

Complaint: Mr AB had made a series of related complaints against HS2 Ltd. Correspondence with his agent had been suspended without him being told, the company had not followed its complaints procedure, and there had been additional stress for Mr AB and his family.

HS2 Ltd response: HS2 Ltd had conducted internal case reviews of most of the matters Mr AB had raised. It has acknowledged that a decision to suspend agent-to-agent communication had not been communicated to Mr AB when it should have been.

ICA outcome: The ICA said he part upheld the complaint. He recommended that HS2 Ltd clarify its complaints procedure to say that there were times when it would dispense with stage 2, and that it should commission research into the mental health outcomes of such a major infrastructure project. HS2 Ltd said that work was under way on both matters.

Further allegation of lack of community engagement

Complaint: Mr AB complained about what he said was HS2 Ltd's failure to engage with the people in his local community.

HS2 Ltd response: The company disputed Mr AB's analysis of its strategy and practice.

ICA outcome: The ICA said that it was apparent that there was a wide gulf between the views of Mr AB and HS2 Ltd, but an ICA review was not best designed to bridge the gap. As much as anything this was a breakdown in relationships. Given the volume of correspondence and formal and informal meetings with residents, the ICA said it was not possible to say that HS2 Ltd had failed to engage. Nor was there maladministration in the company's approach to Mr AB and the handling of his complaint. Although offering no advice, the ICA expressed the hope that Mr AB would take up the offer of a face-to-face meeting with a senior member of HS2 Ltd staff.

Time to complete disturbance claim

Complaint: Mr AB complained that HS2 Ltd wrongly assumed he could complete his disturbance claim within 12 months of relocating his business. He provided supporting evidence from fellow professionals about the time necessary before a full and final claim could be submitted.

HS2 Ltd response: HS2 Ltd said its experience was that most claims could be finalised within a 12 month timeframe, but there was no limit.

ICA outcome: The ICA said there was lot of overlap with previous complaints made by Mr AB, and he was aware that Mr AB had little faith in the ICA process seeing it as a stage to pass through on the way to the PHSO. However, there were two new elements to this complaint. First, the time necessary to complete Mr AB's business disturbance claim. The ICA said it was likely that a full claim (for things like postal redirection) would take more than 12 months, but there was nothing to suggest that HS2 Ltd was insisting on 12 months. Second, the complaint handling which the ICA thought had been generally well managed.

Letting of property purchased by HS2 Ltd

Complaint: Mrs AB complained that a property close to her home that had been owned by HS2 Ltd for some time had not been let efficiently, and at the right price, and had therefore been empty for many months. She also questioned the extent to which the company was maintaining the property.

HS2 Ltd response: HS2 Ltd initially asked Mrs AB to raise her concerns directly with the estate agent. When she complained again, the matter was picked up by the complaints team and a full response was provided. After further communications with Mrs AB, two responses were provided at HS2 Ltd's second stage including an independent review by a senior manager. In this review the suggestion of contacting the estate agent was identified as a service failure, and remedial measures were put in place.

ICA outcome: The ICA could not adjudicate between the two accounts of HS2 Ltd's custodianship of public resources as he had no expertise in conveyancing in the London property market. He considered that HS2 Ltd had followed its standard policy of acting on specialist advice, which he could not criticise. However, he felt that Mrs AB's complaint

that the property was looking tatty and was not being maintained and kept secure from the front had not been fully addressed, and he referred HS2 Ltd's further comments to Mrs AB in his response. He did not uphold the complaint.

The role of the Residents' Commissioner

Complaint: Mr AB complained about HS2 Ltd's Residents' Commissioner. He said she had justified poor complaint handling by the company.

HS2 Ltd response: HS2 Ltd said that the Commissioner had no responsibility for complaints, and had simply responded to Mr AB's correspondence by explaining the procedure.

ICA outcome: The ICA said that the Residents' Commissioner was responsible for overseeing HS2 Ltd's adherence to the complaints time targets (since these formed part of the Residents' Charter), but she had no other responsibility for complaints. He shared the view that she had simply attempted to explain the new involvement of Public Response Managers, rather than defending or justifying it. The ICA was content that the Residents' Commissioner had endeavoured to answer Mr AB's questions in a full and frank manner.

Discrimination against tenants

Complaint: Mr and Mrs AB had protected leaseholds for land on which they lived and worked. They complained of delays and unresponsiveness by HS2 Ltd and its agents in negotiating and agreeing compensation for losses arising from the acquisition of the land. They also complained that they had been treated differently and less favourably compared with the owners of the freehold estate (their landlords). In the course of the ICA review, they complained of further delays and unresponsiveness by the company and its agent as the compensation negotiations continued.

HS2 Ltd response: HS2 Ltd's Chief Executive apologised for delays in responding to queries and progressing the case. He explained that this was partly because HS2 Ltd had no immediate need to take possession of Mr and Mrs AB's premises. He found no evidence that Mr and Mrs AB had been discriminated against because they were tenants. However, he accepted that his staff had incomplete information and could have sought to find out more. The Chief Executive provided explanations for HS2 Ltd's actions and a timetable for seeking possession of the property. HS2 Ltd did not accept there were any grounds for further complaint. It judged that its retained agent had dealt with the later negotiations promptly and efficiently based on the information provided to him.

ICA outcome: The ICA concluded that there was no evidence that the negotiation process had been deliberately and unfairly prolonged to suit the interests of HS2 Ltd. He agreed with HS2 Ltd's own finding of unjustified delay. HS2 Ltd had also acknowledged that it had not handled the obtaining of consent fairly and reasonably, but argued this maladministration was not discriminatory. Although the ICA accepted there was no intention to discriminate, he considered that the effect of this handling was that Mr and Mrs AB had unjustifiably received less favourable treatment and there was an unfairly discriminatory character to the company's dealings with them, as compared with their

landlords, in relation to access arrangements for the ground works. He upheld this part of the complaint. The ICA upheld only one of the later allegations (that HS2 Ltd's agent had failed to reply to several emails from Mr and Mrs AB). He recommended that the Chief Executive write to Mr and Mrs AB with his apology for the manner in which access for the ground investigations works was planned and arranged. He recommended that HS2 Ltd agree to compensate Mr and Mrs AB for any and all losses and inconvenience caused by the ground works in excess of the £500 already paid. The company should also invite them to submit a claim for their losses, to be calculated as though HS2 Ltd had entered and used the premises in exercise of its Schedule 2 powers of entry (and to include the costs of professional assistance, if any, needed to submit and negotiate the claim). Finally, he recommended that HS2 Ltd pay Mr and Mrs AB the sum of £500 as a consolatory award to reflect the inconvenience caused to them.

(ii): Maritime and Coastguard Agency

5.4 We received seven complaints about the MCA in 2018-19 compared with none at all last year.

5.5 The subject matter of complaints and the ICA outcomes (fully, partially or not upheld) were as follows:

- Accreditation (1/partial)
- Medical & administration (1/partial)
- Personnel matter (1/not)
- Service records (1/not)
- Pollution (1/not)
- Wreck (1/not)
- Harbourmaster conduct (1/not).

CASES

Delay in handling application for a qualification

Complaint: Mr AB complained about delay in the handling of his application for an Engine Room Watch Rating Certificate (ERWRC). He also criticised the handling of his correspondence.

Agency response: The MCA had apologised for the delay, and had expedited the complaints process. It had offered Mr AB an alternative pathway to gaining his ERWRC, but some documentation was still outstanding.

ICA outcome: The ICA said that he could not adjudicate on personnel decisions nor assess whether the information Mr AB had supplied was technically sufficient to ensure his certification. An ICA could not substitute his opinion for the specialists in the body set up for that purpose. However, there had been a failure to respond to some of Mr AB's correspondence such that a partial uphold of his complaint was justified.

Alleged discrimination in promotion policy

Complaint: Mr AB complained that his failure to gain promotions was the result of malice on the part of MCA management for his trade union role in opposing the Future Coastguard programme. He accused two managers of harbouring a grudge against him.

Agency response: The MCA said he had been treated fairly. Others who had opposed Future Coastguard had been successful in gaining positions in the organisation.

ICA outcome: The ICA explained that personnel decisions did not come within his jurisdiction. However, he recommended that the MCA should consider if further advice should be offered to its staff regarding the ambit of the ICA scheme. So far as the MCA's correspondence was concerned, the ICA was content that it was timely, courteous and appropriate.

Pollution on a river

Complaint: Mr AB complained that the MCA had not conducted appropriate enquiries into the actions of Associated British Ports in respect of pollution and safety hazards on a river estuary.

Agency response: The MCA said that it could not conduct the sort of investigation that Mr AB sought. However, it was taking its own actions and ones with partners to try to tackle the problems Mr AB had identified.

ICA outcome: The ICA said that he could say little on the substantive matters raised by Mr AB. However, he criticised aspects of the MCA's handling of the complaint and recommended that the Chief Executive consider if further advice or training was required.

A complaint about rights to wreck

Complaint: Mr AB complained about the time taken by the Receiver of Wreck (ROW) to bring all the droits relating to a vessel that sank in in the Channel 1865 to a conclusion. He also said he had not been told the outcome of correspondence between the Government Legal Department (GLD) and the police regarding the content of letters the police had sent him some years earlier.

Agency response: The MCA had said the ROW was endeavouring to bring all the droits to a conclusion as quickly as possible.

ICA outcome: The ICA said that he could find no maladministration on the part of the MCA. He understood Mr AB's impatience, but the failure to give a definite timetable for closure of the droits was understandable given the complexities involved. However, the ICA was able to include considerable additional information in his report that he hoped would be helpful to Mr AB. In addition, the MCA had committed to chasing the police for answers to GLD correspondence that had not been received.

A medical certification complaint

Complaint: Mr AB complained that the MCA's medical officer had declined to certificate him on vengeful, xenophobic and discriminatory grounds. He highlighted discrepancies between her account of her involvement in his certification and other information he obtained from his own GP and through FOI. He also highlighted an inconsistency in the MCA doctor's account of his behaviour towards MCA staff.

Agency response: The MCA's senior doctor reviewed the case and upheld her colleague's involvement. Considerable efforts had been made to contact Mr AB's GP to fill in gaps in the medical paperwork and to ensure that information was up-to-date. It had been established that Mr AB marginally failed to meet a specific standard, and on this basis his application had been declined. Mr AB was welcome to reapply when his health could be shown to have improved (which he did, successfully, shortly afterwards).

ICA outcome: The ICA could not resolve some of the conflicts of evidence in this case but saw no reason why the MCA doctor would act maliciously, nor any evidence that she had done so. He thought it unlikely that the certification decision, which clearly had been made with reference to the rules, was informed in any way by improper motivation. The ICA also commented on the fact that the MCA had given him the wrong address for Mr AB meaning that his acknowledgement letter had gone astray. This had been reported to the Information Commissioner in line with data loss procedures, and the ICA set out in full the sequence of events and the remedial steps that would be taken. These included an extra check of terrestrial addresses at the ICA stage as well as enhanced checking procedures by the Agency. A consolatory payment of £300 to reflect the fact that data loss had occurred, as well as the error in the description of Mr AB's behaviour towards the Agency, was made by the MCA.

No entry to port

Complaint: Mr AB complained about the decision of a harbourmaster to refuse entry to a port. He said this was a breach of the law and the MCA Port Marine Safety Code.

Agency response: The MCA said that that the vessel had been prevented from entering the port because of unpaid fees. The Agency felt this was reasonable. The Port Marine Safety Code was voluntary and the MCA had no powers of enforcement.

ICA outcome: The ICA said he was not able to oversee the actions of the harbourmaster, nor offer definitive legal judgements. But his lay view was that the Harbours, Docks and Piers Clauses Act 1847 did not afford an absolute right of entry. The ICA was content that the MCA had conducted enquiries appropriate to the circumstances, although he criticised wording used in one of the Agency's letters. It had also come to light that the details of the vessel's ownership were not as the MCA had believed.

(iii): Civil Aviation Authority

5.6 We received five CAA complaints (compared with three last year). The subject matter of complaints and the ICA outcomes (fully, partially or not upheld) were as follows:

- Racism and unwarranted regulatory action (2/not)
- Development works and safety at an aerodrome (1/partial)
- Licensing (1/not, 1/discontinued at ICA stage as further action by CAA agreed).

CASES

Un-evidenced allegations of racism and incompetence

Complaint: Mr AB complained that the CAA was directing regulatory measures against an examiner who worked at his flying school because the examiner was not a UK national. He accused the CAA of bigotry and racism as well as poor service and unacceptable delays in licence processing.

CAA response: The CAA was limited in its ability to disclose the basis of its regulatory interest in the examiner because he was not an employee of the flying school or party to the complaint. He was not allowed to conduct examinations until he had been subject to oversight by CAA flight operations staff. In the meantime, his examination schedule was picked up by CAA staff to ease the burden on the flying school. Nonetheless, Mr AB remained deeply dissatisfied with the CAA's involvement. He stated that he had extreme difficulties getting hold of examiners and that this was the responsibility of the CAA. The CAA responded through its complaints procedure over the six month span of the complaint, but in the absence of concrete evidence of prejudicial behaviour by its staff it could not uphold the complaint or investigate it to any great depth.

ICA outcome: The ICA felt that the CAA had provided a good standard of customer service to Mr AB during the complaint, given the authority's inability to disclose details of its regulatory intelligence and decision-making. There was no evidence of racism or prejudice. The ICA noted a few instances where correspondence could have been better managed, but overall he did not uphold the complaint that the CAA's administration fell below a reasonable level.

Alleged delay in processing a change of flying licence

Complaint: Mr AB complained that the CAA had taken too long to process a change of flying licence from the UK to another country. In consequence, he had lost earnings and had asked for compensation.

CAA response: The CAA had said that it could not consider compensation claims.

ICA outcome: The ICA did not consider that the CAA was acting in line with HM Treasury guidance, the Ombudsman Principles, or the DfT's own (unpublished) *Charter – Principles for Remedying Complaints*. He therefore invited the CAA to reconsider its position. This was agreed, and the CAA wrote to Mr AB to provide evidence of lost earnings. The ICA could not say how this process would end, but was content that the matter had been resolved restoratively and there was no more for him to do.

Development at an aerodrome

Complaint: Mr AB complained about the CAA's attitude towards development works at an aerodrome. He also said there had been a failure to respond to some of his correspondence.

CAA response: The CAA said that many of the matters Mr AB had raised had been answered in the past or did not come within the CAA's statutory duties. It emphasised that, while it wanted properly to respond to issues raised by members of the public, this could not be at the cost of fulfilling its duties to ensure air safety.

ICA outcome: The ICA said that some correspondence had gone unanswered, and it would have been better had there been specific apologies. However, overall Mr AB had been provided with a good service - even possibly at the risk of diverting resources away from the Authority's core duties. The ICA part upheld the complaint, but said no recommendations (or further correspondence) were required. The ICA added that the technical aspects of Mr AB's complaint (whether air safety was imperilled if there was just one runway at the aerodrome) were not those he was qualified to consider.

Use of drones for commercial purposes

Complaint: Mr AB complained about the advice he had been given over the phone when applying to renew his Unmanned Aircraft System Operations Manual in order to continue to enjoy Permission for Commercial Operations. He said that he had not been told he needed to include insurance documents in the Manual, and his application had been rejected as he had only included the name of his insurance company.

CAA response: The CAA had listened to recordings of the calls in question and was satisfied that Mr AB had been given appropriate advice.

ICA outcome: The ICA also listened to the calls and was satisfied that Mr AB had not been given flawed or incomplete advice. However, he was concerned that the online form did not work as it should do, and may not work at all with one commonly used internet browser. However, as this had already been referred to the CAA's IT desk, there were no recommendations the ICA could usefully make.

(iv): DfTc

5.7 We received two complaints about the DfT this year:

- One relating to the handling of conflicts of interest in relation to the passing of the hybrid bill for HS2 Ltd (not upheld)
- And another about the allegedly wasteful provisioning of smart phones to DfT staff (partially upheld).

CASES

A complaint about conflicts of interest that was largely out of scope

Complaint: Mr AB complained about the handling of conflicts of interest by the Department for Transport in relation to its appointment of lawyers to represent the Secretary of State during the passage of the Government's Hybrid Bill granting powers for the construction of High Speed 2 ("HS2") Phase One (London to Birmingham). He claimed that they were conflicted because the solicitors also act or have acted for a commercial freight company with an interest in the development of HS2. He said the Secretary of State for Transport had told Parliament that the "entire purpose of HS2" was to increase rail freight capacity and that these conflicts should be fully investigated.

DfT response: The DfT denied that the entire purpose of HS2 was to create rail freight capacity – it had many benefits and beneficiaries, including the enhancing of existing capacity for freight and passengers. No legal advisers or representatives had operated with any conflict of interest and there were no grounds for the issue being further investigated.

ICA outcome: There were no grounds for investigating the complaints further since the DfT's response had been reasonable, thorough, proportionate and fair. The Secretary of State had *not* told Parliament that the "entire purpose" of HS2 was to increase rail freight capacity. An ICA could not comment on the conduct of the lawyers and any complaint about them would need to be addressed to their respective professional regulatory bodies.

Complaint about telephony choices

Complaint: Mr AB complained about the introduction of iPhones and other premium smartphones for DfT staff. He said they did not represent value for money. He also complained about the response to his complaint and said it had taken too long.

DfT response: There had been a single response from the Department at Director General level. This said that an investigation had been conducted and appropriate procedures had been followed.

ICA outcome: The ICA said that the Department was answerable to Parliament and the National Audit Office for its use of resources, and he could not be expected to adjudicate. However, he agreed with Mr AB that the response to his complaint could have been more detailed. He recommended that the Department consider sharing the investigation report with Mr AB, and this was agreed.

Appendix

TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS (as revised July 2019)

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 (ICA) provide independent reviews of complaints about the services delivered by:

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

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

3. This guidance sets out expectations of the ICAs and will, subject to annual review, apply throughout the current ICAs' terms of appointment.

4. Any changes in the interim will be subject to agreement between DfT, the delivery bodies and the ICAs.

Referral and review process

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

6. The delivery 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. The delivery body will ensure the complainant knows what the ICAs can do and that they must ask for referral within three months[12] of the delivery body's final response. A standard referral form for delivery body use is annexed to this guidance (the 'referral form').

7. Delivery bodies must always refer a complaint to the ICA if asked to do so. A delivery body must never block a complaint being referred.

8. A delivery body will usually tell a complainant they can ask for ICA referral after it has provided a final response. However, in some circumstances the delivery 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. A delivery body may also ask an ICA for advice on a case before its final response. If this happens, the

[12] Three months will be the usual time period, but delivery bodies can extend this where they feel there is good reason to do so.

ICAs will ensure a fresh review will take place should the complainant ask for an ICA review.

9. The delivery body will aim to pass a completed referral form, timeline and papers to the ICA as soon as possible, and no later than within 15 working days of being asked to refer a case to the ICA. At that stage, the delivery body will ensure the ICA knows if the complainant has any disability, and/or communication preference or requirement.

10. The ICA will acknowledge receipt of a referral to the delivery 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.

11. 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 delivery 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 delivery 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 delivery body has asked the ICA to review the case
    - an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

    Against a detailed review
    - the delivery body has investigated the complaint properly and has found no administrative failure or mistake
    - the complainant objects to the delivery body's policy or legislation
    - a full review would be disproportionate.

12. Having taken into account the factors set out in paragraph 11, 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.

13. 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 delivery body will ensure the ICA has complete access to the relevant documents. This includes third party material.

14. 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 delivery body (and DfT if appropriate) beforehand.

15. 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 to support case handling.

16. The ICA will send a draft report to the delivery body for it to check for accuracy. If the delivery body thinks it might be difficult to accept and/or implement the ICA's draft recommendations, it may comment at this stage.

17. 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.

18. Exceptionally, the ICA may decide to issue a full (or partial) draft report to the complainant, as well as to the delivery body. This would be to allow all parties to provide their input before the ICA finishes the report.

19. The ICA will aim to complete their review of the case within three months. They should tell the complainant and the delivery body if they think it will take longer and explain the reason(s) why.

Remedies

20. The ICA may recommend the delivery 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 as a result of the delivery body's mistake or failure.

21. When making a recommendation for any financial payment, the ICA will consider the delivery body's policy, relevant Treasury Guidelines (currently *Managing Public Money*) and the Ombudsman's *Principles for Remedy*.

22. 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.

23. At the draft report stage, the delivery body should try to reach an agreement with the ICA about their findings and recommendations. When a delivery body does not agree to implement a recommendation, it should tell the ICA at draft report

stage. If the delivery body and the ICA cannot resolve any difference of opinion the delivery body should tell the complainant and the ICA, in writing, after the ICA issues the final report. The delivery body must explain its reasons for not implementing the recommendation.

24. If the delivery body responds to an ICA report by writing to the complainant setting out its response to the report and to any recommendations, it must send a copy of its letter to the ICA who handled the review. After implementing an ICA's recommendations, the delivery must inform the ICA how it has done that.

25. The delivery body must tell the relevant ICA if a case they have reviewed has been referred to the Ombudsman. The delivery body must send a copy of any adjudication commenting on that ICA's handling of a case and the final Ombudsman's report into that case. The delivery body should tell the relevant ICA if the Ombudsman has made any recommendations about the case they have reviewed.

Confidentiality/personal information handling

26. When you make a complaint to a Department for Transport (DfT) delivery body, that body will use your personal information, and where appropriate share it with DfT and its appointed independent complaints assessors (ICA), so they can handle your complaint properly

27. We might publish your complaint, in anonymised form, in the ICA's annual reports, to show the public how DfT and its delivery bodies deal with complaints and what our ICAs do. We will also use your data for producing anonymised statistical information

28. DfT and its delivery bodies process your personal data in connection with your complaint. Some bodies are separate controllers under data protection law

29. Where a complaint has been sent to the wrong DfT delivery body, they will forward it to the right one and let you know they have done so

30. DfT and its delivery bodies will destroy securely all data about your complaint that was referred to the ICA, including the report, after two years.

31. DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at **https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter.**

32. Please note that this privacy policy covers DfT, its agencies and investigation branches only. If you have complained about another DfT body, you should refer to its website to see their own privacy policy. [Other data controllers should amend this paragraph as appropriate so that it refers to their own privacy policies.]

33. To conduct a review an ICA might require access to material that is sensitive; for example, because it is confidential, legally privileged or commercially sensitive. Where the delivery body has told the ICA some material, they have asked for is sensitive, the ICA must not disclose any part of it outside the delivery body or

DfT(C) without first getting consent of the Data Controller. In rare cases, an ICA might not be able to confirm or deny the existence of data. The delivery body must inform the ICA in those circumstances.

34. The ICAs must handle all documents and information given to them in line with DfT's and/or its body's requirements for the lawful protection of information, especially personal information.

35. 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 delivery body or to the Department, together with any relevant documents or information to which the request may relate.

36. The ICA should copy their report to the complainant (and any representative such as an MP) to the delivery body and the Department. The ICAs' reports are not confidential; they should be written with the expectation they could be shared.

37. The ICAs shall not include the names of staff in reports.

38. Two years after a review or the issue of the ICA's Annual Report including the case (whichever is the later), the ICA will destroy securely all relevant case documents they hold. The Department will be responsible for the destruction of any documents stored centrally.

Reporting by ICAs

39. 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 delivery bodies
    - what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of the delivery bodies' complaints procedures and their role
    - a selection of anonymised complaints the ICAs have concluded during the year, to highlight issues found in service delivery, to encourage others similarly affected to come forward, and to demonstrate the independence of the ICAs' work
    - any other matter the ICAs consider the Department should know about.

40. The ICAs will invite each delivery body to check a draft of the report for the accuracy of sections dealing with its cases.

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

42. The ICAs will also produce quarterly summary reports to an agreed format. These will also be provided to the delivery bodies in draft form before submission to DfT.

Target timescales

43. Target timescales for the scheme are set out below.

Delivery body to provide ICA with completed referral and all supporting documents	15 working days of receipt of request for an ICA review
ICA to acknowledge referral to complainant and delivery body and to inform complainant and delivery body of proposed timescale for review	5 working days from receipt of completed referral
Delivery body to answer queries raised by ICA	15 working days of receipt of query
ICA to issue draft report to delivery body	3 months from receipt of completed referral.
Delivery body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to delivery body and complainant	5 working days from response to draft report and within three calendar months of initial referral.

44. If an ICA thinks they might miss any of these targets, they will tell the DfT and/or the delivery body as early as possible and explain their reason(s).

Equality

45. 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 delivery body considers the complainant has any protected characteristic that might require the ICA to adjust their approach to handling the case, it will tell the ICA as soon as possible.

July 2019

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 (ICA) 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 delivery body]
   - 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:
    - government, departmental or delivery body policy
    - contractual 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 delivery body completion

ICA review referral form

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

1. Delivery 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? (eg are they unable to write?) 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 delivery body's initial response to complaint	
10. Summary of initial response (attach letter/email if appropriate)	
11. Date of delivery body's final response to complaint	

12. Summary of final response to complaint (attach letter/email if appropriate)	
13. What redress, if any, has been offered to the complainant (eg apology, reimbursement of expenses, ex gratia payment)?	
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? If so, does the delivery body think the ICA should waive the time bar?	yes/no 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
Date:	Person making referral (if different from email)

Any other comments: