Department for Transport

Independent Complaints Assessors
Annual Report, 2022–23

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

We are pleased to submit our Annual Report covering the period April 2022 to March 2023.

Stephen Shaw

Jon Wigmore

Foreword

As was the case a year ago, the Covid-19 pandemic continues to cast a long shadow across the services provided by the Department for Transport that we oversee and the approach we take to customer complaints. Much of the story of 2022–23 has been of the recovery made by DfT public bodies. However, it is in the nature of our work at the apex of the complaints system that our reviews look back in time. Many of the grievances we have reviewed have therefore concerned the delays and disruption that were a feature of all our lives for two years from early 2020 onwards.

Indeed, it is apparent that these problems continue to affect those who use DfT services. Many of the DVLA's medical enquiries into fitness to drive continue to take longer than before the pandemic. The DVLA complaints team has not been able to meet its timeliness targets. And ICA referrals from the DVSA are routinely outside the 15 working day target that applies to all DfT bodies.

While we understand the operational problems faced by the department's public bodies, it is clear that many customers have now lost all faith in what is seen as a 'Covid excuse'.

In our report a year ago, we noted a rise in offensive and sometimes threatening communications from some complainants towards staff working in DfT public bodies. Those working in call centres are all too frequently the victims of abuse. In our own jurisdiction, we have also seen an increase in the number of 'comebacks' from disappointed complainants, a small minority of whom use sarcastic or abusive language. Working as we do from our own homes, and without the immediate support of colleagues, such conduct can be particularly difficult to deal with. Through the department's regular liaison meetings with its complaint managers, we have continued to emphasise the importance of looking after frontline staff (particularly those working from home), as well as customers (who have often been exasperated by the difficulty getting through on the phone).

Casework

We received 341 cases in 2022–23 and completed 317 reviews. At the end of the reporting period, work in progress (that is to say, cases received but not yet completed) constituted 60 cases.

In summary, although incoming case numbers fell by 5 per cent compared with 2021–22, the sharp end of year upsurge we describe in the next section has continued into 2023–24, with referrals up around 38 per cent from 2022–23 at the time of writing. Meanwhile, the 'weight' of the caseload has increased, in part because we have fewer complaints principally directed to Covid-19 policy and delay (about which we can say little). Another factor has been an increase in Drivers Medical referrals from the DVLA, by over 70 per cent.

We received a total of 216 referrals from the DVLA in the year, compared with 53 from the DVSA, 31 from National Highways, and just 41 from all other DfT public bodies and from the department itself.

Appendix 2 to this report sets out the overall complaint volumes received by the department and its public bodies. The data has been separately validated by the department. It is immediately evident that most complaints are resolved long before any ICA involvement is required. This fact should be borne in mind when reading the case histories that form the bulk of this report. We are conscious that what we see is but a small (and almost certainly unrepresentative) sample of the total transactions for which DfT bodies are responsible.

Terms of reference

In line with our annual practice, we have overseen a review of our terms of reference and have annexed the latest version at Appendix 1. The changes made this year have been minor, with the exception of paragraph 9, which is intended to emphasise the responsibility of DfT public bodies to try to resolve grievances without the need for independent review. We do not wish to encourage 'stringing' of the complainant via repeated iterations of the same response. But we also want to emphasise that ICA review should be reserved for complaints where there is no prospect of the complainant and DfT body reaching an accord themselves.

This is not to say that an ICA review is a panacea. Our terms of reference exclude the content of policy and we offer what the terms of reference themselves describe as a 'light-touch' service, based on the paperwork we receive. An ICA review is ill-suited to complaints involving decisions about the use of resources, or disputes between fellow professionals. Complaints that turn on one person's account of another's attitude, behaviour and/or performance remain largely insoluble through ICA review (e.g. complaints about driving examiner judgment and conduct).

Further details of what we can and cannot look at are provided in the protocol to the terms of reference, which also form part of Appendix 1.

Relationships

We have continued to enjoy many instructive conversations with people whose contact with services in the DfT family has brought them, often reluctantly and wearily, to us. We have been humbled by people's determination that services can be delivered in safer and more efficient ways for all, including the people who work in them. In the National Highways case summarised in section 4 of this report (*Gold standard complaint handling from the manager of a Regional Control Centre*, page 106), we facilitated a virtual meeting to resolve the

complaint. The driver was frustrated by frequently incorrect closure signs adding significantly to his regular commute. Nonetheless, to his credit, he was prepared to sit down with the staff responsible for diversion management. The meeting was, from the ICA's perspective, a masterclass in complaint resolution. This was because of the understanding each party communicated of the challenges faced by the other.

Videoconferencing technology is now mainstream for many. We are looking to the centralised DfT services in particular to talk more to people to better understand and thereby resolve complaints that too often are entrenched by stock wording that misses the essence of the complaint.

While ever-conscious of the dangers of institutional capture, we greatly value the personal and professional relationships we have built up with the DfT and its staff over the years. It was particularly pleasing that we were able this year to make a visit to the DVLA for the first time since before the pandemic. Bi-monthly video meetings with the DVLA are also now in place.

Likewise, we have held productive dialogues with both Network Rail and National Highways in relation to service delivery and the handling of complaints. In October 2022, we had the pleasure of presenting remotely to National Highways' correspondence team.

We have enjoyed useful discussions with the DVSA and the DVLA about their handling of MP and ministerial cases. We have accepted the distinction between chasers sent on behalf of constituents (that might ordinarily have involved a simple phone call by the constituent) and expressions of discontent that meet the standard definition of a complaint. Both agencies agree that the latter category should include a sign-off, clearly flagging that the correspondence is over, and the option of ICA referral is available.

Looking forward, we are delighted to report that our appointments have been extended for five years from April 2023. It is also very pleasing that the department will be recruiting at least two more ICAs to start work in late 2023/early 2024. We have told potential candidates to think in terms of a commitment of three days per week, if there are four or five of us in post. This would mean that serving as an ICA would revert to being a part-time occupation, rather than the more than full time work it has become in recent years. Indeed, had it not been for the sterling contributions of our two associates, Lindsey Wilby and Claire Evans in taking on some of our more complex cases, the ICA scheme as a whole would have been in a parlous state.

1: Overview of our year's work

Input

1.1 Some 341 new cases were referred to us in 2022–23, compared to 359 a year ago, 323 in 2020–21, and 386 in 2019–20, which remains the high-water mark. This amounted to a 5 per cent reduction, comparing year-on-year. The elimination by the DVSA of its backlog that drove numbers up last year has been a significant factor. Our impression is that volumes and trends are generally returning to the pre-pandemic totals.

1.2 An overview of our 2022–23 caseload, compared to 2021–22, is provided in Table 1.1.

Table 1.1: **Cases received 2022–23, main complaint areas, and changes since 2021–22**

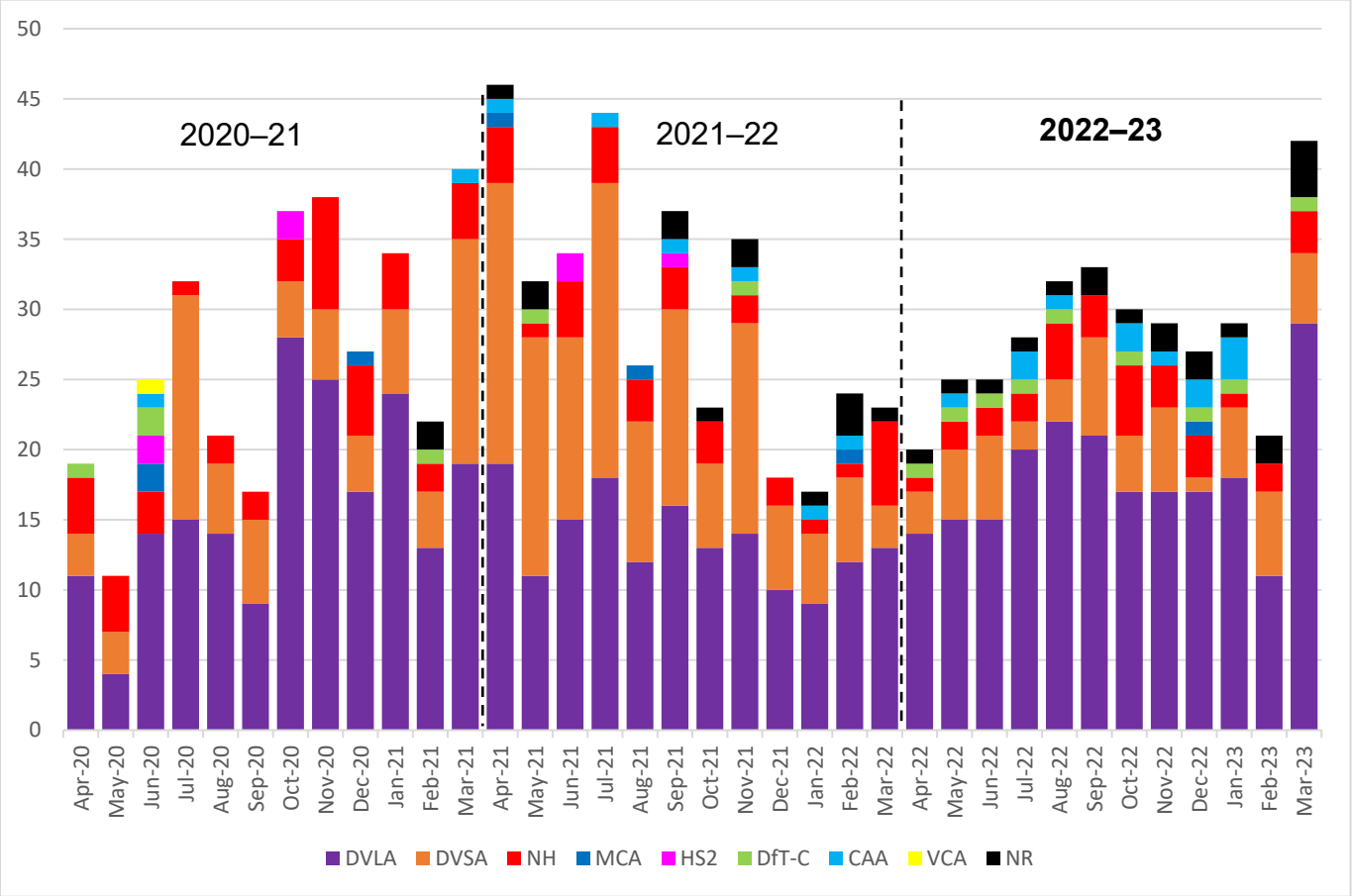
	Referrals	Main complaint area	Change from 21–22
DVLA	216	Drivers Medical (40%)	+33%
DVSA	53	Examiner conduct (30%)	-61%
NH	31	Variable speed limits (13%)	-9%
NR	19	Vegetation management (32%)	+6 cases
CAA	12	Pilot/crew licensing (33%)	+6 cases
DfTc	9	Secretary of State decision (2)	+7 cases
MCA	1	Standard for building small boat	-2 cases
HS2	0	-	-3 cases
VCA	0	-	Same
Total	**341**		**-5%**

1.3 We commend the DVSA for the dramatic reduction in referrals to us, reflecting the determined elimination of its backlog. We also note with approval the 'clean sheets' from HS2 Ltd and the VCA, and the reduction in National Highways referrals.

1.4 Figure 1.1 (overleaf) presents each month's referrals since April 2020. It shows both the reversal in quarters 1 and 2 of the drop-off we reported last year, and the beginning of a very busy Spring 2023. The number of referrals in quarter 4 was 44 per cent higher than a year ago (92 compared with 64).

1.5 As illustrated by Figure 1.1, our workload continues to a large extent to be determined by the DVLA. Another marker of the return to pre-pandemic normality was that the DVLA supplied us with 63 per cent of our referrals (compared with 45 per cent last year when the DVSA was drawing heavy criticism for being unable to meet driving test demand). In line with previous years, over a third of all our DfT caseworking time in 2022–23 was spent on DVLA Drivers Medical cases. There were no significant trends evident in the referrals from the other delivery bodies.

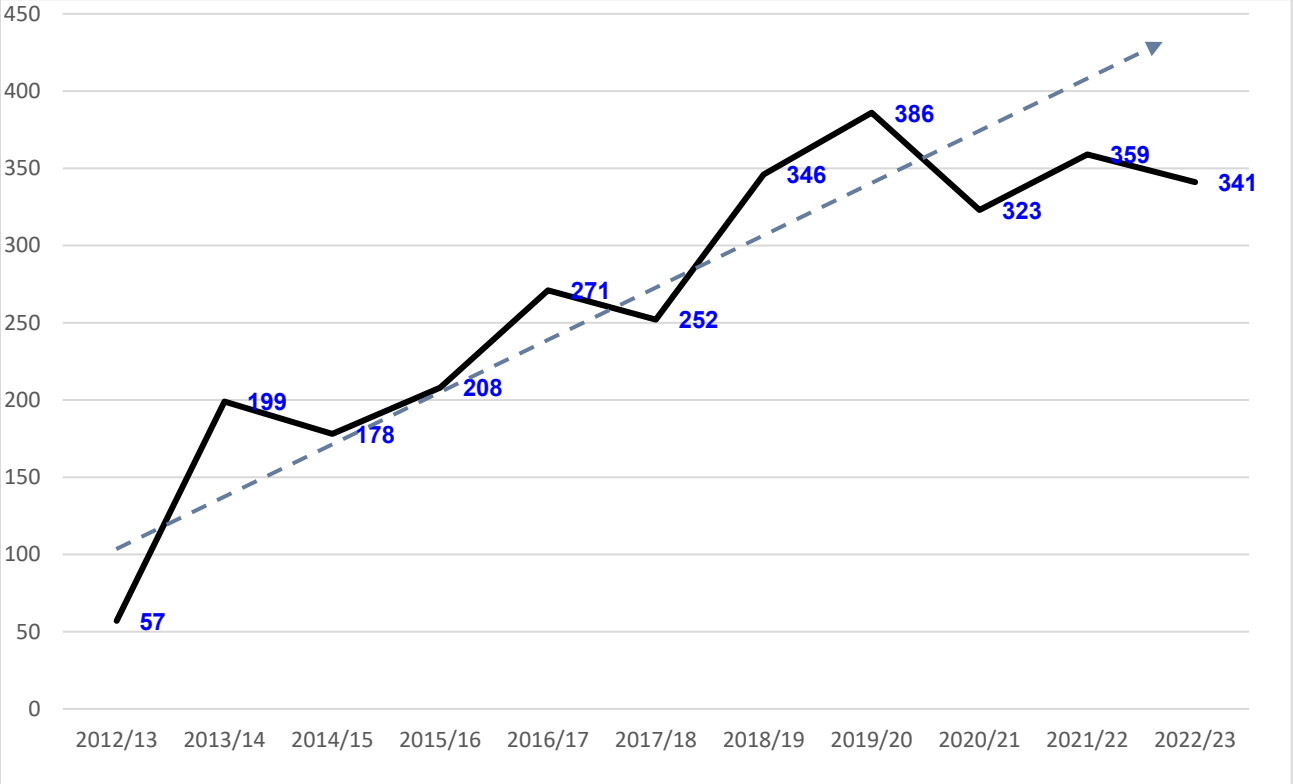
Figure 1.1: **ICA referrals by month, April 2020–March 2023**



1.6 Figure 1.2 plots the number of referrals we have received each year over the past decade. The trend line shows the anticipated direction of travel had Covid-19 not intervened.

1.7 Looking forward, if 2023–24 was to be in line with our busy Q4 in 2022–23, we would be expecting around 370 referrals. If March 2023 were to prove the template rather than an outlier (Figure 1.1 refers), then we would exceed 500 cases. Even with two additional ICAs, this would prove very challenging indeed.

Figure 1.2: Incoming cases by year, 2012/13–2022/23



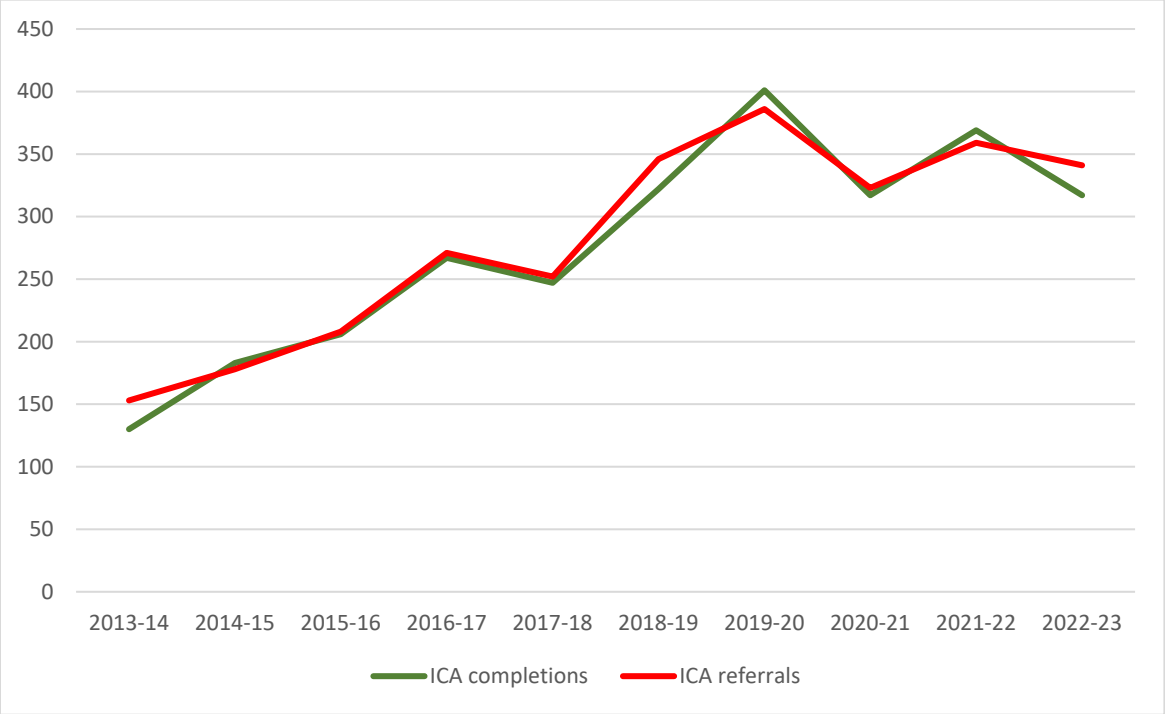
Output and outcomes

1.8 During the year we completed 317 cases, a 13.5 per cent fall from last year (369). This reflects the reduction in overall incoming cases, an increase in their complexity, and the fact that we must balance non-DfT commitments with our responsibilities as ICAs.

1.9 Figure 1.3 plots our efforts at keeping output in line with incoming referrals over the last 10 years. While we are not complacent about future challenges, we think that Figure 1.3 reflects well on the robustness of the ICA arrangements, given that delays and backlogs are so prevalent in other complaint-handling and Ombudsman bodies.

1.10 Having said this, we are conscious that many complainants do expect a degree of formal investigation that the ICA scheme is simply not able to deliver. We do not conduct primary investigations and are aware of the necessary limitations of paper reviews.

Figure 1.3: ICA referrals and completions, 2013–2023



1.11 We summarise our 317 case outcomes in 2022–23 compared to last year as follows (all percentages are rounded):

• Not upheld:	203 cases	64%	(2021–22: 66%)
• Partially upheld:	86 cases	27%	(2021–22: 24%)
• Fully upheld:	9 cases	3%	(2021–22: 6%)
• Discontinued/quick resolution	19 cases	6%	(2021–22: 4%)

1.12 These outcomes are evidently consistent with previous years. Aggregating those 95 cases that were fully and partially upheld gives a figure of 30 per cent of cases that were upheld to some extent (the same as last year).

1.13 In Table 1.2, we summarise the outcomes of all our 317 completed cases by DfT delivery body.

1.14 As will be seen, we made recommendations in over 44 per cent of all the cases we completed. This reflects our objective, if possible, of identifying where services could be improved that may be outside the scope set by the original complaint.

Table 1.2: **Outcomes of cases closed by ICAs 2022–23, by delivery body**

Delivery body	Closed cases	Upheld?				% Upheld full/part	Further action proposed?
		Full	Part	Not	Disc.*		
DVLA	195	3	56	123	13	30%	83 (42%)
DVSA	51	3	12	34	2	29%	28 (55%)
NH	32	1	11	19	1	41%	18 (56%)
NR	18	1	2	14	1	17%	7 (39%)
CAA	12	1	3	8	0	33%	4 (33%)
DfTc	8	0	2	4	2	25%	1 (12%)
MCA	1	0	0	1	0	0%	0
VCA	0	0	0	0	0	-	-
HS2 Ltd	0	0	0	0	0	-	-
TOTAL	**317**	**9**	**86**	**203**	**19**	**30%**	**141 (44%)**

* Discontinued, or resolved, with the agreement of the complainant, without a formal ICA report.

1.15 The single main recommendation areas per case are shown below:

- 68: consolatory payments (for non-financial loss)
- 14: apologies
- 13: further/better explanation
- 8: changes to information / guidance provided
- 5: combined consolatory and compensation payments
- 4: review the decision
- 3: changes to working systems
- 3: improvements to complaint handling
- 3: compensation payment
- 1: training
- 19: other.

1.16 As in previous reports, we emphasise that the figures above underestimate the number of recommendations we have made, particularly those that involve changes to working practices. For example, a consolatory payment recommendation and apology aimed at remedying individual hardship will often be accompanied by recommendations for improved systems.

1.17 The total consolatory payments we recommended amounted to £20,232. This compares with £14,607.10 in 2021–22, and £12,481.50 in 2020–21. As we frequently observe, the calculation of consolatory payments is not an exact science.

1.18 We recommended financial remedies in 77 cases (24 per cent), as follows[1]:

- DVLA (59): £17,429.00
- DVSA (12): £1,228.00
- Network Rail (1): £950.00
- National Highways (4): £375.00
- CAA (1): £250.00

1.19 Our approach is informed by the Parliamentary and Health Service Ombudsman's scale of injustice in *Our guidance on financial remedy* for situations where a simple apology is insufficient.[2]

Productivity

1.20 We took on average 5 hours and 55 minutes to complete each case in the 2022–23 reporting year (a slight increase from last year's 5h:19m, reflecting fewer complaints focusing solely on Covid-related delays). Some 13.5 per cent of cases took two hours or less. Such cases frequently reflected the policy and/or legislative focus of a complaint (for example the way that vehicle excise duty refunds have been calculated), matters that are not for us to comment on.

1.21 At the other end of the scale, eight cases took over 20 hours. Some of these reflected novel and complex subject matter (for example in the aviation sector). Others required, or involved, frequent contact with the customer and/or the delivery body. As always, DVLA Drivers Medical cases were far more likely to exceed the average (which drops to just over five hours if such cases are removed from the calculation).

1.22 The total time we spent on cases that we concluded in 2022–23 was 1,859 hours (compared to 1,842 hours last year). This year, 59 per cent of our case-working time was devoted to DVLA referrals compared to 50.8 per cent in 2021–22.

1.23 We took on average 37 working days to conclude cases (against our target of three calendar months). This represents some slippage against last year's average (31.7 working days). This total includes the time taken by DfT delivery bodies at the 'fact checking' stage. It is also influenced by any requirements on the part of complainants (for example, subject access requests, or deferrals).

1 Where we have increased an award made by a delivery body prior to our involvement, the sums below reflect only the increase. We generally do not recommend quantum in compensation cases, but rather recommend that the public body considers a specific item of remediable loss through its compensation policy. The total payments flowing from our recommendations are therefore not reflected in these figures.

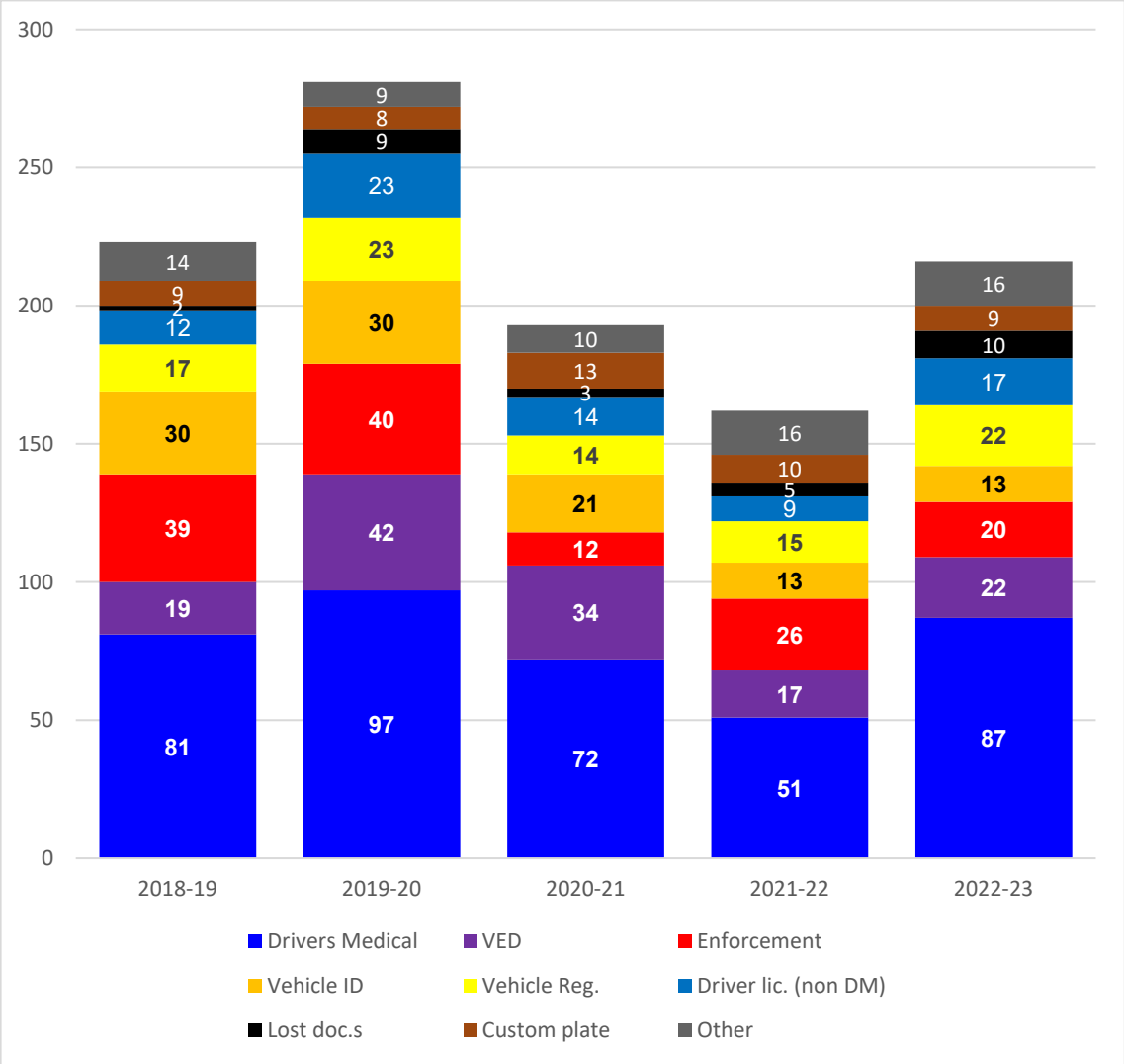
2 (https://www.ombudsman.org.uk/sites/default/files/Our-guidance-on-financial-remedy-1.pdf

2: DVLA casework

Incoming cases

2.1 As we noted in the previous chapter, the 216 cases we received from the DVLA represented a 33 per cent rise from last year. Figure 2.1 charts the incoming cases against the previous four years with reference to the main complaint areas

Figure 2.1: DVLA referrals, 2018-2023 by main subject area[3]



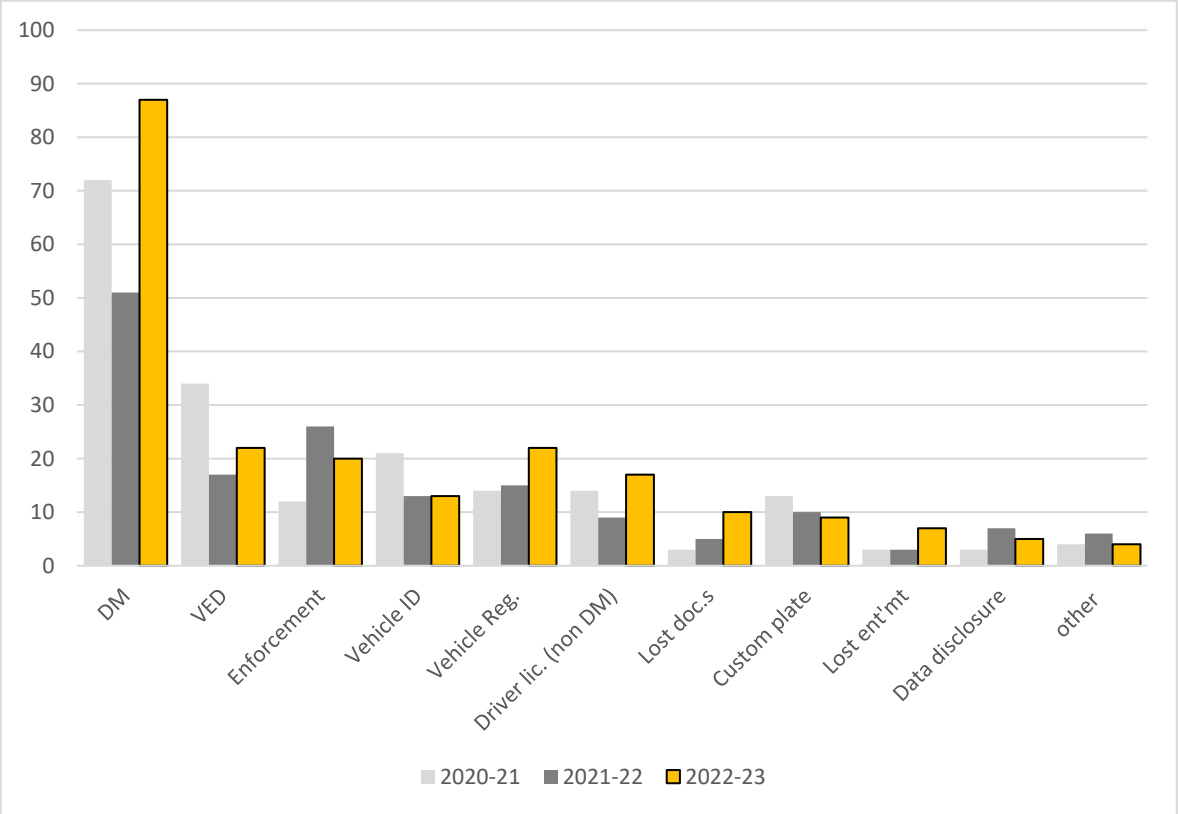
[3] **Drivers Medical** – the section of the DVLA making licensing decisions for drivers with relevant and/or prospective medical conditions; **VED** – vehicle excise duty/'road tax' (usually refunds); **Enforcement** – fines and other enforcement for alleged VED and insurance offences; **Vehicle ID** – registration of vehicles where identity is disputed (includes motor caravan-related disputes); **Vehicle Reg**. – other disputes about registration; **Driver Lic**. – non-medical driver licensing; **Lost docs** – lost documents, typically I.D.; **Custom plate** – personalised or 'cherished' registrations; **Other** – various.

2.2 Typically, VED complaints will consist of a dispute about the tax that should be refunded to the vehicle keeper after a qualifying event (usually disposal, or SORN). The DVLA's policy of conflating the date of the qualifying event with the (administrative) date that the notification arrives in Swansea has continued to vex a sub-group of customers. People unable to use, or unaware of, the long-established option of making notifications on gov.uk in 'real time', continue to come to us complaining that the DVLA has cheated them of a full refund.

2.3 Vehicle Registration complaints have included an increasing number where customers have complained of being charged £25 for a 'replacement' V5C (logbook) when the original never arrived. We have no doubt that people did not receive their V5C. It is not surprising that customers are irked to pay for what they deem to have been a failure on the part of the DVLA. The DVLA has emphasised that the £25 charge is set in legislation, and that it cannot be held responsible for failings by Royal Mail. Customers have six weeks to report non-receipt of the V5C, after which the statutory charge is levied.

2.4 Delays in processing paper documentation, often with annoying – and sometimes costly – knock-ons for customers, also featured heavily in the vehicle and driver licensing categories.

Figure 2.2: **Incoming DVLA cases, 2020–2023, by main subject areas**



2.5 Figure 2.2 charts incoming cases in the main DVLA subject areas over the past three years. It illustrates the 70 per cent increase in Drivers Medical (DM) referrals, comparing this year with last. The demands of DM casework have been well-documented in our previous annual reports, and the year's referrals have reflected perennial themes. This year's figure of 87 DM cases is the second highest in ICA history (2019–20's 97 being the record).

2.6 The consistent themes in DM cases have been delays, a lack of clarity as to what is or should be happening, and differences of opinion between drivers' doctors and the DVLA medical team. Most of the people coming to us regard the DVLA as overly cautious and more inclined to believe drivers when they are disclosing fitness problems than when they are denying them. Our perspective remains that DM has improved its accountability and customer service immensely in the last decade since it has been fully in the ambit of the ICA scheme. Only two of the 79 DM cases closed in the year were fully upheld (in 2013–14, we upheld three of the eight DM cases we reviewed).

Cases we completed

2.7 We completed 195 DVLA cases in the year, 14 per cent more than last year. Overall, we:

- Did not uphold 123 complaints (63%)
- Partially upheld 56 complaints (28.5%)
- Discontinued 13 complaints with the complainant's permission (7%)
- Fully upheld 3 complaints (1.5%).

2.8 In Figure 2.3, we illustrate the numbers of complaints we upheld to some extent in the six main complaint areas over the last three years.

2.9 The same data are expressed in percentage terms in Figure 2.4. It is evident that the complaint area where we were most likely to uphold last year (vehicle identity) has dropped by about two thirds, reflecting we think a welcome reduction in complaints about the body type classification of home motorhome conversions (customers have sought the classification 'motor caravan'). This may reflect some success in the agency's efforts at explaining the purpose of body type classification (solely to assist law enforcement agencies, and not relevant to tax, MOT, insurance, ferry fares or speed limits).

Figure 2.3: Numbers of DVLA cases upheld to some extent, 2019–2023 (six most complained-about subject areas)[4]

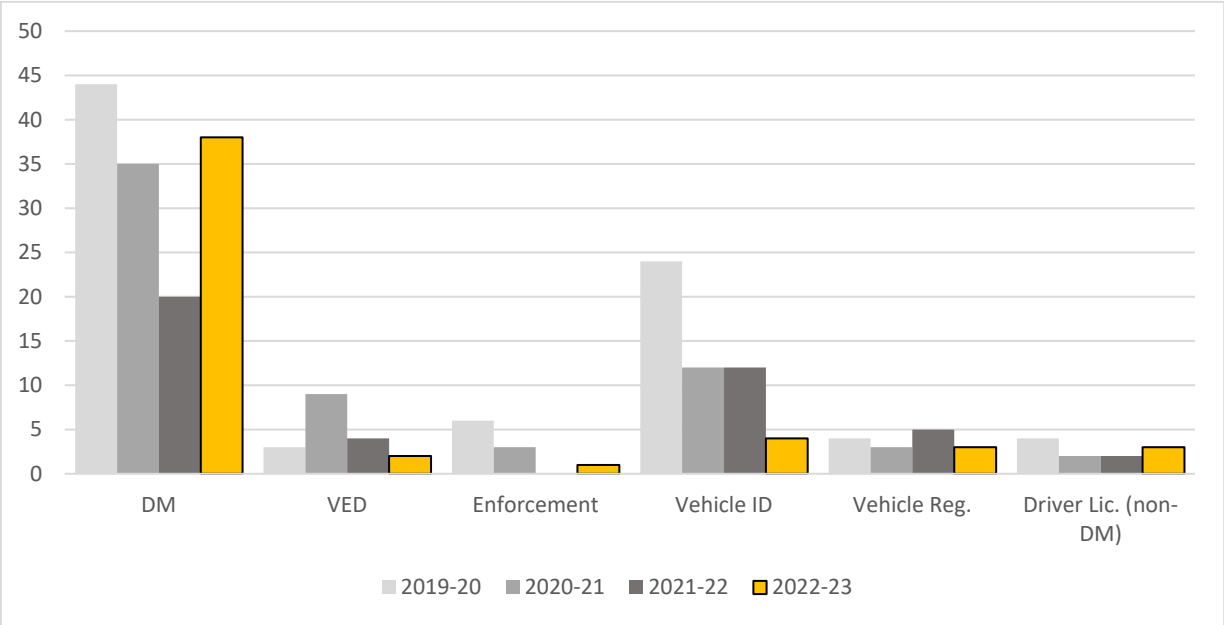
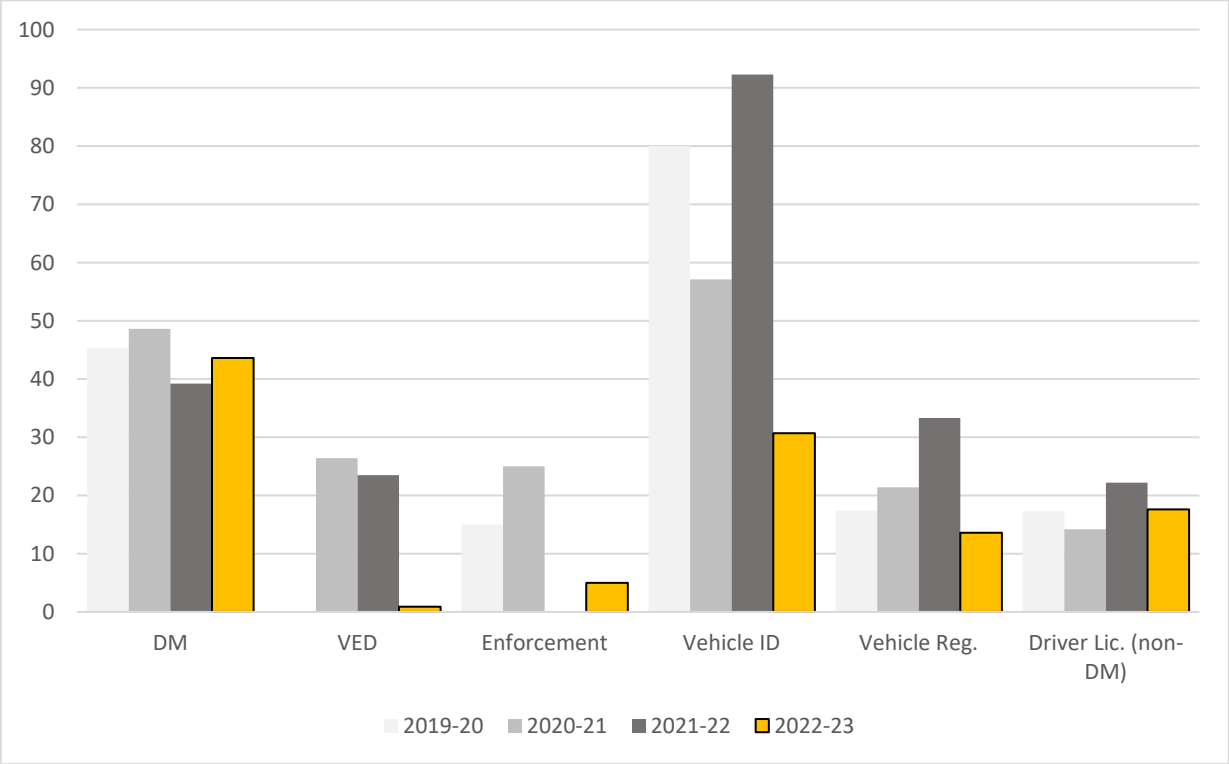


Figure 2.4: Percentages of DVLA cases upheld to some extent, 2019–2023 (six most complained-about subject areas)



[4] **DM** – Drivers Medical; **VED** – vehicle excise duty/'road tax' (usually refunds); **Enforcement** – fines & other enforcement for VED and insurance offences; **Vehicle ID** – registration of vehicles where identity is disputed (includes motor caravan-related disputes); **Vehicle Reg**. – other disputes about registration; **Driver Lic**. – non-medical driver licensing.

2.10 Drivers Medical upholds have remained in the 39–49 per cent range despite the fluctuating numbers, reflecting the extended engagement that has occasionally occurred between drivers and the DVLA (several years is not unusual given the need in many cases for regular reviews of licensing decisions).

Themes arising from DVLA casework

2.11 As was the case a year ago, we begin our case studies with complaints relating to the DVLA's application of the standards of fitness to drive relating to alcohol. The requirement for those with a history of alcohol dependence to show continuing abstinence from alcohol is particularly demanding. It gives rise to many complaints, especially given what we perceive to be the uncertainty of the diagnosis of dependence amongst General Practitioners.

2.12 Other issues arising from Drivers Medical cases have included the agency's response to third-party notifications regarding fitness to drive, the licensing of people who are neuro-diverse, and the impact on vocational drivers of changes to their entitlements.

2.13 Before we receive any DM cases, they have undergone a detailed internal review – including a consideration by the senior doctor or one of his deputies. In consequence, remedial action has often been taken before the ICA commences their review. This is extremely good practice which reflects well upon the DVLA.

2.14 More generally, there has been an increase in the number of DVLA cases that we can resolve without the requirement for a formal review. This again represents good customer service and respect for the use of public money.

2.15 However, some DVLA cases are simply not capable of resolution at the ICA stage. We have in mind complaints flowing from the 'retirement' of personalised number plates where DVLA policy is governed by legislation (and is therefore not maladministrative) but which we believe to be counterproductive. It is also very difficult for ICAs to adjudicate upon vehicle identity cases or where drivers claim to have entitlements missing from their licences.

2.16 The DVLA's tax enforcement regime is also very strict, even with customers with a long history of compliance. There is rarely much that an ICA can contribute where there has been a breach of legislation.

2.17 Where a clamped vehicle is removed to the pound but not collected, it is either destroyed or sent for auction. By the time all the fees (not least the auctioneer's fees) are deducted, there is rarely much left for the owner of the vehicle.

2.18 Complaints about the DVLA's approach to recording the body type of vehicles converted for use as motor caravans have been a major feature of our work in recent years. This year, the number has reduced to a trickle – the consequence, we believe, of a more nuanced approach being taken by the agency. However, we remain dissatisfied with the information provided on gov.uk relating to vehicle conversions. We have no doubt that many customers continue to spend large sums of money adding decals to their vehicles only to discover that the DVLA will still not approve their body type application.

CASES

(i): DRIVERS MEDICAL GROUP

Cases engaging the alcohol fitness standards

Alcohol standards, case 1: Haemolysed CDT sample leads to revocation on grounds of dependence

Complaint: Ms AB complained about a medical licensing decision. She came within the scheme for High Risk Offenders (HROs) but on two occasions her CDT (carbohydrate-deficient transferrin) sample was found to be haemolysed. The DVLA therefore wrote to her GP. The GP's report resulted in Ms AB's application being refused under the standard for alcohol dependence. Ms AB said this was ancient history and she now drank very little.

Agency response: The DVLA had said its decision was in line with the legal standards.

ICA outcome: The ICA said that he could not intervene in medical judgment. However, he had asked the DVLA's senior doctor to review the decision and it had been endorsed in full. Although it was clear that there had been delays, the ICA felt that there had been no maladministration given the impact of Covid-19 on the DVLA. However, he acknowledged that Ms AB herself might well take a different view.

Alcohol standards, case 2: Delays largely down to the pandemic

Complaint: Mr AB, who had a history of problematic alcohol abuse, complained that it had taken the DVLA a year to relicense him. This had cost him tens of thousands of pounds in lost work opportunities.

Agency response: The DVLA activated Mr AB's case six months after his application once he had complained (it had been queued as a low priority case until that time). He was referred for a blood test and assessment. A medical opinion supportive of relicensing against the alcohol standard was received by the agency a month later (nine months after the reapplication). The franchise doctor had indicated that Mr AB had disclosed a history of

mental health problems, and a new leg of enquiries was opened. The difficulty was that Mr AB had not seen his GP for many years and Drivers Medical had needed to make repeat contact with the practice before arranging a face-to-face examination. He was eventually relicensed after a misunderstanding had been resolved about whether he had been seen as part of the GP assessment.

ICA outcome: The ICA regarded the initial delays that beset Mr AB's case as the product of the pandemic. The reason for the latter delays was the late notification of a history of mental health problems. Had Mr AB notified this himself at the point of reapplication then that investigation would have run side by side with the alcohol enquiries. Confusion then arose as to whether the GP had seen Mr AB and a further delay of two weeks occurred. The ICA did not feel that there was sufficient evidence of error or maladministration to uphold the complaint. However, he empathised heavily with Mr AB's experience, particularly given the impact on his ability to make a living.

Alcohol standards, case 3: **A correct revocation but, at times, poor customer service**

Complaint: Mr AB's driving entitlement had been revoked over three years earlier on the grounds of alcohol misuse. Mr AB challenged the DVLA's application of the fitness standards, and the extent to which its decision was supported by evidence. In particular, he questioned the weight given by the agency to a statement from his GP, when CDT testing was supportive of his account of his health.

Agency response: The agency explained that Mr AB's licence had been revoked because, at the time of its enquiries, his GP had confirmed that Mr AB had a history of alcohol misuse, and it was not controlled at that time.

ICA outcome: The ICA explained that there are four pieces of information taken into account when the agency makes a licensing decision in a case of potential alcohol misuse: the driver's self-declaration; their GP's evidence; the outcome of the independent medical examination; and the %CDT blood level. All evidence must support licensing. The ICA had sympathy with Mr AB's perspective – that the agency's application of its standard policies can lead to outcomes that appear unfair to the individual. However, he could not criticise the DVLA for following its own policies correctly, as it did in Mr AB's case. He was, however, critical of the handling of some of Mr AB's complaints. He recommended an apology and a consolatory payment of £150 in recognition of the unacceptable delays in responding to some of Mr AB's letters, and not answering others at all.

Alcohol standards, case 4: **High Risk Offender cannot drive during medical enquiries**

Complaint: Mr AB complained about the time taken to relicense him following a ban for drink-driving. He said he had not been told that he could not drive while the DVLA was

conducting its enquiries. He sought compensation for costs he had incurred when stopped by the police and his car was impounded.

Agency response: The DVLA said that correspondence had been sent to the address on record. As a High Risk Offender, Mr AB was required to undergo a CDT test and examination and had no right to drive while enquiries were ongoing.

ICA outcome: The ICA said that, like many banned drivers, Mr AB thought that taking a drink-driving course automatically meant an earlier time back on the road. This was not the case. The ICA was also content that the information sent to Mr AB about the HRO scheme had made clear that he was not entitled to drive while enquiries were under way.

Alcohol standards, case 5: **Drink driver wrongly treated as High Risk Offender**

Complaint: Mr AB complained about his relicensing following a ban for drink-driving. He said he had been wrongly treated under the High Risk Offender scheme. He asked for compensation, including the costs of a drink-driving awareness course he had taken to reduce the length of his ban and the cost of taxing and insuring his vehicle while he remained unable to drive.

Agency response: The DVLA had said it had been wrongly informed of Mr AB's blood alcohol level by the court. However, it accepted that an opportunity to correct the record had been missed. The agency calculated that this failure had meant Mr AB's re-application was delayed by just over a month and had made a £300 consolatory payment. It had declined to meet Mr AB's other costs.

ICA outcome: The ICA could say nothing about the court's mistake and Mr AB would need to approach HM Courts and Tribunals Service. However, it was clear that the DVLA had also provided poor service. The ICA was content that the £300 offer was in line with PHSO guidance. He also felt there was no case for the taxpayer to meet Mr AB's other costs. He was presumably a safer and more socially responsible driver because of taking the drink-driving awareness course.

Alcohol standards, case 6: **A customer who asked if a daily half bottle of wine is debarring gets his entitlement revoked**

Complaint: Mr AB had his entitlement to work as a taxi driver suspended by his licensing authority after a medical where a doctor had suggested that his consumption of half a bottle of wine with his evening meal represented a problem in line with the DVLA's fitness standards. The doctor had also referred to a dizzy spell Mr AB said he had experienced over two decades previously. Mr AB wrote to the DVLA to ask what its guidelines actually were. To his consternation, his letter provoked medical enquiries into his fitness which he refused

on principle to comply with. Eventually, he was revoked for non-compliance. He protested that this represented bureaucratic overreach as well as an abuse of power by the DVLA.

Agency response: The DVLA's initial response was to begin medical enquiries. Eventually, after Mr AB had approached the Prime Minister, his questions and challenges about the agency's fitness to drive regime were addressed. The DVLA extended the deadline for Mr AB to comply with medical enquiries repeatedly, but he dug in and refused. Eventually the agency reluctantly revoked his entitlement.

ICA outcome: The ICA enjoyed a mutually challenging discourse with Mr AB during the review in which he (the ICA) explained that, contrary to Mr AB's view, the DVLA's involvement in driver fitness (including problematic alcohol consumption) was mandated in law. The mechanism through which Mr AB could prove his point that he was fit to drive (medical investigation) was the same mechanism with which he was refusing to cooperate. The ICA was mildly critical of the length of time it had taken the DVLA to address Mr AB's questions and challenges about the process, but his overall conclusion was that Mr AB's complaint was about legislation and policy rather than customer service. He did not uphold the complaint. He was delighted to learn soon after concluding the case that Mr AB had been relicensed.

Alcohol standards, case 7: **Covid-related delay is not maladministration**

Complaint: Ms AB complained about the time taken to agree a new licence following a conviction for drink-driving. She also complained that it was impossible to contact the DVLA.

Agency response: The DVLA had accepted that there were delays (including in responding to Ms AB's complaint). It said these were attributable to the enduring impact of Covid and the related industrial action. The agency also accepted that it had been wrong not to have answered one of Ms AB's letters.

ICA outcome: The ICA said that there was no doubt that Ms AB had received poor service. But he said this was not the result of maladministration but the ineluctable consequence of a unique public health emergency. He recommended that the DVLA write to Ms AB to apologise for failing to answer one of her letters and to explain why her licence had the starting date it did (the result of an administrative error, but one of no practical consequence).

Alcohol standards, case 8: **Delays in relicensing a driver with past alcohol problems**

Complaint: Mr AB had been convicted of drink-driving some 10 years previously and had fallen under the aegis of the HRO provisions given the high level of alcohol in his blood. Over the following six years, he was relicensed for a single year at a time, or his application

was refused. His complaint to the ICA was that his latest reapplication was unnecessarily delayed and that the requirement for new GP evidence was repetitive.

Agency response: The DVLA admitted that Mr AB's reapplication had stalled for three months due to pandemic pressure, but he had entitlement to drive under section 88. The DVLA apologised for the delay and put Mr AB's case on priority. Drivers Medical sought comments from a new GP and they were pursued for a further month until Mr AB complained through his MP. At this point the case was referred for medical review and a 'til 70 licence was issued.

ICA outcome: The ICA noted that the decision-making about Mr AB's short-period licensing over the years was in line with DVLA policy and supported by CDT results. The ICA felt that the decision that evidence was needed from the new GP, as well as the previous one, was overly cautious and he was pleased to see that it was overruled on medical review. The ICA did not find that outright errors had occurred. He concluded that much of the vexation and frustration experienced by Mr AB arose simply from the agency's exercise of its standard policies. Understandably, over a decade after the conviction, he resented the continued focus on his historic alcohol consumption. Nonetheless, the ICA accepted that this was legitimate. Some delays for which the pandemic was not an excuse had occurred. The ICA therefore recommended a £100 consolatory payment, partially upholding the complaint.

Alcohol standards, case 9: **The purpose of drink-driving awareness courses**

Complaint: Mrs AB complained about the time taken to agree a new licence following a conviction for drink-driving. She said she had taken an awareness course to reduce the length of her ban. She also complained about difficulties contacting the DVLA.

Agency response: The DVLA had accepted that there were delays which it attributed to the legacy of Covid. Mrs AB came within the terms of the HRO scheme. In the event, a DVLA doctor judged that she came within the standards for alcohol misuse and not dependence and a one-year licence was issued.

ICA outcome: The ICA said there had been no maladministrative delays. However, something like six months of time had cumulatively been lost over a one-year period. Like many drivers, Mrs AB had assumed that taking a drink-driving awareness course would mean her new licence would be issued immediately. This was not the case. Nor was it the purpose of the course, which was to make Mrs AB, and others convicted of drink-driving, safer drivers in the future. The ICA could not adjudicate upon the medical decision-making but the DVLA's senior doctor had described it as particularly customer-sensitive, which carried great weight. The ICA also hoped his report helped explain the course of the decision-making.

Alcohol standards, case 10: **A customer denies alcohol dependence**

Complaint: Mr AB complained about delay and the decision to revoke his licence for alcohol dependence. He said was not dependent upon alcohol.

Agency response: The DVLA had accepted that there were delays, which it attributed to the legacy of Covid. It said that its licensing decision was correct as Mr AB's doctor had recorded that he had been dependent upon alcohol in the past six years, and, by Mr AB's own account, he was not totally abstinent.

ICA outcome: The ICA said the licensing decision was at the limits of his jurisdiction. However, he noted that the DVLA doctor had asked for a carbohydrate-deficient transferrin test at public expense. However, when the result was 0.7 per cent (which would indicate little or no recent alcohol consumption), he simply went ahead with the revocation. The ICA said a more customer-focussed DVLA might have asked whether the CDT result called into question the GP's original diagnosis of dependence – especially when there was no other supporting information (like alcohol treatment, etc).

Vocational casework

Vocational case 1: **DVLA reconsiders medically restricted licence for vocational driver**

Complaint: Mr AB complained about the time taken by the DVLA to agree a Group 2 licence. He said this was preventing him from working as a bus driver and he sought compensation.

Agency response: The DVLA said that medical enquiries had been necessary to ensure that Mr AB met the more stringent standards for vocational driving. A three-year licence had finally been issued after 12 months.

ICA outcome: The ICA sympathised with Mr AB. However, some minor administrative delays aside, he could not identify any maladministration in the DVLA's approach. There was no case for compensation, therefore. Although normally the ICAs liked to see medical enquiries conducted in parallel, this had not been possible in Mr AB's case as each enquiry had followed sequentially from the previous one when the enquiries had been unsuccessful. However, during the course of his review the DVLA said that the agency could in fact have issued a full-term licence rather than a three-year one and it would look into what had happened. Although the ICA could not anticipate the outcome, he hoped this would be welcome news to Mr AB.

Vocational case 2: **30 years of being wrongly licensed to drive HGVs**

Complaint: Mr AB complained that, despite having an HGV licence for 30 years, the DVLA refused to renew his entitlement on the grounds that he had a monocular field of vision. This decision arrived completely out of the blue when the yearly renewal requirement came in (Mr AB's entitlement had been renewed uneventfully on four prior occasions). Mr AB had never had an accident in decades of driving. He had always been completely upfront about his monocularity. He asked how the DVLA could interfere in his working life in this way when no suggestion that he was unsafe had ever arisen.

Agency response: The DVLA's senior doctor determined that the relevant 'grandfather rights' did not, unfortunately, apply. The DVLA offered Mr AB a consolatory payment of £500.

ICA outcome: The ICA accepted that Mr AB should never have been licensed to drive Group 2, and therefore should not have been able to build a career as an HGV driver. However, as Mr AB *was* licensed for 30 years, the loss of that career came as a tremendous shock, and Mr AB could not be expected (in his 60s) to enter a new role immediately. The ICA recommended that the DVLA should compensate Mr AB for six months of lost earnings at his last salary rate, while he found his feet and searched for a new job. The impact of the agency's belated realisation of its error on Mr AB was catastrophic, affecting all aspects of his life, to the extent that the losses he had suffered could be characterised as traumatic. The ICA considered that a consolatory payment of £5,000 was warranted, and he recommended accordingly, partially upholding the complaint.

Vocational case 3: **A reminder of the fact that vocational drivers may reapply three months in advance**

Complaint: Mr AB is a vocational driver over the age of 65 who must reapply for his entitlements annually. He complained about DVLA delay and its failure to send him renewal papers in good time. His potential employer would not accept his entitlement under section 88 of the Road Traffic Act, and he therefore lost income. He asked for compensation.

Agency response: The DVLA said that Mr AB had applied only shortly before his entitlement ran out. It said his licence had been issued within the published time target. For these reasons, it denied compensation or any fault.

ICA outcome: The ICA said there was no legal requirement for the DVLA to send re-application papers and Mr AB could have applied much earlier than he did. He shared the DVLA's view that no compensation was due. However, he sympathised with Mr AB as, like many DVLA customers, he had discovered that section 88 cover was of no practical benefit if the entitlement is not recognised by potential employers. The ICA criticised the DVLA for

saying that the re-application forms could not have been sent earlier (it was uncertain when they were actually sent), and for wrongly telling Mr AB that an application could only be considered eight weeks before expiry when the figure for vocational re-applications is three months. He recommended that relevant staff be reminded of the terms of the legislation.

Mental health casework

Mental health case 1: **Caution on the part of a driver's own doctors causing delay**

Complaint: Ms AB complained that, despite 30 years of safe driving while living with mental health problems, the DVLA had revoked her driving entitlement for 17 months without evidence. She felt penalised. She found DVLA medical enquiries incredibly slow moving. Ms AB spent several thousand pounds on taxis and missed medical appointments (which in turn informed the impression of some of her doctors that she was not compliant with treatment and should not be relicensed). She sought compensation.

Agency response: The DVLA sought assurance from Ms AB's clinicians that her mental health had been stable for three months and that she was adhering to treatment with no relevant medication side-effects. Over the course of the investigation her doctors did not confirm her fitness to drive. Eventually, a DVLA doctor prescribed a driving assessment that Ms AB passed with flying colours. The agency explained its decision-making and, in the absence of error or lapses in service, declined Ms AB's £45,000 compensation claim.

ICA outcome: The ICA noted long delays related to the pandemic (as distinct from avoidable maladministration). The root cause of the problem had been the caution of Ms AB's own doctors as to her fitness to drive. Eventually, a pragmatic driving assessment decision had led to the breaking of the deadlock. The ICA did not uphold the complaint.

Mental health case 2: **Another driver in dispute with her doctors and the DVLA**

Complaint: Ms AB complained after the DVLA revoked her Group 2 and ordinary driving entitlements as a result of a medical notification. She initiated and then dropped legal proceedings. The DVLA, hindered by Ms AB's dispute with her primary care providers, was unable to obtain the requisite assurance that her condition was stable. The revocations therefore remained in place for approaching two years at the point that the ICA concluded his review.

Agency response: The DVLA doctor who revoked Ms AB's Group 2 entitlement shortly after receiving the medical notification explained to her why and set out the requirements for her case to be reopened. Her car driving entitlement was then revoked (some four months after the initial notification). In the absence of the requisite evidence of stability and engagement with treatment, both entitlements remained revoked.

ICA outcome: The ICA found that the medical team had handled the case fully in line with published policy and medical standards, and the underpinning legislation. He was sympathetic to Ms AB's difficulties, given her dispute with primary healthcare providers. However, he accepted that the agency could not ignore the evidence it had received. The ICA found that every opportunity to reapply had been presented to Ms AB. He did not uphold the complaint.

Third-party notifications

Third-party notification case 1: **A driver incensed by reports of being unfit to drive**

Complaint: Mr AB was subject to two reports that he was unfit to drive. He complained that the DVLA should not have launched investigations into what were clearly allegations from an unprofessional and illiterate person. He insisted that the DVLA should have dropped the case as soon as it learnt that this was a neighbour dispute. Mr AB argued that the health areas highlighted by the informant were unclear. He was incensed by the fact that the agency did not have a filtering system so that malicious and poorly-constructed complaints did not trigger medical investigation.

Agency response: The DVLA investigated the fitness areas identified by the informant. It repeatedly provided Mr AB with the statutory and policy framework. The literacy and credentials of an informant were not regarded by the DVLA as relevant. The DVLA's handling of the investigation was considerably slowed down by the pandemic. In the event, it would not be until approximately a year that Mr AB's fitness to drive was confirmed. He had been allowed to drive throughout the duration of enquiries.

ICA outcome: The ICA outlined the DVLA's policy and found that it had been followed correctly. There had certainly been long delays (for example the necessary information to support relicensing had sat on file for six months before the decision was made) but this was a product of the pandemic. Mr AB's case had legitimately not been prioritised. As the agency had followed its established policies and subjected the complaint to sound if belated investigation and responses, the ICA did not uphold the complaint.

Third-party notification case 2: **Medical enquiries triggered by police report**

Complaint: Mr AB complained about DVLA medical enquiries triggered by a police report. He said he had been the victim of discrimination.

Agency response: The DVLA said it had conducted enquiries in line with its responsibilities on behalf of the Secretary of State. It accepted that one standard letter should have been personalised and had apologised.

ICA outcome: The ICA was satisfied that there had been no undue delay or maladministration by the DVLA. Mr AB had undoubtedly experienced stress and anxiety because of the DVLA's enquiries, but he had retained his licence throughout. The ICA agreed that the DVLA should have explained why it was re-starting enquiries (the result of an unusual circumstance – a GP indicating that he had completed a questionnaire incorrectly), but the apology represented sufficient redress, albeit there was a learning point for the agency.

Other medical standards

Correct outcome but procedure not followed properly

Complaint: Mrs AB complained about the decision of the DVLA to revoke her driving licence following a driving assessment. She criticised the assessors' report and said they had set out to take her off the road on grounds of age.

Agency response: The DVLA said that it treated the results of the driving assessment in good faith. Cognitive deficits had been found and the driving had been unsafe. The agency acknowledged that its standard letter to Mrs AB had not given sufficient detail – although this had subsequently been put right by a DVLA doctor.

ICA outcome: The ICA found that there had been several third-party notifications about Mrs AB's fitness to drive but her GP had been unable to comment. At this point a nurse had required Mrs AB to undergo the assessment at which the cognitive deficits and driving faults were discovered. The ICA said it was his lay view that there were sufficient grounds to revoke. However, the DVLA's senior doctor had commented that, in the absence of a known medical condition requiring an assessment, it was not appropriate to require one. In other words, while the outcome was correct, the requirement for a driving assessment was not technically appropriate or in line with DVLA procedure. The ICA did not think this represented sufficient grounds to award a consolatory payment from the public purse. Nor did he think he had grounds for a formal recommendation. But it was clear that the DVLA would wish to ensure that all its nurses were aware that a driving assessment should not be required in the absence of a known medical condition.

A complaint about the application of the brain tumour standards

Complaint: Mr AB notified the DVLA of a brain tumour in Spring 2020. He later complained that the agency required him to have two years off driving, whereas his oncologist had suggested that six months to a year should be sufficient. He attempted to reapply for his licence in Summer 2021, but the application was rejected as being "too early". Mr AB applied again and was issued with a licence valid from mid-2022.

Agency response: The DVLA apologised for (pandemic-related) administrative delays during their enquiries but insisted that their actions were correct and appropriate in the circumstances of Mr AB's case.

ICA outcome: The ICA found that there had been an unavoidable, Covid19-related, delay in providing a response to Mr AB's notification of a brain tumour. It was appropriate that the time off driving was not initially specified, as the type of brain tumour was not known at the point of revocation. When Mr AB reapplied for his licence in Autumn 2020, the DVLA doctor advised that two years off driving was required. Senior medical review would later find that Mr AB was eligible to be licensed in June 2021 (one year after the end of primary treatment). The ICA recommended an apology, a consolatory payment of £950, and an invitation to apply for compensation for any direct financial losses that Mr AB may have suffered. He also found missed opportunities to license Mr AB sooner than was done. The ICA also judged that the complaints team's response to Mr AB's MP's approaches was unacceptably delayed and of a poor standard. The ICA recommended that recognition of these failings should be included in the agency's apology to Mr AB.

A complaint that the DVLA did not give adequate weight to a customer's unique circumstances

Complaint: The DVLA revoked Mr AB's driving licence in early 2019 after a diagnosis of early-onset Alzheimer's disease. Following a practical driving assessment and the provision of further medical reports, he was issued with a short-term licence, valid for one year. The agency issued further short-term licences in 2020 and 2021. Mr AB complained that the repeated restriction of his entitlement to one-year periods did not give due consideration to him as an individual and did not reflect the fact that his condition was, in his view, stable. Mr AB challenged the DVLA's decision-making in court: his appeal was unsuccessful.

Agency response: The DVLA explained that, as Mr AB's formal diagnosis remained dementia, the issuing of one-year licences was standard practice (as recommended by the expert panel) to ensure that customers with prospective disabilities receive regular medical review. The DVLA emphasised that, although it is not within its remit to amend an established clinical diagnosis, if medical evidence could be provided that Mr AB's formal diagnosis had been amended to one of a stable cognitive impairment – rather than dementia – then such evidence could be assessed, and the licensing decision reviewed accordingly.

ICA outcome: The ICA found that, although the DVLA's own policies do not require it to consider anything other than the disabilities of the licence holder, attempts had been made to consider Mr AB's case on its individual merit. The medical standard for dementia, including a need for annual review, had been correctly applied. However, the single-year review period is not prescribed in law, and it could be reconsidered in Mr AB's specific case if he was able to provide evidence from his clinicians in support. The ICA found that the

delay in issuing Mr AB's licence in 2020 had been an unavoidable consequence of the pandemic, but his 2021 licence should have been issued earlier. There had also been an unacceptably lengthy delay – of at least six months – in responding to Mr AB's complaints, albeit the response he received belatedly was of a very good standard. The ICA recommended an apology and consolatory payment of £200 for the failings he had identified.

Multiple flaws in assessing the fitness to drive of a customer with a visual field defect

Complaint: Ms AB had a condition that gradually reduced her visual field, necessitating a review of her licensing every year. She complained of delays and poor service after she reapplied. After repeated visual field testing, her entitlement was refused just before lockdown and it took her two years to get it back. In this time most of her correspondence and that of her lawyer was not responded to by the DVLA. Ms AB could not understand why her entitlement was refused even though there had been no apparent diminution in her vision.

Agency response: The DVLA occasionally orientated Ms AB to its requirement to reopen her case – favourable binocular field charts. However, much of its correspondence contained stock wording that did not assist Ms AB in understanding why her representations and those of her consultant had not been successful. When the complaints team realised that swathes of Ms AB's correspondence had not been responded to, it made a £200 consolatory payment.

ICA outcome: The ICA recommended that the DVLA's templates should explicitly state the requirement for binocular charts. His review benefited from extensive comments from the DVLA's senior doctor. He noted that Ms AB's condition was progressive, meaning that it could never be entertained for exceptional licensing (Ms AB was informed of this for the first time at the ICA stage). The ICA was pleased to learn that the template revocation letter was now far more specific than the letter used in Ms AB's case. The DVLA had commissioned three visual field tests after Ms AB's reapplication, one of which was favourable. In line with the expert advisory panel's view, the ICA accepted the senior doctor's view that the most favourable chart for the complainant should have informed the licensing decision – he found that Ms AB should not have had her application refused. Accordingly, he concluded that the DVLA was responsible for the first of the two years Ms AB had spent unable to drive. He recommended that the DVLA entertain a compensation claim from Ms AB to reflect this and that the agency should pay a £1,300 consolatory sum. The ICA commended several improvements that had been implemented in medical casework since Ms AB's experience. The ICA upheld the complaint.

Very poor handling of a complaint from a driver unaware of a historic revocation

Complaint: Ms AB had been caught speeding 20 years previously. She paid the fine at a court office and three points were handwritten onto her counterpart licence (the correct procedure would have been for the DVLA to do this). The DVLA was then told routinely by the court of the endorsement and wrote to Ms AB asking her to return her licence. For unknown reasons, Ms AB did not receive the request and did not learn that her entitlement was revoked for not complying. She remained unaware for six years until, out of the blue, her GP expressed concerns to the agency about her drinking. Ms AB complied fully with the DVLA's investigation requirements, but confusion set in on the DVLA side - she had no driving entitlement to investigate. For unknown reasons, although Ms AB showed the DVLA that the endorsements had been written onto her licence, the agency's courts department did not act. She was repeatedly orientated to the medical requirements to reapply for her entitlement. Another decade of bewildering interactions with the agency followed, during which Ms AB had no legal entitlement to drive. At the time of her ICA complaint, she was facing court action for driving without a licence.

Agency response: In the absence of a response to the original request to return the licence, Ms AB's entitlement was revoked. When the GP notification arrived, standard enquiries began and then were quashed. The agency accepted at ICA stage that Ms AB's representations about the endorsement should have been referred to its courts team. During the various iterations of the complaint, the agency referred repeatedly to Mrs AB not being allowed to drive as she had not complied with medical enquiries. Latterly, her case was reopened and her fitness to drive was under active investigation during the ICA review process.

ICA outcome: The ICA was highly critical because Ms AB had provided a copy of her counterpart licence showing the endorsements, but this had not been picked up. As a result, she and the DVLA were at cross purposes in the early stages. Unfortunately, this set the tone for the correspondence that followed over the following decade and a half. Ms AB was, in this time, diagnosed as autistic. She had, in the absence of focussed, specific replies from the DVLA, taken it upon herself to decide that she could lawfully drive. At the time of the ICA review, this had resulted in a live police prosecution. From time to time, Ms AB had challenged the revocation but the responses she received were not always accurate or specific. The ICA also noted that the very heavy drinking disclosed by Ms AB would have certainly resulted in the revocation of her licence. Concluding, the ICA upheld the complaint, referring to the many opportunities open to the DVLA to straighten out its requirements. He recommended a consolatory payment and an apology from the chief executive. He welcomed the agency's many efforts to improve its medical investigations, and accepted that the events in Ms AB's case were very unlikely to be repeated.

Wrongful revocation leads to compensation claim

Complaint: Mr AB sought compensation for a series of DVLA failures. His licence had been revoked on grounds that the agency's senior doctor now said were flawed, but he did not learn about this for another nine months (meaning Mr AB had no opportunity to appeal through the courts). The handling of his correspondence had also been poor.

Agency response: The DVLA had acknowledged mistakes and made a consolatory payment totalling £600.

ICA outcome: The ICA said the flaws in handling and other delays could not be excused as Covid-related. Indeed, he felt this was one of the worst cases he had seen in his time as ICA. However, he could not endorse Mr AB's claim for compensation for a vehicle he had sold of his own volition when his licence re-application was under way. Nor for the costs of VED and insurance which were his responsibility as a vehicle keeper. The ICA was also content that the consolatory payment was consistent with the PHSO guidance for Level 3 injustice. However, the DVLA had declined to pay three train fares on the grounds that Mr AB could have applied for his licence earlier. However, the ICA said this failed to acknowledge that the DVLA had mistakenly advised Mr AB to reapply when the correct action would have been to have referred the matter back to the Drivers Medical case holder. Mr AB did not need to reapply at all.

DVLA makes consolatory payment for delay

Complaint: Mr AB sought compensation for what he said was a mistaken requirement for him to undergo drug testing that meant he was without a driving licence for a further five months. He said he had lost a dream job in consequence and nearly lost his home. Mr AB also complained of rudeness by members of the contact centre and of unlawful delay in making the ICA referral.

Agency response: The DVLA had acknowledged mistakes and made a consolatory payment totalling £250 for delay and £150 for failure to make the ICA referral in good time.

ICA outcome: The ICA said it was evident that Mr AB could have been licensed earlier. However, on listening to the calls Mr AB had made, he did not identify any rudeness. Mr AB was very direct himself – although the ICA said this was because his question about the progress of his ICA request could not be answered (an evident lesson for the DVLA). The ICA was content that the consolatory payment was in line with Level 2 injustice and was appropriate. Mr AB had been asked to complete a compensation form but had not done so. In its absence, and the absence of any other evidence, it was not maladministrative of the DVLA to decline to pay additional compensation.

A customer experiencing delays, in part of his own making, is gratuitously hostile to staff on the phone

Complaint: Mr AB complained that it had taken the DVLA 11 months to process his driving licence renewal application as he approached his 70th birthday. In the application paperwork he had disclosed, for the first time, a neurological condition that had been diagnosed some two decades earlier. He provided details of a doctor overseas as having seen him the most recently. The DVLA explained that Mr AB likely had cover to drive under section 88 of the Road Traffic Act. It also told him that it needed evidence from a UK-based doctor. As delays set in, Mr AB initiated a series of confrontational phone calls with agency staff who he targeted with hostile and unpleasant language. He demanded repeatedly that the chief executive respond to him personally, adding her to the list of individuals that he named in his complaint.

Agency response: The DVLA experienced difficulties targeting the correct UK-based doctor for medical evidence. The case was put on priority. The agency explained why the chief executive could not get personally involved. The head of its medical department and the chief doctor both reviewed the case and explained handling to Mr AB, as did the complaints team. He was licensed as a priority within a few days of the GP medical report arriving.

ICA outcome: The ICA identified the main problem as being the significant operational pressures identified by the National Audit Office in its recent audit of the DVLA's driver licensing activities. The agency could have acted more quickly but Mr AB himself could also have expedited matters. If he had read the published guidance on his condition, he would have understood his legal duty to report it to the DVLA, meaning that his renewal application would have been linked to an existing medical case. Second, the online advice on the gov.uk medical pages made it clear which documentation would be required and provided a download link. Thirdly, Mr AB became too engrossed in complaining about individual DVLA staff to provide the necessary details of a UK-based GP until very late in the day. The ICA was particularly critical of Mr AB for referring to a DVLA staff member as a "monkey", noting that this was the low-water mark of the baleful communications he had directed to junior staff working under pressure. He regarded the DVLA's repeated apologies for the delays as more than remedying the complaint. He did not uphold it.

Pandemic-related delays in the issuing of a medical provisional licence that impacted particularly badly on a young learner with cerebral palsy

Complaint: Master AB, who had cerebral palsy, applied online for his first provisional licence in year 2 of the pandemic. His case sat in a medical queue for three months. His mother, Mrs AB, concerned that he would not be licensed in time for his 17th birthday and unable to get through on the 'phone, set about obtaining medical evidence. Unfortunately, contact centre staff were often unable to confirm that evidence had been received. This, and the mounting delays, contributed to Mrs AB's increasing anxiety and anger. Mrs AB

experienced staff as uncaring and even mocking on occasion; they found her hostile. Eventually her son's case was reviewed by a DVLA doctor who recommended the issue of a provisional licence. Mrs AB complained about staff attitude, delays, a failure to adapt the complaints process for her own disability, discrimination against her son and the inaccessibility of clear information about the DVLA's requirements.

Agency response: The DVLA apologised repeatedly for the difficulties faced by Mrs AB in getting through to its contact centre. The case was put on priority and Master AB's licence was granted based on the information his mother had provided. Further complaints arose out of the imposition of an adaptation marker (which was later removed). A £200 consolatory payment was offered given Mrs AB's account of the poor service she had received.

ICA outcome: The ICA's overall conclusion was that the very poor service experienced by Master AB and Mrs AB was the product of the pandemic and industrial action, rather than maladministration. He judged that the £200 offered to Mrs AB represented reasonable remedy. He did not agree that the DVLA should refund the cost of the medical enquiries Mrs AB had commissioned as the available information was clear that the agency itself would pay for any investigation. He partially upheld the complaint and recommended that the chief executive apologise to Mrs AB.

Short-term licences and the principle of transparency

Complaint: Ms AB complained in relation to medical licensing and delays on the part of the DVLA. She explained that being without a licence had had a significant impact upon her and her daughter.

Agency response: The DVLA said that licensing had been in line with the standards in *Assessing fitness to drive*. It had acknowledged delays but said these were the result of Covid, not maladministration.

ICA outcome: The ICA said there was no doubt that Ms AB had received poor service. But he agreed that this was the result of the ongoing impact of the pandemic and not avoidable maladministration. However, the ICA noted that Ms AB had not received a full explanation of why her eventual licence had been for one year only and this contravened the PHSO principle of transparency. (As in many reviews, the ICA criticised the absence of information about short-term licences in *Assessing fitness to drive*.) He recommended that the DVLA write to Ms AB explaining the standard and the panel advice on which it was based.

A sudden revocation of C1 entitlement leaves a family stranded in a motorhome abroad

Complaint: Mr AB had declared his monocularity to the DVLA but was issued in error with C1 entitlement on consecutive occasions. In this time, he purchased a motorhome for over £60,000. His second C1 reapplication was declined correctly by the DVLA on the basis that C1 licensing is not ordinarily available to people with monocular vision. At the time he was on holiday abroad, caring for a disabled child. The revocation of his licence was instantaneous, necessitating a third-party coming out and bringing the motorhome back to the UK. Acting on DVLA advice that he could never be licensed for C1, Mr AB sold the vehicle for significantly less than what he had paid for it. Shortly afterwards, he was advised by the DVLA that he could apply for category C entitlement with 'grandfather rights' which he went on to do, successfully. This meant that he could have kept the motorhome. Mr AB escalated his complaint to the ICA after dismissing the DVLA's offer of 20% of the loss in value of the motorhome and £3,500 for his non-financial losses.

Agency response: The DVLA paid a £500 sum shortly after the revocation that Mr AB had used to fund the return of the motorhome to the UK. The agency was very responsive to the impact on Mr AB of revocation and kept in close contact with him over the weeks and months that followed, encouraging him to make a claim. Correspondence over the three years after the revocation was stop/start due to the pandemic. The DVLA declined Mr AB's claim for interest on the loan he had taken out to buy the motorcaravan, offering instead the sum outlined above.

ICA outcome: The errors accepted by the agency were: a failure to consider grandfather rights at the outset given monocularity; repeated C1 licensing outside of the grandfather rights entitlement route; and Mr AB being told that he could never be licensed on C1. The ICA found that the impact on Mr AB and his family included financial loss in recovering the motorhome to the UK and from the disposal of it to trade. Non-financial loss included the immediate, unheralded termination of a family holiday. The ICA considered that Ombudsman level 4 hardship was engaged and recommended a payment at the top of that scale (£2,950). In terms of compensation, he recommended that the agency pay half of the depreciation in value of the motorhome.

Incorrect revocation leads to compensation claim

Complaint: Mr AB's driving licence had been wrongly revoked for a year. This was only identified by the DVLA after 12 months and the involvement of the senior doctor. Mr AB had asked for compensation as he had been required to take on additional staff for his business to drive him around. He complained that the consolatory payment of £1,800 was insufficient and sought £25,000.

Agency response: The DVLA said that its payments from the public purse were appropriate.

ICA outcome: The ICA agreed that the consolatory payment of £1,800 was in line with PHSO Level 4 injustice and was appropriate. He also agreed that the information Mr AB had supplied was not sufficient to justify compensation. However, it was evident that Mr AB had incurred some additional business costs. He recommended that, if Mr AB could supply additional information, then the DVLA should reopen its consideration of his compensation claim.

GP practice unable to offer DVLA-required appointment

Complaint: Mr AB complained about the revocation of his licence under the standards for diabetes. He said he was a taxi driver and had lost six months income, causing financial and emotional difficulties. He asked for compensation.

Agency response: The DVLA said its medical decision-making had been correct. It had therefore declined to pay compensation.

ICA outcome: The ICA agreed that the revocation had been correct given the questionnaire received from Mr AB's doctor and Mr AB's own confirmation that he did not always check his blood sugar levels at times relevant to driving. However, the ICA was concerned that the revocation had been 'triggered' (but not caused) by the inability of Mr AB's GP practice to offer him a DVLA-required appointment. Had such an appointment gone ahead, the revocation might have been delayed or (depending on the outcome) not have taken place at all. The ICA said that DVLA decision-making was not customer friendly given the difficulties of making GP appointments of any kind – let alone those deemed to be 'private appointments' – during and after the pandemic. But as the revocation was in line with the standards, he could not recommend compensation. DM Business Support had also told the ICA that it was content that its procedures for caseworkers did not need amending to take account of circumstances when a GP appointment could not be made.

DVLA approach to licensing of drivers on the autism spectrum

Complaint: Mr AB complained about the time taken to issue his son a first provisional licence. He also complained that it had been issued for one year only. He said that his son was on the autism spectrum, and it was well known that people with autism took longer than other people to learn to drive and so a one-year licence was unfair.

Agency response: The DVLA had accepted that there had been delays – of the kind common to all medical licensing during the period in question. The doctor in the case had written a bespoke letter to Mr AB explaining the decision-making.

ICA outcome: Given that this would be a matter for the courts, the ICA could not adjudicate upon the one-year licence. But he was able to include in his report detailed exchanges

involving the DVLA's senior doctor in explaining the approach the agency takes to autism. Although unable to uphold the grievance (the ICA took the view that the delays were still a hangover from Covid), he recommended that the DVLA issue new guidance to staff about the circumstances in which it is necessary to seek renewed consent from a driver regarding someone else acting on their behalf.

(ii): VEHICLE REGISTRATION AND IDENTITY

Registration of classic vehicle

Complaint: Mr AB complained that the DVLA would not allow him to register his classic vehicle under its original 1925 registration. He said his vehicle was in its original state save that he acknowledged that the VIN plate was not original and was in the wrong location.

Agency response: The DVLA said it had carried out an inspection and had evidence (that it would not share) that Mr AB had sought replacement parts for his vehicle. It said he could consider applying to be registered as a reconstructed classic with the assistance of a specialist club.

ICA outcome: The ICA said he could not overturn a DVLA regulatory decision and could not say whether Mr AB's vehicle was the one that came off the production line nearly a century ago. The only question was whether the DVLA had sufficient evidence such that its decision was not maladministrative. He was content that was the case. Although the ICA understood why Mr AB objected to evidence he could not see, he was also content that there were good reasons for this. The DVLA's offer that Mr AB's vehicle be considered as a reconstructed classic was a reasonable one, although the ICA also understood that a reconstructed classic with a DVLA VIN would be a fraction of the value of one of the very few remaining originals from 1925.

Campervan complaint following PHSO investigation

Complaint: Mr AB complained that the DVLA would not change the body type of his vehicle from van with side windows to motor caravan. He said that he could not understand what more he could do to meet the published guidance.

Agency response: The DVLA had reiterated that body type was not the same as the use to which a vehicle could be put. The agency said it was committed to improving the wording on gov.uk but this had been held up because of Brexit/Covid.

ICA outcome: The ICA said he could not address the DVLA's policy – including its policy on body type. But as in so many like cases, he part upheld the complaint on the grounds that the information on gov.uk was unsatisfactory. As the DVLA itself accepted, a customer could follow all the advice to the letter but still find that their application for a change of

body type was rejected. Drawing upon a recent PHSO investigation that endorsed very largely the ICA approach to these cases and which he regarded as setting a precedent, the ICA recommended a consolatory payment of £100.

A heavily modified 1930s classic must be Q-plated

Complaint: Mr AB bought the remains of a 1935 saloon that had never been registered with the DVLA. The body was in very poor condition, so he decided to renovate all the mechanical parts and replace the body with that of a tourer made by the same company at the same time. To do this he shortened the chassis by 6 inches. Over two decades later, he applied to have the original registration attached to the modified car. The DVLA refused because only wholly original vehicles were eligible. Mr AB undertook to reverse the chassis modification, but the DVLA was not persuaded. All available routes to age-related registration were closed including the Reconstructed Classics scheme (which required components to be over 25 years old and of the same specification as the original vehicle, as well as a true reflection of the marque). Mr AB contested this energetically, arguing that the modification he proposed was commensurate with a repair and that the two seater tourer was a true reflection of the marque. Mr AB regarded the decision as inconsistent with other decisions by the agency.

Agency response: The DVLA insisted that the modification invalidated the application. The agency was prepared to accept repaired vehicles as original but not modified vehicles. Mr AB's shortening of the chassis, even if reversed, would represent modification. Mr AB was told that he would need to seek individual vehicle approval, a DVLA VIN and then a Q-plate. The DVLA also highlighted that the owners' club had not confirmed that the new body was of a style fitted by the factory at the time. The agency regarded the original vehicle as no longer existing. It emphasised that the decision had been made in line with published guidance. The modified chassis and new body made age-related registration impossible.

ICA outcome: Mr AB drew a different line to the DVLA between modification and repair, but that difference was not indicative of any failure on the part of the DVLA to apply or explain policy. The ICA regarded Mr AB's questions and challenges as having been reasonably responded to. He judged that the DVLA's emphasis on historicity and originality were valid considerations. The ICA expressed minor reservations about the clarity of the published guidance and asked the agency to consider whether it could be better worded. However, he did not find any error or failure of service and therefore did not uphold the complaint.

Customer fails to alert DVLA to error on registration certificate

Complaint: Mr AB complained that about the total consolatory payment of £100 he had received in relation to the registration of his classic vehicle. In the early 1990s, a then DVLA local office had wrongly recorded the date of first registration. Although aware of the

problem, Mr AB had not reported the matter to the DVLA until he undertook a voluntary MOT, and his vehicle was tested under the wrong set of emissions standards.

Agency response: The DVLA acknowledged that there had been errors on its part and had made two separate payments of £50 that Mr AB had declined.

ICA outcome: The ICA set out the course of events (which he said the DVLA had initially failed to do). He said that there was little doubt that an error had been made more than 30 years ago. However, Mr AB had not reported this (a breach of the statutory regulations). He was content that a total of £100 was an appropriate sum and in line with the relevant guidance. For those reasons he could not uphold the complaint or make any recommendations.

A customer anxious about someone else's car registered to his address

Complaint: Mr AB received a logbook for a car that he had never owned in the name of somebody he did not know who had never lived at his address. Alarmed that this was a fraudulent attempt to involve him in crime, he contacted the DVLA requesting that the third party be deregistered from his address and that an investigation occur to clarify whether there had been deliberate fraud or an error. Unfortunately, it took the DVLA over six weeks to rectify the record and confirm the same to Mr AB. In the meantime, he had written increasingly anxious and frustrated letters.

Agency response: The DVLA declined to provide any of the information about the registration transaction requested by Mr AB on the grounds of data protection and fraud prevention. The keeper change had been transacted remotely; such transactions went through on the basis that they were made in good faith with fraud and errors being corrected upon contact from members of the public. Given the volume of the DVLA's operations, this was the most pragmatic approach to maintaining its vehicles register. However, in response to Mr AB's complaint that this was a fraudster's charter, the agency explained that it was in the process of transforming its services and actively investigating ways it can validate the details of registered keepers to prevent incorrect registration.

ICA outcome: The ICA did not think that Mr AB's experience suggested that he was at risk of fraud such that the DVLA should have taken more action than it did. There was no evidence of crime. The ICA was critical of the delays that Mr AB had faced, even making allowances for the unprecedented circumstances of the pandemic. He was also unhappy that the DVLA had claimed to have rectified the record as soon as Mr AB had been in touch, when the correction had not occurred for over six weeks. He partially upheld the complaint and recommended that a consolatory payment should be made to Mr AB.

A £25 charge for a 'replacement' logbook that had never arrived

Complaint: Mr AB was one of several customers who complained that the DVLA unreasonably levied a £25 charge for the provision of a 'replacement' V5C/logbook when it had failed to provide the original document – despite admitting that it had received the necessary notification that he was the keeper. Mr AB was particularly incensed that the agency insisted that, because six weeks had elapsed since its record of sending the document to him, the £25 fee was non-negotiable. He pointed out the well-publicised delays in document processing by the DVLA but to no avail.

Agency response: The DVLA reiterated throughout the correspondence that it had dispatched the V5C shortly after electronic notification from the dealership that keepership had passed to Mr AB. The address was correct and there was no reason to associate non-receipt of the document with any error or omission by the DVLA. The agency explained the legislation underpinning its £25 fee.

ICA outcome: The ICA suggested at the outset of his involvement that this might be a case where the DVLA made a pragmatic decision to provide a logbook and avoid the cost of ICA involvement. However, the agency remained of the view that there was a point of principle involved. The ICA looked into document processing times during the period following Mr AB's acquisition of the car. He concluded that the published information and advice encouraged people to chase up non-receipt of a logbook within six weeks. Had Mr AB done this and faced administrative and customer service obstacles, then the ICA would have been able to recommend that the agency provide him with a logbook. However, this was not the case. In the absence of clear evidence of error or omission by the DVLA, the ICA could not uphold the complaint or make any recommendation.

Concerns over bona fides of classic bike

Complaint: Mr AB complained about a decision to Q-plate his classic motorcycle that had previously been verified by a now-closed DVLA local office. He said he had the support of the specialist club but acknowledged that the frame might have been replaced. In further correspondence he said he would be content to have an age-related plate.

Agency response: The DVLA said that another bike had come to light with the same registration. The specialist club had determined that neither frame was original and therefore the decision to Q-plate was appropriate.

ICA outcome: The ICA explored whether Mr AB's bike could be considered as a reconstructed classic. At first the DVLA refused. However, it subsequently said that if Mr AB could source a frame that the club was happy with then he could apply for reconstructed classic status. The ICA did not feel he could achieve any more given the DVLA's approach.

Complexities in inheriting the right to a personalised plate, not of the DVLA's making

Complaint: Mrs AB complained that the DVLA had given her incorrect advice about retaining a personalised registration that her late husband was grantee to. It had been a nightmare getting through on the phone and, she said, the false assurance that the retention would be transacted despite the existence of a second executor had necessitated an expensive appointment at the solicitors. She regarded the DVLA's £100 consolatory payment as derisory.

Agency response: The DVLA listened to the calls and established that the initial advice had indeed been incorrect. Sign-off from the second executor was required before the retention could be processed. Once this was obtained, the agency completed the transaction, taking a fortnight longer than the four weeks promised to customers. The DVLA offered its sincere apologies for the additional inconvenience Mrs AB had faced, along with the consolatory sum.

ICA outcome: The ICA acknowledged that this had been a very difficult time for Mrs AB. But he considered that the £100 offered by the DVLA was reasonable in circumstances where additional time to transact the retention was legitimately required given the presence of the second executor. He did not uphold the complaint of unremedied injustice.

Loss of cherished plate #1

Complaint: Mr AB complained that the DVLA had allowed his former partner to register herself as the keeper of a vehicle that he said he owned. Mr AB said his partner was in possession of the vehicle only temporarily. He also said that, therefore, he had lost the rights to a cherished numberplate he had purchased before his marriage.

Agency response: The DVLA said that Mr AB himself acknowledged that he was no longer in possession of the vehicle. Therefore, the keepership records were correct. It said it would not involve itself in a civil dispute about ownership.

ICA outcome: The ICA sympathised with Mr AB – especially as he had responded to the change of keepership letter within two weeks. However, even if that letter had been progressed in good time by the DVLA, it would only have led to further enquiries revealing that the vehicle was no longer in Mr AB's possession. He did not believe there had been maladministration on the part of the DVLA, and its decision not to involve itself in civil disputes – especially those involving marital breakdown – was entirely reasonable and proper.

Loss of cherished plate #2

Complaint: Mr AB complained that the DVLA would not restore his entitlement to a cherished plate.

Agency response: The DVLA said that the vehicle was now registered abroad, and Mr AB had not safeguarded his right to the plate before this occurred. The DVLA said that if the vehicle were returned to the UK, and retaxed and re-MOT'd, etc, then it was possible that the entitlement could be restored.

ICA outcome: Some minor misinformation aside, the ICA could not identify maladministration. It was clear that by law the right to the cherished plate could not be restored when the vehicle to which it was attached was registered abroad and not physically in the UK.

Loss of cherished plate #3

Complaint: Mr AB complained that the DVLA unreasonably refused to renew his entitlement to display two personalised number plates even though he had cheque stubs indicating that he had renewed his entitlement within the requisite timeframe some eight years previously. Mr AB referred to significant difficulties in his personal life that had prevented him from following up the matter sooner. The plates were of significant sentimental value.

Agency response: The DVLA was unable to match Mr AB's evidence with its own records. It concluded that applications to extend the right to display the plates before they expired were considerably overdue given the provisions of the relevant Retention and Sale of Registration Marks Regulations. No transitional scheme was in operation, therefore the plates would "exist only for audit purposes" on the DVLA systems and could not be displayed.

ICA outcome: The ICA judged that the DVLA had acted in line with the legislation and related policies. He was unable, therefore, to uphold the complaint. As in similar cases considered by the ICAs, he noted the counter-productive restrictions that applied to belated plate renewal provided in legislation.

Application to transfer a cherished plate

Complaint: Mr AB complained that the DVLA would not permit him to transfer a cherished plate to a vehicle he had purchased. He said that he had been misinformed by the DVLA contact centre. Had he known that he could not transfer the plate he would not have bought the vehicle.

Agency response: The DVLA had accepted that poor advice had been given and made a consolatory payment of £80. The agency said, however, that the law was clear that a plate could not be transferred if to do so would make the vehicle appear younger than it was.

ICA outcome: The ICA said that the law was clear and well publicised on gov.uk. He could not ask the DVLA to act outside the law. However, he was critical of aspects of the DVLA's complaint handling (including one letter that said the plate could not be placed on a younger vehicle – the exact opposite of the true position). He said that the consolatory payment was below Level 2 on the PHSO scale and recommended increasing it to £150.

A customer who did not read the small print loses title to a personalised plate

Complaint: Mr AB had transferred his personalised plate to his car 13 months earlier using the DVLA's online portal. He was dismayed, shortly before selling his car, to discover that the online portal would not allow him to retain the plate. The agency informed him of its policy that where there is a gap of more than 180 days in the previous five years' licensing history, then retention cannot be transacted on the portal. Mr AB reluctantly transferred the plate with the car and lost title to it. He pressed the DVLA for compensation. Why, he asked, was transferring the plate *onto* the car easy online but transferring it off was impossible?

DVLA response: The DVLA explained its policy and repeatedly urged Mr AB to retain the plate before disposing of the car. It declined his claim for compensation.

ICA outcome: The ICA could see both sides of the argument. From the DVLA's perspective, the advice on the V317 form (and online) was clear enough that keepers should retain the plate before selling or destroying a vehicle. The online guidance on retaining a plate also states that vehicles must have been taxed or had a SORN in place continuously for the past five years. The agency emphasised to the ICA that retention and assigning services are independent and operate using different criteria: *"they should not be compared on a like-for-like basis."* On the other hand, the ICA was sympathetic to Mr AB's points, in particular that assigning the plate had been straightforward. He had no way of knowing that there had been a gap in the registration history while the car was owned by someone else. The ICA suggested that the personalised registration service would be improved by a marker putting assigning customers on notice that they will need to manually retain/transfer in future unless they keep the vehicle continuously licensed for five years themselves. Other safeguards were suggested by the ICA. In his consideration of the service provided to Mr AB, the ICA noted that the DVLA had responded swiftly to his communications and advised him on three occasions before he disposed of the car that he would lose the plate unless the retention was transacted. In the absence of an error or shortfall in service, the ICA could not uphold the complaint.

Registration documents for the *Nomadland* generation

Complaint: Mr AB complained that the DVLA would not issue a registration document for his vehicle to what he acknowledged was a maildrop address. He said he was of no fixed abode and travelled around the country for work.

Agency response: The DVLA said that maildrop addresses were not acceptable as the police and other authorities would be held up in the event of an accident or enforcement activity.

ICA outcome: The ICA said he did not believe the DVLA's approach was maladministrative. It derived from powers under the Regulations and was intended not only to assist the police and others but to guard against fraud. However, he understood that it did not assist those living a *Nomadland* lifestyle. The ICA was pleased to see that the DVLA had exercised some discretion, lifting the bar on the record temporarily to enable Mr AB to tax his vehicle over the phone.

An ex-keeper stung by the new keeper's misdemeanours

Complaint: Mr AB complained that it took the DVLA nine months to deregister him from a car he had sold back to a dealership, despite the dealership's repeated efforts to notify the agency. In this time, he was targeted for enforcements for infractions by the new keeper. Mr AB demanded that the agency pay over £700 of fines.

Agency response: The DVLA had (exceptionally and contrary to standard procedure) removed Mr AB from the vehicle record after the second representation from the dealer. The dealer's communications had been somewhat confused and contradictory – Mr AB was not named as the ex-keeper and the dates did not tally. The agency explained to Mr AB that it was his duty to notify disposal. From the outset it advised that he should return any notices of fines, etc. to the issuing authority with an explanation that he had not been keeper at the time. The DVLA declined to reimburse him.

ICA outcome: The ICA had reservations about Mr AB's account that the delay in deregistering him was a product of DVLA error. First, it had been Mr AB's responsibility to notify disposal using the V5C/3 slip on the logbook. Second, the ICA pointed to the inconsistent and implausible correspondence from the dealership to the DVLA. Finally, he noted that the sum that Mr AB was claiming was not supported by evidence. The ICA did not uphold the complaint.

Scrappage rules out-trump classic vehicle

Complaint: Mr AB complained that the DVLA would not issue him with a V5C for a classic vehicle he had imported into the country. He said it was in excellent condition and fully insured.

Agency response: The DVLA said that Mr AB's vehicle had previously been treated as Category B scrappage. However, it had been wrongly exported rather than crushed and therefore could not be re-registered.

ICA outcome: The ICA agreed that the DVLA had followed the regulations and policy. But he suggested that exceptionally the DVLA might issue a Q-plate to denote the vehicle's unusual provenance. The DVLA deemed this an 'unusual suggestion' and one that could be counterproductive. Given it was following policy, the ICA could not uphold the complaint against the DVLA. However, he regretted that a classic vehicle that was perfectly roadworthy was to be crushed rather than a customer-friendly compromise found.

Non-transferable registration for classic vehicle

Complaint: Mr AB owns a classic motor scooter. After a long campaign, the DVLA agreed that it could be issued with its original registration. However, Mr AB complained that the DVLA had closed his case without sending him a letter; more importantly, he complained that the original plate had been allocated on a non-transferable basis.

Agency response: The DVLA said that the non-transferability of plates was a long-standing policy and registrations were allocated on that basis. It said the clerk who had dealt with Mr AB's case had now left the agency so could not be asked about the way the case had been closed.

ICA outcome: The ICA said that the contemporaneous note recorded by the clerk indicated that Mr AB was happy for his case to be closed once the original registration was allocated. However, it was obviously possible that there had been a misunderstanding. On the substantive issue, the ICA said the non-transferability of plates in these circumstances was a matter of DVLA policy on which he could not adjudicate. However, it was of long standing, was well publicised (including on the application form and notes) and had been introduced for a good reason – to prevent fraud. He did not uphold the complaint.

(iii): VEHICLE TAX AND ENFORCEMENT

A customer unwisely ignores enforcement in relation to a disposed-of vehicle

Complaint: Mr AB, who did not have a V5C/logbook, sold his car through social media but did not notify disposal to the DVLA in writing, expecting the purchaser to do it. Two

months later he cancelled his direct debit but still did not notify disposal. He started receiving speeding and parking notices for the car. The DVLA then put him on notice that he was liable for enforcement action for unpaid tax, but he did not respond. He was issued with a late licensing penalty (LLP) at which point he complained that the DVLA's published information on direct debit cancellation did not refer to ongoing liability for a vehicle.

Agency response: The DVLA escalated the case in stages through its standard enforcement channel to a debt collection agency. The DVLA explained that its www.gov.uk/sold-bought-vehicle link set out how to notify disposal without a logbook. The agency accepted that the direct debit cancellation page could be more informative and referred Mr AB's comments to its web team. However, it regarded the enforcement as correctly applied. Mr AB continued to be badgered by debt collectors.

ICA outcome: The ICA agreed that the enforcement had been applied and conducted in line with legislation and policy. He had no jurisdiction to challenge it. Advice about ongoing liability for a disposed-of vehicle was printed onto every logbook (it was not the DVLA's fault that Mr AB did not have a logbook). The ICA regarded it as axiomatic that liability will apply whenever keepership is registered. He was not persuaded by Mr AB's arguments to the contrary. While sympathetic, the ICA could not uphold the complaint.

A driver confused and distressed by the agency's disposal of her vehicle

Complaint: Mrs AB had a long history of lawful vehicle ownership. A two-day lapse in MOT cover for her car regrettably coincided with the scheduled direct debit renewal for tax. The direct debit therefore failed. Mrs AB did not respond to the DVLA's various prompts that the vehicle was untaxed, and she received an LLP followed by a clamping. Confused, Mrs AB inadvertently signed the vehicle disclaimer form confirming that she had no rights of ownership. The DVLA's clamping contractor immediately disposed of the vehicle to auction. Mrs AB argued that she had renewed the MOT promptly after it had expired, and that the enforcement was unfair and harsh. She relied on the car for childcare and much more. She was bewildered by the various fines levied by the agency and argued too late that the car should be restored to her with its contents.

Agency response: The standard suite of prompts and notifications had been sent to Mrs AB. This had started with a reminder prior to expiry of the direct debit that the car would need MOT cover for the transaction to succeed. After tax lapsed, two further letters were sent, followed by the LLP. A week or so later the vehicle was clamped, and standard advice on how to release/recover it was provided at the roadside and in subsequent correspondence.

ICA outcome: The ICA regarded the enforcement as highly unfortunate and disproportionate. In essence, the lack of MOT cover over a single weekend set in train a series of events whereby Mrs AB had lost her car. Most regrettably, she had not understood

the necessity of resolving the tax cover at an early stage. However, the enforcement was mandated in law and the ICA had no scope to criticise the DVLA or its enforcement contractor. The ICA was mildly critical of the time it had taken the DVLA to tell Mrs AB why the direct debit had failed. However, he balanced that criticism with an acknowledgement that the agency's automated notifications had all been employed, regrettably without success. The ICA was therefore unable to uphold the complaint.

Delays with MOTs in Northern Ireland lead to DVLA enforcement action

Complaint: Mr AB complained about enforcement activity in Northern Ireland. He said there were huge delays with MOTs, and it was not possible to tax. Mr AB contrasted the DVLA position with the more understanding approach of the Police Service of Northern Ireland and the insurance companies.

Agency response: The DVLA said the law was clear. Vehicles should either be taxed or declared SORN. The DVLA said it had no responsibility for MOTs – whether in Great Britain or in Northern Ireland.

ICA outcome: The ICA said that the law was clear, and he could not make a finding of maladministration against the DVLA. However, he regarded the position as very unsatisfactory. There were long delays with MOTs in Northern Ireland because of Covid and equipment failures. But the resolution of these problems was for the Driver and Vehicle agency in Northern Ireland and for the political process, not for an administrative complaints procedure.

Penalty for vehicle long-since disposed of

Complaint: Ms AB complained about a penalty notice further to Continuous Insurance Enforcement (CIE) for a vehicle she had long since part exchanged. She said she had informed the DVLA and had anticipated that the dealership would have done likewise. She also said the vehicle had been scrapped so no question of insurance arose.

Agency response: The DVLA said the law was clear. Ms AB was the registered keeper at the time of the offence.

ICA outcome: The ICA sympathised with Ms AB, and he said she might well be right in her allegation that the letter she had sent had got lost at the DVLA during the Covid mail pile-up. However, this was to speculate and the DVLA was entitled to rely on customers chasing if they did not hear anything after four weeks. If Ms AB had responded to the Insurance Advisory Letter (IAL), the matter might have been settled at the time. The ICA said it was not clear if the vehicle had been scrapped (the dealership said it had, but the DVLA had no record). In any event, there was no evidence that it had been scrapped at the time of the CIE offence. Given the law on CIE, the ICA could identify no maladministration, despite his

sympathies for Ms AB and other customers who received penalties for vehicles they had long since disposed of.

Wrongful clamping

Complaint: Mr AB complained that his vehicle had been improperly clamped and that the clamp could have been removed earlier.

Agency response: The DVLA said that Mr AB's tax had been overwritten after he claimed a rebate. It had offered a consolatory payment of £150 for poor service.

ICA outcome: This was a complex matter and the ICA said he could not be certain he had got to the bottom of it. Mr AB had taxed his vehicle online and been warned that the tax would start from the beginning of that month. He had then gone to his credit card issuer and tried to get one month of the tax refunded as he did not need the vehicle until the next month. When the issuer approached the DVLA, it seems to have been assumed that the refund was made (although this was far from certain), and Mr AB had been sent an appropriate warning letter. This then resulted in the record (wrongly) showing the vehicle as still SORNed (as it had been before Mr AB taxed it). The ICA was content that the consolatory payment was in line with PHSO scales and that the root cause of the problem was Mr AB's attempt to reclaim tax for a part month. But if Mr AB could show he had lost income because of being wrongly clamped, the DVLA should obviously consider this. The ICA therefore recommended that the DVLA send him a compensation form for completion.

The DVLA refuses to register a car to a 'mail-drop' address; it is then clamped and sold at auction

Complaint: Mr AB attempted to register a car he used for work to an address marked by the DVLA as a 'mail-drop' location, and therefore an ineligible address for vehicle registration. The application was rejected accordingly, but Mr AB did not receive or read the correspondence for over a year. Meanwhile, he thought he was unable to tax the car without a logbook. It was stickered by the DVLA's enforcement agents, but no action was taken by Mr AB. A fortnight later, the vehicle was clamped and impounded. Mr AB protested that the vehicle was nil tax, that it was the DVLA's fault he could not tax it. Further, the address he had attempted to register it to was acceptable to Companies House and other government bodies including HMRC. Why then did the DVLA refuse to regard it as a viable address?

Agency response: The DVLA explained why it would not register Mr AB's car to the address he had provided. It emphasised that the enforcement had been correctly applied and Mr AB was put on notice that his vehicle would be disposed of if he did not pay the requisite fees and claim it. When he did not do so, the vehicle was auctioned off.

ICA outcome: The ICA noted that Mr AB's argument that the address was viable was not helped by the fact that he had not picked up correspondence from there. It clearly was not the DVLA's fault that he hadn't licensed the vehicle (in fact he could have licensed it through alternative means and had well over a year to pick things up with the DVLA). The enforcement outcome had been harsh, but it had been conducted within the legal and policy framework. The ICA could not therefore uphold the complaint.

An olive branch by the DVLA at ICA stage after a customer had problems notifying SORN

Complaint: Mr AB complained that he was unfairly and unreasonably targeted with enforcement action in relation to a scooter he kept in his garden shed. He said that he had been unable to SORN using the DVLA's interactive voice recognition system. He had made two attempts in good faith and had received no message that would suggest they had failed. After the DVLA issued a Late Licensing Penalty, he protested that he was being penalised for a DVLA system failure. Supported by his MP, he continued to press the agency to cancel debt collection activity.

Agency response: The DVLA insisted that Mr AB should have understood that his notifications had been unsuccessful. He subsequently succeeded in notifying SORN but this was after the enforcement had been applied – meaning that the agency could not waive enforcement. At ICA stage, the DVLA reflected that it had made some errors in complaint handling that would understandably have confused Mr AB. On that basis it cancelled the enforcement and issued a £100 consolatory payment.

ICA outcome: The ICA could not uphold the complaint of system or service failure by the DVLA as he could not establish precisely why the early notifications had failed. He welcomed the agency's resolution of the complaint.

Error by fleet operator leads to vehicle keeper being removed from record and unable to tax

Complaint: Mrs AB complained that she was unable to tax her car as she had been removed from the keepership without her knowledge. She said this had caused great inconvenience and represented a breach of her GDPR rights. She asked for £12,000 in compensation.

Agency response: The DVLA said that the cause of the problem was that the previous keeper was a fleet operator that had not destroyed the V5C in line with DVLA instructions. A batch of V5Cs from the fleet operator had been processed in good faith for a change of address. This had the effect of removing Mrs AB from the record. In processing batches from fleet operators, the DVLA does not follow its normal process of contacting the previous keeper on record and thus Mrs AB was not alerted to what had happened. The

DVLA acknowledged that Mrs AB's data rights had been breached in that her data had been overwritten in error. It had offered a total of £500 consolatory payment but declined to pay compensation in the absence of evidence of material loss.

ICA outcome: The ICA said the root cause was the failure of the fleet operator to follow DVLA guidance when it sold the vehicle to Mrs AB. He did not think it was maladministrative for the DVLA to have different systems when processing batches of V5Cs from operators, but this case showed that there were weaknesses in relying upon companies to do the right thing. The ICA inferred that Mrs AB was not the only customer who had been overwritten as keeper. The ICA was content that the matter had been resolved quickly and that the sum of £500 was proportionate and in line with the guidance. He did not think additional compensation was due.

A case of unforgiving enforcement

Complaint: Mr AB complained about the imposition of an LLP under the legislation for Continuous Registration. He said his vehicle was in a garage for complex repairs. At the suggestion of the garage, he had SORNed his vehicle before the tax expired. He accused the DVLA of bullying him and intruding on his privacy.

Agency response: The DVLA said that an attempt to SORN was shown on its records, but the transaction had been terminated by the customer before completion. It said the LLP had been correctly imposed. It had now been passed to a debt collection agency**.**

ICA outcome: The ICA said he had great sympathy for Mr AB. There was no suggestion that he had set out to avoid road tax or not to SORN his car. Indeed, quite the contrary. However, the issue was not where his sympathy lay but whether the DVLA was guilty of maladministration. The ICA said the law was in strict terms and he could not make a finding of maladministration when the DVLA had applied the law as Parliament intended.

Motor trader is clamped

Complaint: Mr AB, a motor trader, complained about the clamping of three of his vehicles. One had been used for a test drive and was outside his business premises. Mr AB also said it had been displaying trade plates (and that NSL had digitally altered the photos). The other two were in a local pub carpark that Mr AB said he had permission to use.

Agency response: The DVLA said it was content that each clamping was in line with the regulations. It said the first car had not been displaying trade plates when clamped. In any case, it was on the public road (Mr AB was invited to show Land Registry documentation if he felt otherwise). The other vehicles were in a private car park but, despite being offered the chance to explain his relationship with the car park owner, Mr AB had declined to do so. The suggestion that photos had been manipulated was rejected.

ICA outcome: The ICA said this was essentially a legal dispute – had the DVLA and NSL interpreted the law and regulations correctly? But so far as he could see there had been no maladministration. Mr AB had been offered the chance to justify his position in respect of all three clampings but had declined to do so. The issue of the trade plates in the first clamping was something of a red herring and he did not conduct primary investigations. However, trade plates should not be used on parked vehicles and should be displayed on the outside not on under the rear screen.

Another motor trader is clamped

Complaint: Mr AB complained about the clamping, lifting and disposal of a vehicle he had purchased and intended to sell.

Agency response: The DVLA said the vehicle was sitting untaxed on a verge, constituting part of the highway. There were no signs that it was in trade. By the time Mr AB had noticed it was missing (a month after the clamping) it had been disposed of at auction in line with the Regulations.

ICA outcome: Noting that Mr AB had said that he did not think he needed to tax the vehicle as he was a trader, the ICA said he was surprised that Mr AB was not familiar with the Regulations. Motor traders did not need to tax vehicles they intended to sell so long as they were kept on clearly designated business premises. This was clearly not the case here. He could not uphold the complaint, but sympathised with Mr AB that the net proceeds from auction were likely to be a lot less than what Mr AB had paid for the vehicle.

A keeper SORNing on housing association land has his car auctioned off by the DVLA

Complaint: Mr AB notified SORN on his car on Housing Association land, in a layby close to his home. The DVLA's enforcement agents NSL clamped the car and then, after a month, lifted it. Over a three-month period, correspondence between Mr AB, NSL and the DVLA rumbled on. Mr AB argued that the layby was not public highway and it had therefore been a legitimate place to SORN. NSL provided evidence that the road (including laybys) was maintained by the council and amounted to adopted public highway. In the end, the car was auctioned. Mr AB also lost title to a personalised plate and the car's contents. He insisted that he would recover his losses legally and that the DVLA should pay for a new replacement vehicle.

DVLA response: NSL and the DVLA insisted from the outset that the land was maintained by the council and the enforcement could proceed under Section 29 of the Vehicle Excise and Registration Act 1994. The disposal date was extended on four occasions. NSL emphasised that *ownership* of the land was irrelevant. As far as the legislation was concerned, *maintenance* of the land was crucial. It refused Mr AB's claim.

ICA outcome: The ICA could not adjudicate over Mr AB's dispute about the legality of the enforcement. On an administrative level, he was satisfied that NSL had backed up its position with evidence and addressed all the points raised by Mr AB. Mr AB had been apprised from the outset how to get his car back while still pursuing his complaint/claim. In this way he could have avoided the massive pound fees that built up, and the auctioning. The ICA was very sympathetic to Mr AB's case and understood why the enforcement had felt disproportionate and unfair. However, it had been conducted in line with legislation and policy and he had no grounds to comment on its merits.

An ex-vehicle keeper incensed by the DVLA collecting 'double tax'

Complaint: Mrs AB's disposal notification was not received by the DVLA and the direct debit for tax would remain in place for the following eight months. In this time Mrs AB made sporadic efforts to deregister herself from the car. She was incensed when the DVLA would not refund the vehicle excise duty she had paid, insisting that she had been told she would get a refund when she chased up to ring back 10 to 12 weeks later. As a result, she had paid well over £150 in tax that the DVLA should refund. She regarded the DVLA's conduct as all the more egregious as it had also been 'double collecting' tax for the car from its new keeper during this time.

Agency response: The DVLA went through the various communications from Mrs AB and established that the first record it had received of disposal had arrived some 10 months after the event. No refund was therefore due.

ICA outcome: The ICA was concerned about some aspects of the DVLA's handling, including the lack of clarity as to the contents of recorded delivery letters sent to the agency. The ICA felt that it was likely that a notification of disposal had been dispatched in one of those letters by Mrs AB. In recognition of the poor service she had received, he recommended that the DVLA make a consolatory payment of £100.

A customer unconvincingly blames pandemic delays for not taxing his car

Complaint: Mr AB moved house five months before the first wave of the pandemic. He informed the DVLA using the V5C but did not receive a new V5C. Nonetheless, he was able to tax in February 2020 using a V11 reminder letter sent to his previous address. Just over a year later, after he had, in the absence of a V11 reminder, failed to renew tax cover, he was subject to an LLP followed by a clamping. Convinced that the DVLA had chosen to target him for aggressive enforcement rather than simply alerting him to the need to renew tax, he complained that the enforcement was disproportionate and unfair. As his car was zero duty, he could not be characterised as a tax avoider. Mr AB raised several other complaints against the DVLA.

Agency response: The DVLA explained that it does not target vehicles identified as untaxed through its mainframe. Mr AB's car had been seen on the road by the DVLA's enforcement contractor during a scheduled sweep of the postcode area. The DVLA held the line that the enforcement had been justified, explaining that notifications of change of address against a driver record did not carry across to the vehicle record and that non-receipt of a new V5C within six weeks of dispatch should have alerted Mr AB that there was a problem. The agency also pointed out that there had been several months before the pandemic during which Mr AB could have chased the matter up.

ICA outcome: The ICA noted that Mr AB had been able to re-tax using the V11 reminder letter some four months after moving house. At this stage, before the pandemic, the fact that the car was still registered to his former address should have been apparent. The ICA was not convinced that the pandemic had any role in Mr AB's difficulties here. He acknowledged that he could not be characterised as tax avoider and that the enforcement had felt disproportionate. However, it had been conducted in line with published policy and the ICA was therefore unable to uphold the complaint.

Satisfactory outcome for vehicle wrongly clamped

Complaint: Mr AB's car had been mistakenly clamped. This led to him having to curtail his wife's birthday celebrations.

Agency response: The DVLA had made a payment towards the cancellation of Mr AB's hotel booking and a consolatory payment of £200 for poor service.

ICA outcome: Following the ICA's intervention, the DVLA agreed to increase the payment to £500. The ICA thought this was fair in the circumstances and Mr AB withdrew the complaint.

Fees charged by auction company to dispose of seized vehicle

Complaint: Mr AB complained about the clamping and disposal of his vehicle while he was abroad and unable to travel because of Covid restrictions. He also said that the sum raised at auction did not represent the true value of his car.

Agency response: The DVLA had said it had no knowledge of Mr AB's whereabouts and he had made no effort to ensure his vehicle was lawfully on the road. It had explained that auction costs had been charged of both buyer and seller.

ICA outcome: The ICA sympathised with Mr AB, but he accepted that the DVLA had acted lawfully. In circumstances where the agency had no knowledge of a customer's whereabouts, it could not exercise Covid-related discretion. However, he recommended that a copy of his report be shared with NSL as there seemed little doubt that the fees

charged by the auction company (and which came off the receipts paid to Mr AB) appeared excessive compared with other motor auctioneers.

A customer discovers that his car has been auctioned off for a pittance

Complaint: Mr AB's MOT ran out and he was unable to get his car tested before he left the country. He expected that his direct debit would auto-renew but in the absence of MOT, it did not. While he was abroad his car was targeted for enforcement action of which he was completely unaware. The car was then clamped, impounded and, in the absence of any representation from Mr AB, auctioned off. Mr AB complained that the sum paid to him out of the proceeds of sale was barely 10 per cent of the value of the car. He sought a payment from the DVLA to reflect his significant losses.

Agency response: The DVLA's wheelclamping unit explained why Mr AB's vehicle had been targeted. In addition to the last chance to tax letter, some time before tax had expired (while Mr AB was in the country) the agency had written to him highlighting the need to get a valid test certificate for the direct debit to renew. This position was reiterated by the complaints team in subsequent communications.

ICA outcome: The ICA considered that the penalty that Mr AB had paid for a brief lapse in MOT, and then tax, was disproportionate, particularly bearing in mind his history of lawful keepership. It was impossible not to feel sympathy for him, particularly given his representations that he could not afford a replacement and needed a car to work. However, in the absence of any error or failure in service, the ICA could not uphold the complaint.

Poor treatment of customer reporting illegal removal of clamps

Complaint: Mr AB complained that, when he reported that clamps were being illegally removed from untaxed vehicles in his street, the DVLA was uninterested and treated him rudely.

Agency response: The DVLA had listened to one of Mr AB's calls and agreed that he had been treated without empathy. An apology was offered, and management action taken. Just before the ICA referral, the complaints team had acknowledged other aspects of poor service and made a consolatory payment of £75.

ICA outcome: The ICA said it was disappointing that Mr AB's public spiritedness had been treated so poorly. It was also disappointing that correspondence had gone missing. Although the DVLA had acted (including amending its internal advice so that other customers would be encouraged to contact NSL), the consolatory payment did not reflect aspects of poor service identified by the ICA. He therefore increased the payment to £125.

Poor handling of customer in receipt of PIP

Complaint: Mr AB is in receipt of the Personal Independence Payment (PIP) and is entitled to a 50 per cent deduction in road tax. Unfortunately, and despite being alerted to a change of address, the DVLA sent data about his entitlement to a former address. Attempts to retrieve the letter were unsuccessful. The DVLA compounded the initial problem by confirming to the resident of the old address that the correspondence related to PIP – something Mr AB had kept from them.

Agency response: The DVLA apologised, reported the data breach to the Information Commissioner, and made consolatory payments of £350.

ICA outcome: The ICA said that Mr AB had been the victim of very poor service. However, he was content that the actions taken by the DVLA represented sufficient redress and the consolatory payment was consistent with Level 2 injustice on the PHSO scale.

The entitlement to pay road tax by direct debit

Complaint: Mr AB complained that the DVLA would not allow him to pay his road tax by direct debit. He said that he had been told that the facility would be reinstated if he paid six months' tax outright.

Agency response: The DVLA said it had withdrawn Mr AB's right to pay by direct debit because payments had been missed. Before making the ICA referral, it acknowledged some handling errors and agreed exceptionally to reinstate payment by direct debit if arrears were cleared. A £50 consolatory payment was made.

ICA outcome: The ICA said it was clear the handling of this matter had not been optimal, and this had caused Mr AB stress and inconvenience. However, the fundamental problem was his failure to pay direct debits on no fewer than eight occasions. The ICA concluded that, following the DVLA's actions, there was no remaining injustice for him to remedy.

Customer seeks goodwill payment for his own mistake

Complaint: Mr AB had purchased a second-hand car as a first-time buyer. He had subsequently been clamped. He said the seller had not told him there was no tax on the vehicle. He accepted that an offence had been committed but sought a goodwill gesture from the DVLA to repay the clamping fees. He said that other first-time purchasers could be in the same position and called for the DVLA to review its position on goodwill payments.

Agency response: The DVLA said that it was ten years since tax transferred with a vehicle (in this case, the tax had run out anyway), and there was no onus on the seller to remind

purchasers about the taxation position. An offence had been committed and a goodwill gesture would not be consonant with the proper use of public money.

ICA outcome: The ICA said he had no reason to doubt Mr AB's account that he did not know his car was untaxed. But information was freely available on gov.uk and on the green slip from the V5C that Mr AB had in his possession. It was not maladministrative of the DVLA to decline to make goodwill gestures to those who were in breach of the law but said they were ignorant of it.

(iv): MISSING ENTITLEMENTS AND DOCUMENTS

Loss of a marriage certificate

Complaint: Mrs AB complained about the loss of her marriage certificate when applying to change her name on her driving licence. As her existing short-term driving entitlement was due to expire, the DVLA also undertook medical enquiries. Mrs AB further complained about the time taken.

Agency response: At stage 2 of its complaints procedure, the DVLA acknowledged unacceptable delays and other poor service. It made a consolatory payment of £200.

ICA outcome: The ICA said two things emerged from his review: very poor handling by the DVLA and the remarkable patience shown by Mrs AB. While welcoming the DVLA's attempts to resolve the grievance, the ICA felt the consolatory payment (while in line with PHSO guidance) was too low given the serial failures by the DVLA. He therefore increased the payment to £350.

Lost identity documents

Complaint: Mrs AB had applied for a driving licence enclosing several identity documents. Although she received her licence the documents were never returned. She feared identity theft and asked for compensation for the cost of renewing the documents.

Agency response: The DVLA said that it had returned the documents by ordinary second class post. Had Mrs AB wanted to make their return more secure she should have enclosed a pre-paid signed for envelope in line with the DVLA's published procedures. The DVLA declined to pay compensation and suggested Mrs AB should speak to the Post Office or Royal Mail.

ICA outcome: The ICA had much sympathy for Mrs AB. However, by her own account she had forgotten to enclose the pre-paid envelope (which it seemed likely she had in fact purchased from the Post Office). In these circumstances, the ICA said there had been no maladministration by the DVLA in following its procedures and returning the documents by

standard second class post. As to what had happened to the papers, the ICA could not say. He sympathised with Mrs AB in that it seemed two public bodies were blaming each other. But he could not see why Mrs AB's very unfortunate mistake should merit compensation from the DVLA.

Passport at DVLA means cancelled holiday

Complaint: Mr AB complained that his daughter's passport had not been returned in time for a family holiday. His daughter therefore had had to stay at home and the family had incurred a number of additional costs.

Agency response: The DVLA had acknowledged poor service in failing to look for the passport despite having a signed-for delivery number. A consolatory payment of £300 had been offered but rejected by the complainant.

ICA outcome: The ICA had attempted to mediate a settlement between the parties, but this proved unsuccessful. Following his review, the ICA recommended increasing the consolatory payment to £500, but he did not offer compensation as Mr AB had booked the holiday at his own risk at a time when delays at the DVLA were well known. He also recommended amending the advice to first time licence applicants to make clear that those whose passport photos are not digitalised will need to send their passport and cannot rely on simply providing the passport number. It was likely that the third party who had first been involved had not advised Mr AB's daughter accordingly.

DVLA more likely than not responsible for missing BRP

Complaint: Ms AB applied for a provisional driving licence online, providing her deed poll documentation and biometric residence permit (BRP). She dispatched the application pack by Special Delivery including prepaid Special Delivery return. Because it arrived late, it was rejected by the DVLA. A month later, Ms AB chased the agency, having not heard anything. The tracking code for the return Special Delivery package elicited an error message on Track & Trace. Over the following three months, Ms AB made repeated representations to the agency that it must be responsible for the missing documentation. The Royal Mail had explained to her that the 'returned' documents had never entered its system, hence the lack of tracking data. The only explanation for this was that the DVLA had failed to provide the package to the Royal Mail for scanning and dispatch.

Agency response: The DVLA had no record on its systems of the tracking code for the return dispatch of the documentation to Ms AB. However, it insisted that the package had been returned to her on the day the application had been processed, in line with expected procedures. A complaints team investigation established that rejected applications were not tracked within the DVLA's systems. The position was held that Ms AB should chase the Royal Mail for the package (although she had reported having done this repeatedly from

the outset). Repeated physical searches within the DVLA for the documents were unsuccessful.

ICA outcome: The ICA established that there were actually at least two expected audit points where the package number should have been recorded internally by the DVLA. Neither of these markers existed on DVLA systems. The ICA concluded that the package had not been taken to the delivery bay. He therefore found that the DVLA had lost it. He recommended that the price of a new BRP and deed poll documentation should be refunded by the DVLA. He also recommended that the agency should make a consolatory payment of £500 to reflect the inconvenience caused to Ms AB.

Taxi driver with no car entitlement on his licence

Complaint: Mr AB complained that the DVLA would not issue him with a driving licence showing full car entitlement. He said he had passed his driving test in the early 1960s and had subsequently worked as a taxi driver. He pointed out that the Council would have checked his driving entitlement.

Agency response: The DVLA had carried out its standard searches and said it had no record of Mr AB ever having had a car entitlement. It said it would re-consider its decision if he could supply supporting evidence.

ICA outcome: The ICA had much sympathy for Mr AB. He said the DVLA had probably been right to speculate that Mr AB had had two red book licences, but for reasons unknown only one had been converted. However, it was clear that any licence since the establishment of the former DVLC would not have shown a car entitlement (which suggested that the Council's due diligence was not very impressive). In the absence of evidence of maladministration, and the absence of any evidence of Mr AB ever having had a full car entitlement, the ICA could not uphold the complaint. He appreciated that the prospect of having to take a theory and practical driving test would be very unappealing to Mr AB given his age.

No trace of entitlement for a driver on the road for five decades

Complaint: Mr AB had been driving for 50 or so years and, he thought, had been issued with a counterpart and photocard licence by the DVLA after converting his red book entitlement many years previously. He lost his licence and over a period of years requested that the DVLA replace it. The agency could not do so because it held no record of a full entitlement, even when checked against variations of Mr AB's name and details.

Agency response: The DVLA conducted multiple searches and could not find a record of full entitlement. It surmised that Mr AB had not converted his red book entitlement into a

DVLA licence within the 10 year grace period that had ended in 1986. While it accepted that he had passed his driving test, it was unable to issue him with a licence.

ICA outcome: The ICA was very sympathetic to Mr AB's predicament. Nobody doubted that he had passed the driving test. However, there was no evidence that he had redeemed his red book for a 'til 70 licence. In policy therefore, the DVLA required him to pass the theory and practical tests before it could fully license him. Mr AB refused, insisting that he could produce witnesses to the fact that he had passed his test many years previously. The ICA did not doubt this but could not require the agency to depart from its policy position that the opportunity to convert had passed.

An HGV driver requalifies when his entitlement cannot be traced

Complaint: Mr AB passed his HGV1 test in the late 1980s and therefore was very surprised after half a million miles of trouble-free HGV driving to be challenged by the police about his entitlement. The agency scoured its records using variations of Mr AB's name and date of birth, and found only provisional entitlement in HGV1 category. Mr AB did not expect the DVLA to believe him and successfully re-sat the test. He was accordingly issued with a new licence. He argued that the DVLA's requirements (which centred on evidence that an entitlement had been recorded on the driver register in Swansea) were discriminatory, as people who had not attracted motoring endorsements and convictions would not be able to show that their entitlement had been checked by the police and/or courts.

Agency response: The DVLA maintained that there was no record of higher class HGV entitlement. It required documentary evidence of the vocational licence issued after 1 April 1986 by a Traffic Area Office, a certificate confirming a test pass within the last two years, or documentary evidence showing a prior DVLA record of the requested entitlement. The agency responded to further queries made by Mr AB's MP, standing by its position that full entitlement had never been held on Mr AB's record.

ICA outcome: The ICA could not find evidence of error or failure in customer service by the DVLA. It had applied its policy-driven requirements to Mr AB's claim to the entitlement, having exhausted its searches of electronic and manual records. The ICA expressed no doubt whatsoever that Mr AB had been legitimately working on his HGV1 entitlement over the previous three decades but, for unknown reasons, this was not reflected on the driver record. He was unable to uphold the complaint.

An ex-soldier is eventually allowed to drive tanks

Complaint: Mr AB, an ex-serviceman, was convinced that his category H tracked vehicles entitlement should be reflected on his DVLA licence. He noticed that the entitlement was provisional and assumed that there had been an error in Swansea.

Agency response: The DVLA obtained certification from the Ministry of Defence confirming Mr AB's military service and the fact that he had passed the military tracked vehicle assessment in the late 1980s. At the point of referral to the ICA, the DVLA sought confirmation from the Ministry that Mr AB's certification was genuine. Delays then set in while Mr AB's consent for the Ministry to speak to the DVLA was sought. Happily, his entitlement was confirmed as the ICA concluded his review.

ICA outcome: The ICA welcomed the DVLA's reconsideration of its position whereby equivalence (accepting that the military driving test amounted to a valid test pass in the civilian sphere) opened a new avenue to consider Mr AB's case. The ICA was sympathetic to Mr AB's complaint of delay (the whole process had taken over nine months) but did not conflate the DVLA's change of policy position with maladministration or poor service; rather, he welcomed it. The ICA accepted that the agency had legitimate safety concerns and that the threshold to allow the entitlement was justifiably set high. Given the agency's constructive reflection on its position throughout the complaints procedure, the ICA did not uphold the complaint.

(v): OTHER CASES – DRIVERS

Confusing tale of first licence application

Complaint: Mr AB complained about that his application for a first provisional licence had not been processed and his identity documents had been lost. He said he had been waiting more than six months.

Agency response: The DVLA said the initial application had been returned because of an inconsistency in the records of Mr AB's name. But it had subsequently given contradictory advice. On one occasion it had said that the online application was out of time; on another, it had said the application was still live. The DVLA also said it had no receipt demonstrating that the identity documents had been received.

ICA outcome: The ICA said that this was a confusing matter, and he could not get to the bottom of it. An application for a first provisional licence should be a straightforward affair, but what had happened in Mr AB's case was uncertain. The ICA constructed a timeline for what he considered the most likely course of events. It was apparent that there had been some maladministration by the DVLA, and the ICA part upheld the complaint. He also recommended that a senior member of the DVLA should write to Mr AB with an apology and an account of what had happened – along with advice as to the next steps.

Complaint about wrong details on licence is resolved

Complaint: Mr AB's licence had been wrongly issued by the DVLA as for automatic vehicles only. He had twice been stopped by the police (the second time bizarrely after the correct

licence had been issued) and incurred the impounding of his vehicle and a consequent loss of earnings in addition to considerable inconvenience and embarrassment. He sought £1,000.

Agency response: The DVLA had accepted that it was responsible for Mr AB's misfortunes. It had made a total offer of £730, which Mr AB had rejected.

ICA outcome: The ICA felt that the sum offered by the DVLA had not been generous. Given that the differences between the DVLA and the complainant were not large, and to avoid unnecessary costs of a full ICA review, he invited the agency to reconsider. When the sum of £1,000 was agreed, the ICA withdrew the complaint as having been resolved.

Errors on a licence

Complaint: Mr AB complained about mistakes on his driving licence that meant a job offer was withdrawn. He claimed compensation running into tens of thousands of pounds.

Agency response: The DVLA had accepted that there were mistakes when Mr AB exchanged a foreign licence and had offered a consolatory payment. It had declined to pay compensation on the grounds that the mistake in Mr AB's licence had been present since 2010 when he had first applied for a provisional, and he had not complained about it for 12 years.

ICA outcome: The ICA said the consolatory payment was appropriate and in line with the guidance. However, he felt the DVLA had misdirected itself in respect of compensation. The ICA was able to show that the licence issued in 2010 had been correct. Thus, while Mr AB had to take some responsibility for having failed to spot the errors on the exchanged licence in 2018, this was mitigated by the fact the 2010 licence was correct. He therefore part upheld the complaint and recommended that the DVLA reopen Mr AB's claim for compensation. However, the ICA said the outcome of this reconsideration would be far more modest than Mr AB's claim. The DVLA was not responsible for his car loan or other debts. And the firm that had offered Mr AB work and then withdrawn the offer because of the DVLA's mistakes on his licence had since gone into administration with all employees made redundant.

A private hire driver kept off the road by problems validating her entitlement

Complaint: Ms AB was a driver for a private hire company with an online platform. She complained that a glitch in the DVLA's 'View your driving licence online' service (VDL) meant that she was unable to work for four days for which she sought compensation from the agency.

Agency response: The DVLA eventually connected Ms AB to a manager who issued a D737 Certificate of Entitlement by fax, but this was insufficient for the company, meaning that Ms

AB was unable to work. Eventually, on day four, the DVLA confirmed that the codes on the system matched, and a valid check code would be produced for Ms AB. It refused to pay compensation on the grounds that there had been other ways of checking entitlement (it referred to a check code being made available through its Customer Enquiry Group).

ICA outcome: The ICA was less than impressed by the DVLA's initial handling. Ms AB had had to insist before she spoke to a manager and had been incorrectly advised that she could have obtained a check code over the telephone. However, he had reservations about Ms AB's claim, noting that the provision of the VDL service should not automatically expose the DVLA to liability when people's employers impose fixed and inflexible requirements. The ICA noted that the D737 Certificate of Entitlement was regarded as sufficient proof of driving credentials in overseas jurisdictions – he was not sure, therefore, that it was reasonable for the DVLA to pay out because the private hire company refused to accept it. He did not therefore recommend that compensation should be paid but, given at times poor service, he recommended a consolatory payment of £100.

Another customer unable to use VDL

Complaint: Mr AB complained that he could not access VDL or obtain a check code. He said this was hampering his ability to find employment and amounted to discrimination. He said it all related to a spent conviction.

Agency response: The DVLA acknowledged that Mr AB could not access VDL and that this was an inconvenience. However, it said this was the result of the Traffic Commissioners having prevented Mr AB obtaining a bus licence – a decision to which the DVLA was not party. It had pointed out the other ways that Mr AB could obtain information about his entitlements.

ICA outcome: The ICA sympathised with Mr AB. It was not clear if the inability to view VDL for those affected by a Traffic Commissioners decision was by design or was a computer glitch (he suspected the latter), but he did not believe this amounted to improper discrimination. The ICA said that the fact that the DVLA was not party to the decision was true but did not mean that the DVLA did not have to take responsibility for its systems. However, he could not dictate how the DVLA used its IT budget or set its priorities. He could not uphold the complaint but recommended that a copy of his report be shared with the Director of Operations to ensure that he was sighted on the issue.

A customer is trapped in the DVLA's complaint 'Step 0' for seven months

Complaint: Mr AB, an officer in a car club listed on the DVLA's V765/1 directory, complained on behalf of a member of excessive delays in his application to reunite a 1940s classic with its original registration. The process took approximately eight months with

numerous delays and errors, and the complaints team's belated involvement did not address key points in the correspondence.

Agency response: Four fruitless months in, Mr AB tried to escalate the matter from Kits & Rebuilds (K&R) into the complaints procedure. However, he was confounded repeatedly by the agency's insistence that K&R should respond in writing. Seven months in, Mr AB accurately described his dealings with the agency as *"an appalling litany of events showing an organisation in chaos"*. However, his efforts to escalate were again thwarted by the DVLA again looping the complaint back to K&R. Meanwhile K&R issued a logbook for a different vehicle to the club member, in error. And so the correspondence rumbled on. Mr AB complained that: the promised consolatory cheque had not been received; staff had been obstructive; the DVLA had insisted on writing to the wrong address; he had been given the wrong telephone number; and the complaints procedure had not been followed. In desperation, he attempted to escalate directly to the ICAs. In its single response to the complaint, the complaints team apologised for the delays and explained that K&R had been responsible for the first-stage response.

ICA outcome: The ICA reminded the DVLA that its Business as Usual complaint stage (known by the ICAs as 'step 0') consisted of the complainant 'speaking' to the relevant department. Mr AB had attempted this over a six-month period without success and therefore the complaints team should have picked up his case. The ICA said this was an object lesson in why the DVLA needs to reform its complaints procedure. The ICA did not make any recommendation to this effect because he understood that the DVLA was in the process of removing step 0 (regrettably, over a year later, this had not happened). The ICA upheld the complaint and recommended that the agency reconsider its policy of only corresponding with owners' club officers at an owners' club address when they have provided a different address. It should also reconsider its advice to customers that letters sent signed-for may not be received in Swansea even when they are signed as received (the ICA did not think it was appropriate for the DVLA to attempt to blame the Royal Mail for signed-for documentation not being retrievable). The ICA recommended that the agency should make a payment reflecting the extreme frustration Mr AB had experienced over seven months. He also asked the management of K&R to reflect on lessons that might be learned from Mr AB's tortuous 'customer journey'. At the time of writing, the ombudsman was proposing to investigate the DVLA's implementation of the ICA recommendations.

Mishandling of application for provisional lorry licence

Complaint: Mr AB had applied for a provisional lorry licence. It was not in question that his application was mishandled by the DVLA and there was a period of four months when he could have been issued with the licence but was not.

Agency response: The DVLA had apologised. It had made a consolatory payment of £300 and invited Mr AB to make a claim for compensation. However, he was not able to

evidence the jobs he said he would have been offered or what he would have been paid. In these circumstances, the DVLA had declined to pay compensation.

ICA outcome: The ICA said that it was not in doubt that Mr AB had received very poor service. However, the only remaining issues for him were whether the consolatory payment was appropriate and the decision to decline compensation sound. So far as the first matter was concerned, the ICA said Mr AB's experience came within Level 2 on the PHSO scale, and a payment of £300 was in the upper middle of the scale. He was content that this was appropriate. In the absence of any evidence of material loss, the ICA was also content that there had been no maladministration by the DVLA in declining to pay compensation.

DVLA not responsible for customer's use of premium phone service

Complaint: Mr AB had been removed from the vehicle record because of an inputting error by the DVLA. Although this had been speedily remedied, Mr AB asked the DVLA to pay half the more than £600 he had incurred in phone costs while contacting the DVLA.

Agency response: The DVLA had declined to pay. It said it was Mr AB's choice to use a premium phone service and information about how to contact the agency was freely available. A consolatory payment of £50 had been made for poor service.

ICA outcome: The ICA said Mr AB was right to argue that none of the costs would have been incurred but for the DVLA's initial mistake. But that did not mean the taxpayer was responsible for his use of premium phone services. Indeed, the ICA was bemused at how such large sums had been incurred. The DVLA had referred Mr AB to Google and Phonepayplus. The consolatory payment was also sufficient in the circumstances.

(vi): OTHER CASES – VEHICLES

No error in processing Certificate of Destruction

Complaint: Mr AB complained that the DVLA would not allow him to register a vehicle he had bought from a scrappage merchant. He said it was intended as a gift for a young relative. Mr AB acknowledged that a Certificate of Destruction (COD) was in place but said this had been an error. He added that his personal experience was that the DVLA had exercised discretion and reversed CODs issued in error in the past.

Agency response: The DVLA said the vehicle had been intended for disposal and there was no evidence that the COD had been issued in error. The agency said that in law a registration could not be issued to a vehicle that had received a COD.

ICA outcome: The ICA agreed there was no evidence that the COD had been issued in error. More likely, the ATF concerned had issued the COD and then changed its mind and sold the vehicle to Mr AB. He did not believe there had been maladministration.

(vii): OTHER CASES – ACCESS TO DATA

Poor handling of complaint about release of data

Complaint: Mr AB complained about the release of his data to a local authority and separately to a private parking company under Regulation 27 of The Road Vehicles (Registration and Licensing) Regulations 2002. It was not in question that the council had misread the number on an ANPR and that Mr AB's vehicle was not involved. He separately challenged the parking company's right to seek his data.

Agency response: The DVLA had conflated the two issues. It said that Regulation 27 was met – Regulation 27(1)(a) in respect of the Local Authority and Regulation 27(1)(e) 'reasonable cause' in respect of the parking company.

ICA outcome: The ICA had to be careful not to intrude into the statutory responsibilities of the Information Commissioner. But his lay view was that Regulation 27 had not been breached in either instance. It was the responsibility of the data controller (in this case the Council) to make sure that its subsequent processing was lawful. However, the ICA was very critical of the DVLA's handling of this matter and its failure to distinguish the two instances of data release. He said he had found it very difficult to follow the paperwork and the handling was so poor that he part upheld the complaint and recommended that Mr AB receive a formal apology.

DVLA not the regulator of the parking industry

Complaint: Mr AB complained about one of the Accredited Trade Associations (ATAs) for the parking industry – the International Parking Community (IPC). He asked who regulated the IPC. Mr AB said the DVLA should not be sharing data with a particular parking company because its signage was not in line with IPC guidance.

Agency response: The DVLA said that it was satisfied that the IPC ensured that member companies followed its guidance. But the agency also emphasised that it was not itself the regulator of the parking industry. The DVLA said it was satisfied that keeper data had been shared in line with Regulation 27.

ICA outcome: The ICA said he agreed that the DVLA was not an overseer of the IPC. However, in light of Mr AB's complaint, the agency had in fact asked the IPC to carry out a review. Mr AB had raised legal issues (in particular, about the nature of the contract between a driver and a parking company) that he could not answer authoritatively. He was

satisfied that the DVLA had engaged courteously and comprehensively with the complainant.

(viii): OTHER CASES – EQUALITY ISSUES

Customer-friendly outcome for driver with PIP discount

Complaint: Mr AB complained in relation to his payment of VED when he was entitled to the 50 per cent PIP discount. He said that he had expected to be repaid the full amount he had paid so that the 50 per cent could start from the same date.

Agency response: The DVLA had arranged for a repayment but said it could not backdate the start date for VED.

ICA outcome: This was a complicated story, but the ICA was content that the DVLA had eventually found a solution which, while not exactly what Mr AB had asked for, was customer-friendly and in line with the legislation. However, he part upheld the complaint as this solution could have been found earlier and therefore awarded a consolatory payment in line with Level 2 injustice.

The DVLA repeatedly fails to update its record with a driver's correct name

Complaint: Mx AB's difficulties with the DVLA began after they applied to renew their C1/D1 driving licence at the age of 70. They characterised the DVLA's medical enquiries that followed as vindictive and excessive. They were highly critical of the agency for failing to change the name on their licence to reflect their identity accurately. They accused the DVLA of wrecking their life for 14 months. Mx AB described incorrectly directed and disproportionate medical enquiries and rubbished the agency's licensing requirements.

Agency response: The DVLA apologised for the delays that occurred during the processing of Mx AB's application but maintained that its actions had been appropriate.

ICA outcome: The ICA found that the DVLA had acted appropriately in rejecting Mx AB's first application (as they had not included a D4 medical examination), and second application (as the visual assessment was out of date). The correct title of "Mx" had been used by the DVLA since September 2021. However, Mx AB's further applications should not have been rejected on the grounds that they had not provided a deed poll to support their request for a change of name – they were never advised, throughout their many dealings with the agency, that one was required. The ICA recommended that the DVLA should amend the webpage that explains what evidence is required to accept a request for a change of name or gender. The ICA found no evidence that Mx AB's gender identity had affected the way DVLA staff had handled their case but recommended an apology and a consolatory payment of £300 in recognition of the failings he had identified.

3. DVSA casework

Incoming cases

3.1 As usual, DVSA complaints in 2022–23 centred on practical driving test availability, refusals, examiner conduct and test outcomes.

3.2 We received 53 cases from the DVSA, in comparison with 136 cases in 2021–22, a decrease of some 61 per cent and something of a return to pre-Covid normality.

3.3 During the worst of the pandemic, the agency had been unable to deliver in the region of 1 million driving tests. But as illustrated in Figure 3.1, the subsequent efforts by the agency to improve test availability may be reflected in the smaller numbers of complaints to us. In particular, complaints reflecting difficulties in securing precious test appointments were considerably reduced.

3.4 However, the DVSA has acknowledged that waiting times and test demand remain much higher than before the pandemic, although its delivery of 1.8m car driving tests in 2022 exceeded pre-Covid levels.

3.5 We are also pleased to report dramatic drops in theory test complaints, complaints related to Approved Driving Instructor (ADI) registration, and other aspects of practical driving test administration. Complaints about examiner conduct almost halved this year.

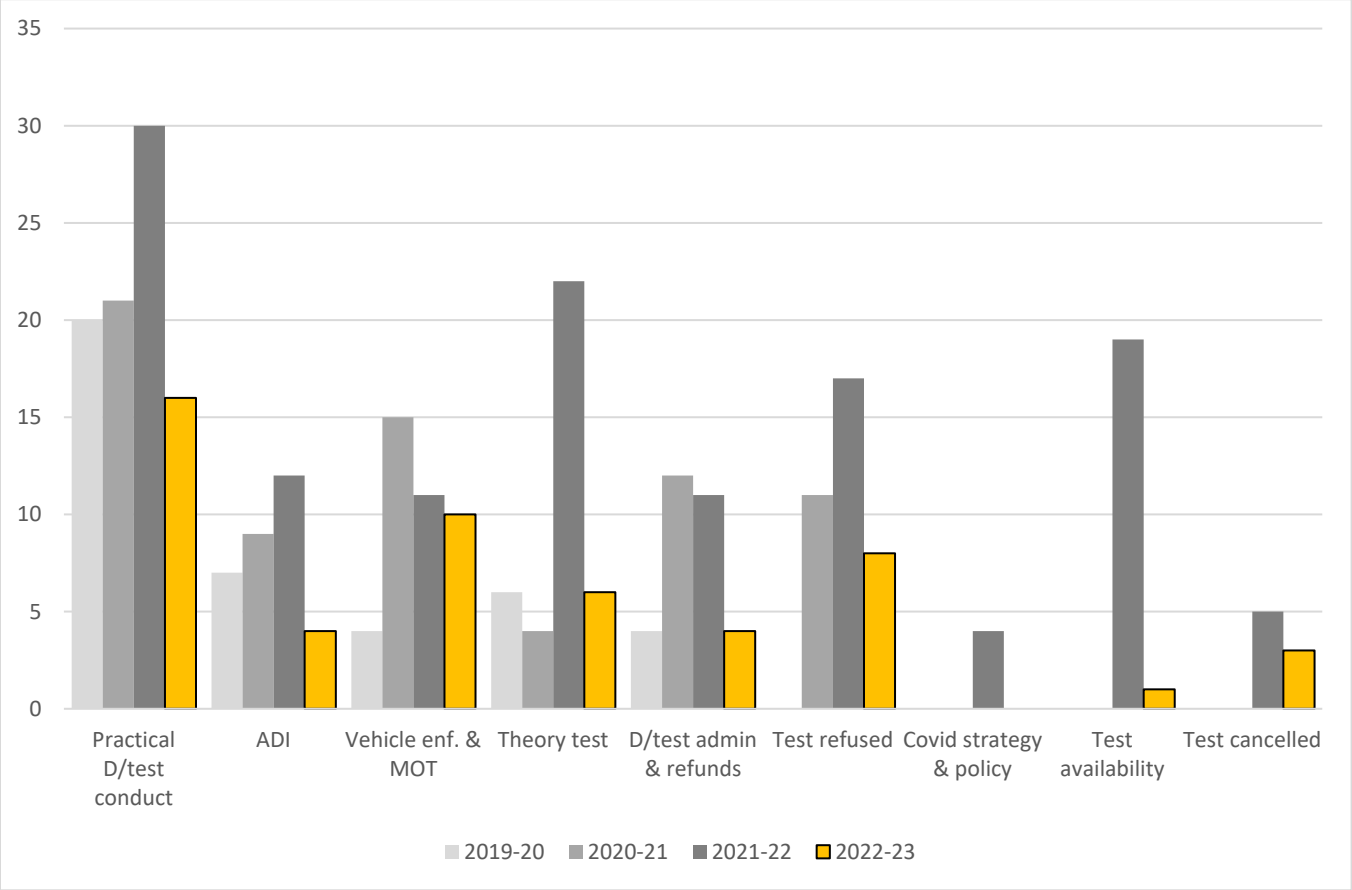
3.6 The quality of DVSA referrals prepared for ICA consideration is very high. However, they are now all made outside the 15 working day target (many by months not weeks) that is cited in our terms of reference. Complainants have been properly informed by the DVSA that there will be a delay, and we are pleased to note that the information on gov.uk has now changed. [5]

3.7 We will separately consider with the DVSA whether there are ways of simplifying the referral process to reduce waiting times for complainants.

3.8 Figure 3.1 plots incoming ICA cases in the main complaint areas over pre and post-pandemic times.

[5] To include the wording: '*However, it's currently taking about 3 months for us to do this because we're getting more emails and letters than usual*'. https://www.gov.uk/government/organisations/driver-and-vehicle-standards-agency/about/complaints-procedure

Figure 3.1: **Incoming DVSA cases, 2019–2023, by main topic**[6]



Cases we completed

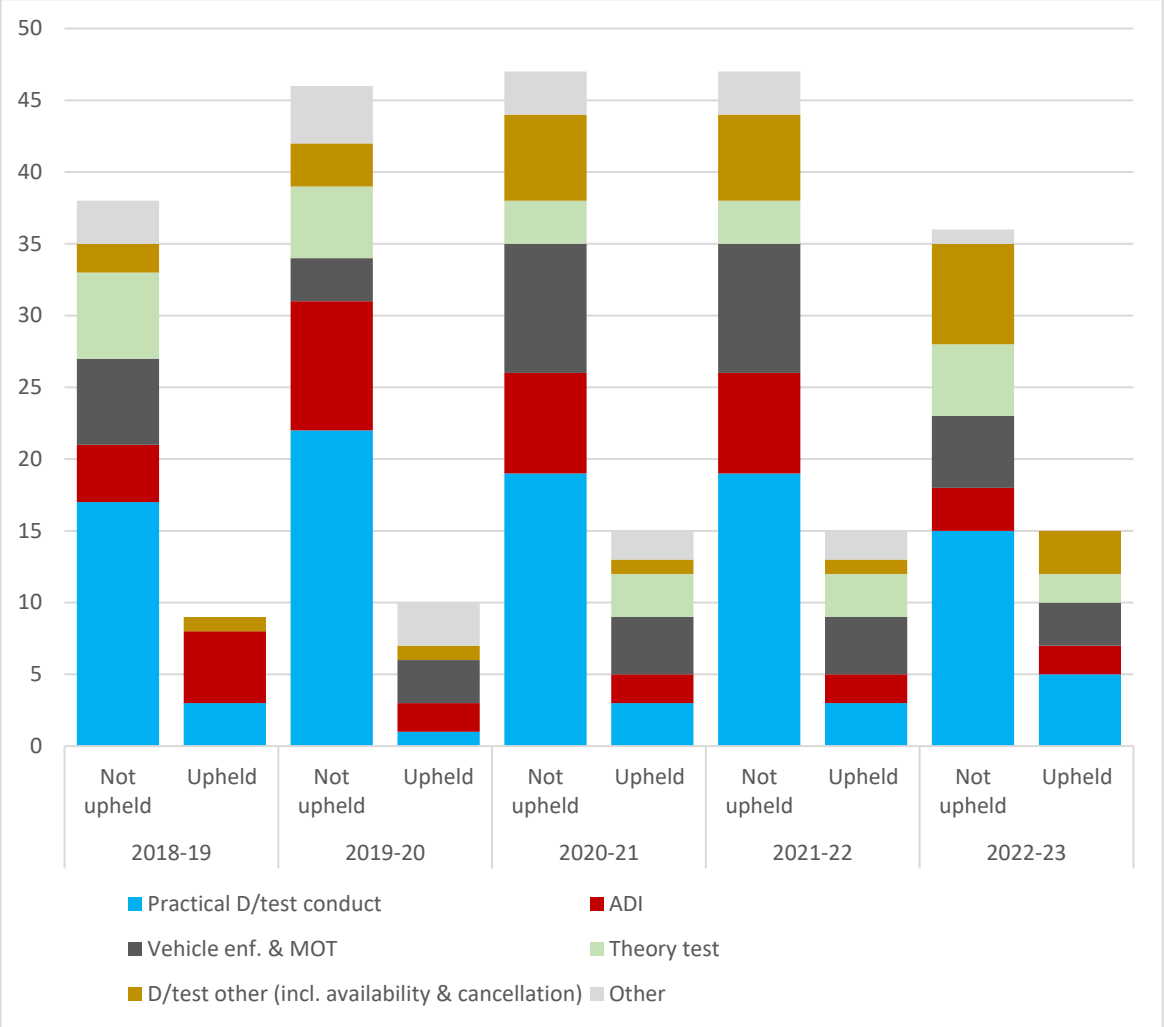
3.9 We completed 51 DVSA cases in the year, the overall outcomes of which are summarised in Figure 3.3, alongside outcomes for the previous four years.

3.10 The overall uphold rate for the DVSA (aggregating partial and full upholds) was 29.4 per cent, slightly higher than the 27.4 per cent of complaints from all the other DfT public bodies combined, which we upheld to some extent.

3.11 We did not fully uphold any DVSA complaint, reflecting the excellent work of its team preparing cases for ICA and PHSO referral who have been particularly adept at identifying and putting right failings just before the ICA referral stage.

[6] **Practical d/test conduct**: complaints about the attitude, conduct and/or judgment of DVSA examiners; **ADI**: complaints brought by approved driving instructors or people being trained for the role, often related to the conduct of tests or the DVSA's oversight of the profession or the DVSA's oversight of the profession or the DVSA's regulatory oversight of the profession; **Vehicle enf. & MOT**: complaints about the DVSA's vehicle enforcement operation and oversight of the MOT system; **Theory test**: complaints about theory tests; **D/test other**: complaints about practical driving test administration, allocation and availability; **Test refused**: complaints that practical tests were refused, in particular due to the cleanliness of the test vehicle. **Other**: complaints not meeting any of the above criteria.

Figure 3.3: DVSA case completions by outcome for the past three years



Themes arising from DVSA casework

3.12 We remain concerned by the way in which the DVSA handles the most serious complaints made against it and its staff. Indeed, in respect of more straightforward matters, the quality of DVSA 'investigations' can also be disappointingly thin. The agency restricts itself in terms of what evidence it will consider (no use of video evidence, for example). In some cases, it will then challenge complainants to provide evidence of hostile and even discriminatory behaviour by staff, dismissing the complaint when the complainant has no prospect of providing the requisite evidence.

3.13 We intend no personal criticism of the staff involved, but we sense that complaints are often treated defensively, rather than in a spirit of impartial enquiry. Perhaps this is inevitable when the department conducting the initial responses to complaints is labelled Corporate Reputation. We also recognise that staff are entitled to a presumption of professionalism by their employer unless a reasonable threshold of evidence suggests otherwise.

3.14 We understand that complainants do not always behave in a reasonable and grown-up manner. Most driving test candidates are young, and the testing process is stressful and demanding. But this does not excuse some of the behaviour and language used against examiners – whose job is also stressful and demanding. Several of our complaints concern the DVSA's application of its HS1 marker when a candidate is deemed to have behaved unacceptably. The marker prevents candidates reapplying for a test online to ensure that a manager is available to accompany the examiner on any future test.

3.15 Complaints against examiners (which essentially consist of one person's word against another's) are some of the most difficult for us to resolve. However, we are satisfied that a very high standard of proof is required to make a finding of professional misconduct against a driving examiner. In recording the outcome of practical driving tests, we are also satisfied that the DVSA can rely upon the judgments of experienced driving examiners vis-a-vis the necessarily much less experienced views of test candidates themselves. Nonetheless, we are frequently uncomfortable when we do not uphold a complaint about behaviour and attitude that has the ring of truth, because the necessary threshold of evidence is not met.

3.16 Complaints that arise from the DVSA's identity checks on test candidates are also difficult to resolve, given that we do not conduct primary investigations. However, while we are not in least naïve about the safety and integrity risks presented by impersonation, it is our impression that members of some ethnic groups are more likely to be challenged about their identity than others. The DVSA must ensure that there is no implicit racial profiling in its procedures or in the conduct of its staff. And where a hard-earned entitlement is revoked on suspicion of impersonation, the agency needs to have well-oiled and sympathetic appeal, and on occasion redress, procedures.

3.17 We said last year that we had reservations about the suitability of the ICA scheme for addressing complaints from approved driving instructors (ADIs) or those running training companies (approved training bodies or ATBs). We report below on a complaint about the removal of a trainer's authority to teach motorcyclists and the closure of his ATB. This was one of the most extensive ICA reviews since our appointment a decade ago and the ICA made no fewer than six recommendations. These included that the DVSA should consider revisiting the removal of the trainer's authority and the ATB closure.

CASES

(i): THEORY AND PRACTICAL DRIVING TESTS

A furious candidate berates staff after last-minute driving test cancellation

Complaint: Miss AB's driving test was cancelled due to staff sickness, and she was not informed until 45 minutes before her test appointment. She attended the test centre and challenged the staff there, filming some of them outside while demanding answers to her questions (including why she had not been told of the cancellation sooner). Staff referred her to the customer service team. Her behaviour was such that the agency activated its HS1 procedure for aggressive customers. This meant that Miss AB could not book online and had to have a manager sitting in on her next test.

Agency response: The DVSA explained why Miss AB's future booking would be supervised and provided a new test slot the following week (where Miss AB passed). It also referred her to the procedure for claiming out of pocket expenses (OOPE). Miss AB continued to complain that the sum she had claimed had not been paid and that there were delays. Eventually, after her MP became involved, the agency manually retrieved her OOPE claim from the queue and expedited a payment.

ICA outcome: The ICA judged that the OOPE had been handled correctly. Miss AB's claim for lost earnings was not eligible, and her claim for distress fell outside of the scope of OOPE. The delays were explicable in terms of operational pressures arising from the pandemic, rather than maladministration. The ICA said that Miss AB's claim that she had behaved appropriately was not assisted by the fact she had filmed staff without their permission. Concluding, he did not find that there had been avoidable, provable failings in service by the DVSA that would support Miss AB's claim for a consolatory payment for unremedied injustice.

A candidate rudely demands the reversal of his fail

Complaint: Mr AB complained that the two serious faults recorded on his driving test were the product of examiner error. He characterised the DVSA as corrupt and as unlawfully withholding his driving entitlement. He demanded that the fail outcome be either evidenced (by more than the examiner's judgment) or reversed, and he repeatedly threatened the agency with legal action.

Agency response: After a major delay (about 10 months) the agency reiterated the examiner's notes on the driving test form and apologised for the delays. In later correspondence it explained that examiners were well trained and that it did not collect proof of candidate performance.

ICA outcome: The ICA saw no merit in the complaint and dismissed it accordingly. He was also critical of the DVSA for taking so long to respond; the delay had meant that the opportunity of further comments on the reason for the fail had been lost. However, he declined to recommend a goodwill payment, noting the singular absence of goodwill in Mr AB's aggressive correspondence.

Revoke first, ask questions later, when an innocent candidate is accused of cheating

Complaint: Ms AB complained that her theory test pass was revoked eight months later, meaning that her practical driving test appointment had to be cancelled. She found the DVSA's initial explanation and appeal requirements nonsensical. Eventually, the agency explained why she had been identified as a candidate who might have employed the services of an impersonator. After six weeks the revocation was overturned but Ms AB had already re-sat and passed the test on the second occasion. She did not regard the reimbursement of her test fees as sufficient remedy.

Agency response: The test centre where Ms AB had initially passed had been subject to an investigation, given concerns around candidate impersonation. The DVSA informed Ms AB using standard template wording drawn from the relevant policy. It repeatedly invited Ms AB to appeal with evidence. Eventually, after the enforcement team had reversed the revocation, the agency's complaints function became involved. At this stage a rebooking of the practical test was arranged quickly and apologies were at last offered. The DVSA declined to refund any additional tuition costs.

ICA outcome: The ICA could not comment on a live enquiry into criminality. However, he was very critical of the DVSA's responses to Ms AB's initial representations, concluding that her initial challenge should have been handled as an appeal. He characterised the repeated requests for evidence from Ms AB as nonsensical given the rule that candidates could not make records during theory tests. Clearly the DVSA had access to evidence including, presumably, video footage of Ms AB on the day of the test, as well as records of her identity checks. The ICA concluded that the revocation could have been overturned at the outset of communications with Ms AB, and not after six weeks. He found that the basis of the revocation should have been provided in the initial notification; and that a 'revoke first, ask questions later' policy needed a far smoother and more customer-friendly appeal mechanism attached to it. Nothing in the DVSA's responses to Ms AB's challenges dispelled the impression she had gained: that this was an investigation conducted 'on the back of an envelope'. The ICA's recommendations were aimed at hastening, clarifying and improving the appeal process for revoked candidates. He concluded that, even allowing for the pressures created by the pandemic, six weeks of at times nonsensical communications fell well short of the required standard. He therefore recommended that the DVSA also make Ms AB a consolatory payment.

Unfounded doubts about a candidate's identity lead to practical test refusal

Complaint: Mr AB presented at a driving test centre but, unlike the preceding three presentations, the examiner did not judge that Mr AB resembled the photograph on his driving licence. Mr AB could not reproduce his signature to the satisfaction of the examiner either and so the test was cancelled. Mr AB complained that the decision was inconsistent with his previous presentations and the physical evidence. Being denied the test had meant that Mr AB faced additional costs as well as the anxiety of trying to rebook in a limited time period before his theory test expired.

Agency response: The DVSA insisted that the examiner had followed the correct procedures having felt that Mr AB did not resemble the picture on his licence. He had provided him with four opportunities to replicate his signature.

ICA outcome: The ICA found that the examiner's judgments on the day had been flawed. Mr AB had been accepted at the same test centre on three previous occasions, had provided further evidence in the complaints process that he looked like the picture. Post-complaint, he had been adjudged by the manager investigating the complaint to resemble the photocard picture. The ICA noted that the requirement to replicate the signature had not been met by Mr AB. This did not surprise the ICA, who reflected that he had rarely been able to replicate his own signature in four decades. However, he did not find evidence that the examiner had departed from procedure and so could not recommend the reimbursement of Mr AB's costs. But the ICA was unhappy with other aspects of DVSA handling, including 'stringing' – the imposition of an additional six-month leg to the complaints procedure only for the DVSA to trot out the original position that there had been no error. The ICA therefore recommended a consolatory payment.

Fire drill distracts a candidate who had already failed the theory test

Complaint: Mr AB complained on behalf of his son that a fire drill during the hazard perception segment had ruined his son's concentration and performance, causing him to fail. Mr AB argued that the DVSA should reimburse the cost of the theory test and provide priority booking. He was outraged that candidates had not been informed that the scheduled fire drill would occur during their test and not given an opportunity to book at a different time. Mr AB emphasised that his son had a learning disability and was particularly adversely affected by distractions and interference.

Agency response: The DVSA explained that a scheduled fire drill had occurred at the beginning of the instruction video for the hazard perception test. Candidates had been away from their desks for 18 minutes in total. The instruction video for the hazard perception test had been restarted from the beginning. Candidates had not been interrupted mid-test. In any event, Mr AB's son had failed the preceding multiple choice

section meaning that his performance in the hazard perception sequence could not be instrumental in the overall test result.

ICA outcome: The ICA could not see how a claim based on the outcome of the test could succeed given the fact that Mr AB's son had already failed by the time the alarm went off. He also expressed reservations about Mr AB's suggestion that candidates should be warned about, or given the option of opting out of, fire drills. It seemed imperative to the ICA that the organisation should have a systematic approach to ensuring safety even if this did represent an occasional inconvenience for customers.

Theory test centre staff behaved inappropriately; inadequate investigation

Complaint: Ms AB had several concerns about the attitude and behaviour of Pearson VUE theory test staff when her son – who had autism and anxiety – had presented. This had damaged her son's performance.

Agency response: The DVSA spoke to the staff but did not uphold the complaint. Ms AB requested a further investigation, including a review of the call when the original test was booked, and of any available CCTV footage. The DVSA declined to review either of those sources of evidence.

ICA outcome: The ICA could see no evidence that the DVSA had put some of Ms AB's more specific concerns (that Pearson VUE employees had mentioned a previous complaint and laughed while discussing this) to the staff in question. The ICA found no particular intention on the DVSA's part to imply that Ms AB had requested sign language interpretation, and therefore he did not consider that a review of the call in question was necessary. In any case, the DVSA does not record calls, so a review would not have been possible even if warranted. The agency confirmed that any comments – either verbal or written – about the booking of a sign language interpreter had been made in error. They apologised for this during the independent review. The ICA suggested that wording about staff assessments of candidate anxiety might be used more cautiously in future to avoid any implication that they knew better than the candidate how the candidate truly felt. Given that no audio was recorded, a review of the CCTV footage would not have provided "a true and fair assessment of events", and the ICA therefore agreed with the DVSA's decision not to review it during their investigation of Ms AB's complaint. However, he disagreed with the additional reasons given by the DVSA for not carrying out such a review. He recommended an apology to Ms AB for the deficits in complaint handling that he had identified.

Complaint about theory test decision is resolved

Complaint: Mr AB complained that staff at the theory test centre would not allow his test to proceed as his photo licence did not contain a photograph. He said the DVLA had apologised and that in any case he had his passport and BRP with him.

Agency response: The DVSA said that staff had acted correctly. Mr AB did not have a valid licence and could not take the test.

ICA outcome: The ICA sympathised strongly with Mr AB but as a matter of law he felt that the staff had acted correctly as Mr AB was not in possession of a valid licence. The fact he had other ID with him was therefore irrelevant. However, the ICA also felt that as a matter of good customer service the DVSA could have refunded the test fee as Mr AB had requested, thus avoiding the additional costs of an ICA review. In carrying out his review, the DVSA agreed to make such a payment (including a small element for inconvenience). Thus, while the ICA could not uphold the complaint as there was no evidence of maladministration, he was content that the matter had been resolved.

Practical test cancelled in wake of named storm

Complaint: Mrs AB complained that her son's practical driving test had been cancelled at the last minute because of Storm Eunice. She said she did not disagree with the decision but felt it should have been taken earlier as it was known that the storm, which was subject to a Met Office red weather warning, would cause great disruption. She asked for her out-of-pocket expenses to be paid.

Agency response: The DVSA said that it always aimed to carry out tests when booked but cancellations could be at the last minute. Its policy was not to pay expenses when tests were cancelled for bad weather.

ICA outcome: The ICA had much sympathy for Mrs AB and her son (whose test had been cancelled with just eight minutes to go). However, the DVSA aimed to hold as many tests as possible (especially after the backlog caused by Covid) and there was trade-off between the advantages to the majority and the disadvantages to a minority whose tests were cancelled with very short notice. Local conditions could change hour by hour and, unless it was contended that all tests should have been cancelled because of the storm, this inevitably meant that some people would be inconvenienced. This was a difficult balancing act, but the ICA did not think it constituted maladministration. However, with the increased likelihood of extreme weather events, the ICA recommended that his report be shared with the DVSA's Director of Operations for their consideration. He could not assist Mrs AB in respect of out of pocket expenses as this was a matter of published DVSA policy.

Test cancelled: **Poor investigation into alleged bald tyre**

Complaint: Mr AB, an approved driving instructor (ADI), complained that the examiner would not proceed with a practical test for his pupil on the grounds that one of the tyres on his vehicle was bare. He provided video and photographs to demonstrate that the tyre was

within the legal limits. He said he had lost income after cancelling lessons to take his tyre to a tyre fitter so that the tread could be measured.

Agency response: The DVSA said its policy was not to consider photographic or video evidence. It said the examiner had made a professional judgment.

ICA outcome: The ICA was very critical of the failure of the DVSA to conduct any real inquiries, especially when the examiner himself had taken a photo of the tyre in question. It subsequently came to light that the examiner said the tyre in Mr AB's video was indeed the one on the car. The ICA recommended an apology, a consolatory payment for poor service, and a refund of the candidate's test fee.

Poor investigation into examiner conduct

Complaint: Mr AB complained about the conduct of the examiner during his failed HGV test.

Agency response: The DVSA did not reply for three months and then said (on the basis of no inquiries) that it was sorry if the examiner had upset Mr AB when this was not his intention. At stage 2, the agency had the benefit of comments from the Local Driving Test Manager (LDTM) and the examiner, before concluding that it was satisfied the test had been properly conducted.

ICA outcome: The ICA said he could not sensibly adjudicate on how the examiner had conducted himself or conduct the sort of forensic investigation that Mr AB sought. However, he was critical of the delay in replying to Mr AB and the absence of any enquiries before the stage 1 response was sent. Not surprisingly, the terms of that response had satisfied neither the complainant nor the examiner himself. However, the ICA was content that no redress was required beyond the findings of his independent report.

Serious allegations against driving examiner

Complaint: Mr AB complained that the examiner during his HGV driving test had fallen asleep and invented the two serious faults that led to his failing the test.

Agency response: The DVSA reported that the examiner had refuted the allegations. The agency said it was content that the test had been conducted properly.

ICA outcome: The ICA noted that the examiner's contemporaneous comments dictated onto the DL25 were difficult to follow and there was a difference in tone and content with the comments he submitted subsequently. However, he was content overall that the agency had carried out sufficient enquiries. The ICA did not conduct forensic investigations and could not say what had happened during the test in question. But such serious

investigations against an examiner required a very high burden of proof. He did not have grounds to uphold the complaint but recommended that the examiner be reminded of the need for care when recording comments on the DL25 (driving test report).

A driving test appointment cancelled when the instructor took off his face mask

Complaint: Mr AB complained that his driving test had been refused after his instructor had momentarily removed his face mask to speak to his child in the car as they arrived for the test. The rules at the time of the complaint were that the instructor (as well as the candidate) should drive to the test centre wearing a mask. Mr AB complained that the DVSA was retrospectively applying a rule that had not yet been implemented; about delays; that the examiner himself was not wearing a mask; and that others presenting for tests without masks had been allowed to test by the same examiner (Mr AB provided video footage in support of his latter point).

Agency response: The DVSA explained that the rules applicable at the time had required candidates and instructors to wear face coverings when travelling to a test. The examiner had therefore correctly followed procedure. The agency refused, as usual, to comment on video material. In the absence of error, it saw no reason to refund Mr AB's test fee.
ICA outcome: The ICA reproduced the rules that applied at the time along with evidence that they had been circulated to instructors in advance of Mr AB's test date. He therefore accepted the agency's position that the examiner had been following established guidelines. Mr AB's test date had fallen at a time when the rules were subject to regular change. However, this was an omission on the part of the instructor, not Mr AB, and it fell to the instructor to ensure that he was familiar. Mr AB's own compliance, and the examiner's, were irrelevant to the decision. Given the failure of the DVSA to address Mr AB's point about the conduct of its examiner, the ICA recommended a consolatory payment.

Practical test refused because candidate produced an out-of-date counterpart licence

Complaint: About five weeks before his test day, Mr AB realised that he could not find his photocard licence. He rang the DVSA and asked whether the counterpart would serve as proof of provisional entitlement on the day of the test. His understanding of the DVSA's advice was that the counterpart would be sufficient. On the day, the test was refused, causing Mr AB considerable frustration and the loss of £185.

Agency response: The DVSA explained that it did not keep call logs for more than two months, meaning that it had no way of knowing which handler had taken the call. It assumed that Mr AB had not made it clear that it was the counterpart only rather than the old-style paper provisional that he held. The DVSA pointed Mr AB to the widely disseminated advice that paper provisional licences (if held) should be brought to driving tests along with a passport.

ICA outcome: The paper counterpart had been abolished in 2015, with licence holders being advised to destroy it. The paper driving licence, whether full or provisional, remains valid until the holder reaches the age of 70. The ICA agreed that, most likely, the call handler had not realised that Mr AB was referring to the counterpart as opposed to a provisional paper licence (the last of which had been issued in 2000). While the ICA felt that this may have been indicative of a lapse in service, he had reservations about Mr AB's claim. First, the published advice was clear that the driving licence needed to be produced on the day of the test (and the counterpart clearly indicated that it should be provided *with* the photocard licence). Secondly, the DVLA confirmed that Mr AB would have been able to replace his missing photocard in good time before the test anyway. The ICA therefore judged that Mr AB had been in a position to mitigate fully any losses arising from deficiencies in the DVSA advice. He noted a significant delay in the complaint response, however, and recommended that the DVSA make a token consolatory payment.

Bad light stops test

Complaint: Mrs AB complained that her son's practical driving test had not gone ahead because of poor light. She alleged that tests at the particular time were cancelled *en bloc* in advance and her son had lost money on the extra tuition.

Agency response: The DVSA said that the fee would not be refunded as Mrs AB's son's next test had not been charged a fee. The agency said that out-of-pocket expenses were not paid in relation to tests cancelled for poor light and denied that the tests had been cancelled in advance.

ICA outcome: The ICA said that at first sight this was a simple matter. There was no entitlement to expenses under DVSA policy. The examiner was entitled to take the view that the light was too poor to allow the test to proceed. And Mrs AB's son had now passed a subsequent test so there was no continuing detriment to remedy. However, three aspects caused the ICA concern. There had been very significant delays in the DVSA's handling of the correspondence. The stage 2 response was based on comments from a manager that the agency now said were incorrect. And while most late tests had in fact gone ahead, there was a fair prospect that any one test would not. However, Mrs AB's son and others in the same position had not been alerted to this possibility (which meant they had no time to reschedule or take their chances but dispense with additional tuition). This breached PHSO principles as it was not fair and transparent, and he therefore recommended a consolatory payment of £150.

Criticism of decision not to proceed with practical driving test

Complaint: Ms AB complained that her practical driving test had not been allowed to proceed on the false grounds that her accompanying driver had not been wearing a mask. She pointed out the accompanying driver was a woman, but the DVSA had wrongly

suggested that it was a man. She had also been placed on a HS1 form, preventing her from rebooking online.

Agency response: The DVSA said that it was content the examiner had made the correct decision in line with its policy and the law in Scotland. It had declined to remove the HS1 marker.

ICA outcome: The ICA could not say if the accompanying driver had been wearing a mask or not. But he was critical of the weak evidential basis of the DVSA's decision and subsequent 'investigation'. He said the flag on the Testing and Registration System (TARS) was incorrect (there are a limited number of fields and the examiner had actually followed the Standard Operating Procedure) and recommended it be changed. He also proposed that DVSA reconsider the HS1 – the evidential basis for which was also very weak. Pleasingly, both recommendations were accepted.

A difference of attribution of blame for a fracas in a theory centre

Complaint: Miss AB complained that a member of staff in a theory test centre had unfairly challenged her after she had arrived on time to sit her test. She had defended her right to sit the test, only for the staff member to start shouting and asking her to leave. Miss AB contested the DVSA's account that the staff member had been justified. She asked for the reimbursement of her theory test fee.

Agency response: The DVSA explained that, as advertised in the email sent to candidates prior to the test, they were expected to present 15 minutes before the test time. The point at which Miss AB had arrived, along with her aggressive demeanour, had led to the staff member justifiably refusing her test. The DVSA also wrote to Miss AB outside the complaints procedure to put her on notice that there should be no repetition of her behaviour or restrictions would be applied in future.

ICA outcome: The ICA was unable to judge which account of the incident was the most plausible. He made no criticism of the DVSA for accepting the account of the staff member that had been contemporaneously logged. He did not uphold the complaint.

Customer prevented from booking tests online

Complaint: Mr AB complained about that the HS1 marker on his record that meant he could not book practical driving tests online and must be accompanied by two examiners on future tests. He disputed the circumstances that had led to the issuing of the HS1, pointing out that he had failed tests (both theory and practical) in the past without event.

Agency response: The DVSA said that it had properly investigated the HS1 and the action taken was supported.

ICA outcome: The ICA said that, although he could not know for certain what had occurred during Mr AB's most recent test, the DVSA was entitled to protect its staff against abuse. However, given the passage of time, and the absence of any other incidents, the marker should not stay in place indefinitely. Mr AB had another test booked in a few months' time. If he was unsuccessful and the test had passed without incident, he recommended that the marker be lifted.

An aggressive driving test candidate complaining about examiner attitude

Complaint: Mr AB had the same examiner on two unsuccessful driving tests, six weeks apart. On the second occasion, he launched a long complaint about her attitude that he argued had contributed to his performance. He admitted becoming agitated and raising his voice at her. However, he ascribed his behaviour to the examiner's approach and attitude.

Agency response: The DVSA investigated and found that the examiner had conducted the test within the requisite framework and that the outcome was appropriate. The examiner had arrived back at the test centre distressed, having felt intimidated and threatened by the complainant. For this the DVSA implemented its HS1 procedure meaning that further tests had to be booked by telephone and would involve a manager accompanying the examiner and candidate.

ICA outcome: The ICA was unable to adjudicate over the two accounts of the candidate's and the examiner's attitude and performance on the day. There was some common ground in the fact that Mr AB had raised his voice and become agitated. The ICA was of the view that the DVSA had a duty to ensure the safety and wellbeing of its staff. He therefore made no criticism of the agency for employing its HS1 procedure. He did not uphold the complaint.

Customer data not transferred when theory test booking arrangements were brought back inhouse

Complaint: Mr AB complained about his inability to contact Pearson VUE regarding his son's application for theory test support. It had come to light that, for reasons unknown, Pearson VUE did not transfer key customer information to the DVSA when booking arrangements were brought back inhouse in September 2021. Mr AB accused both Pearson VUE and the DVSA of a lack of professionalism.

Agency response: The DVSA had apologised for the level of customer service Mr AB had received.

ICA outcome: The ICA upheld the complaint in full. It seemed likely that the problem was caused by Pearson VUE but the DVSA had to take responsibility for the failure on the part of

its contractor. However, as Mr AB's son had yet to book his theory test despite slots having been made available on a number of occasions, the ICA did not think there were any recommendations he could make or offer redress beyond the findings of his report. However, the DVSA had agreed to consider the lessons of this unfortunate affair.

Alleged discrimination by examiner

Complaint: Mr AB complained about the conduct of the examiner during his motorcycle MOD1 test. He said that the examiner had shouted at him and had discriminated against him because his first language was not English.

Agency response: The DVSA said it was content that test had been conducted properly and that a serious fault had been correctly recorded for the U-turn manoeuvre.

ICA outcome: The ICA said he could not adjudicate upon the factual aspects of Mr AB's complaint (for example, whether the examiner had shouted or why). However, he was concerned that the stage 1 response had been sent without having sought the views of the examiner or their manager. All the more so when Mr AB had made serious allegations of improper discrimination. The ICA was content that the examiner was entitled to halt the test and to record a serious fault. However, he was concerned that halting the test in part because of language difficulties was not consistent with the advice to examiners about candidates with special needs.

A candidate alleges unfair and discriminatory examiner behaviour

Complaint: Ms AB complained that the examiner who took her practical driving test had been bizarre and intimidating from the outset, needlessly finding fault with her vehicle and driving, and trumping up a serious fault in the test centre car park before the drive had properly begun. She accused him of racist and sexist behaviour. The DVSA investigation she felt reflected a disregard for her experience and the agency's institutional racism.

Agency response: The DVSA explained the basis of the serious fault and put forward the examiner's account, supported by his manager, that his handling of the test reflected standard procedures and was not discriminatory in any way.

ICA outcome: The ICA acknowledged the difficulties faced by those bringing forward complaints of discrimination, particularly given the lack of independent evidence inherent in the driving test context (as well as the covert and unconscious nature of much discriminatory behaviour). The ICA had no doubt that the examiner had been unsuccessful in putting into practice the required "pleasant outgoing approach" intended to put the candidate at ease. He thought it likely that Ms AB's perception of his attitude made routine test procedures feel hostile and targeted. However, he did not find that the evidence available substantiated her complaint of discrimination. The ICA found that the DVSA might

have reflected a broader awareness of how discrimination may, and may not, manifest itself. He also felt that the agency should have said more about the measures it took to counteract bias and discrimination, and why it thought they worked. He welcomed the DVSA offer of a practical test at a nearby centre with a greater likelihood of a female examiner (and the option of a female manager attending the test). He did not uphold the complaint that the DVSA's investigation and responses had been perverse or unfair.

Use of private car parks during practical driving tests

Complaint: Mr AB complained that he had been failed for crossing a pedestrian crossing in a supermarket car park but argued that the laws of the road did not apply on private land. He also criticised factual aspects of the alleged breach and said that the supermarket chain had not given permission for driving tests to be held on their land. He pointed out that the DVSA itself tried to discourage driving instructors from using the very car park in question. He asked for a refund/return of the test fee.

Agency response: The DVSA said that it was common practice to use supermarket car parks to provide real world experience for learner drivers. It said it had used this particular car park on many of its test routes and this continued. The rules of the road did not change on private land and the agency was content that the examiner had made the correct decision that crossing the pedestrian crossing when someone on foot wished to pass over it was a serious fault.

ICA outcome: The ICA could not adjudicate upon the demeanour of the examiner or the position of the pedestrian for whom Mr AB did not stop. However, he asked a range of questions of the DVSA about the law and agency practice. Although he could not make authoritative legal judgments, he was content that the use of private car parks during tests was in line with DVSA policy. Indeed, the DT1 encourages their use for the forward park manoeuvre. However, the ICA was surprised that the DVSA could not show written evidence in support of its position that the supermarket was content for its land to be used. He recommended that the DVSA consider if it needed to give further advice to LDTMs on the benefits of obtaining written consent when new supermarket and other car parks were planned to be used on test routes. The ICA said the use of car parks by instructors was a different matter. The DVSA could advise instructors but had no control over their actions.

(ii): ADI and ATB COMPLAINTS

A complaint about trainer booking

Complaint: Mr AB, who runs a lorry driver training company, complained that the DVSA policy in relation to trainer booking was unfair to his company.

Agency response: The DVSA had explained its policy on trainer booking and denied unfairness.

ICA outcome: The ICA said that the DVSA had applied its policy and therefore he could not make a finding of maladministration. However, there were suggestions that the policy favoured larger firms over small and new ones and that did raise questions about overall fairness. He therefore recommended – as he had done in other similar cases – that a copy of his report be shared with the chief executive for her consideration.

A complaint about a standards check

Complaint: Mr AB, an ADI, complained that a standards check had been arranged and judged corruptly because of a disagreement with an examiner and manager at the test centre a year previously. Mr AB produced a voluminous account of his grievance.

Agency response: The DVSA had acknowledged that it had caused inconvenience to Mr AB by repeatedly asking for identifiers he had already supplied. The DVSA also accepted that it had been tardy in alerting Mr AB's right to appeal against the conduct of the test in the Sheriff Court. The agency had made a £100 consolatory payment, rejected by Mr AB. However, the DVSA had also said that it stood by its examiner's markings of the test and denied that staff at the test centre had played any part in calling Mr AB for his standards check.

ICA outcome: The ICA agreed with the DVSA's judgments and with the offer of £100. He was content the DVSA could rely upon its examiners. However, for his next standards check, the ICA recommended that, in line with DVSA procedures, an examiner be brought in from another test centre to conduct the check.

Complaints against ADI kept on file

Complaint: Mr AB is an ADI. He complained that an allegation made against him by a member of the public had been retained on his file for two years even though he disputed that he was involved.

Agency response: The DVSA said that it was content that Mr AB was the person involved. The complainant had provided the registration number and it accorded with Mr AB's details. He had said himself that no one else had access to his vehicle to provide driving lessons.

ICA outcome: The ICA could not say whether the pen portrait provided by the complainant was an accurate description of Mr AB, and whether the colour of his vehicle was the same as that identified by the complainant. However, it was clear that the complainant had wrongly identified the driving school to which the car was attached, so it was possible he had made other mistakes too. Having said that, the ICA was content that the DVSA did have sufficient

grounds to place the complaint on Mr AB's file – given that the vehicle registration was clearly his, the vehicle was the same colour and model as that in the complainant's screenshot, and, while weighing less in the balance, the description of the ADI bore similarities to Mr AB. In any event, the ICA could not adjudicate upon regulatory decisions (including the Fit and Proper person test) or DVSA policy (the filing of unsubstantiated allegations for two years). Nonetheless, the ICA was critical of the DVSA's enquiries. In particular, it was not clear how the complainant had obtained the registration number. Nor had the DVSA sought information from Mr AB of his lessons and their location on the day in question. He recommended that a copy of his report be shared with the Instructor Conduct team for their consideration.

Sit still at the back

Complaint: Mr AB is an experienced ADI. He complained about the conduct of a driving examiner who during two tests advised him to sit still during his pupil's test that he was accompanying. Mr AB said this insulted his professionalism.

Agency response: The DVSA said that it was common practice to advise those accompanying tests to avoid exaggerated motions that could give the impression of coaching. It was content that the examiner had spoken politely and appropriately to Mr AB.

ICA outcome: The ICA said that, although he could not know for certain what had occurred during the two tests, advice to avoid exaggerated movements seemed sensible. However, the relevant advice on gov.uk focussed on the dangers of distracting the candidate rather than coaching and he recommended that this be amended.

Closure of an ATB

Complaint: Mr AB complained about the removal of his authority to train motorcyclists and the closure of his approved training body (ATB). He said he had been victimised and the DVSA had not followed its procedures.

Agency response: The two decisions had been reviewed and endorsed. The DVSA said Mr AB was not a fit and proper person to run an ATB. He had also failed three standards checks and therefore could no longer provide tuition. It argued that its decisions were taken in the interests of safety.

ICA outcome: This was the most extensive DVSA complaint the ICA had reviewed in a decade. He found that, while the DVSA's objectives were sound, they were not based on publicly available policy. Moreover, the decision to remove Mr AB's authority to train was not in line with policy. The DVSA – at the last moment – had revealed that it operated a parallel system of standards checks that were risk-based. However, there was no reference to this in any public-facing documentation. Nor was there any policy on checks that were

part completed and the criteria for 'fit and proper' only related to motoring matters, although it was clearly intended that there should be a wider impact. The ICA made six recommendations, including that the DVSA should consider revisiting the removal of Mr AB's authority and the closure of his ATB. It should also invite a claim for compensation and revise the material on gov.uk. Finally, his report should be considered by a senior director.

(iii): VEHICLE STANDARDS

An MOT customer's complaint is lost and then she is subjected to 'stringing'

Complaint: Mrs AB's car failed its MOT on multiple grounds, and she was told that she would have to pay for work for it to pass. She took it to a different MOT station where it passed with no work needed. She complained twice to the DVSA within the 14 working day window for MOT appeals. For reasons unknown, the emails were not received and by the time she chased she had exceeded the time bar. The DVSA's intelligence unit declined to look into her complaint on the grounds that the car would not have been in the same condition when seen by the original MOT station. She complained about this and about the DVSA's failure to receive her initial notifications.

Agency response: The DVSA scoured its mailbox and could find no trace of the initial emails from Mrs AB. She produced screenshots showing that they had been dispatched; and the DVSA's own screenshots showed that the first email received was the third, sometime outside the appeal window. It explained that the information about the testing station had been looked into by the Intelligence Unit. Regrettably no further action was possible.

ICA outcome: Mrs AB accepted that he would never get to the bottom of where her emails had gone. She was concerned by two things. First, that her report of impropriety by the garage should have been actioned and she wished to know the outcome; and secondly the DVSA should improve its email system to provide confirmation of receipt. On the first point, the ICA had it confirmed by the agency that the intelligence had been looked into, but he was unable to say any more given the confidentiality of the process. The DVSA was looking into providing confirmation receipts on its email portal, but this functionality was not yet available. The ICA partially upheld the complaint on the ground that Mrs AB had been subjected to 'stringing' – obstruction in the form of additional hurdles after she requested ICA review when the agency had nothing more to say. Further delays had then followed. He recommended an apology and a consolatory payment. The ICA also recommended that the Corporate Reputation team should be reminded that the purpose of a staged complaints process was to offer different opportunities for resolution. When all opportunities had been exhausted, and the customer requested escalation, the presumption should be to escalate.

Sudden engine failure is not a safety defect

Complaint: Mr AB's engine suddenly failed on the motorway and the power steering and braking felt erratic as he coasted to safety. The manufacturer would not report the incident as a safety defect. Meanwhile the engine was a write-off. Mr AB reported the incident to the DVSA but was very disappointed by the outcome of its Vehicle Safety Branch (VSB) investigation.

Agency response: The VSB concluded that, in line with the wording of the Code of Practice on Vehicle Safety Defects and Recalls (the Code), this had been a loss of power akin to the driver taking their foot off the accelerator while retaining control of braking, steering and signals. As such it was not a safety defect as defined by the Code. There had been no similar incidents reported and no action would be taken.

ICA outcome: The ICA could not adjudicate between the two assessments of what the engine failure represented. He was critical of the DVSA for not addressing Mr AB's specific points and challenges, namely that control of the vehicle had been very difficult after the engine failure and that other jurisdictions had picked this up as a safety defect. The ICA included the agency's further comments on this in his review. He partially upheld the complaint.

Tampered exhaust systems and the MOT

Complaint: Mr AB complained about cars with loud exhaust noises passing their MOTs. He said this was a sign that the MOT system was not fit for purpose.

Agency response: The DVSA had explained that responsibility for enforcing against unlawful exhausts rested with the police not the DVSA. It said the requirement of MOT testers is that exhaust noise should not be out of line with what might be expected but it could not require testing stations to invest in noise testing machines or ensure they were up to date with the Db levels of every mark of car. The agency was satisfied that its systems for checking testing stations, etc. were robust. It also said that a noisy vehicle could have had its exhaust system changed after the MOT.

ICA outcome: The ICA sympathised with Mr AB's campaign against antisocial vehicles. However, he could not discern any maladministration in the DVSA's approach. He recommended that a copy of his report be shared with those responsible for MOT policy, as it was arguable that a tampered exhaust could become a reason for MOT failure. While the principal aim of the MOT was roadworthiness, some aspects of the test (for example, checking that number plates are in the appropriate format) are about adherence to the law rather than roadworthiness as such.

Complaint about MOT failure

Complaint: Mr AB complained about an MOT failure for his car. He said that the items on which he was failed were no longer matters the tester should fail a vehicle for. He also said that he had taken the vehicle to one garage, but it had then been presented at another garage for the test itself.

Agency response: The DVSA said that the MOT Inspection Manual had been amended and the items had been correctly tested and failed. It said that non-testing garages could present vehicles at other garages where MOTs were conducted, and that this was perfectly legal and quite common. It said it had no direct responsibility for non-testing garages although, as in this case, it had liaised with Trading Standards to ensure that the first garage was not falsely promoting itself for MOTs.

ICA outcome: The ICA could not assist on the core aspects of Mr AB's complaint. Neither garage had behaved unlawfully or unreasonably, and the DVSA only had responsibility for overseeing those garages that conducted MOTs. It was also abundantly clear that the MOT Inspection Manual did require the parts to which Mr AB referred to be tested and for the vehicle to be failed if they were seriously corroded. However, the ICA could understand why Mr AB had felt otherwise as false information was still readily available about this on gov.uk. He recommended that this be amended or removed. Although not making a formal recommendation, the ICA also asked for a copy of his report to be shared with a named member of staff whose involvement with Mr AB the ICA commended.

A vehicle examiner accused of taking a hammer to plastic components

Complaint: Mr AB, a truck driver, complained that a DVSA vehicle examiner applied a hammer to plastic components in his engine bay during an inspection causing over £200 worth of damage. Mr AB had not witnessed this; he had inferred it from the sound effects and the sight of the examiner with the broken component and hammer. He complained that his representations to the DVSA for the value of the components and the cost of their installation had been unreasonably rejected.

Agency response: The DVSA confirmed that it was standard procedure to test metal components using a small hammer. The examiner was adamant that the components were damaged when he inspected them but were functional (as reflected in the 'advisory' recorded at the time). He had not, he insisted, taken a hammer to plastic components.

ICA outcome: The ICA would not be drawn into speculation about the cause or causes of the damage. He noted that Mr AB had not witnessed the events of his complaint. This was a 19-year-old vehicle and the DVSA's account of degradation of the components was plausible. Further, the ICA could not imagine why a professional examiner would take a hammer to a plastic component in the way inferred by Mr AB. From his administrative

perspective, he found that the DVSA's investigation was timely and thorough. He made no criticism of the agency for accepting the outcome of that investigation. He did not uphold the complaint.

(iv): EQUALITY ISSUES

Complaint about 'reasonable adjustments' during practical driving test

Complaint: Mr AB complained about the conduct of his son's practical driving test. He said that his son had an autistic spectrum disorder and the examiner had not exercised reasonable adjustments when his son could not respond to the sat nav instructions.

Agency response: The DVSA said that its examiner had acted correctly. The candidate had been able to correct an earlier sat nav error and there were no grounds for switching to following traffic signs. The test had been concluded early after a serious fault in line with the then Covid-19 protocol.

ICA outcome: The ICA could identify no maladministration. If Mr AB believed there had been unlawful disability discrimination, he would need to take legal advice or consult the Equality and Human Rights Commission. The ICA said the evidence showed clearly that the examiner was aware of the candidate's disability but there was nothing to suggest he could not follow sat nav. The ICA was also content that the examiner had sufficient grounds not to switch off the sat nav and to end the test early.

Why are the pass rates for older women so low?

Complaint: Mrs AB complained about the conduct of a driving examiner during a practical driving test. She accused him of misogyny. She pointed out that older women drivers had a very low pass rate in practical driving tests.

Agency response: The DVSA said that it was content that Mrs AB's test had been fairly marked. It rejected claims of discrimination. The LDTM had agreed to take Mrs AB's next test.

ICA outcome: The ICA could not say what had occurred during the test but said a very high burden of proof was required to suggest the examiner had behaved unfairly or unprofessionally. However, the ICA was intrigued by the statistics showing a very strong correlation between age and success in driving tests. Although the sample sizes for older women drivers were small, and factors such as a history of failed tests could play a part, he recommended that the DVSA should consider commissioning research into why the pass rates for older women were so low (around 25 per cent).

A candidate citing disability is discomfited by eye contact from an examiner

Complaint: Mr AB failed two C+E practical driving tests and was served with an HS1 after the examiner in the second test reported that he had behaved in an intimidating fashion during the drive, repeatedly accusing the examiner of staring at him. He complained that the first examiner had belittled him and used disrespectful language. Mr AB maintained that the second examiner had stared at him and that this was intimidation. He referred to mental health problems that had been exacerbated by this treatment. Mr AB denied being abusive and contested the sanctions applied. He regarded the DVSA's responses as biased and characterised the agency of failing to make reasonable adjustments.

Agency response: The DVSA interviewed both examiners and did not uphold the complaint nor refund the test fee. It maintained that Mr AB's conduct during and after the second test had been inappropriate.

ICA outcome: The ICA was mildly critical of the delay in the DVLA's final response to Mr AB's queries about how he should go about rebooking. However, he found the explanation very sympathetic and well-written. He suggested to Mr AB that he should learn from the examiner's experience of his behaviour as intimidating rather than dismiss it. Given his stated health problems, he also encouraged Mr AB to make a full notification to the DVSA through the prescribed gov.uk channel in advance of any future test. This would mean that the examiner would know in advance that Mr AB's reactions to the test environment might appear strange but should not be assumed to be hostile. The ICA did not uphold the complaint.

(v): OTHER MATTERS

iPad errors

Complaint: Mr AB passed his practical driving test. As there was an old address on his provisional licence, he was correctly advised by the examiner to send the licence himself to the DVLA. He complained that the DVLA then sent his new licence to his old address and feared identity theft and fraud. He said the DVLA had said that there had been a mistake by the DVSA.

Agency response: The DVSA had accepted that its examiner had mistakenly left a box un-ticked on the electronic DL25, indicating that he had retained the licence (even though in the notes he had correctly recorded that the candidate had kept the licence). This had automatically triggered the DVLA action. The DVSA had informed the DVLA, and the wrong licence had been voided and a new one issued. The agency had also offered a consolatory payment of £50 then increased to £125.

ICA outcome: The ICA was content with the action taken – both to try to put matters right and to try to prevent a recurrence. But conscious that Mr AB had incurred significant costs and was clearly still concerned about identity theft, he proposed increasing the consolatory payment to £200. He also recommended that a copy of his report be shared with the Director of Operations as the examiner's iPad error was an easy one for other examiners to commit too. (The ICA also hoped that the DVSA would look at the examiner's use of American-formatted dates on his iPad which he said was a recipe for confusion and which might also be the default for other examiners.)

MOTs from Northern Ireland not shown on gov.uk

Complaint: Mr AB complained that the check MOT record on gov.uk showed his MOT had expired and warned that he could face a fine of up to £1,000. He said the vehicle had been MOT'd in Northern Ireland. He acknowledged that the landing page said that records were only kept for tests in England, Scotland and Wales, but said this was no excuse for publishing material that contravened the Defamation Act.

Agency response: The DVSA acknowledged that its systems were not aligned with those of the DSA in Northern Ireland (unlike the DVLA system which correctly showed Mr AB's vehicle as both taxed and having a valid MOT). It said work was under way and close to fruition to provide a long-term solution.

ICA outcome: The ICA had much sympathy for Mr AB. Although the ICA's lay view was that the Defamation Act was not invoked, Mr AB was right to say that other customers would be affected, and his own experience was of difficulties with his insurance company. However, given that a solution was almost in place, the ICA did not think a finding of maladministration would be warranted. Nor were there recommendations he could make. However, had a solution not been imminent, it was likely the ICA would have recommended a tightening of the caveats on gov.uk to make clear that Northern Ireland MOTs were not shown online.

DVSA responsibilities vis-a-vis Trading Standards

Complaint: Mr and Mrs AB own a campervan. The car they were towing was attached by an A-frame which detached and crashed, fortunately causing no casualties. Mr and Mrs AB then engaged over a long period with the DVSA over the failure of the A-frame. They said that the workmanship was shoddy and that the DVSA should recall all vehicles fitted by the firm concerned.

Agency response: The DVSA's Vehicle Safety Branch had determined that the cause of the accident was corrosion where the A-frame had been fitted (in a non-standard fitting, not approved by the manufacturer). It said there were no grounds for a recall.

ICA outcome: During a lengthy review, the ICA criticised the DVSA for not explaining fully to Mr and Mrs AB the extent of its responsibilities in circumstances like theirs or the role of Trading Standards. His report contained an apology on behalf of the agency. The ICA was able to include details of the actions taken by the DVSA that had not previously been shared with Mr and Mrs AB. He also recommended that a copy of his report be shared with Trading Standards and with the DVSA' s relevant director responsible for the VSB.

DVSA involvement in police operation

Complaint: Mr AB complained in relation to DVSA involvement in a police-led operation to check cars for roadworthiness. Amongst other things, he said that his family had missed a hospital appointment in consequence, that the vehicle examiner had claimed he had the same powers as the police, that the vehicle examiner had exercised sway over the police and actually stopped vehicles on the road and diverted them into the car park where the checks were taking place, and – most significantly – that the checks were carried out in an area where most residents were members of an ethnic minority. Accordingly, the whole process was directed by racism.

Agency response: The DVSA emphasised that its examiner was only present on request from the police and that the exercise had been led by the police throughout. The specific allegations against the examiner were denied.

ICA outcome: The ICA said that in his experience of joint operations/investigations the concept of police primacy was key. It was very unlikely therefore that the vehicle examiner could have exercised the sway over the police that Mr AB claimed. However, the ICA said that Mr AB made a good point about the potential demographic consequences of mounting enforcement exercises in in particular areas – whether or not the decision to do so was racially motivated (as Mr AB alleged) or for other reasons. However, in this instance, these were concerns he should raise with the police and were not the result of DVSA decision-making. The ICA noted that a blog on gov.uk suggested that cars were not targeted for DVSA checks. However, while this might be general policy, this did not reflect the legislative position on vehicle examiners' powers. Nor did it apply when the DVSA was involved in a police-led operation. He recommended that the DVSA should consider if the blog needed amending.

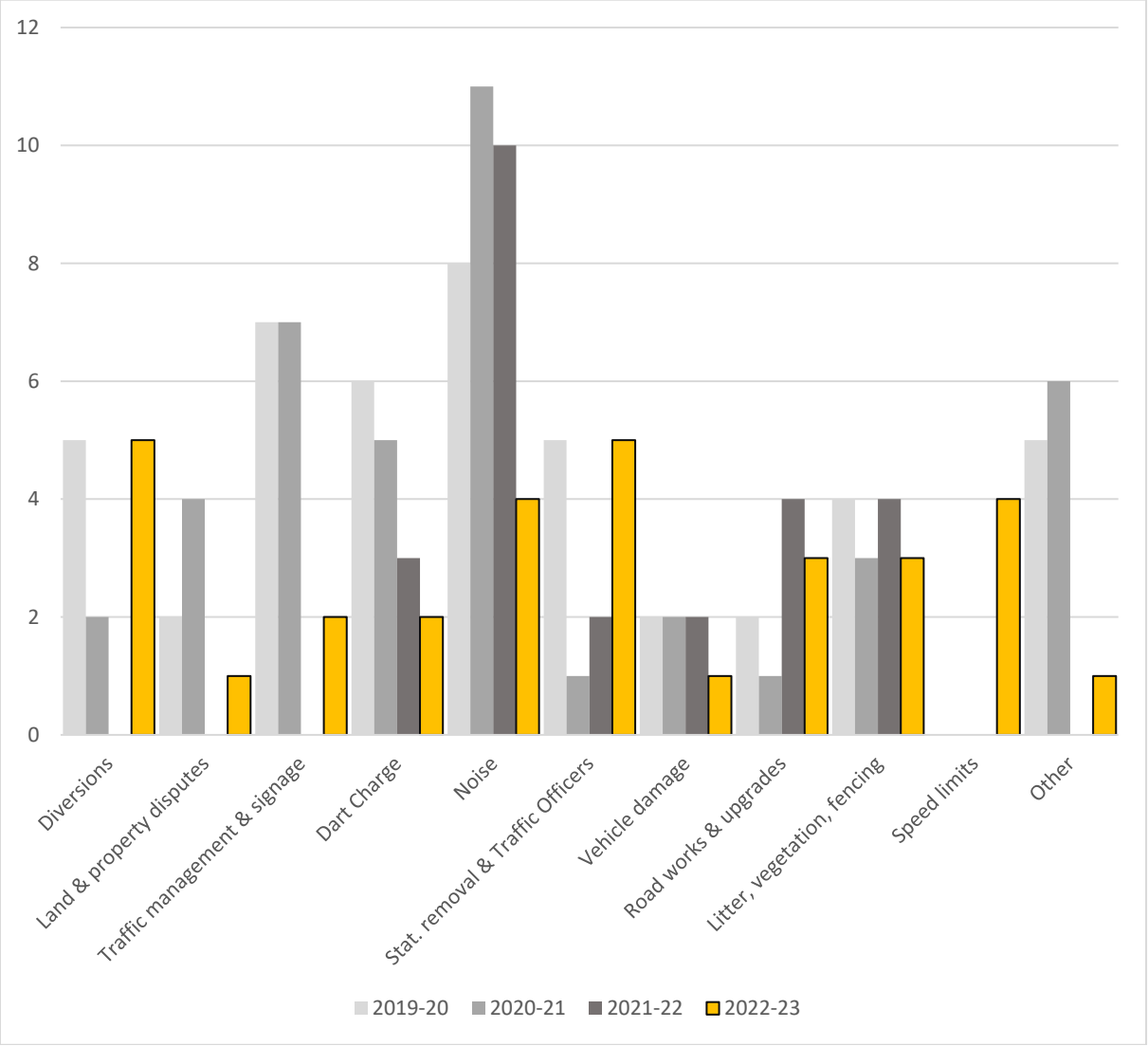
4. National Highways casework

Incoming cases

4.1 The 31 complaints we received from National Highways represented a continuation of the company's 2021–22 referral rate of about three cases per month. This is slightly below that of the two pre-pandemic years when National Highways sent us on average about four cases per month.

4.2 Figure 4.1 charts incoming cases over the last three years against the most frequent complaint subjects. As in previous years, no clear pattern or trend is evident.

Figure 4.1: **Incoming National Highways cases, 2019–2023**



Cases we completed

4.3 We upheld to some extent 12 of the 32 (37.5 per cent) National Highways' cases we completed in the year (compared to 17 out of 32 last year). The numbers upheld to some extent against complaint areas are as follows:

- Variable speed limits: 3
- Noise & nuisance: 3
- Roadworks & diversions: 3
- Vegetation: 1
- CCTV not available: 1
- Motorway signage: 1

Themes arising from National Highways casework

4.4 The year saw us receive four complaints from drivers issued by the police with Notices of Intended Prosecution (NIPs) for alleged speeding offences on parts of the network with variable speed limits (VSLs). All complained that National Highways' Motorway Incident Detection and Automatic Signalling system (MIDAS) had failed in some way, resulting in an unfair potential prosecution. Sometimes the complaint was accompanied by a request for data from National Highways about the speed limits displayed on particular gantries. Some complainants sought this data to defend themselves in court. Two are summarised in the casework section of this chapter.

4.5 We welcome the fact that our, at times critical, findings in these cases informed the company's excellent published explanation of VSLs and its role in assisting police enforcement.[7] (We were also invited to offer comments on the draft.) In the published information, National Highways explains clearly that its VSL data is not comparable with the evidence that will inform a police prosecution, and that it is not an enforcement authority. In particular, National Highways does not have access to the data captured by speed detection equipment installed on its network. Complaints and information requests should not, therefore, be seen as a way of constructing a defence against a police prosecution. Nonetheless, as ICAs we have continued to emphasise the importance of the company meeting public sector provider standards of transparency and customer service in these often heavily contested circumstances.

4.6 Complaints about noise nuisance from major roads are a frequent component of our postbag, where the complaint is essentially about mitigation measures. However, we cannot mandate how National Highways uses the sums of public money with which it is entrusted or to determine its priorities. It is also difficult for us to comment on diversion schemes when roadworks are under way, notwithstanding the undoubted

[7] https://nationalhighways.co.uk/road-safety/variable-speed-limits/

inconvenience they cause for road users. We have to emphasise to complainants that we are laypeople charged with delivering an administrative complaints procedure, and have no specialist knowledge of traffic planning or road engineering and maintenance.

4.7 The cases that follow include several examples of complaints about the statutory removal of broken-down vehicles from the motorway or other parts of the strategic road network. Statutory removal (particularly of large vehicles) is expensive, and we understand why drivers may be critical of the decisions taken. However, in the absence of any evidence to the contrary, it is difficult to see how National Highways can do other than defer to the professional judgments made by its traffic officers that a particular vehicle poses a threat to road safety and must be removed under their statutory powers.

CASES

Need to locate CCTV motorway coverage as soon as possible

Complaint: Mr AB complained in relation to a motorway accident when he rear-ended another vehicle. He said the driver had made an emergency stop at 70 mph and he asked National Highways for any CCTV coverage. He eventually claimed a sum of around £25,000 in compensation – presumably because his insurers would not meet his claim.

National Highways response: National Highways said it could not locate CCTV coverage, the purpose of its cameras was to assist traffic flow, and they were unlikely to pick up an accident as it occurred.

ICA outcome: It was clear from the paperwork that there had been some confusion as to the location of the accident (the responsibility for the incorrect information was not known). The ICA also criticised National Highways for an apparent lack of energy in trying to locate CCTV footage before it was deleted and considered this represented injustice at Level 2 on the PHSO scale. However, he did not think this meant National Highways could be held responsible for Mr AB's loss – indeed, it was entirely possible that no such footage existed. But the ICA felt that staff should be reminded to try to locate CCTV as quickly as possible notwithstanding that its use by drivers and their insurers was not its primary purpose.

One of many complaints about the A12 widening scheme

Complaint: Mr AB complained about a consultation event concerning the A12 Chelmsford to A120 widening scheme. He said his questions had not been answered.

National Highways response: The company said those present had tried to answer questions as best they were able. National Highways had provided further answers in correspondence. The company had also shared some previously unreleased traffic flow

data with Mr AB and explained that the purpose of the consultation was to present their chosen design only.

ICA outcome: There were some significant limitations on the extent to which the ICA could review the complaint as he had not been present at the meeting. He found that National Highways had consulted on a variety of route options in both 2017 and 2019, and that it was consistent with the published consultation process for nationally significant infrastructure projects (NSIPs) that only the chosen route was presented at this later stage. The ICA judged that one of Mr AB's questions had not been answered and, while not upholding the complaint of misinformation and deceit, recommended a further letter from National Highways to address the point in question.

A complaint following statutory removal of vehicle from a motorway

Complaint: Mr AB complained about the conduct of traffic officers leading to the statutory removal of his vehicle from the motorway. He said this had been 'barbaric'. He sought repayment of the removal fees.

National Highways response: National Highways said that its traffic officers had taken the correct decision to remove the vehicle/to close lanes/to reduce the speed limit. It said that the fees would not be refunded.

ICA outcome: The ICA could not say if the vehicle presented a hazard or assess the other actions taken. In any event, like National Highways, he had to defer to the professional judgments of traffic officers in what could be stressful circumstances. The ICA did not identify anything that would justify the word 'barbaric'. However, it seemed most likely that one of the traffic officers had not written the log number on the form given to Mr AB (despite the company having said she did), and National Highways should apologise. Mr AB had also said he had been discriminated against on grounds of disability, but the ICA said he could identify no evidence of this, and Mr AB would have to pursue that aspect of his grievance elsewhere.

A contested statutory removal and complaint that the attending traffic officer behaved poorly

Complaint: Mr AB's wife's car broke down on a motorway exit slip road close to a traffic-light-controlled roundabout. Mr AB complained that the traffic officer who attended was disrespectful, obstructive and threatening. A dispute had arisen about the removal of the vehicle by National Highways' contractor under the statutory provision, costing Mr AB £150. His own recovery company was nearby, and he argued that the slip road had been made safe and should not have been treated as a live lane where immediate recovery was essential.

National Highways response: National Highways explained that the vehicle was obstructing the free flow of traffic on the highway; the traffic officer had thus acted in line with the legislation in arranging statutory recovery. Had Mr AB's recovery company arrived first they would have been permitted to move the vehicle. The traffic officer had not intended to be disrespectful in any way. In its second stage response, National Highways explained the factors that its traffic officers consider when deciding whether to call statutory recovery. Mr AB's own recovery company had not been called at the point that the traffic officer arrived at the scene, and it was therefore justifiable that he engaged statutory recovery. National Highways declined to refund Mr AB's costs.

ICA outcome: The ICA could not substitute his own assessment for that of the professional traffic officer who attended the breakdown. He set out the legislation and guidance applicable to such situations. In the absence of clear proof that there had been an error or failure in service, he was unable to uphold the complaint. He was mildly critical of National Highways for not responding more fully to Mr AB's criticism of the attitude of the officer involved.

Breakdown leads to complaint against traffic officer

Complaint: Ms AB complained after she had been a passenger in her daughter's car when it hit a piece of debris on a motorway. She alleged that the traffic officer who attended had cajoled them into driving the vehicle to the Services – causing further damage as the oil sump had been damaged. She also said that the traffic officer had encouraged her to lie to the RAC about the ownership of the vehicle.

National Highways response: National Highways said it was content that the traffic officer had correctly outlined the options to Ms AB and her daughter (who did not have breakdown cover). Unfortunately, no local garage could assist, and the complainant had not wanted to submit to statutory removal. The traffic officer also denied encouraging Ms AB to lie to the RAC.

ICA outcome: The ICA could not adjudicate upon the factual aspects of the complaint. However, he was satisfied that National Highways had conducted a satisfactory investigation. Indeed, he commended the author of the stage 2 response for asking further questions of the traffic officer before replying. The ICA was concerned however that the traffic officer had not used his body-worn camera (which might have helped resolve the factual issues) and recommended that National Highways consider if further advice about their use should be offered to its traffic officers.

Breakdown on a smart motorway

Complaint: Mr AB complained in relation to a motorway breakdown. He said he had been left in an unsafe location, signals had not been set, and that traffic officers had attended and then gone elsewhere. He said this demonstrated the dangers of so-called smart motorways.

National Highways response: National Highways said that its traffic officers had been called to another incident. It said traffic signals had been set appropriately, and that the locality for the breakdown had been deemed safe (and was not where Mr AB had said it was).

ICA outcome: The ICA said that the photographs supplied by the traffic officers seemed to reflect Mr AB's initial report and not his subsequent complaint. It was indeed unfortunate that Mr AB had waited so long for recovery (the AA had driven past, and it took another hour for them to arrive). They had then removed Mr AB and his passenger while the vehicle was later subject to statutory removal. The evidence suggested that traffic signals had been appropriately set, but the ICA did not doubt that Mr AB and his colleague would have felt very vulnerable on an unlit section of motorway. Mr AB's general criticisms of smart motorways were a matter for the political process.

Noise nuisance from a trunk road

Complaint: Mr AB complained about noise from the six-lane trunk road that adjoins his property. He said that National Highways had given incorrect information about noise reduction measures. Mr AB said the constant noise was affecting his and his wife's health.

National Highways response: National Highways said there was no current plan to replace an acoustic fence. It had already laid a noise-reducing road surface. Further re-texturing (also referred to as resurfacing) was planned for later in the year.

ICA outcome: The ICA could not instruct National Highways how to use the resources at its disposal. But he was struck that no one from the company had made a site visit to Mr AB or installed a noise monitor so that there was an objective measure of the noise nuisance compared with other roadside neighbours. He recommended that National Highways consider these proposals. The ICA also noted that Mr AB lived in a Noise Important Area (NIA) yet Mr AB's entitlement or otherwise to double or triple glazing had never been explained. He recommended that this be remedied. Finally, the ICA was critical of the conflation of re-texturing and resurfacing as the latter was intended to prevent skidding and would have a negligible impact on noise, and said National Highways would need to ensure that the two terms were not used interchangeably.

A neighbour of the network waits for years for noise mitigation

Complaint: Mr AB had lived near a busy trunk road for over 20 years. In recent years he had complained repeatedly, and always with great courtesy, about the lack of noise mitigation on the stretch near his home. This most recent complaint arose from the resumption of heavy traffic following the first lockdown. Mr AB was concerned that NH's refusal to install a noise barrier or make available other mitigation options was inconsistent with the policy applied to new-build developments close to its network. He argued that the company had a duty of care to mitigate a known nuisance affecting the health and welfare of neighbours. He also argued that National Highways should have taken steps to mitigate the noise while it was undertaking routine maintenance.

National Highways response: National Highways explained that the relevant regulations provided for five-year mapping/action planning cycles. There was no budget within the current cycle (2020–25) to build a noise barrier near Mr AB's home. His house was not in a NIA, but he neighboured an NIA and mitigation would be extended to cover his home in due course. This would not occur before the third road investment strategy (RIS3) 2025–30 investment period. National Highways explained that it had already installed a noise-reducing road surface. It made its Route Manager available for direct contact with Mr AB and said that the recent repairs and renewals had been funded from a different budget.

ICA outcome: The ICA emphasised that he had no role in resource allocation. While the ICA acknowledged that National Highways' responses to the complaints were not welcomed by Mr AB, his judgment was that in the main those responses were sympathetic, informative and timely. The company had been clear throughout that it was highly unlikely that anything would be done until the 2025–30 spending round. The ICA did not uphold the complaint of unremedied injustice.

National Highways takes the rap for another company's rattling manhole covers

Complaint: Mr AB complained over almost a two-year period about rattling manhole covers near his home belonging to a water company. Successive undertakings to reseat the covers had not been delivered on by the water company. Mr AB regarded National Highways as ultimately responsible and directed his complaints to the company. He was also critical of National Highways for not updating him after it had inspected repairs by the water company, for not escalating his complaint, and for giving inconsistent information about the resurfacing of the stretch.

National Highways response: National Highways initially repaired the covers within a single phase of works, reducing road closures. Unfortunately, one of the repairs failed and Mr AB's correspondence with the company rumbled on over the following months. In its second stage response, National Highways spelled out that it was not in law responsible for the repairs. However, it would continue to liaise with the water company, and it did so as

further repair dates were negotiated. Delays set in, caused by the water company, but Mr AB complained only to National Highways.

ICA outcome: The ICA noted that The New Roads and Street Works Act 1991 (the 1991 Act) at section 88 gave the "undertaker" responsibility for maintaining apparatus in the street; in this case the undertaker was clearly the water company. The ICA likened Mr AB's targeting of National Highways as akin to complaining to a park keeper about the poor quality of music emanating from the bandstand. National Highways could have been more helpful in its responses, for example by emphasising from the outset that the assets were not its responsibility. However, the ICA reflected that when National Highways had attempted to do this, Mr AB had rejected its representations anyway. The ICA found much to commend in National Highways' persistent engagement with Mr AB over a third-party company's botched repairs. He found no grounds on which to uphold the complaint and suggested that Mr AB should in future address the owner of the assets with his complaints.

Misery for a smart motorway neighbour caused by degradation of a new live lane

Complaint: Mr AB's property abutted a busy smart motorway. He complained that sometime after conversion of the hard shoulder to a live lane, he and his neighbours had been exposed to excessive vibration and noise. This had been exacerbated by collisions of heavy goods vehicles with divots and manhole covers. Mr AB praised the National Highways engineers who had repeatedly visited the site and attempted to effect lasting repairs, but the road surface had continued to degrade. He was heavily critical of National Highways for failing to resolve the root cause of the nuisance. He urged the company to close the hard shoulder/live lane while it identified and implemented a permanent solution.

National Highways response: National Highways engineers continued to visit the site, on one occasion with senior management, to assess the extent of the vibration and noise problems. During the span of the complaint (August 2021–September 2022), several efforts were made to improve the road surface. However, repeated filling, resurfacing and smoothing of the pavement surface and removal of drainage hatches effected only temporary respite for residents, because the road surface inevitably continued to sink and deform, particularly in the hotter months.

ICA outcome: The ICA regarded the actions of National Highways' engineers as fully meeting its customer service standard of being "by our customers' side, keeping them moving by providing exceptional services". The problem had been, and remained, that the engineers had limited leverage over resources. This meant that there were lags between work being identified as necessary and work occurring. It had also meant that the repairs had been palliative rather than addressed to the origins of the recurring problem. The ICA recommended that National Highways:

- set out its plans for upgrading the stretch in line with the views of its engineers

- provide an evidenced response to Mr AB's proposal that lane 1 should be closed while a permanent solution was effected
- respond to Mr AB's evidence that vibration levels were excessive.

The ICA was disappointed that Mr AB had been repeatedly referred to National Highways' compensation team despite the clear message from that team that his case was not eligible as a 'red claim'. Finally, he recommended that the company spell out clearly its position regarding the several thousand pounds expenses Mr AB incurred as a result of flooding in his home that he attributed to vibration damage from the motorway.

Concerns from villagers campaigning against a major road widening scheme

Complaint: Mr AB and Mr CD, along with neighbours in their village, complained about potential knock-ons to the company's plans to widen a trunk road. These included, in their minds, catastrophic increases in traffic through narrow village roads threatening the lives and wellbeing of drivers and community members. They were also critical of National Highways' refusal to consider the parish council's alternative community proposal, accusing the company of withholding information about traffic flows. They regarded the traffic modelling as inaccurate.

National Highways response: National Highways had been consulting on the scheme for over five years within the prescribed sequence for nationally significant infrastructure projects under the Planning Act 2008. The alternative proposal put forward by the village community had not been part of the company's proposal for the scheme. National Highways accepted that the projected increase in flows in certain parts of the village were high but starting from a very low base point. It had expanded its model to take on board community concerns about the extent of modelling and remained of the view that total traffic would be unchanged. HGVs would be banned and vibration levels would be acceptable. National Highways could not consult indefinitely on the scheme and was proceeding towards a Development Consent Order (DCO) application. It had attempted to meet the parish council repeatedly from March 2022 only to have meetings postponed.

ICA outcome: The ICA found that National Highways could have provided the campaigners with more information about the extent of consultation and design modelling that had occurred. However, he accepted that this was an exceptionally busy period and that the project team had been bombarded with correspondence from the campaign group and others. He noted that the DCO application submission had approaching 3,000 pages of documentation alone. This was significant evidence that the company had taken on board a wide range of representations and concerns. It had also produced a detailed technical report addressing the feasibility of the parish council counter-proposal and provided this to the Planning Inspectorate. The ICA found National Highways' responses to Mr AB's and Mr CD's criticisms of its traffic modelling to be of a reasonable standard. He considered that any deficits were remedied by its detailed representations and modelling to the Planning

Inspectorate. It was now open to the complainants and their fellow campaigners to direct their challenges to that body. He did not uphold the complaint. Nonetheless the ICA was critical that a clear commitment to meet Mr CD had not been honoured and he recommended that National Highways apologise.

A couple fazed by foliage

Complaint: Mr AB and his wife bought property close to an A road and complained that foliage from trees screening them from the highway was encroaching over the 70m perimeter fence. Inspections and cuts followed but Mr AB complained that undertakings to cut back a two metre margin from the fence were not honoured. He also complained that National Highways' Environment Team Manager had been condescending and inconsistent.

National Highways response: Various contractors and staff came out to visit and inspect, and consideration was given to Mr AB's request that vegetation be cut back two metres in a way that would make maintenance easier for him. Eventually, the Environment Team Manager undertook a site visit at stage 2 of the complaints procedure and set out the position that Mr AB would have to maintain his own side of the boundary. Works would not be annual but rather based on evidence of the vegetation becoming unsafe.

ICA outcome: The ICA accepted Mr AB's account that staff visiting his property had created an expectation of a radical cut-back that was then countermanded by the Environment Team Manager. The ICA reviewed the relevant undertakings by National Highways and found that the Environment Team Manager's statement of what the company was going to do, and not do, was in line with policy. The ICA reflected that this message should have been spelt out clearly in the correspondence as Mr AB had been allowed to think for a long time that the company would cut back harder on its side of the boundary. The professional advice was that this would reduce the necessary screening and, in the longer run, would not prevent overgrowth anyway. The ICA partially upheld the complaint on the grounds that Mr AB had not been given the necessary clarity as to the company's position.

Noise nuisance after trees are felled

Complaint: Ms AB complained about the removal of trees adjoining her home next to a motorway. She said this had increased light and noise pollution.

National Highways response: National Highways said the trees had been felled by National Grid as they had posed a risk to overhead power cables. The company acknowledged that its initial engagement with neighbours had not been good but had subsequently explored in depth issues of re-planting and a possible acoustic fence.

ICA outcome: The ICA said that anyone living close to major transport infrastructure would likely encounter nuisance from time to time or on an ongoing basis. In this case, there

seemed no question that the felling of the trees was necessary, and National Highways had conducted a variety of meetings with neighbours and revisited its replanting proposals. However, the company itself had acknowledged initial failures in alerting neighbours to the proposed tree works. The ICA recommended a formal 'lessons learned' exercise to try to ensure that other roadside neighbours were not treated in the same way in the future. The ICA was also concerned that two National Highways letters had suggested that the new planting would reduce noise when the evidence suggests that it reduced the perception of noise rather than noise itself.

A couple miss their daughter's wedding after a motorway closure

Complaint: Mr AB complained that he and his wife had missed their daughter's wedding ceremony due to National Highways' mismanagement of an accident on the motorway necessitating a 15-hour closure. They had been diverted along a congested route and were at a standstill for much of the time, taking seven hours in total to travel 90 miles. Mr AB was critical of the lack of signage, the choice of diversion route, inaccurate gantry information about the extent of the delays, and National Highways' responses. He was particularly annoyed by National Highways recommending its Twitter feed for real-time updates on the network as he could not read Twitter while driving. Mr AB reflected that his son-in-law, making a similar trip, had fared much better by leaving the motorway at an earlier junction and taking a different route around the closure. His conclusion was that his son-in-law's diversion route was a far better choice and should have been flagged by National Highways for all traffic.

National Highways response: National Highways' initial response was a generic explanation that diversion routes were chosen to best facilitate the demand of traffic, and that 90-minute delays had been set for traffic approaching the closure junction. At its second stage, National Highways' Head of Service Delivery provided more information about signage warning drivers of the closure. Predicted timings on the signage referred only to motorway traffic and not the whole diversion route, as Mr AB had assumed. There had been information on Twitter and National Highways did not monitor or set electronic message signs for diversion routes that were not on its network (as was the case here). National Highways did not provide information about how long it was taking drivers to get through diversions. It regarded its handling of the incident as in line with well-established procedures.

ICA outcome: The ICA said the stage 1 response did not engage fully with Mr AB's concerns that the flagged delay bore no relation to the true delay, taking the diversion into account. This, with other deficits, was addressed in the second stage letter that the ICA regarded as a reasonable response to the complaint. The ICA did not uphold the complaint, as National Highways had operated correctly within its standard policies in managing the incident and had, at the second stage, fully answered the complaint.

Community engagement over a diversion that was never implemented

Complaint: Mr AB complained repeatedly about the use of a road running through his village as a motorway diversion route. Eventually, National Highways met Mr AB and a neighbour, and an agreement was made on notification arrangements for planned diversions. It included a commitment to avoid full motorway closure and the resulting use of diversions whenever possible. The agreement did not give the community any decision-making role on whether full motorway closure (necessitating use of the diversion) would occur. Mr AB complained that National Highways had intended to circumvent the agreement only to be blocked by the local council – the council had insisted that the hard shoulder be kept running, and the diversion had not been used. Mr AB considered that National Highways had been dishonest and had departed from its agreement. He felt that the contractor had been given undue influence in pressing for complete motorway closure. He also questioned the extent to which the community had been put on notice of the potential use of a diversion.

National Highways response: National Highways explained from the outset that the recent work was not planned and not therefore covered by the agreement. National Highways explained that "subject matter specialists" would decide on the best methodology of implementation. The community was to be kept informed but were not being invited to contribute to decision-making. The contractor had pressed for complete closure on safety grounds but had been overruled by the council. The scheme had therefore proceeded using the hard shoulder. National Highways undertook to explain the background and logic behind scheme delivery strategies to members of the community.

ICA outcome: The ICA did not see any merit in Mr AB's arguments that staff had been dishonest, or that National Highways was biased against his community. He found persuasive National Highways' explanation that safety had been the basis for the original plan for full motorway closure. The ICA could not see that the agreement was engaged or breached, noting that the diversion was never implemented. The ICA did find, however, that the agreement implied consultation in places. He therefore recommended that it be redrafted by National Highways to cover the precise works referred to and the mode and purpose of communications with the community. He recommended that it emphasise that it did not represent a consultation opportunity. The ICA did not uphold the complaint.

Drivers contesting the company's part in speeding enforcements, case 1

Complaint: Mr AB was snapped doing 70mph by a speed camera on a stretch of motorway with 50mph VSLs. He complained that National Highways' MIDAS system was not functioning properly as there was no sign of congestion nor any other hazard that could justify the VSL. He learned from National Highways that the MIDAS system should reset two minutes after a triggering incident had cleared. In this case it had been manually reset – he asked if this meant that the 50mph VSL had been left *in situ* for too long. His

communications with National Highways were time-pressured as he intended to contest the NIP. In the end he wisely paid the £100 and accepted the points. National Highways did not answer his questions within its published timescale.

National Highways response: It took seven weeks of regular chasing by Mr AB to get his complaint answered – despite repeated undertakings that National Highways' speed enforcement team would ring him. Mr AB was dissatisfied with the information he was given, and the matter was escalated to stage 2 where a regional director explained that MIDAS is triggered automatically when the system's traffic flow sensors detect congestion ahead. When this is managed appropriately, drivers should never see congestion. No faults had been reported with MIDAS on the night of Mr AB's drive.

ICA outcome: The ICA checked that MIDAS was working correctly, and the company explained in further detail how it worked. The congestion algorithm had still been active at the time Mr AB drove through the sign, meaning that the sign was still required and therefore would not have been reset either automatically or manually. Whatever the merits of a VSL, customers might expect a prosecution if they fail to abide by it – National Highways is not an enforcement agency and its data is "indicative only and cannot be relied upon in enforcement action or court proceedings to accurately reflect what signs and signals were displayed on the road at any given time, without going through rigorous analysis and data assurance processes". The ICA accepted that the system had been working correctly and that reasonable efforts had been made at stage 2 to resolve matters. He was unhappy, however, with the seven-week delay at stage 1 for which he recommended a consolatory payment. He partially upheld the complaint.

Drivers contesting the company's part in speeding enforcements, case 2

Complaint: Mr AB received a NIP from the police after driving at 58mph in a VSL stretch with the limit allegedly set to 40mph. The photographs he obtained from the enforcement authorities were, in Mr AB's eyes, inconclusive. He was convinced that the gantry he drove under was displaying 60mph and so he asked National Highways for three numbers: the limit displayed on the preceding gantry, the limit on the gantry triggering the camera (that informed the NIP), and the speed on the gantry after it. Eventually Mr AB gave up on his plan to defend the NIP and reluctantly paid up and accepted the points. When data did arrive from National Highways, he complained that it did not relate to his request for three numbers. He characterised the response as *"vague and slow"*.

National Highways response: NH initially provided a generic response that underlined that it was not an enforcement authority and VSLs should be complied with. It next explained that *"our database is not certified or calibrated to the same enforcement standards the police are required to meet. Our systems are also not connected to the variable speed limit enforcement cameras, and we only record signs and signal data for internal use and operational purposes. As such, the information held within our systems is indicative only and*

can't be relied upon in enforcement action or court proceedings to accurately reflect what signs and signals were displayed on the road at any given time, without going through rigorous analysis and data assurance processes". National Highways then decided to provide unfiltered data to Mr AB and generated a 25 megabyte 724,220-row spreadsheet that it spent the following weeks unsuccessfully trying to send to him. Needless to say, this was of no use.

ICA outcome: The ICA emphasised the right of customers to clarity from a public body. He also reminded the company of its customer service commitment to "… work to ensure that, when our customers contact us, we're easy to reach, professional and empathetic; actively listening to what they need." National Highways had repeatedly told Mr AB that it did not have what he needed – a magic bullet to get him out of a speeding ticket. However, the ICA could not agree that a belated gigantic data dump represented a reasonable level of customer service. National Highways should have either explained why it would not provide or highlight the numbers Mr AB wanted or have simply provided the three numbers. Concluding, the ICA partially upheld the complaint. In response, National Highways set out its undertaking to create a dedicated webpage in collaboration with the National Police Chiefs Council to provide transparency. As noted earlier in this section, we were pleased to be involved in the finalisation of the webpage, the provision and contents of which we commend.

Poor organisation of night-time works

Complaint: Mr AB asked why motorway works could not have been conducted at night when they would have caused less disruption. He asked for compensation for the time he had spent pursuing his grievance.

National Highways response: National Highways initially said it was unable to arrange the works overnight (a message repeated by the same member of staff on two occasions). However, at stage 2 it came to light that there had been a breakdown in communications and the works could indeed have been scheduled alongside other night-time closures.

ICA outcome: The ICA part upheld the complaint in that there had clearly been maladministration leading to the works and in giving Mr AB incorrect information. However, he was content that the apologies and explanations given at stage 2 represented sufficient redress and Level 2 on the PHSO scale was not reached. The ICA said it had been poor practice for the same member of staff to reply twice (had another pair of eyes seen the replies, Mr AB might not have been misinformed). But the ICA did not feel Mr AB had assisted himself in expecting an escalating fee for his time pursuing his complaint. That said, he did not believe Mr AB's conduct represented vexatiousness and while the stage 2 reply could reasonably refer to National Highways' policies in this regard, the ICA did not think that he would have done so himself.

Compensation claim and service provided by district valuer

Complaint: Mr AB complained in relation to a compensation claim resulting from expansion of a trunk road. He said that the district valuer acting on behalf of National Highways had acted unfairly with delay and failure to communicate.

National Highways response: National Highways acknowledged that there had been delays and uncertainties. It said one of Mr AB's claims had now been settled. National Highways had also said it was happy for a RICS expert to be appointed to settle the remaining claim but had rejected the proposal for a mediator.

ICA outcome: The ICA said he could not adjudicate upon the compensation claim and was not an appellate mechanism. He said there was nothing maladministrative in National Highways' preference for the appointment of a RICS expert to adjudicate. Clearly, there had been elements of poor service from the district valuer, and he recommended that a copy of his report be shared with the chief executive of the Valuation Office Agency for their consideration.

Gold standard complaint handling from the manager of a regional control centre

Complaint: Mr AB relied on a specific motorway junction close to his home for daily commutes as well as other trips. However, the exit slip road was frequently closed while major renovation of the roundabout and widening of the road was under way. Mr AB complained that on numerous occasions National Highways had failed to provide signage warning drivers of the slip road closure at a sufficiently early point for them to exit earlier. This meant that he had to leave at a later junction necessitating 20-mile extensions to his journey as opposed to three or four miles had he left before the closure. This had occurred nine or ten times.

National Highways response: In local resolution, National Highways initially said that the problem was a failure on the part of its automated systems. In its stage 2 response it suggested that the problem was operator error in its regional control centre.

ICA outcome: The ICA judged that the best way to resolve the complaint would be to facilitate a meeting between the manager of the relevant regional control centre and Mr AB. In the meeting, the manager apologised sincerely and explained that National Highways' initial response, and handling of the slip road closures, had not been right. This was because it had been predicated on the scenario of junction-to-junction closure (forcing drivers off the motorway) as opposed to the closure of an exit slip road (for which earlier notification would be provided). The manager explained what should have happened and the measures he had implemented to prevent recurrence. Learning from the errors in this case would also be disseminated across National Highways' regions to maximise its impact. National Highways agreed to offer Mr AB a goodwill payment of £75. Mr AB and the ICA

regarded this as a satisfactory resolution to his complaint, meaning that the ICA did not proceed to full review.

The impact of a road improvement scheme on an elderly person

Complaint: Ms AB complained on behalf of an elderly relative about the noise and light pollution resulting from a road improvement scheme. She said that National Highways had shown scant regard for her relative's vulnerability and that her house and garden would now be visible to pedestrians and cyclists and horse riders using a path that had been installed next to the carriageway. In particular, she wanted an acoustic fence installed and criticised the shrubs that had been planted to replace that part of her relative's garden that had been lost to the road scheme under compulsory purchase.

National Highways response: National Highways said that it had indeed paid special heed to Ms AB's relative. The advice of its noise specialists was that an acoustic fence was not required and in fact the new surface would reduce noise. It also said the lighting was required for the pedestrian crossing and had been agreed with the other relevant authorities.

ICA outcome: The ICA had much sympathy for the complainant and her relative. But he could not tell National Highways how to use the resources at its disposal. In any event, it was not maladministrative to follow the advice of its experts that an acoustic fence was not required. Nor could the ICA assist over the question of lighting of the pedestrian crossing. No one would wish their lives to be spoiled by a road scheme, but this was not something an ICA review could readily resolve. The ICA criticised delays in National Highways' correspondence (and the failure to send holding letters) and recommended that one piece of correspondence (that did not form part of the referral) be reviewed to make sure it was appropriate.

Customer seeks assurance that road surface is safe

Complaint: Mr AB complained about the safety of the road surface on a trunk road. He asked National Highways for a statement that he could share with his MP that the road was 'safe'.

National Highways response: National Highways said an inspection had been carried out and a pothole repaired. In a letter, it said it shared Mr AB's concerns that the road was safe.

ICA outcome: As in like cases, the ICA explained that he could not dictate to National Highways how it managed roads and ensured road safety. Nor could he offer an independent assessment of the road in question. He also hoped that National Highways was satisfied that all the roads for which it is responsible are 'safe' although he could understand why they did not want to provide a categoric statement that could be regarded

as a hostage to fortune. He was content that National Highways had responded promptly and appropriately to Mr AB's concerns. The ICA said that issues about National Highways priorities and use of resources were really a question for the political process not an administrative complaints procedure. He said Mr AB should feel free to share his letter with his MP.

5. Network Rail casework

5.1 We received 19 complaints about Network Rail in 2022–23 (compared to 13 last year). Of the 18 we completed in-year, only three were upheld to some extent. The complaint areas in incoming cases were as follows:

- Vegetation management: 5
- Noise nuisance: 3
- Graffiti removal: 2
- Engagement & notifications: 2
- Toilet facilities: 2
- Policy on hunts entering NR land: 1
- Flooded land: 1
- Bridge closure: 1
- Overcrowding: 1

Themes arising from Network Rail casework

5.2 The caveat, that as ICAs we are not subject specialists and cannot in any event dictate how resources are deployed, applies to much Network Rail casework as it does to National Highways. There are also many similarities in the casework itself: complaints about noise pollution, intrusive vegetation, and the extent of engagement and communication with local communities. Occasionally it has appeared to us that people have expected to enjoy the benefits of rail connectivity without the inconvenience of repairs and maintenance of the infrastructure.

5.3 Overall, we have been hugely impressed by the quality of Network Rail's complaints handling. Indeed, we think that on occasion some complainants have been super-served, receiving detailed replies from senior officials almost by return. There is a danger that this level of service may feed a sense of entitlement that we have discerned amongst some of those who have asked for an ICA referral.

5.4 Network Rail is not within the jurisdiction of the Parliamentary and Health Service Ombudsman. While we use Ombudsman principles and standards as our benchmark for Network Rail complaints, the complainants have no further recourse beyond an ICA review.

CASES

Unfair criticism of Network Rail after hunting dogs collide with a train

Complaint: After hunting dogs were reportedly killed by a train during a trail hunt, Ms AB complained that Network Rail had failed to take responsibility for preventing its land from being used by hunts. She also characterised its customer service as obstructive and abysmal.

Network Rail response: Network Rail initially referred Ms AB to the British Transport Police (BTP) to whom they had reported the hunt as an act of trespass. When pressed by Ms AB for information about its position on hunting, the company explained that it regarded the unauthorised accessing of its land by hunts as a subcategory of trespass and provided general information about its approach. Network Rail accepted that its customer service adviser could have been more helpful on the webchat and referred Ms AB's comments to their manager. At the final complaint stage, Network Rail's Regional Managing Director did not uphold Ms AB's complaints about the quality of responses she had received or the company's disclosures through the Freedom of Information Act.

ICA outcome: The ICA signalled from the outset that he had no jurisdiction to rewrite Network Rail's policy on hunting. He disagreed with Ms AB's assessment that the company had taken no responsibility, pointing out that it had: (i) attended the site of the collision and established that there were no injured or dead animals at the scene; (ii) reported the matter as criminal trespass to the appropriate authority; (iii) referred Ms AB to its generic information about how it prevents trespass, including by the installation of fencing; and (iv) issued a public statement, picked up by national and local media, in which it outlined events and warned of the risks of trespass. The ICA did not uphold Ms AB's complaints about Network Rail's complaint handling, concluding that the responses had been extremely sympathetic, timely and courteous.

Graffiti and litter on the railway

Complaint: Ms AB complained that Network Rail had not responded appropriately to her reports of graffiti and litter on the rail network. She accused staff of rudeness.

Network Rail response: Network Rail had replied at length to Ms AB but had tried to persuade her to use the community relations team rather than writing direct to the chief executive. The company said it took both graffiti and litter very seriously, but that it prioritised safety-critical issues. As a consequence, it could not give exact dates when remediation would take place.

ICA outcome: The ICA commended Ms AB's diligence. Both graffiti and litter were blots on the environment. However, the prioritisation of safety-critical issues could not be deemed

maladministrative. Nor was it improper to try to channel Ms AB away from the chief executive – like the leaders of all large organisations he was entitled to delegate responsibility to dedicated staff. Nor could the ICA discern any rudeness. Indeed, he felt that Network Rail had provided prompt, courteous and comprehensive replies to Ms AB's correspondence. He could not uphold the complaint but expressed the hope that Ms AB's dissatisfaction with the replies she had received did not get in the way of her underlying objective of improving the railway for the benefit of travellers and the wider public.

Debris from ground adjoining trackside neighbour's wall

Complaint: Mr AB complained about Network Rail's failure to remove debris from ground adjoining his property. He said the debris had contributed to the collapse of his wall during a named storm, and that its presence represented a continuing risk.

Network Rail response: Network Rail said that its staff had visited the site twice and had carried out the necessary works. The company did not believe that the debris (which had been fly-tipped) represented any continuing threat either to Mr AB or to the railway. They said that the cause of the wall collapsing was that it was not sufficiently robust and had had a fence attached to it that acted as a 'sail' during the storm.

ICA outcome: The ICA could not instruct Network Rail where to carry out repairs. Nor did he have the specialist knowledge to judge the cause of the wall collapsing or any continuing danger from the accumulated debris. He was content that Network Rail had conducted themselves properly in visiting and carrying out repairs on two occasions and that its correspondence was entirely appropriate. He could not uphold the complaint.

Complaint from trackside neighbour about noisy works

Complaint: Mr AB complained about Network Rail's failure to notify trackside neighbours of works on the track. He said these had been noisy and that Network Rail had been inconsistent in explaining whether the works were planned or unplanned. He also said the company had not followed its complaints policy.

Network Rail response: Network Rail said that it was committed to good relations with neighbours and to providing notification of planned works.

ICA outcome: The ICA part upheld the complaint. He was content that Network Rail had shown a flexible response to Mr AB's complaints – and that this was in line with Ombudsman principles. However, he agreed with Mr AB that he had been given contradictory explanations of the works in question. He also felt the company should clarify its policy on advance notification. Although not entitled to information that could breach data protection, Mr AB was also due a fuller explanation of which neighbours had been notified in advance of the works. The ICA made recommendations on both the latter points.

Intrusive ivy

Complaint: Mr AB complained about ivy encroaching from Network Rail land and threatening to topple his fencing. He indicated he had been complaining about this for the past decade.

Network Rail response: Network Rail had visited the site and carried out removal of the ivy. It had left some vegetation on the basis that weeds will re-grow anyway and in the interests of biodiversity. The company had also said that it would no longer correspond with Mr AB on this issue as it had nothing to add and in light of abusive comments that he had made about staff.

ICA outcome: The ICA could not adjudicate upon the technical aspects of weed control. However, he sympathised both with Mr AB for the problem and with Network Rail for balancing the needs of neighbours against its commitments to the environment. The ICA said that the decision not to correspond any longer with Mr AB should be time-limited as weeds (especially ivy) regenerate and it was likely the problem would recur in a year's time.

Noise nuisance from the railway

Complaint: Ms AB complained about noise nuisance from the railway neighbouring her home. She said that the sound was causing a great disturbance in what was a tranquil part of the country. In repeated correspondence, she accused Network Rail of not taking the matter seriously and of not following its complaints process.

Network Rail response: Network Rail had accepted that noise was excessive but said that finding a solution was not a quick fix. The company had asked Ms AB to moderate her abusive comments about its staff. Network Rail had also said that it would no longer correspond with Mr AB on this issue but would continue to provide updates on its remedial works.

ICA outcome: The ICA could not offer technical expertise in regard to reducing the noise nuisance. He said he had to defer to Network Rail's professional experts and Ms AB's view that the problem could be ameliorated overnight was nothing more than assertion. The ICA also felt that Network Rail had provided a very high level of service to Ms AB, albeit she did not agree with much she had been told. The company had also followed its complaints procedure. The ICA agreed with Network Rail that the tone of Ms AB's correspondence was unnecessarily personalised and could be deemed as abusive. In contrast, the responses from Network Rail, were prompt and courteous. He did not uphold the complaint or make any recommendations.

A complaint about excessive engagement

Complaint: Mr AB complained about Network Rail's engagement with the media in relation to the closure of a rail tunnel that would cause disruption to travellers. He said that this was a PR exercise and 'jolly' for the workforce.

Network Rail response: Network Rail defended its decision. It said it was an important way to communicate with the wider public and denied that its staff were engaged in a jolly.

ICA outcome: The ICA said that how Network Rail used the resources at its disposal was a matter for its board and ministers and not for an administrative complaints process. He was content that Network Rail had handled the correspondence appropriately and that there had been no maladministration. He also said that in his experience there were many more complaints about a failure to engage with the public in relation to road and rail schemes than there were complaints to the contrary.

A complaint that trees were not felled

Complaint: Mrs AB complained that Network Rail would not fell, or reduce in size, trees across the railway at the back of her property that cast a shadow across her garden.

Network Rail response: Network Rail said that the trees had been subject to inspections and did not represent a threat to the railway or to neighbouring properties. Its policy was not to cut trees that were in good health and no danger. It cited its commitment to biodiversity.

ICA outcome: The ICA said that Network Rail's approach was in line with its published policies and was not maladministrative. The ICA was also content with the tone and content of Network Rail's correspondence. He did not uphold the complaint. However, noting that the policy documents all focussed on when vegetation would be controlled, he suggested that at the next iteration the documents be reworded also to stress that healthy trees representing no threat would not be cut down or reduced in size.

A tree that did fall down

Complaint: Mrs AB complained that Network Rail had treated her neighbours more favourably following a tree falling from Network Rail land onto their properties. She sought additional compensation.

Network Rail response: Network Rail had agreed to increase its consolatory payment in line with that offered to the neighbours. It also agreed to repay Mrs AB's insurers the claim they had paid (thereby enabling her 'no claims' to be reinstated) plus the cost of an

uninsured fence that had been damaged. It said this put the two neighbours in the same position.

ICA outcome: The ICA was content that Network Rail had indeed now treated the two neighbours equally. He did not feel there was any remaining unremedied maladministration.

A masterclass in handling a groundless complaint

Complaint: Ms AB complained initially about train drivers making excessive noise and leaving engines running all night creating a major nuisance in the small village where she lived. She characterised Network Rail as "running riot" and "totally contemptuous". She copied in various senior managers in the region. Although content with the initial response, Ms AB then embarked on a fortnight of complaint correspondence with Network Rail focusing on what she perceived as an inferior service offered to people contacting the company through its helpline portal. Although she had never used the helpline service herself, she complained about its location in a northern city.

Network Rail response: Minutes after Ms AB's initial contact, Network Rail acknowledged the complaint and later that same afternoon apologised sincerely, explained why engines had been left on (to protect against the freeze), and explained why the track near the village had been needed and how delays had arisen. Network Rail also provided information about further programmed work and an assurance that the local team had been informed. The direct contact details of the officer handling the case were provided in the event of any further problems. As the correspondence developed, Network Rail set out the basis of its devolved customer contact model. Ms AB continued to complain, arguing that it was discriminatory that people who complained to senior managers direct as she had done enjoyed a better service. Network Rail explained that this was not the case and that its 20 working day target was not rigid but reflected the need for flexibility to respond to a range of customer needs, some straightforward and others requiring more in-depth investigation and response. Network Rail declined Ms AB's suggestion that the village should be compensated for the night of noise and nuisance. Eventually, after nine days of fruitless and circuitous communication based on Ms AB's assumption that the helpline that she had never used was "rubbish", Network Rail closed the complaint.

ICA outcome: The ICA was sympathetic to Ms AB and her neighbours' experience of noise and emission nuisance. He commended Ms AB for her gracious acceptance of the apologies and remedial action provided by Network Rail. He had significant reservations, however, about the merits of Ms AB's further correspondence with the company. Complaints, suggestions for improvements to the helpline and queries were not aimed at any service she had received or had been denied. Nonetheless, Network Rail's responses arrived often on the same day or the day after. The ICA considered the timeliness and quality of the responses to be of an exceptionally high standard. If anything, Ms AB was

complaining about having received too good a service. The ICA was unhappy about Ms AB's attacks on individuals and her disparaging references to Network Rail staff. He dismissed her complaint on the basis that complaint handling had been of a high standard. He could not consider the complaint that the helpline could be better run as it was a matter of policy and operational decision-making that was not for an ICA to second-guess. He recommended that Network Rail should decline to correspond further with Ms AB about her complaint as all reasonable steps had been taken to resolve it.

All bridges are created equal

Complaint: Mr AB complained in respect of the closure of a railway bridge for essential repairs. He accused Network Rail of not prioritising the repair work and criticised the terms of the responses he had received from the company.

Network Rail response: Network Rail had explained why the closure was necessary and the alternative travel and ticketing arrangements in place. It had also given details of the repair necessary and the fact this had involved some 24-hour working.

ICA outcome: The ICA said that he could not comment on the technical aspects of the complaint – he had to defer to the judgments of Network Rail engineers that the bridge was not safe and required closure in both directions. He also could not comment on the repairs themselves but said he did not understand the basis for Mr AB's criticism that they had not been carried out with due haste. In fact, they had been completed within the expected time target. He did not doubt the disruption caused to Mr AB and other travellers, but criticised Mr AB's personalised criticisms of Network Rail staff and his implication that repairs in this part of London were more important than in others. He did not uphold the complaint.

Removal of graffiti

Complaint: Mr AB complained in respect of graffiti on a railway bridge. He said that Network Rail had promised to jet-wash the graffiti but had then simply painted it over.

Network Rail response: Network Rail said its approach was to remove graffiti if it was offensive. However, other graffiti would be removed as and when other works allowed. The company had subsequently decided to bring forward the removal of this graffiti but said that it had been unable to persuade the local authority to agree a road closure. This meant that painting over from the top of the bridge was the only option.

ICA outcome: The ICA said that he could not mandate how Network Rail spent its resources. For the company to have done so in line with its published approach was not maladministrative. However, the ICA said the work had not been carried out with much finesse. He also criticised the fact that Network Rail could not evidence that the local authority had declined to permit a road closure. He recommended that the company

consider how best such decisions should be logged in the future. The ICA also criticised a lack of clarity in the company's responses to Mr AB as to whether any jet-washing had in fact been attempted.

A customer appalled by the state of station toilets

Complaint: Mr AB experienced the toilets in one of Network Rail's managed stations as "disgusting, shameful and abhorrent" and he therefore approached a member of staff on the platform to ask what they would do about it. He later formally complained about the toilets and the member of staff whom he said had been uninterested. He pursued this complaint energetically and aggressively, adding complaints about rudeness, delays and inefficiency and accusing Network Rail of failing to flag escalation options.

Network Rail response: The Regional Managing Director responded personally to the complaint immediately, apologising and acknowledging that Mr AB's experience was a world away from what he and his colleagues were trying to achieve. Mr AB was asked for more details, but the member of staff could not be identified. Nonetheless, meetings were held with the team responsible for customer service and toilet cleaning in order to improve the service. Mr AB refused a meeting, instead pressing Network Rail for a cash payment, which the company declined.

ICA outcome: The ICA considered Network Rail's response to the complaint to be of a good standard. Feedback had been referred to the relevant staff through briefings and unqualified apologies offered repeatedly. The matter had been investigated and responded to by two separate tiers of senior management. The ICA agreed with Mr AB that the member of staff should have assisted him with making the complaint, but the passage of time meant that they had not been identified. The ICA concluded that Network Rail had answered Mr AB's points reasonably. He did not uphold the complaint.

Staff unaware of planned refurbishment works

Complaint: Mr AB complained about arrangements for refurbished toilets at a major station. He criticised Network Rail's communications and said staff had not known what was happening. He also challenged the provision of a gender-neutral toilet.

Network Rail response: Network Rail had explained its internal and external communications. It had invited Mr AB to meet the senior station manager and tour the station, but Mr AB had declined. Network Rail had said that the provision of a gender-neutral toilet was in line with modern expectations, but no passenger would be required to use it.

ICA outcome: The ICA said that when Mr AB had first complained the planned works had yet to start. It was perhaps not surprising therefore that staff were not fully briefed.

However, there were lessons there for Network Rail. The ICA said he did not conduct primary investigations and had thus not personally reviewed the signage, etc. Overall, the ICA was content with Network Rail's handling of Mr AB's correspondence (one slight delay and an erroneous reference to the former Disability Discrimination Act aside). It was of course Mr AB's right to decline the offer of a tour of the station although the offer reflected well upon Network Rail and most commuters/travellers would probably have leapt at the chance.

A complaint about station overcrowding

Complaint: Mr AB complained about overcrowding at a mainline station on two occasions. He said the situation had been frightening and staff seemed not to know what to do.

Network Rail response: Network Rail had explained that one incident had been caused by an intruder on the line leading to the power being turned off and the other by a signal failure. It had acknowledged that there were lessons to be learned. The company had written to Mr AB (including at CEO level) on several occasions, and he had been offered a face-to-face meeting (subsequently a meeting by Zoom) that Mr AB had declined. In repeated messages, Network Rail had asked Mr AB to refer to members of staff politely and to respect the gender of one of its senior staff.

ICA outcome: The ICA said that Mr AB had rightly drawn attention to the disruption, delay and overcrowding. It was also clear that this had not been handled as well as it could have been. However, the ICA was disappointed and bemused that this reasonable complaint had descended into name-calling with Mr AB repeatedly describing a female member of staff as a man. He had also used a mildly abusive term about staff generally. The ICA said that while the second issue was regrettable, the first could have indicated misogyny on Mr AB's part, and Network Rail had reasonably withdrawn the offer of a face-to-face meeting in consequence. The ICA said that the company could now properly regard the correspondence as closed.

6. DfT and other public body casework

(i): HS2 Ltd

6.1 We received no HS2 Ltd referrals this year (after last year's three).

(ii): Maritime and Coastguard Agency

6.2 We received just one complaint about the MCA in 2022–23, which was directed to the content and application of boatbuilding standards rather than to customer service.

A boat builder at odds with the relevant standard, the MCA and the ICA

Complaint: Mr AB, who was trying to build a specific type of vessel, complained that the wording of the relevant MCA standard was ill-conceived to the extent that it should be judicially reviewed; and that the MCA had failed to provide him with sufficient advice and assistance in applying it.

Agency response: The MCA, followed by a minister in the DfT, explained that compliance with the standard was a legal requirement in the context of an industry where the lives of too many seafarers were being lost. The standards had been in place for a long time. The MCA had provided Mr AB with a significant amount of advice, free of charge. It adjudged that his boat was not being built in compliance with the standard despite its provision of appropriate guidance.

ICA outcome: The ICA cautioned Mr AB from the outset that the ICA scheme had no competence to adjudicate over different readings of the merits and applications of the technicalities in the standard. He asked Mr AB which published commitments, service standards or statutory duties he believed the MCA had failed to deliver on. Mr AB refused to answer this question but did provide documentation in support of his complaint, along with his own interpretation of what the MCA's free consultancy role should be. The ICA reviewed this alongside papers provided by the MCA and concluded that there was no evidence of service failure or error such that he could uphold the complaint. Mr AB could not accept this and insisted that his own construction of the ICA role (as advocate) should be applied.

(iii): Civil Aviation Authority

6.3 We received 12 CAA complaints (compared with six last year). As with all our low-volume public bodies, we are cautious in making comments on trends or issues. The subject matter was:

- Pilot & crew licensing: 4
- Meteorological test: 1
- Aircraft reg. delay: 1
- Operational safety cert: 1
- Pilot licensing: 1
- Airspace infringement investigation: 1
- Joint CAA/police investigation: 1
- Crew licensing exam content: 1
- Low-flying aircraft: 1

CASES

Gold standard medical investigation after a pilot reported a brief loss of consciousness

Complaint: Mr AB, a commercial airline pilot, experienced a brief loss of consciousness and his medical certificate was suspended by his aeromedical examiner (AME). The AME submitted a reapplication to the CAA after consultant-initiated medical testing had revealed no sinister cause for the event and a minimal risk of repetition. Mr AB complained that it then took the CAA's medical team 21 working days to confirm his fitness to fly and issue his Class 1 certificate. In the meantime, he and the AME had chased repeatedly. He characterised the CAA's customer service function as lacking in any real teeth or effectiveness. His own analysis was that was that customer service staff, followed by the complaints team, were desperately trying to cover up systemic and individual failings within the authority that might represent negligence.

CAA response: The CAA explained that it had needed to refer Mr AB's case to an external consultant specialist who devoted a day a week to CAA cases. This meant that it had taken longer than all would have wished for the fitness-to-fly decision to be made. Nonetheless, 21 working days was within the expected timescale. The CAA was working to mitigate additional strain on its system created by EU exit, the pandemic and the implementation of its new CELLMA record keeping system. Dissatisfied with the lack of specificity in the CAA's replies, Mr AB requested ICA referral.

ICA outcome: The ICA was critical of the CAA for not providing the more specific responses to Mr AB's challenges and questions that he had requested. CAA handling had been highly efficient with a full medical review occurring within a week of the initial referral. The

medical assessor had identified a need for further evidence from the AME and requested it at the same time as activating the referral to the external consultant specialist. This provided an opportunity for the additional evidence to be added the file and to be available to the external specialist when Mr AB's case was at the top of their queue. The CAA's medical assessor had needed to chase the AME for some of this evidence. The material on file did not substantiate Mr AB's complaint that the CAA's systems were fundamentally flawed. In fact, the ICA concluded that the dynamic medical triage/further enquiries/specialist referral sequences set in train by the medical assessors' initial assessment represented a gold standard. He did not uphold the complaint of unremedied injustice and commended the CAA and its medical assessor for their efficient and diligent handling.

A pilot is 'provisionally' suspended after repeatedly flying without a transponder squawk

Complaint: Mr AB flew his light aircraft over an airport's airspace (a transponder mandatory zone – TMZ) without his transponder squawk or radio contact being picked up. As a result, a mandatory occurrence report (MOR) was made to the CAA and an investigation was launched. The aircraft was identified and Mr AB, as pilot, was asked for an independent engineer's report on the functionality of his transponder and encoding unit. He initially declined to provide this, instead raising a series of questions with the authority. He complained that the CAA's delayed handling of the MOR did not reflect its claimed safety focus, and that its Infringement Coordination Group had prematurely 'provisionally' suspended his pilot's licence pending the outcome of further enquiries. He was also critical of the authority for not rescinding the provisional suspension two days later when he met the CAA. Eventually, three weeks after its imposition, after Mr AB had participated in a formal interview (and provided the requested engineer's report), the provisional suspension was lifted. Mr AB also complained that the CAA had referred to a failure to learn from the recommendations of the Airspace Infringements Awareness Course (AIAC) that he had undergone four months prior to his latest airspace infringement. He emphasised that the recommendations were advisory and not mandatory.

CAA response: The CAA explained that the provisional suspension had followed the fourth airspace infringement in 23 months by Mr AB. The CAA was therefore concerned that there had been a failure to learn from the recommendations of the AIAC. Through the complaints correspondence, the CAA explained the policy and legislative basis of its action and why it regarded its handling as in line with its Just Culture and service standards. It set out why the latest airspace infringement had been classed as major. The provisional suspension had been in line with policy. It had been lifted when the engineer's report had established that the transponder had been functioning – meaning that the matter of why the squawk had not been detected remained unresolved. Its decision-making process was set out in some detail and the CAA went on to meet Mr AB to try and resolve matters. He remained

adamant that the 'provisional' suspension, which had actually prevented him from flying, had been disproportionate and premature.

ICA outcome: The ICA had reservations about Mr AB's initial refusal to provide the independent engineer's report, given his history of MORs. The ICA was also sceptical about Mr AB's complaint that the authority had not sufficiently investigated the incident when he himself had initially refused to provide information that later was instrumental in the lifting of his provisional suspension. The ICA established that the authority's handling of the MOR had been fully in line with policy. He commended the authority for its complaints responses and willingness to meet with Mr AB. In the absence of error or service failure, he did not uphold the complaint.

Delayed consideration of requirement for fresh examinations post-Brexit

Complaint: Mr AB complained about having to go through certain helicopter flight tests. He said he had already passed the relevant examinations.

CAA response: The CAA said that Mr AB's qualifications could not be converted following the UK's departure from the EU. He had been offered additional time to take them. The CAA accepted that there had been a significant delay in offering Mr AB the correct advice.

ICA outcome: The ICA could not adjudicate upon whether Mr AB needed to take the tests. This was a matter of the CAA's interpretation of the law following Brexit and a regulatory and technical decision. On all three counts it was outside his jurisdiction. He commended the CAA for offering Mr AB the additional time, but he was concerned by apparent confusion in the correspondence handling. He recommended that advice should be given to members of the CAA's contact centre. The ICA was also disappointed by the delays and recommended a consolatory payment of £250 in line with DfT and PHSO guidance.

A complaint about a new training licence

Complaint: Mr AB complained that the CAA wanted him to pay for a training licence that he already possessed. He also criticised the lack of consultation over proposed changes to the training regime.

CAA response: The CAA said that Mr AB did not have the qualification as this was a new initiative. It acknowledged that a computer upgrade had shown the qualification a year before its introduction, but additional training was required. It had explained the extent of the consultation with interested bodies and said that the new approach had been widely welcomed.

ICA outcome: The ICA could not uphold the complaint. It was entirely clear that Mr AB did not have the new qualification for which additional training was required. He also felt the

CAA was entitled to charge more to reflect the costs of the additional training. There had evidently been a computer glitch because of a premature upgrade that must have affected many other people in addition to Mr AB. But the CAA could reasonably have concluded that attempting to remedy this would not have been a good use of resources. However, there was a lesson for the CAA in that a delay in replying to Mr AB had probably contributed to his decision to escalate all the way to the ICA.

Mixed messages from the CAA about why a Certificate of Airworthiness could not be issued in a timely fashion

Complaint: Mr AB, with his business partner, ran an aircraft maintenance company. They complained that CAA handling of a Certificate of Airworthiness (C of A) application for an aircraft to be imported into the UK was subject to unacceptable delays, scuppering the import in the end.

CAA response: The CAA explained that there had been a problem addressing emails that had now been fixed and should not recur. Apologies were offered. At the second stage of its complaints procedure, the CAA stated that the email glitch had presented a short-term delay but the root cause was that the aircraft was never registered with the UK and did not have valid transport documents. The CAA regarded its published service delivery levels as having been met.

ICA outcome: Mr AB had received inconsistent messages from the CAA as to why the C of A application was not progressing. In particular, in later correspondence, the CAA had referred to deficiencies in the import documentation. However, the authority had previously told Mr AB that these deficiencies had been resolved. There were other inconsistencies. The CAA knew that it had an unhappy customer whom it had let down in the early stages. The CAA had provided mixed messages about the validity of the export documents and had not provided services that were easily accessible, with clear procedures and accurate, complete, understandable information. The ICA also observed that some of the CAA's responses to his enquiries had reflected a service-driven orientation rather than a customer-focussed one. He recommended that the CAA apologise for its failure to orientate Mr AB fully to its requirements at an early stage. He also recommended that the CAA review the suite of documents it provides to C of A applicants to ensure that the requirements are clear. Finally, he recommended that the CAA's customer service function reviews Mr AB's experience to identify how better to provide timely, consistent, constructive and joined-up advice to applicants in future. He upheld the complaint.

Customer seeks to establish a drone service between hospitals

Complaint: Mr AB complained on multiple grounds about the way the CAA had handled his application for an Operational Safety Certificate to enable him to establish a drone service to take lab samples and drugs between a series of hospitals. He said that CAA staff did not understand their own rules and changed processes to suit themselves. Mr AB personally criticised two senior members of staff for their professional conduct and the performance of the CAA's Airspace Regulation Team.

CAA response: The CAA said that it had assisted Mr AB as far as it could. It defended the two senior members of staff and said it had met its service delivery commitments to Mr AB.

ICA outcome: The ICA issued a very long report detailing the course of events. In general, he felt the CAA had emerged well but there were clearly learning points to take away. Although not upholding the complaint and making no recommendations, the ICA was very pleased by the CAA's response to his review which was very positive in terms of taking forward the learning.

CAA involvement in police operation

Complaint: Mr AB complained about a joint police/CAA operation at his premises at which an arrest was made. He asked why he had not been given advance notice and said that the safety implications of the operation had not been considered.

CAA response: The CAA said that police operations were a matter for the force in question. However, advance notice would obviously not be given. The CAA had answered a range of questions posed by Mr AB, but there had been a delay in doing so. In consequence of the review having been conducted by a senior official, the CAA waived stage 2 of its complaints procedure.

ICA outcome: The ICA said he had no responsibility for the police but it would appear that the operation followed standard procedures. He said that on the evidence before him there had been no safety implications. The ICA commended the thoroughness of the CAA reply, but part upheld the complaint for delay – albeit there were no recommendations he could make.

A complaint about examination questions

Complaint: Mr AB complained that the reviews he had paid to have conducted into two Flight Crew Licensing (FCL) examinations had been flawed. He said there was ambiguity in some of the questions.

CAA response: The CAA said that its specialists had reviewed the questions and were content that they were not flawed. The authority agreed to waive the fee for a second review of one of the examinations that Mr AB had requested, as it could not understand how he expected there to be a different outcome. The CAA offered advice to Mr AB about the need to discuss the examinations with his instructors and continue his efforts to pass, as his marks were not far below what was required.

ICA outcome: The ICA said he had neither the expertise nor authority to judge whether particular test questions were ambiguous. He could not act as an appellate body against FCL exams or adjudicate upon the decisions of the CAA's specialists. He judged the CAA's correspondence to be kind and courteous. He did not uphold the complaint but said there might be a learning point about the level of detail given in review outcome letters.

A compensation request

Complaint: Mr AB complained that the CAA's consideration of his claim ignored a number of his allegations. He also complained that CAA's independent review was not independent and that it came to the wrong conclusion. Mr AB further complained that the CAA had failed to enforce the law and that its complaints process was not fit for purpose.

CAA response: The CAA was satisfied that its decision on Mr AB's claim was appropriate and that it had provided an explanation for its decision.

ICA outcome: It is not the ICA's role to comment on the merits of the CAA's decision on the compensation claim. However, the ICA found that there had been significant delays in the consideration of Mr AB's claim and that the CAA had not addressed all the issues raised or explained why it would not do so. When Mr AB complained about the decision the ICA again found evidence of delays and a failure to address the substantive issues. The ICA welcomed the CAA's decision to send Mr AB's claim for a further stage 2 complaint consideration but found that the communication around that could have been handled better and that, again, not all the issues were addressed. There was then a further delay while the case awaited referral to the ICA. The ICA recommended that the CAA apologise to Mr AB for the frustration he had been caused and pay a consolatory payment to him of £200.

(iv) DfTc

6.4 Nine complaints involving the department centrally were referred to us in the year (compared to two last year). All were completed in-year. Two were partially upheld, two were discontinued, and the remaining five were not upheld. The complained-about areas were:

- Air accident investigation: 1
- Legal costs claim: 1
- Quad bike regulations: 1
- Access to DfT-owned land: 1
- Release of data: 1
- Role in consultation : 1
- HS2 Ltd : 1
- Rail accident inv: 1
- Employment : 1

6.5 As is often the case, most of the complaints were addressed to policy matters rather than the department's customer service and administration. We provide summaries of four of the more salient cases below.

CASES

A complaint that a toll regime did not comply

Complaint: The complainant was a ferry operator, whose regime of fares was determined by the DfT's Secretary of State through statutory instrument. The department accepted the recommendations of an independent inspector as to a revised fare regime. The operator complained that the recommendations of the independent inspector were not fully reflected in the order that set out the new fare regime, to their potential detriment. The schedule attached to the order contained the same fares recommended by the inspector but imposed them for different periods and limited the last fare increase to only 12 months. It ended the operator's right to charge tolls prematurely. The operator's representative complained that the department had unreasonably refused to reimburse their client's legal costs arising from the representations that they had made to get the order revoked and a new one issued. They also complained of a delay in the department's response to their correspondence.

Department response: The department reminded the ferry operator and their representative that the inspector's role was advisory. It argued that it had not erred in law in departing from some of her recommendations. In its second substantive response to the complaint, the DfT apologised for the delay but did not accept the representative's

conflation of the revisions reflected in the revised order with corrections triggered by their challenge.

ICA outcome: The limitations of the ICA's scope precluded him from considering some of the substance of the complaint, but within his jurisdiction he found that the department had made a reasonable attempt to consult with the operator about the timing of the statutory instrument coming into force. The DfT's refusal of the representative's request to review a draft copy of the order before it came into force amounted to policy. It was reasonable, the ICA found, for the DfT to press ahead rather than allowing for a further postponement.

A complaint about an air accident investigation

Complaint: Mr AB had been involved in a helicopter accident. His complaint was that the subsequent Air Accident Investigation Branch (AAIB) was flawed, and he had been treated poorly.

Department response: The AAIB stood by its report and investigation process. It drew attention to the many times it had engaged with Mr AB.

ICA outcome: The ICA could not act as a point of appeal against the AAIB report. Accordingly, a key aspect of Mr AB's complaint was outside his remit. The ICA noted that the AAIB had not followed its complaints procedure and one letter from Mr AB had received no reply. However, he commended the level of engagement that included the Chief Inspector himself and which meant that, at the end of the process, Mr AB now understood what had caused the accident.

A developer who felt that the department was thwarting him

Complaint: Mr AB complained that the DfT, represented by National Highways, was unreasonably restricting access to his land that he wished to develop.

Department response: A DfT minister responded to a representation from Mr AB's MP, setting out her view (based on legal advice) why ongoing access to the land would be retained by the department. The full valuation implications were conjecture in the absence of planning permission. This position would be reiterated during Mr AB's correspondence with the department.

ICA outcome: The ICA explained from the outset that his jurisdiction did not allow him to involve himself in positions held by government ministers. Nor was he equipped or qualified to arbitrate in a legal dispute about access to land in which the parties on both sides were properly represented. He did not detect any deviation from the department's administrative and customer service standards in its dealings with Mr AB and his MP. He did not uphold the complaint.

A complaint of inappropriate data release

Complaint: Mr AB complained that the DfT had passed his data on inappropriately after he had made enquiries of the Secretary of State and others about vehicle enforcement.

Department response: The DfT explained that it handles approaching 56,000 items of correspondence every year and that its standard procedure is to seek input from executive agencies when relevant to an incoming query. In the absence of a stipulation from Mr AB to the contrary, it had routinely obtained input from an executive agency which, in terms of data protection law, was part of DfT and not an external body anyway.

ICA outcome: The ICA noted that the complaint, in essence, concerned the DfT's data handling. It would ultimately fall to the Information Commissioner to make a ruling as to whether it had complied with the statutory requirements. On an administrative level, the ICA was content that Mr AB's questions and challenges had been answered reasonably, and that the department had acted within its Personal Information Charter. Mr AB had not put any stipulation limiting transmission of his data on his original communications. The ICA did not uphold the complaint.

(v): Vehicle Certification Agency

6.6 We have received only two complaints about the VCA in the last decade, the last one of which arrived in June 2020. Nonetheless, the agency continues to support the ICAs when technical input into certification is required to assist in casework related to the other DfT family members.

Appendix 1

THE DEPARTMENT FOR TRANSPORT INDEPENDENT COMPLAINT ASSESSORS – TERMS OF REFERENCE, JULY 2023 [8]

Introduction

1. The overall aims of the independent complaints assessor (ICA) process are to:

   - put right any injustice or unfairness suffered
   - improve services delivered through the DfT
   - provide assurance that DfT public bodies have followed proper procedures and that maladministration has not occurred.

   The ICA process is intended to assist customers and users of DfT/DfT public body services including those that may come into contact with DfT/DfT public bodies; it is not best designed for resolving disputes between fellow professionals.

2. The role of the ICAs is to review how a particular matter has been handled. It is a 'light touch' procedure; the ICAs do not conduct primary investigations, or routinely interview the parties, and are usually unable to adjudicate upon contested versions of events where no independent evidence exists.

3. The Department for Transport (DfT) independent complaints assessors (ICAs) provide independent reviews of complaints about the information and services delivered by:

   - the central Department for Transport (DfT(c))
   - the other bodies reporting to DfT as set out in annex C (DfT public bodies).

4. This guidance sets out expectations of the ICAs and will, subject to annual review, apply throughout the current ICA's terms of appointment.

5. Any changes in the interim will be subject to agreement between the Department ICA sponsor, DfT(c), DfT public bodies and the ICAs.

Referral and review process

6. The scope of the ICA scheme is defined by an agreed protocol that is annexed to these Terms of Reference (the 'protocol' – Annex A).

[8] https://www.gov.uk/government/publications/dft-independent-complaint-assessors-terms-of-reference/dft-independent-complaint-assessors-terms-of-reference

7. The DfT/DfT public body will tell all complainants that they can ask for an ICA review through being provided with the information about the DfT/DfT public body's complaints procedure in the final response, including responses to complaints by Members of Parliament and others acting on behalf of the complainant.

8. The DfT/DfT public body will ensure the complainant knows what the ICAs can do and that they must ask for referral following the DfT/DfT body's final response. A standard referral form for the DfT/DfT body use is at Annex B (the 'referral form').

9. When the DfT/DfT public body has completed its own complaints procedure, it must always refer a complaint to the ICAs when asked to do so by a complainant. Where a complaint is felt to be outside the ICA remit as set out in these Terms of Reference, the DfT/DfT body will consult an ICA before the final decision is made. Decisions about the extent to which a complaint meets the criteria for ICA review will be made by the ICAs.

10. The DfT/DfT public body will usually tell a complainant they can ask for ICA referral after providing a final response. However, in some circumstances the DfT/DfT public body may decide to refer a complaint to an ICA before it has completed its complaints procedure, given the agreement of the complainant and the ICA.

11. The DfT/DfT public body may also ask an ICA for advice on a case before its final response.

12. The DfT/DfT body will aim to pass a completed referral form, chronology and all data exchanged between the parties to the ICA no later than 15 working days after the complainant has asked the DfT/DfT body to refer a case to the ICA (a holding letter and explanation should be sent to the complainant if this target is not met).

13. The ICA will acknowledge receipt of a referral to the DfT/DfT public 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.

14. 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 DfT/DfT public 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 DfT/DfT body's handling of the complaint has been poor. For example, it has failed to conduct a proportionate and reasonable investigation, and/or has failed

to apply an appropriate remedy
- The DfT/DfT body has asked the ICA to review the case
- an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

Against a detailed review

- The DfT/DfT body has investigated the complaint properly and has found no administrative failure or mistake
- the complainant objects to the DfT/DfT body's policy or legislation
- the complainant has or had a right of appeal, reference, or review through another avenue, for example tribunal or legal proceedings
- the essence of a complaint is a contractual or commercial dispute
- a full review would be disproportionate.

15. Having considered the factors set out in paragraph 14, 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.

16. During the review the ICA may raise queries about the complaint history, or the policy or legal background, and the DfT/DfT public body will try to answer these. The DfT/DfT public body will ensure the ICA has complete access to all the relevant data, documents and information used in responding to the complaint. This includes third party material.

17. An ICA may interview relevant parties by exception and should tell the DfT/DfT public body (and DfT ICA sponsor if appropriate) beforehand.

18. The ICA will review the complaint and set out their conclusions about the way the matter has been handled.

19. An ICA may discuss a case with another ICA or ICA substitute if they feel it would be helpful. An ICA may also, with prior agreement from DfT ICA sponsor, co-opt a substitute ICA to support case handling.

20. The ICA will send a draft report to the DfT/DfT public body for it to check for factual accuracy. If the DfT/DfT public body thinks it might be difficult to accept and/or implement the ICA's draft recommendations, it may comment at this stage.

21. The review will, where appropriate, include the ICA's findings and conclusions (with reasons) as to:

- whether the DfT/DfT body has been fair and has met the relevant standards in its administration (including complaint handling)

- 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.

22. Exceptionally, the ICA may decide to issue a full (or partial) draft report to the complainant, as well as to the DfT/DfT public body. This will allow all parties to provide their input before the ICA finishes the report.

23. The ICA will aim to complete their review of the case within three months. They should tell the complainant and the DfT/DfT public body if they think it will take longer and explain the reason(s) why. With the agreement of the ICA and the complainant, reviews may be suspended or withdrawn at any point.

Remedies

24. The ICA may recommend the DfT/DfT public body put right any complaint they uphold by:

- apologising
- giving more information and/or explanation
- taking other remedial action
- paying out-of-pocket expenses (with evidence)
- paying other financial losses (with evidence)
- making a consolatory payment, if this is proportionate and necessary, to reflect the inconvenience, injustice, hardship or delay experienced by the complainant because of the DfT/DfT body's decision, action or failure to act.

25. When making a recommendation for any financial payment, the ICA will consider the DfT/DfT public body's policy, relevant HM Treasury guidance (currently *Managing Public Money*), the UK Central Government Complaints Standards, and the Parliamentary and Health Service Ombudsman (PHSO) documents, *Principles for Remedy* and *Our Guidance on Financial Remedy*.

26. In suggesting any remedy, the ICA will consider the impact and seriousness of any poor service or maladministration on the complainant. The ICA will also consider 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 or failed to do made their situation worse.

27. At the ICA draft report stage, the DfT/DfT public body should try to reach an agreement with the ICA about their findings and recommendations:

    - When the DfT/DfT public body does not agree to implement a recommendation, it should tell the ICA at this draft report stage.
    - If the DfT/DfT public body and the ICA cannot resolve any difference of opinion, the DfT/DfT public body should tell the complainant and the ICA, in writing, after the ICA issues the final report.

28. When the ICA has made recommendation(s) about redress, the DfT/DfT public body must respond to the complainant in writing. A copy of what is sent to the complainant must be sent to the ICA who handled the review.

29. The DfT/DfT public body must tell the relevant ICA as soon as they are aware that a case an ICA has reviewed has been accepted for investigation by the Parliamentary Ombudsman.

30. The DfT/DfT public body should, following receipt of the PHSO's final report after investigation into a complaint, advise the relevant ICA and the DfT ICA sponsor of the PHSO's recommendations.

31. The DfT/DfT public body must write to the complainant and copy in the ICA and DfT ICA sponsor to say whether they accept the PHSO's recommendations.

Confidentiality/personal information handling

32. When a complainant makes a complaint to the DfT/DfT public body, they will use the complainant's personal information. Where appropriate, they will share that information with DfT and the ICA so they can handle the complaint properly. The DfT/DfT public body must ensure that complainants are clearly advised and give consent before any ICA referral is made.

33. In the ICAs' annual report and elsewhere, the DfT/DfT public body may publish anonymised data relating to a complaint to show the public how DfT and DfT public bodies deal with complaints and what DfT ICAs do.

34. The DfT/DfT public body may also use complainant personal data for producing anonymised statistical information.

35. The DfT/DfT public bodies process personal data relating to a complaint so they can deal with it. Some DfT public bodies are separate data controllers under data protection law.

36. Where a complaint has been sent to the wrong DfT body in error, they will forward it

to the right one and let the complainant know they have done so.

37. The DfT ICAs will destroy securely all data about a complaint that was referred to the ICA, including the report, generally after two years. DfT/DfT public bodies have their own data retention and archive policy that they will conform with.

38. The DfT's privacy policy has more information about a person's rights in relation to their personal data, how to complain and how to contact the Data Protection Officer. This is available at: https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter.[1]

39. 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 DfT/DfT public body has told the ICA some material they have provided is sensitive, the ICA must not disclose any part of it outside the DfT/DfT public body without first obtaining consent from the appropriate Data Controller(s)

- in rare cases, an ICA might not be able to confirm or deny the existence of data. The DfT/DfT public body must explain this to the ICA in those circumstances.

40. The ICAs must handle all documents and information given to them in line with Department and/or DfT public body's requirements for the lawful protection of information, especially personal information.

41. As data processors, the ICAs will pass any requests made directly to them for information under the Freedom of Information or Data Protection Acts directly to the relevant DfT public body or to DfT(c). They must include any relevant documents or information about the request.

42. The ICA should copy their report to the complainant and to the DfT/DfT public body (and any representative the complainant has specifically nominated to receive a copy of a report, such as an MP). The ICAs' reports are not confidential; they should be written with the expectation they could be shared widely particularly by a complainant.

43. The ICAs will generally refer only to the 'preferred first name and/or title/role' of the member(s) of staff in the DfT/DfT public body referred to in a complaint, not the full name, unless they are members of the senior civil service.

1: This privacy policy covers the central Department (DfT(c)), its executive agencies and investigation branches only. Other DfT bodies have their own privacy policy on their websites. [Other data controllers should amend this paragraph as appropriate so that it refers to their own privacy policies.]

44. Two years after a review or the issue of the ICAs' Annual Report including the case (whichever is the later), the ICA should destroy securely all relevant case documents they hold. In line with paragraph 36, the DfT/DfT body will be responsible for the destruction of any documents stored centrally in line with their own retention policy.

Reporting by ICAs

45. The ICAs will report every year to the Permanent Secretary of the Department for Transport on complaints they have handled in the previous year ending 31 March. The report will be shared with Ministers of the Department to note, and will include:

- how many complaints were referred to the ICAs
- how many complaints they upheld, partially or fully
- what recommendations and suggestions, if any, they made to the Department and/or DfT public bodies
- what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of the DfT/DfT public body complaints procedures and their role
- a selection of anonymised complaints the ICAs have concluded during the year, to:
    - highlight issues found in service delivery,
    - encourage others similarly affected to come forward
    - demonstrate the independence and impact of the ICAs' work
    - draw attention to any other matter the ICAs consider the DfT/DfT public body should know about.

46. The ICAs will invite the DfT(c) and the DfT public bodies to check a draft of the annual report for the accuracy of sections dealing with their cases.

47. The Department will publish the ICAs' annual report and its response to any recommendations on its website following receipt.

48. The ICAs will also produce quarterly summary reports to an agreed format. These will also be provided to DfT/DfT public bodies in draft form before submission to the DfT ICA sponsor.

Target timescales

49. Target timescales for the DfT ICA scheme are set out below.

Department and/or DfT public body to provide ICA with completed referral and all supporting documents	15 working days of receipt of request for an ICA review
ICA to acknowledge referral to complainant and Department and/or DfT public body and to inform complainant of proposed timescale for review	5 working days from receipt of completed referral
Department and/or DfT public body to answer queries raised by ICA	15 working days of receipt of query
ICA to issue draft report to Department and/or DfT public body	3 months from receipt of completed referral.
Department and/or DfT public body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to the complainant and Department and/or DfT public body	5 working days from response to draft report and within three calendar months of initial referral.

50. If an ICA thinks they might miss any of these targets, they will tell the DfT and DfT(c) and/or DfT public body as early as possible and explain their reason(s).

Equality

51. The scheme should be as widely accessible as possible to all sectors of the community, in the same way that DfT's services should be. If, while making a referral, the DfT/DfT public body considers the complainant has any protected characteristic as outlined in the Equality Act that might require the ICA to adjust their approach to handling the case, it will tell the ICA as soon as possible.

Annex A

ICA Protocol

1. The information DfT public bodies should give to complainants at or before the final complaint response is set out below.

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 are not happy with the response. The ICAs cannot accept referrals direct from complainants[2] – the complaint must have been through the DfT or DfT public body's own complaints process, unless exceptionally you, we and the ICA agree it can be referred earlier.

3. The ICA is:

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

4. The ICA looks at whether we've:

   - handled your complaint properly
   - given you a reasonable decision

5. It does not 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'll 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 will not resolve your complaint, then with the agreement of the ICA, the ICA does not 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. That ends their involvement with your case, and you should not expect them to engage in further correspondence. In most cases, your further right of appeal would be to the Parliamentary and Health Service Ombudsman via an MP.

11. The ICA can look at complaints about:

- bias or discrimination
- unfair treatment
- poor or misleading advice
- failure to give information
- mistakes (including decisions, actions and failures to act)
- unreasonable delays
- inappropriate staff behaviour.

12. The ICA cannot look at:

- regulatory decisions and outcomes
- disputes where the principal focus is upon Government, DfT, or DfT public body policy
- complaints arising from contractual and commercial disputes
- complaints about the law
- matters considered by Parliament
- matters where only a court, tribunal or other Body can decide the outcome
- decisions taken by independent boards or panels, for example: applications under the HS2 'Need to Sell' scheme
- decisions taken by, or for, the Secretary of State
- legal cases that have already started and will decide the outcome
- an ongoing investigation or enquiry
- how we (i.e. the DfT or DfT public body) handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- how we (i.e. the DfT or DfT public body) 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 or the judgments of driving and vehicle examiners.

13. Also, the ICA cannot usually look at any complaint that:

- has not 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 cannot usually look at, please tell us why you believe the ICA should review it. We'll send your explanation with your complaint to the ICA.

15. The ICA cannot look at any complaint the PHSO has investigated or is investigating.

Mutual Respect

16. The ICAs will behave in a respectful manner and expect the same in return. They cannot tolerate behaviour that creates an intimidating, abusive or offensive environment or which undermines their safety or wellbeing. Steps will be taken to address such a situation should it arise, which can include but is not limited to restricting their contact with complainants whose behaviour is felt unreasonable.

Annex B

ICA Referral form for Department or DfT public body completion

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

1. Department or DfT public body and contact details of officer preparing the file	
2. Name of complainant	
3. Address	
4. Email address and telephone if known	
5. Has the complainant indicated a requirement or preference for communications? (e.g. are they unable to write?) If so, what?	yes/no
6. Has the complainant identified as having a protected characteristic under EA 2010? If yes, please state what	yes/no
7. Date complaint made and by what means?	
8. Summary of complaint (attach letter/email if appropriate)	
9. Date of initial response to the complaint?	
10. Summary of initial response (attach letter/email if appropriate)	
11. Date of final response to complaint?	

12. Summary of final response to complaint (attach letter/email if appropriate)	
13. What redress, if any, has been offered to the complainant (e.g. apology, reimbursement of expenses, ex-gratia payment)?	
14. If no redress/failure identified, which rules/policies have been followed correctly?	
15. Date of request for ICA review (attach letter/email if appropriate)	
16. Does the public 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 public 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
19. Confirm the complainant's preferred method of communication and that these details have been agreed and are current and valid	
Date:	Person making referral (if different from email)

I confirm that the above information has been verified.

Any other comments:

Annex C

LIST OF DfT BODIES WITHIN THE ICA JURISDICTION

British Transport Police Authority (BTPA) – not the British Transport Police
Civil Aviation Authority (CAA)
Driver and Vehicle Licensing Agency (DVLA)
Driver and Vehicle Standards Agency (DVSA)
High Speed Two Ltd (HS2 Ltd)
London & Continental Railway (LCR)
Maritime and Coastguard Agency (MCA)
National Highways (NH)
Network Rail (NR)
Vehicle Certification Agency (VCA)

as well as
The central Department for Transport itself (DfT(c)).

Appendix 2

Department for Transport – complaints 2022–23

The central department is committed to responding to complaints within 20 working days. The department's public bodies, including executive agencies, have their own complaints procedures and timelines within an overall departmental policy framework. The number of complaints handled by the central department, executive agencies and other public bodies where data is available during 2022–23 and the previous three years is provided in Table 1.

These show an overall increase in complaints, which we put down largely to the pandemic and its impact on delivering services as well as handling business queries that become complaints.

Table 1: Gross number of complaints (e.g., stage/step 1)

Year	2022–23	2021–22	2020–21	2019–20
DfTc	8	24	12	7
BTPA	0	0	0	0
CAA	199	270	153	105
DVLA[9]	13,684	28,197	10,226	3775
DVSA	9,819	8,699	5,985	8,809
National Highways[10]	5,994	4,886	4,242	5,457
HS2 Ltd	1,147	1,637	1,877	867
MCA	52	66	84	70
Network Rail[11]	10,199	7,391	9,005 (1,636)	8,329 (1,834)
ORR	1,118	1,079	1,257	1,722
VCA	15	10	11	9
Total (excluding MP/ministerial)	**42,235**	**52,259**	**32,852**	**29,150**

DVLA data has been reported publicly in various sources over the last five years, including the National Audit Office Report on DVLA handling of driving licence backlogs, DfT annual reports, GOV.UK reporting on MP complaints, and verbally at the Parliamentary Public Accounts Committee. These figures were provided to each body at different times, from a

[9] DVLA data represents a true reflection of all complaints received in the period by DVLA in their 'Step 1' as a formal complaint that is escalated to the 'Complaints, Compensation & Customer Experience Improvement team' within DVLA or made on behalf of a complainant in the first instance by an MP and subsequently managed at 'Step 1'.

[10] National Highways was previously Highways England and before that the Highways Agency.

[11] Network Rail adjusted to reflect total complaints, figures prior to 2020–21 are only those made to the Board and CEO.

range of DVLA sources, counted either as received or closed cases, and always based on the question posed by the requester. That may mean that data published elsewhere may differ from the data published here.

Lessons from complaints handling and improvements made during 2022–23

The following improvements either to complaint handling or service delivery processes have been reported from the central department and DfT public bodies using the feedback from complaints.

Department for Transport (central department)

The central department received several complaints from members of a community group around proposed road improvements in their area. These were sent to the policy team concerned but also individual non-executive members of the department's board. This prompted the department's board to agree how complainants be advised as to how non-executives view complaints as important feedback to them in their role, but do not respond individually.

It was agreed that complainants should be advised in the response from policy areas that; if the complainant has also written to one or more non-executive board members at the department that the non-executives take an active interest in major projects and representations about them, including from complaints. The response will also advise that non-executives will have noted all comments and will ask officials to brief them on the issues raised and how they are being responded to, but board members will not reply individually to complainants.

Civil Aviation Authority

A complaint regarding the lack of communication and action of a refund of an application fee has provided us with an opportunity to review our procedures regarding the issuing of refunds. Our procedures have been updated and licensing officers will email a customer when issuing a refund to confirm the refund and advise the timeframe for when it should be completed.

Following a complaint regarding the claim portal rejection of an Amex payment, a process has been introduced to ensure that this type of payment is not classed as a credit card, therefore eliminating rejections.

A complaint regarding concerns over how the CAA publishes and controls updates to regulation has provided us with an opportunity to review our web publications with engagement with the industry. This has resulted in the consolidation of Air Operation Regulation, AMC & GM now published on the CAA regulations website to improve clarity, understanding and satisfaction of UK aviation regulation requirements. The complainant

has seen the new material and advised us, *"I notice that regulatory publications have been extensively updated. This is a great step forward."*

A complaint regarding incorrect advice relating to an ATOL claim has resulted in our website being updated to ensure the information is clear and concise.

Following a complaint regarding the lack of engagement with the Remote Piloted Aircraft Systems (RPAS) community, regular quarterly meetings have been introduced to improve our ability to communicate, with the first meeting held in March 2023.

An ICA review regarding the approach to Airspace Regulation & Remote Piloted Aircraft Systems (RPAS) highlighted the need for more collaborative working. As a result, regular meetings have been set up to align the work of our teams and address any issues/concerns.

Driver and Vehicle Licencing Agency (DVLA)

The improvements implemented within the business areas below have affected our complaint volumes positively:

Contact Centre

In December 2022, the Contact Centre saw the introduction of a virtual queuing system, giving customers the option to join a virtual queue and receive a call back rather than wait on the line. By the end of March 2023, 132,908 customers had used this feature, which has seen a reduction in call handling times.

The Contact Centre have also introduced an option for customers to receive automated SMS messages from our telephone option menu. Whilst navigating the menu, the customer can request a message containing a link to the information relating to their enquiry contained on our gov.uk website. This has helped support customer understanding of key topics and helped customers gain information quickly.

Interactive Voice Recognition (IVR) has been introduced to navigate our telephone menu for the clean air zones. This has helped direct the customer to the help they require in a much quicker manner.

Input Services

The manual processing of disposals notifications, of which we receive around 850,000 per year, has been successfully automated through the introduction of robotic process automation. This has freed up staff to assist and support other areas of the business.

Drivers Medical

A change of legislation has enabled healthcare professionals other than doctors to complete DVLA medical questionnaires. This has helped our Drivers Medical department by speeding up elements of the medical licencing process while also reducing the burden on doctors.

Driver and Vehicle Standards Agency (DVSA)

The year 2022–23 was another challenging year for DVSA, as we continue to focus on recovery from the effects of the COVID-19 pandemic, particularly regarding practical car driver testing. All other services are operating normally.

In August 2022, we introduced our new customer correspondence monitoring system, which features, for the first time, an online portal to make it easier for customers to provide feedback on our services. The new system provides much more management information to allow us to use feedback to improve the services we offer.

We have also been one of the trailblazer organisations for the Public and Health Service Ombudsman's new complaint standards. Using the maturity matrix which we helped PHSO develop, we have much better visibility on the state of complaints handling at DVSA and areas where we need to focus development. We have shared our initial findings with colleagues across government to encourage adoption and embedding of the new standards throughout government.

National Highways

National Highways are committed to how we engage and respond to customer contact. Our performance is improving, and this has been recognised by the Institute of Customer Service.

We're improving performance through cross-business collaboration, which has included sustained engagement and activities such as:

- Rolling out training across the business to empower our people with support and guidance to deliver a professional, friendly service to our customers by telephone, enabling us to provide a timelier response to customer contact.
- Developing better, more accessible guidance, to provide clear roles and responsibilities for responding to customer contact.
- A correspondence forum to share best practice across the business, to enable our people to provide a consistent, professional, friendly service to our customers.

- Giving regular performance updates to our senior leadership team and escalating any issues. They provide us with support to help drive improvements throughout the business.
- Holding regular meetings to discuss issues with our correspondence teams and conduct deep dive analyses of our performance to see where we need to improve.
- Monitoring and tracking customer contact and complaints across the business to help us monitor performance, track trends and identify issues.
- Improving the timeliness of our responses to customer contact by 8.1%, with a 12-month rolling score of 90.8% of contact responded to within 10 working days in March 23 compared to 82.7% for April 21 to March 22.
- Improving the quality of our complaint handling, reducing our 12-month rolling complaint escalations by 0.7%, with 3.3% of our stage 1 complaints escalating to stage 2 between April 22 and March 23, compared to 4% for April 21 to March 22.

What more are we doing?

- Further developing our customer relationship management systems to provide a single view of customer contact, and a more joined-up service for our customers.
- Expanding our customer feedback platform (Every Customer Has an Opinion) to survey complaints, gain feedback to help us identify our customers' evolving needs and expectations for responses to their contacts, and make continual improvements to our procedures and guidance.
- Developing unreasonable contact handling guidance, to provide support to our people and customers when the nature of contact is difficult.
- Conducting a review of our corporate complaints process, to ensure it remains fit for purpose and aligns to the complaint standards set by the Parliamentary and Health Service Ombudsman.
- Further developing our guidance and training for responding to customer contact, to enable and empower our people to provide a professional, friendly, helpful service.

High Speed 2 (HS2)

As we enter the second year of peak building work, we are understandably receiving an increase in calls about construction-related issues affecting people now. These concerns need to be answered quickly and we are committed to resolving urgent construction enquiries and complaints in two working days. We received 308 urgent construction enquiries and complaints last year and responded in two working days in all cases.

Communities along HS2's path have already faced several years of disruption and uncertainty and the extended lifecycle of the project means the impact of our work will be felt for a significant period into the future.

We are now engaging with local people between Manchester and London. At Phase 1, residents and businesses are being affected by main works construction at more than 350 sites stretching from the West Midlands to London. This pattern will be repeated as early works are delivered longer term along the Phase 2a route connecting the West Midlands and Crewe. We are also working with communities along the Phase 2b route to Manchester, as the legislation for this section of the railway progresses through Parliament.

Network Rail

We have seen a marginal increase in complaints this year compared to the previous year, but the four-year comparison indicates a generally stable trend in this respect, and proportionally, complaints still account for less than 10 per cent of our overall contact. Overwhelmingly, people who contact us are asking for information about the organisation (e.g., specific projects and stations), or about our regions, or for us to carry out work in their area (e.g., removing graffiti, cutting back trees or clearing up litter and fly-tipping). Or they are asking us for information about the rail industry as a whole. Complaints accounted for 8.5 per cent of our overall contact this year, with issues around the noise of the work we carry out and how we notify attracting the highest numbers.
ICA referrals have increased again this year. This is to be expected as our national complaints process (introduced Q3 2021/22) fully embeds in our organisation. Our devolved structure means that some regions are much more confident in their knowledge of this process than others, which is reflected in the number of complaints that are referred from the Southern region compared to other areas of the country.

Office of Rail and Road – non-ministerial department

In 2022–23 the Office of Rail and Road (ORR) received 1,118 complaints and general enquiries, representing a slight increase of 39 cases, or 4%, on the previous year.
Our performance target, to respond to all correspondence within 20 working days, is set by the ORR internally at 95%. This metric is evaluated on a monthly, quarterly and annual basis. The performance target for 2022/23 has been exceeded, at 98%.

Despite updating the website last year signposting readers to the correct authority in relation to train services, fares and delay complaints; the ORR still receive a high volume of correspondence relating to these topics, which are outside the ORR's remit to investigate, as a non-ministerial department. In such instances, the ORR will respond and explain the complaint escalation process and include contact details of the relevant complaint-handling body.

The webpage for complaints and general enquiries is in the process of being further updated so that information can be viewed conveniently. This may assist in reducing the amount of correspondence received, however, ORR are aware that due to its role as a

regulator, rail passengers will contact the ORR in the first instance instead of approaching the Rail Ombudsman.

Complaints received by Independent Complaints Assessors

The data in Table 2 has been corroborated by the ICAs and each of the named DfT sources, and the date referred to the ICAs and received by ICAs is the same as referrals are sent electronically.

Table 2: Number of complaints referred to DfT ICAs

Year	2022–23	2021–22	2020–21	2019–20
DfTc	9	2	4	3
CAA	12	6	2	4
DVLA	216	162	193	282
DVSA	53	136	72	47
National Highways	31	34	42	46
HS2 Ltd	0	3	4	1
MCA	1	3	3	2
Network Rail	19	13	2	1
VCA	0	0	1	0
Total	**341**	**359**	**323**	**386**

Complaints to the Parliamentary & Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) investigates complaints about the department and its delivery bodies when referred by a Member of Parliament on behalf of a complainant. Generally, the PHSO will expect the ICAs to have reviewed the matter before they consider investigating.

Where the PHSO believes there is evidence of maladministration, unfair treatment or poor service, it will investigate the issues, review the remedy provided, and may recommend further actions to resolve the matter. All recommendations made by the PHSO were implemented in the year by the department.

The data supplied in Table 3 has been supplied by the PHSO and corroborated by the department. This also appears in the DfT Annual Report and Accounts 2022–23.

Table 3: Number of complaints investigated, upheld and not upheld by PHSO

Organisation	Complaints accepted for detailed investigation			Investigations upheld or partly upheld[12]			Investigations not upheld or discontinued		
	22/23	21/22	20/21	22/23	21/22	20/21	22/23	21/22	20/21
DfTc	0	0	0	1	0	0	0	0	0
DfT ICAs	0	2	0	0	1	0	0	0	0
CAA	0	1	0	1	1	0	0	0	0
DVLA	1	4	12	4	5	4	3	2	8
DVSA	0	0	0	0	0	0	0	0	0
Nat. Highways	0	0	0	0	0	0	0	0	0
HS2 Ltd	0	2	0	0	2	0	0	0	0
MCA	0	0	0	0	0	0	0	0	0
VCA	0	0	0	0	0	0	0	0	0
Total	1	9	12	6	9	4	13	3	8

Investigations into complaints by PHSO

When PHSO concludes an investigation, it may do so in the year(s) following when it was accepted. In addition, there can be several recommendations made to the department or its public bodies to resolve a complaint. The issue of a report with recommendations may occur in year 1, and those recommendations my be complied with in year 2.

Table 4 includes the number of recommendations made by PHSO following an investigation of a complaint, and whether these were complied with over the last 3 years.

[12] Completed investigations often occur from cases accepted for detailed investigation in previous years.

Table 4: Recommendations made by PHSO and compliance

DfT centre or DfT public body	No. of cases with recommendations			No. of recommendations			Closed: complied with			Open: in compliance		
	2022–23	2021–22	2020–21	2022–23	2021–22	2020–21	2022–23	2021–22	2020–21	2022–23	2021–22	2020–21
DfT	1	1	0	5	1	0	3	1	0	2	0	0
DVLA	4	5	3	13	9	6	13	8	6	0	1	0
HS2	0	2	0	0	2	0	0	2	0	0	0	0
CAA	1	1	0	4	1	0	4	1	0	0	0	0

You can access the PHSO website here via this website link:
Welcome to the Parliamentary and Health Service Ombudsman | Parliamentary and Health Service Ombudsman (PHSO)