Department for Transport

Independent Complaints Assessors

Annual Report, 2023-24

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To the Permanent Secretaries of the Department for Transport, Dame Bernadette Kelly DCB and Jo Shanmugalingam.

We are pleased to submit our Annual Report covering the period April 2023 to March 2024.

Stephen Shaw **Jon Wigmore**

Foreword

The two of us became Public Appointees in 2020, and our then three-year term in office was extended for a further five years (subject to possible further extension by mutual consent) in 2023. However, this is the last annual report that we will pen as a twosome. Very pleasingly, in light of the increasing demand for ICA reviews, to provide contingency, and in acknowledgement that this is a role best conducted on a part-time basis, the department has been recruiting additional ICAs. Peter Wrench, Mena Ruparel and Claire Evans are joining us over the summer and autumn of 2024. Lindsey Wilby, our much-valued associate since 2020, has moved on. We are delighted to be joined by new associates Nick Denton and Alex Oram.

We have already found it very valuable to be able to share views and approaches to complaints in a wider group, as we adjust our approach to best deploy the additional capacity.

We think it may be fairly said that 2023-24 was characterised by something approaching a return to normal after the years blighted by the Covid-19 pandemic. However, DVSA referrals have continued to be well outside the 15-day target that applies to all DfT public bodies. And there have also been routine delays in the DVLA's complaint handling against their 10 day target.

We were delighted to welcome the DVLA's revised complaints procedure, which came into effect just after the end of the reporting year. The so-called 'Business as Usual' process that preceded the two-step complaints procedure, has been abolished with all formal complaints immediately engaging step 1. The DVLA has also amended the reference to step 2 as being the 'Chief Executive' stage, to more clearly read as the formal step 2. These improvements are the result of open and constructive dialogue between ourselves, the DfT and the DVLA, and we applaud them unreservedly. It is of course still the case that customers will be encouraged to resolve any problems they have with the business unit concerned. But there will be much greater clarity as to what, and what is not, deemed as a complaint.

We received 370 cases in 2023-24 and completed 382 reviews, in our second busiest year since we took office. At the end of the reporting period, work in progress (that is to say, cases received but not yet completed) constituted 59 cases, slightly above the average of the preceding two years.

In total, our caseload rose by 8.5 per cent compared with 2022-23.

Although most bodies within the DfT family come under our jurisdiction, in practice it is the DVLA that makes up the majority of our work. This of course reflects the fact that the

activities of the DVLA – whether about drivers or vehicles – affect most of the adult population in one way or the other. We welcomed the opportunity to contribute to Janette Beinhart's Public Body Review of the DVLA and, at the time of writing, are looking forward to learning the outcome. (We made a previous contribution to the equivalent review of the CAA.)

Well over 80 per cent of the DVLA's transactions are now digital, and the overwhelming majority are concluded with commendable efficiency. However, it is unsurprising that the DVLA's medical licensing decisions (with their potentially life-changing implications for customers) are the single largest cause of grievance and ICA review. We have welcomed a 23 per cent reduction in Drivers Medical referrals this year.

Customer relationships with the DVSA are usually more short-term (and come to an end when a test is passed), but our DVSA postbag was especially large in 2023-24 because of previous covid related delays. It is pleasing that the DVSA has directed additional resources to clear its backlog. Few if any customers now regard the covid legacy as an acceptable excuse for poor service.

As well as detailing our complaints handling, this annual report reproduces our latest terms of reference (the terms of reference are reviewed on an annual basis) and (in Appendix 2) the overall complaint volumes received by the department and its public bodies. This is not data collated or validated by the ICAs. But we believe that including it in our annual report serves the interests of transparency and provides a context for our own reviews. As we have said on many previous occasions, most complaints are resolved long before any ICA involvement is required. Indeed, we encourage the bodies in remit to double-check what has occurred before making a necessarily expensive and protracted ICA referral. The DVLA has a formal 'mapping' process that is particularly adept at picking up problems that can be settled without ICA involvement.

The year has seen the further embedding of the Ombudsman's UK Central Government Complaint Standards within the DfT family of providers, a foundation that was created with input from us. The Standards and the associated suite of guidance has provided consistency and a valuable structure for audit, and complaints policy and service development. We welcome the emphases on thoroughness and fairness in complaint investigations and responses. We continue also to refer to the 20-year-old Ombudsman's Principles in our casework, given their emphasis on day-to-day service delivery.

1: Overview of our year's work

Incoming cases

1.1 Some 370 new cases were referred to us, compared to 341 in 2022-23. The totals have ranged between 323 and 386 for the past four years. This amounted to an 8.5 per cent increase, comparing year-on-year.

1.2 We provide an overview of our 2023–24 incoming caseload, compared to 2022–23, in Table 1.1.

Table 1.1: **Cases received 2023–24, main complaint areas, and changes since 2022-23**

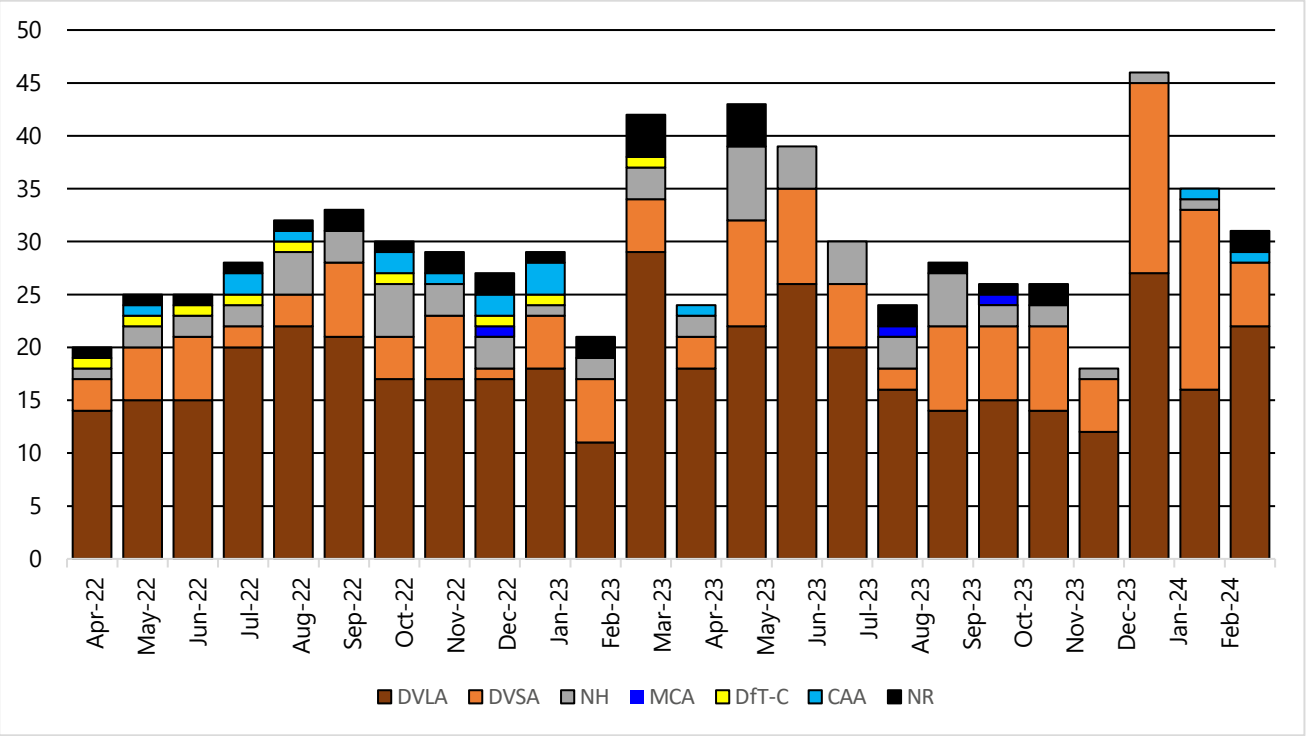
	Referrals	Main complaint area	Change from 22-23
DVLA	222	Drivers Medical (30%)	+3%
DVSA	99	Driving test outcome / conduct (38%)	+ 88%
NH	32	Dart charge (19%)	Same
NR	12	Noise & nuisance (50%)	-7 cases
CAA	3	N/A	-9 cases
DfTc	0	-	-9 cases
MCA	2	N/A	+1 case
HS2	0	-	Same
VCA	0	-	Same
Total	**370**		**+8.5%**

1.3 The most dramatic change from 2022-23 is the near doubling in DVSA referrals, from 53 to 99. On the face of it, the gains we reported last year were reversed in the final quarter of 2023-24, when 41 cases arrived. However, this reflected in part a welcome additional resource in the DVSA preparing the backlog of cases for stage 3 ICA review. As we will discuss further in section 3, the DVSA's ICA referral rate has oscillated since the pandemic and at year end the Agency had some way to go to consolidate recent progress.

1.4 Figure 1.1 shows the consistent pattern of DVLA referrals determining our caseload (60 per cent this year, compared to 63 per cent 2022-23, the latter figure close to the overall percentage going back to 2013). In February 2024, we received our 2,000th DVLA referral since taking up post in 2013, (having received our 3,000th from all bodies the previous August). Since 2013, 84 per cent of our cases have come from the two big motoring agencies (DVLA and DVSA). These are the DfT family members with the most customer transactions, in the most contentious areas (driving test conduct, tax collection/enforcement, and driver fitness remaining consistently represented in our postbag).

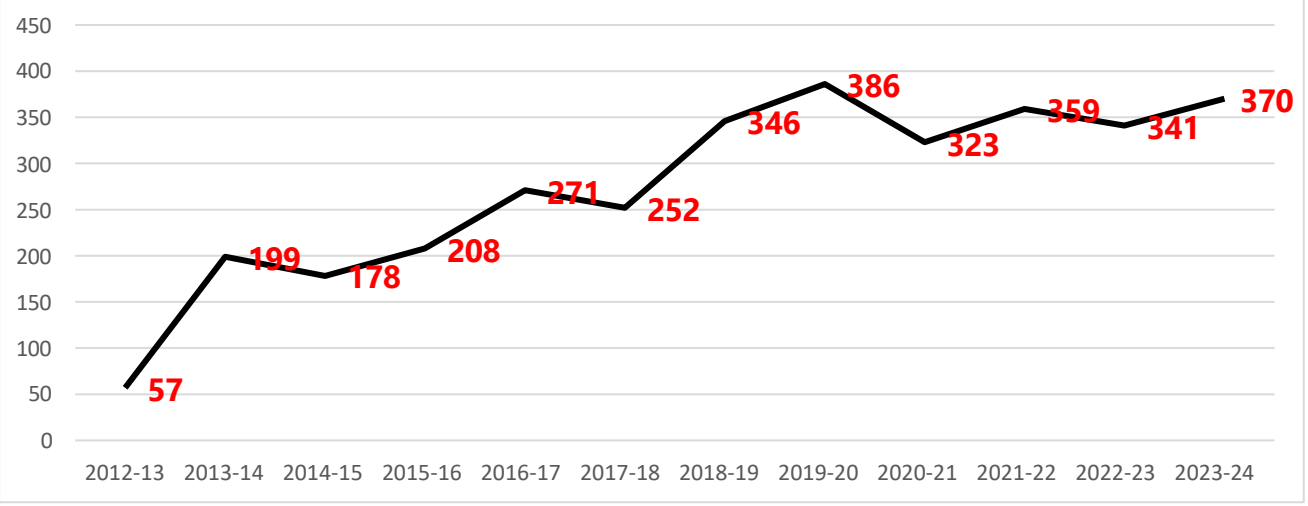
1.5 We have received one complaint about VCA (in June 2020) in the last decade, and 37 about HS2 Ltd. However, the last complaint about HS2 Ltd that reached the third (ICA) stage was in September 2021. In this regard, we note the comments of HS2 Ltd's Construction Commissioner who reported reduced complaints in his jurisdiction in the reporting period.

Figure 1.1: Cases received by month, post-pandemic, 2022–24



1.6 Figure 1.2 illustrates the resumption of the expected upward trend in referrals, post-pandemic. On this basis, we expect 2024-25 to be a record year with over 400 referrals.

Figure 1.2: Referrals to the ICAs by year, 2012/13–2023/24



1.7 Just a quarter (23.5 per cent) of incoming ICA cases were brought to us by women complainants. Some 31 per cent of DVSA referrals were from women, compared with 22 per cent of National Highways cases, and 21 per cent of DVLA referrals. We have not been able to extract any clear gender pattern in complaints about DfT public bodies other than the obvious across-the-board preponderance of male complainants.

Completed cases and outcomes

1.8 During the year we completed 382 reviews, a 20.5 per cent increase on 2022-23. As reported in previous years, with the assistance of our associate ICAs, we have continued to manage fluctuations in referral volumes. However, the increase in the ICA resource is very timely, as balancing our other commitments with what has amounted to full-time DfT casework has proved extremely challenging at times. That challenge is reflected in the fact that 59 cases (15.4 per cent) were completed outside of our three calendar month target (compared to 66 last year – 21 per cent).[1] No complaints about our handling, to our knowledge, were picked up by the Ombudsman.

1.9 We summarise our 382 case outcomes in 2023–24 compared to last year as follows (all percentages are rounded):

• Not upheld:	220 cases	58%	(2022–23: 64%)
• Partially upheld:	141 cases	37%	(2022–23: 27%)
• Discontinued/quick resolution	16 cases	4%	(2022–23: 6%)
• Fully upheld:	5 cases	1%	(2022–23: 3%)

1.10 These outcomes are in line with previous years. Aggregating the 146 cases that were upheld to some extent gives a figure of 38 per cent of cases that were partially/fully upheld (compared with 30 per cent last year). This increase reflects the DVSA's difficulties in meeting the target to refer cases to us within 15 working days of the customer's request.

1.11 No ICA annual report would be complete without us putting on record our reservations about the extent to which the upheld/partial/not upheld 'metric' can be said to reflect public body performance. We would point to the rate of escalation at each complaint stage as a more reliable gauge of complaint handling performance.

[1] Our case log does not allow us to reflect deferred cases so these figures are maximal.

In doing so, we are cognisant of the deteriorating public satisfaction in the transport sector reported consistently by the Institute of Customer Service.

1.12 In Table 1.2, we summarise the outcomes of all our 382 completed cases by DfT public body.

Table 1.2: **Outcomes of cases closed by ICAs 2023–24, by public body**

Delivery body	Closed cases	Upheld?				% Upheld to some extent		Further action proposed?
		Full	Part	Not	Disc.*	23-24	22-23	
DVLA	225	2	74	139	10	34%	30%	93 (41%)
DVSA	99	2	50	44	3	52%	29%	53 (54%)
NH	36	1	9	25	1	28%	41%	13 (36%)
NR	16	0	4	11	1	25%	17%	8 (50%)
CAA	3	0	3	0	0	100%	33%	3 (100%)
MCA	2	0	1	1	0	50%	0%	1 (50%)
DfTc	1	0	0	1	0	0%	25%	0 (0%)
VCA	-	-	-	-	-	-	-	-
HS2 Ltd	-		-	-	-	-	-	-
TOTAL	**382**	**5**	**141**	**221**	**15**	**37%**	**30%**	**131 (45%)**

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

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

- 83: consolatory payments (for non-financial loss) (2022-23 = 68)
- 16: apologies (2022-23 = 14)
- 16: further/better explanation (2022-23 = 13)
- 13: changes to information / guidance provided (2022-23 = 8)
- 6: combined consolatory and compensation payments (2022-23 = 5)
- 6: review the decision (2022-23 = 4)
- 6: changes to working systems (2022-23 = 3)
- 6: improvements to complaint handling (2022-23 = 3)
- 2: compensation payment (2022-23 = 3)
- 1: training (2022-23 = 1)
- 16: other (2022-23 = 19).

1.14 We will usually make more than one recommendation in cases we uphold. As previously reported, the figures above underestimate our total recommendations, particularly those that involve changes to working practices.

1.15 The total consolatory payments we recommended amounted to £15,689. This compares with £20,232 in 2022-23, £14,607.10 in 2021–22, and £12,481.50 in 2020-21. Again, the application of a consolatory payment to a non-financial loss is not an exact science. We have continued to emphasise to customers that the sums offered in recognition of maladministration are tokenistic and should not be compared with what the courts may award.

1.16 We recommended financial remedies (consolatory and compensation) in 93 cases (24.4 per cent of completions), as follows:[2]

- DVLA (60): £12,390.00
- DVSA (30): £4,469.00
- Network Rail (1): £200.00
- National Highways (1): £100.00
- CAA (1): £100.00

1.17 The DVLA declined our recommendation in one case (meaning that 59 recommendations to the Agency were implemented, amounting to £12,170).

1.18 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.[3]

Productivity

1.19 We took on average five hours and 20 minutes to complete each case in the 2023-24 reporting year (this compares with five hours and 55 minutes in 2022-23).

1.20 On average, 41 working days elapsed between receipt and completion of reviews. As noted above, we finished 84.6 per cent of our cases to target.

[2] 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.

[3] Financial remedy | Parliamentary and Health Service Ombudsman (PHSO)

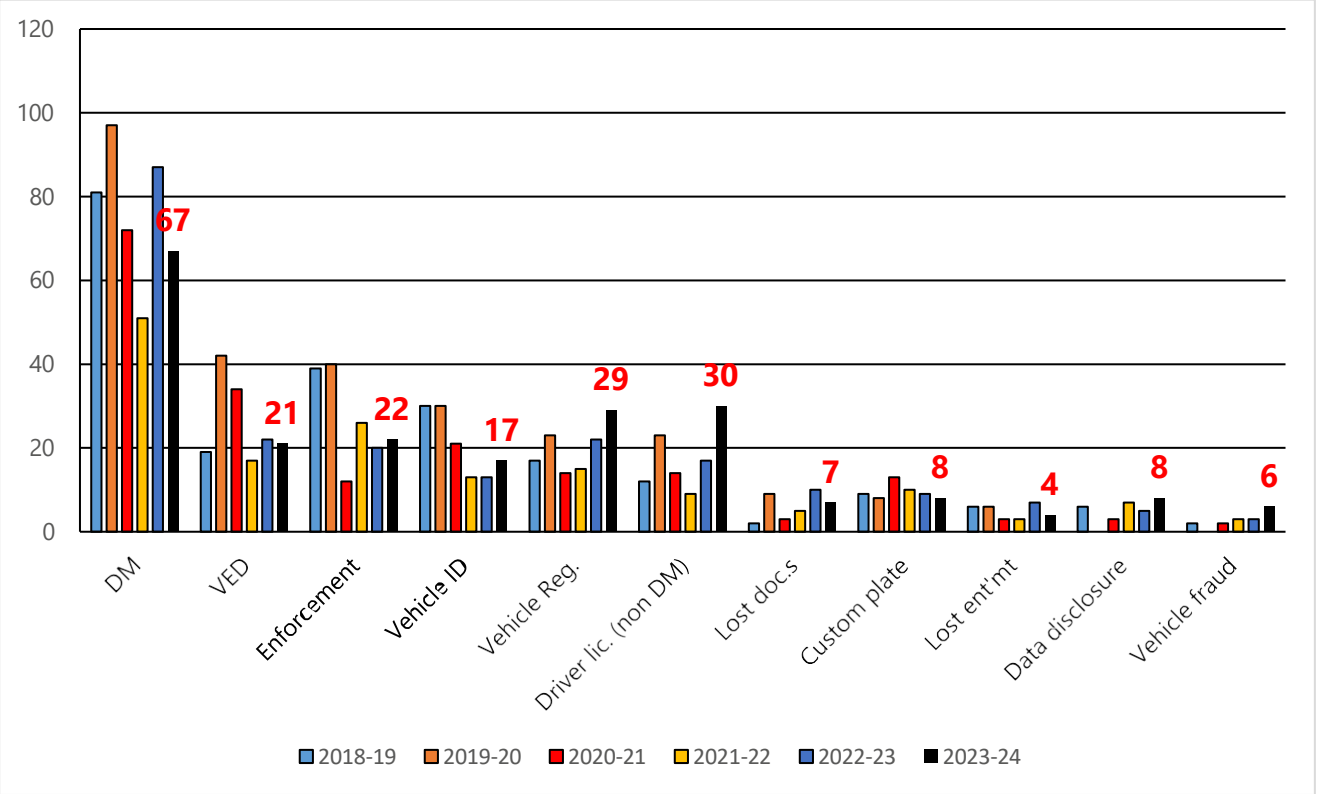
2: DVLA casework

Incoming cases

2.1 We received 222 cases from the DVLA in 2023-24, as noted in section 1, a 3 per cent increase from 2022-23. This represents a welcome steadying-up of our DVLA workload after the 33 per cent year-on-year increase we reported last year.

2.2 Figure 2.1 illustrates the year's intake of cases in the main subject areas (without the handful in the 'Other' category) alongside those of the last five years.

Figure 2.1: Incoming DVLA cases by subject area, 2018-2024[4]



2.3 While figure 2.1 points to some continuity in customers' concerns in recent years, we are delighted to report a significant and sustained drop in Drivers Medical referrals in the latter nine months of the year, after last year's spike. Overall, this represents a 23

[4] **DM**: 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 ID; **Custom plate**: personalised or 'cherished' registrations; **Data disclosure**: release of keeper data; **Vehicle fraud**: DVLA actions when the police and/or keepers notify suspected vehicle crime.

per cent drop. While the nature of this part of the Agency's business is that we will never experience a 'flatline', Figure 2.2 (overleaf) illustrates what we hope is a downward trend.

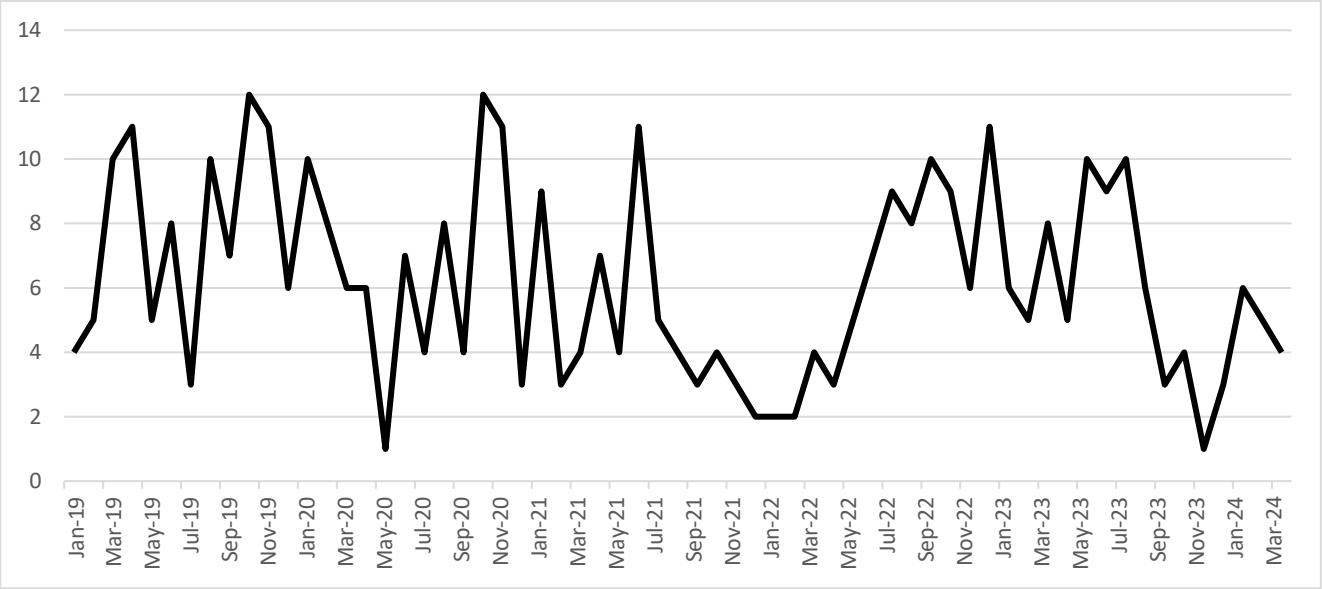
2.4 We say more about the outcome of Drivers Medical and other cases we have completed in the next section. We attribute the downward gradient in DM referrals to the service improvements effected by the energetic leadership of the group, in both the clinical and administrative spheres. The Agency told us:

"In the Drivers Medical department, we have worked hard to improve the time it takes to make a licensing decision, reducing this by over 50% resulting in customers receiving an outcome much earlier in the process.

"In terms of complaint resolution, we have added additional resource to the Drivers Medical Customer Complaint Analysis team. This has resulted in improved processes and a proactive approach whereby caseworkers are encouraged to make proactive telephone calls to customers to provide a status update of their application.

"There has been an increased focus on collaborative working between the Complaints and Drivers Medical teams, to take the next action and speed up the overall process for the customer."

Figure 2.2: **Incoming Drivers Medical cases, 2019-2024**



2.5 We commented last year on the subject areas subsumed under the category 'Vehicle Reg.'. This year these subcategories have included:

- £25 fee for V5C (6)
- Errors on V5C (including keeper address) (5)

- Address on V5C (vehicles cannot be registered to mail drop addresses) (5)
- Delays in V5C issue (4)
- V5C issued to third party (civil dispute) (3)
- SORN not registered (1)
- Emissions data on V5C affecting ULEZ liability (1)
- Taxation class (1)

2.6 Customers have continued to complain about liabilities related to vehicle registration, including vehicle excise duty (VED or road tax) refunds, VED rates, enforcement, and the acquisition of vehicles that were scrap, cloned or stolen. While the Agency has safeguards in place to protect customers, it should be remembered that the statutory purpose of its registration regime is VED collection.

2.7 We reported last year on the dissatisfaction of customers charged £25 for a 'replacement' V5C when the original was never received. We have continued to receive a trickle of complaints about this. We bear in mind the significant volumes involved (the Agency dispatched 16.8 million V5Cs 2022-23), and remind readers that non-receipt of a V5C should be chased up within six weeks of the expected issue date (or a fortnight if a change of keeper is transacted online). Notifications of V5C non-receipt received by the DVLA over six weeks after the issue date will attract the statutory £25 charge.

2.8 The other main growth area – the non-medical 'Driver Lic.' Category - has included:

- Overseas licence exchange (8)
- VDL (entitlement not viewable online on the *View Driving Licence* portal) (5)
- Correct or preferred title not on licence (4)
- Court liaison and bans (4)
- Driving Licence errors (3)
- Digital signature – Passport Office liaison (1)
- Processing delays (1)
- Non-receipt of licence (1)
- Early renewal unfairly reduces span of licence (1)

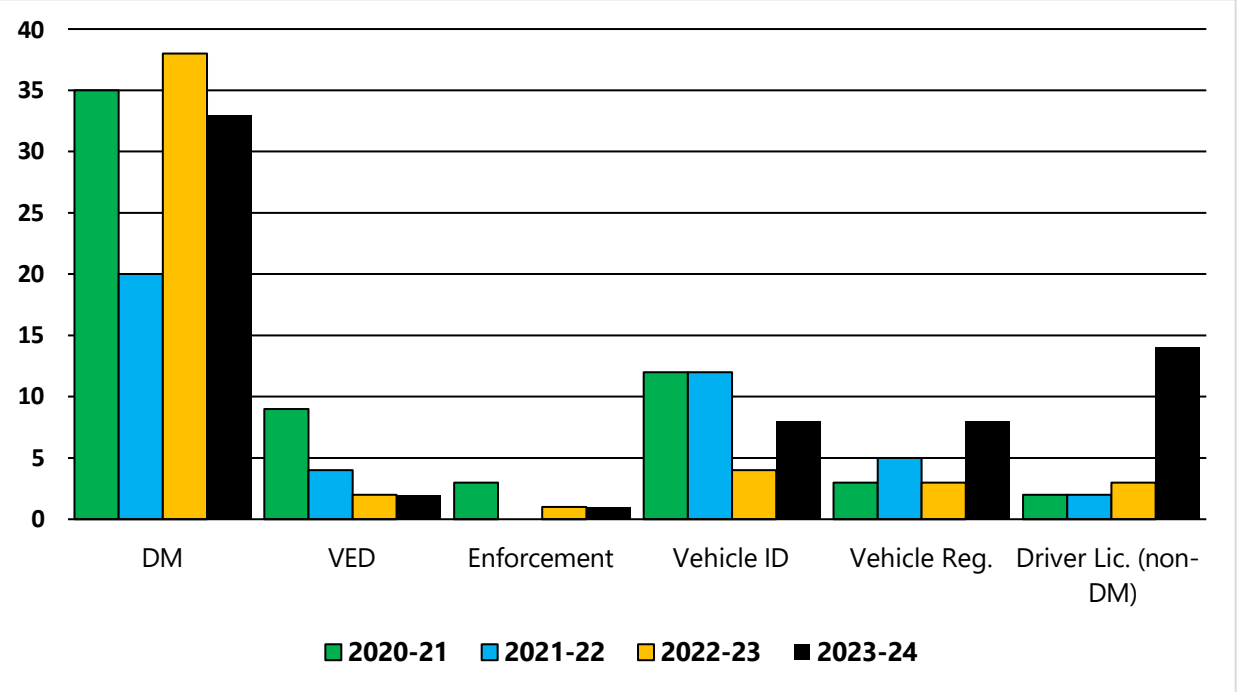
2.9 The increase in complaints about licence exchange has been a feature of the year's postbag. Difficulties reported by customers have included the DVLA's evidence requirements (with overseas jurisdictions not always responsive or consistent), and entitlements not being fully transferred. The impact of people's entitlements not being viewable online through VDL has also been a feature of casework, particularly when employers have not accepted a paper Certificate of Entitlement.

Completed cases

2.10 We completed 225 DVLA cases in the year, a 15 per cent increase on 2022-23. As noted in Table 1.2, we upheld 34 per cent of DVLA cases to some extent (with just two full upholds), and made recommendations in 41 per cent of cases. This compares favourably with the statistics for the other DfT public bodies combined (43.5 per cent upheld, and 50 per cent attracting at least one recommendation). Last year we upheld 30 per cent of DVLA cases, and made recommendations in 43 per cent.

2.11 In Figure 2.3, we chart the outcome of our reviews of complaints in the six main DVLA complaint areas since the pandemic.

Figure 2.3: **Numbers of DVLA cases upheld to some extent, 2020–2024 (six most complained-about subject areas)**



Themes arising from DVLA cases

Drivers Medical cases

2.12 A total of 46 per cent of our DVLA case-working time was spent on Drivers Medical reviews, compared to 58.5 per cent last year. The extent to which we upheld DM cases (49 per cent, this year) is in the same range as previous years, and – as ever – somewhat higher than for non-medical cases. Both fully upheld complaints were DM cases. As previously reported, contentious DM cases contain many complaint areas and span multiple service areas. This makes an uphold of some degree far more

likely than cases based on a single transaction. However, we reiterate our impression of continued improvement in baseline service delivery, and complaint handling in complex cases.

2.13 Most people who bring medical complaints to us accept the need for the statutory driver fitness regime. Delay is, however, almost without exception, a component of their complaints. Most will also refer to difficulties finding out what is happening, by telephone and email, and of lags in paper communications. We have read many accounts of customers who have known that crucial documentation has arrived in the DVLA, but the Contact Centre cannot confirm receipt or say when it will be on the right desk.

2.14 In many of the DM cases we have reviewed we have witnessed very good practice, on the part of its doctors particularly. In a case we report in the next section (*'Neurology #1: Exemplary DVLA medical involvement in a complex case'*), a DVLA doctor worked closely with the mental health team caring for a lorry driver with complex mental health difficulties. Her decision-making was timely, well-documented and fully responsive to changes in the risk assessments of the professionals working with the driver.

2.15 In another vocational case (*'Vocational #5: An error is put right and a bus driver gets back on the road'*), we commended the medical and complaints teams for acting quickly, in concert, to reverse revocations that had been too-hastily applied during an investigation into a bus driver's fitness.

2.16 The application of the standards on alcohol remains the most contentious area of DM casework (we summarise 14 cases in the next section, along with one that also involved drug misuse). Often, the application of the standard for dependence has been fraught. We remain of the view that the potential distinction between rehabilitation and detoxification is not always fully explored by the DVLA. This can be significant for drivers, as a history of medically-assisted withdrawal (i.e. detoxification), reasonably, is regarded by the DVLA as a marker of physical addiction and dependence. Rehabilitation (including groupwork and other therapeutic approaches) may not include detoxification. A feature of one case we report on (*Alcohol standards #9: A six month revocation based on incorrect information*), is that a driver's single episode of rehabilitation was treated as detoxification after the GP had conflated the two on the DVLA questionnaire. Other difficulties were created as he tried to rebuild his life by the DVLA acting within policies that give more weight and effect to debarring medical evidence, than to that which is supportive.

2.17 In this and other regards, the DVLA's reliance upon busy medical professionals to complete its questionnaires is an inevitable source of delay in decision-making, and of error if forms are completed incorrectly. Several of the case studies show how a

single tick in the wrong box on a form can have major consequences. The Agency told us:

"We do not feel it is for DVLA to prove information provided by a medical professional is correct/incorrect. The responsibility remains with the applicant and medical professionals to ensure that the information we receive is correct. Medical professionals who are unsure of the difference between dependence and misuse would be able to view this information in Assessing Fitness to Drive, A Guide for Medical Professionals *or speak to a DVLA doctor for clarification on the doctor to doctor line."*

2.18 As we finalised this document in August 2024, the DVLA published a revised edition of *Assessing Fitness to Drive, A Guide for Medical Professionals*. This included changes to the sections on alcohol misuse and dependence intended to improve diagnostic clarity. In particular, the alcohol dependence standard now requires a '*high-risk feature*' to be present:

- *"alcohol withdrawal seizures (NOT alcohol associated seizures)* [or]
- *medication assisted alcohol withdrawal needed or required*

The presence of these high-risk features is used to identify individuals with a physiological dependence on alcohol who are at an increased risk of relapse into dependant drinking." [5]

We welcome these changes that address many of the areas where customers and clinicians in the cases referred to us have been unclear.

2.19 Our casework has increasingly referred to the outcome of senior medical case reviews within Drivers Medical. These reviews, often at our stage, and always informative, have on occasion identified for the first time missed opportunities to allow people to drive again. Two of our summaries in particular ('*Vocational #1: Catch-22 for HGV driver unaware that he needed to pay £200 for the DVLA to reopen his case'*, and '*Alcohol standards #9: A six month revocation based on incorrect information'*) show

[5] In addition:

- Under the dependence standard, there will no longer be a requirement for lifelong abstinence – abstinence will need to be maintained for 3 years for Group 1 licensing and 5 years for Group 2 licensing. After this an individual can return to controlled drinking.
- Under both standards, controlled drinking will no longer be determined by the government recommended guidelines of 14 units per week. The guidance DVLA provides for clinicians is: "*Controlled drinking means drinking at a level and in a manner which their clinician confirms acceptably controls their alcohol use so it is unlikely to impact on personal, social and work responsibilities".*

how the *'correct'* application of an unwritten reapplication policy has kept fit drivers off the road and out of work.

2.20 Most DM complaints concern reapplications from revoked or refused drivers (who do not enjoy a right to drive during DVLA enquiries under section 88 of the Road Traffic Act). Typically, getting relicensed (outside of the Magistrates' Court) engages a three-stage, only partially publicised, procedure:

- Stage 1, Pre-application: the driver produces evidence: as advised by the DVLA in revocation/refusal letters, the driver produces (if necessary, commissions) new clinical evidence calling into question the position that they do not meet the relevant fitness standard/s.

- Stage 2, Gatekeeping: the DVLA considers driver evidence:
    - If the evidence is judged to support relicensing (perhaps by reversing a box tick previously provided by the driver's doctor), the driver remains revoked while a new investigation sequence is launched by the DVLA. This begins with the DVLA obtaining fresh consent and new medical evidence from the driver, and then if necessary their doctor/s, and so on.
    - We have been critical in cases where we have found that the DVLA should have reversed a revocation, pending its stage 3 investigation outcome.
    - If the new evidence is judged not to support relicensing, the driver is informed that their case remains closed, and of the 'stage 1' requirement.

- Stage 3, DVLA investigation: the DVLA obtains evidence and consent from the driver afresh, then if necessary the NHS, and/or other sources (e.g. its franchise opticians).
    - This often replicates what the driver/the NHS has already provided at stage 1.
    - Only when favourable evidence is commissioned and reviewed by the DVLA, after a full reinvestigation, may the driver be relicensed.
    - The DVLA cannot tell customers when a decision will be made, as the evidence threshold is case-specific.
    - If the decision is not to relicense, the driver is advised to recommence the pre-application procedure.

2.21 Many of our complaints refer to drivers and their doctors having to complete paper fitness questionnaires repetitively (stages 1-2 above). Unfortunately, the interval between stages 2 and 3 can be protracted, often by factors outside the DVLA's

control (typically, pressure on NHS time). This means, again, that the *'correct'* application of DVLA policy may keep demonstrably fit drivers off the road.

2.22 We often see complaints that the DVLA's procedures burden the driver and their NHS practitioners with repetitive requests for information. The threshold to reopen a case in the gatekeeping stage is not always clear to either. In one case we report on, the driver and his doctors expected the DVLA to commission 'gatekeeping' evidence (*Vocational #1: Catch-22 for HGV driver unaware that he needed to pay £200 for the DVLA to reopen his case*, page 22). And the lags in document processing may create significant anxiety for many drivers, and fraught dealings with Agency staff who are in our experience working admirably to assist with the information that is accessible.

2.23 We contrast the arduous relicensing process above with the commendable efficiency of the DVLA's revocation procedure. In summary, a single self-declaration or medical notification of unfitness may get you revoked, while getting your licence back will typically involve three stages (or more, depending on the extent of stage 3 enquiries).

2.24 All agree that clinical evidence calling into question the medical basis of a revocation should be handled faster. We have found that the presumption should be, where evidence is compelling, to lift revocation pending further enquiries (if those enquiries are necessary: our view is that in many cases all that is required is the validation of 'stage 1' driver-provided evidence).

Vehicle registration and identity cases

2.25 The provenance and identity of classic vehicles is a particularly sensitive area of DVLA casework. Decisions to Q-plate a vehicle (thereby indicating doubt about identity) have enormous implications – not least in monetary terms. As ICAs, we are concerned that DVLA processes may place impossible hurdles for vehicle keepers to overcome. While conscious of the number of vehicles that have been rebuilt over the years to look like an original, here and elsewhere, our own approach, like that of the Ombudsman, is to consider the balance of probability.[6] We welcome the DVLA's initiative *'Registering historic, classic, rebuilt vehicles and vehicles converted to electric: call for evidence'* and hope that it leads to better mutual understanding between the Agency and the classic car community.

[6] In its guidance '*Carrying out the investigation*', the PHSO states: '*If there is conflicting evidence or uncertainty about what happened, consider whether something is more likely than not to have happened (the balance of probability). To do this, consider how much weight (or importance) you should give to each piece of evidence. If there is not enough evidence, or the evidence is so equally balanced that you cannot reach a view on the balance of probability, explain clearly why this is the case, setting out all the evidence you have considered.*'

2.26 We are conscious that vehicle cloning of modern cars is a major issue – and one that can result in losses of many thousands of pounds for the victims. We are content that DVLA procedures in relation to the issuing of genuine V5Cs are not maladministrative, notwithstanding that fraudsters have found ways of obtaining them by deceit. We have received a number of complaints from those who have purchased clones who seek compensation from the DVLA for their misfortune. We have not upheld their claims.

2.27 We are much more sympathetic to those customers who have lost entitlement to personalised registrations. Many of the circumstances are very sad. We accept that the law does not permit the DVLA to reissue entitlements that have lapsed, but as we have said in past years, we do not believe that the law itself is wise or necessary.

2.28 Complaints about the allocation of body type to vehicles converted for use as motor caravans have continued to be received, albeit at a much slower rate than in the years after 2019. We believe the DVLA is now exhibiting a more sensitive approach to its decision-making in cases where converted vehicles are near-identical to those manufactured and first marketed as campervans. However, we remain dissatisfied with the advice offered on gov.uk – all of which can be followed only for the customer to have their application for a change of body type rejected. The DVLA assures us that work to improve the guidance is ongoing. Customers also continue to refute the Agency position that body type allocation on the V5C/logbook should not affect their financial overheads.

Vehicle tax and enforcement cases

2.29 We receive many complaints relating to vehicle tax and enforcement, but it is rare that we are able to assist. The law relating to vehicle taxation is in strict terms and enforcement action often appears unforgiving and disproportionate. However, that is how the law is written, and the DVLA is in effect acting as a tax-collecting arm of the Exchequer.

2.30 As the case histories demonstrate, however, many of those subject to enforcement action never intended to break the law. We have on occasion challenged the Agency in light of the Ombudsman Principle providing that penalties should be '*proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned*'.

2.31 A further cause of grievance remains the application of the 'rebate' condition in regard to refunds of vehicle tax when a vehicle is disposed of or declared off-road. The DVLA's policy (reflecting its interpretation of the law) is that the condition is not met until the DVLA receives notification of a qualifying event. For example, if disposal

takes place on the last day of month 1 but the paper notification is not received until the first day of month 2, no tax refund will be made for month 2.

2.32 As many complainants have pointed out, as the new vehicle keeper must tax immediately, the vehicle is in effect double-taxed for month 2 in these circumstances. However, this is also a matter for the Exchequer not for us as departmental complaints assessors.

Other cases – drivers

2.33 Few issues have caused the ICAs a greater challenge over the years than complaints from customers who say the DVLA has 'lost' their driving or riding entitlements. Many such cases date back to before the establishment of the Driver and Vehicle Licensing Centre (the precursor to the DVLA) when local authorities were responsible for issuing 'red book' driving licences. Most 'red books' have long since disappeared, and the accuracy of what they show cannot be validated. It is known that some authorities would issue more than one 'red book' – for example, for cars and motorbikes –and it is assumed that not all entitlements were then converted.

2.34 The DVLA has microfiche records dating back to the 1970s, but these too cannot be independently validated (they simply show how long the DVLA has had a record of a particular entitlement – not whether the record was accurate on conversion). In such circumstances, we can challenge DVLA decisions on the balance of probability, but we cannot say that its reliance upon what its records show is maladministrative.

Other cases – access to data

2.35 Almost all the cases that come to us engage Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 which permits the release of data from the DVLA's registers to those who can demonstrate 'reasonable cause'. For reasons unknown, we seem to receive fewer such complaints than was once the case.

2.36 'Reasonable cause' is not defined in the legislation but it is accepted by the Information Commissioner to include details of vehicle keepership when it is alleged that the terms of parking on private land have been breached. In these circumstances, there is often nothing that the ICA can offer the complainant.

2.37 We do not share the view of complainants that the DVLA can act as the regulator of the parking industry. As we said in one of this year's cases, the Agency clearly cannot check the signage for every penalty notice that is issued by parking companies. In general, the DVLA can rely on its KADOE (keeper at date of event) contracts which enable the automatic processing of data requests.

Other cases – equality issues

2.38 As ICAs, we cannot make definitive legal judgments or say authoritatively if the DVLA or other DfT public body has breached its responsibilities under the Equality Act 2010.

2.39 However, it was interesting that in one of this year's cases – concerning the inability of those in receipt of the Personal Independence Payment to transact online for vehicle tax at a reduced rate – the DVLA acknowledged the 'disparity' in treatment of disabled and able-bodied customers. The fundamental reason for this is that DVLA and Department for Work and Pensions IT systems are not aligned, and self-evidently the ICAs cannot instruct the DVLA (much less the DWP) in its IT priorities. But the current situation is not one we regard as at all acceptable – whether or not it infringes the Equality Act.

CASES

(i) : DRIVERS MEDICAL GROUP

VOCATIONAL DRIVERS

Vocational #1: **Catch-22 for HGV driver unaware that he needed to pay £200 for the DVLA to reopen his case**

Complaint: Mr AB had three and a half decades of HGV driving experience. He told the DVLA, on medical advice, about his angina. The following year he passed an exercise tolerance test (ETT) and was relicensed. However, after further chest pains and another, this time unfavourable ETT, his vocational entitlement was revoked by the DVLA. Over the following five years he petitioned the Agency to reopen his case. His consultant cardiologist indicated that he would be happy to undertake a further ETT, describing the debarring ETT as 'borderline'. The Agency refused to reopen the case for those five years because Mr AB did not produce a favourable ETT. He complained that in this time he had been kept out of work with catastrophic financial and personal consequences, and subjected to confusing requirements from the DVLA. His own doctors had been waiting for the DVLA to commission the ETT (and refused to provide one on the NHS). The DVLA meanwhile refused to reopen the case without the confirmatory ETT result.

DVLA response: The DVLA applied the unwritten, gatekeeping policy on reapplying after revocation (page 18). It required Mr AB to produce proof that he could meet the published standard, an ETT result showing no signs of cardiovascular dysfunction. The DVLA repeatedly told Mr AB that he needed to talk to his own doctors about providing the evidence. When he did this, they didn't understand the unwritten gatekeeping policy any more than he did. Two years post-revocation, the DVLA explained what the necessary evidence was but did not tell Mr AB that he would have to stump up for the test himself

(approximately £200). Eventually, a different DVLA doctor decided to skip gatekeeping and accept a reapplication. Mr AB was relicensed after satisfactory performance in an ETT. The Agency made a consolatory payment of £150 to reflect its poor complaint handling.

ICA outcome: The ICA noted that no DVLA staff member had fallen into error, and that all the applicable policies had been faithfully followed. The outcome was that a single ETT result, described by the driver's consultant as 'borderline', had kept him out of HGV work for five years despite the avowed willingness of his cardiologist to test him again. The ICA could not accept that all was well, as maintained by the DVLA. The ICA noted the obstacles faced by Mr AB. First, the gatekeeping clinical requirement (to reopen his case – the satisfactory ETT) was conflated with the substantive clinical requirement. This created a maximal obstacle to getting the case reopened. The clear willingness of Mr AB's cardiologist to retest him was given absolutely no weight. Second, the DVLA did not tell Mr AB that he would have to pay for the gate-keeping ETT himself. (While this would not have come as welcome news to someone struggling to make ends meet, the ICA had no doubt that a driver describing losses of the order of £60,000 who sincerely believed that he met the standard, would have paid the requisite fee.) Third, the smothering effect of the DVLA stage 0 complaints procedure at the time meant that Mr AB's initial efforts (two years post-revocation) at escalating stayed in the long grass. There was then a sudden change of heart by the DVLA, based on exactly the same clinical picture, whereby it commissioned the ETT that saw Mr AB resume his profession. The ICA was sure that this could have happened many years sooner, before the pandemic. However, he was significantly constrained in the extent to which he could make recommendations by the fact that the Agency had acted within policy. It was noteworthy that neither Mr AB, his GP, nor his consultant cardiologist, understood that the DVLA would not commission the ETT at the gatekeeping stage (it had commissioned 'stage 3' ETTs on two prior occasions, so their expectations were not unreasonable). The ICA recommended that the DVLA pay a further consolatory payment of £500 to Mr AB to reflect the fact that it did not make its requirements clear enough. He also recommended that the Agency should publish its policy on gatekeeping when revoked/refused drivers reapply for their entitlement.

Vocational #2: **Two opportunities missed to prevent a driver being made redundant**

Complaint: Mr AB was an HGV driver, approaching retirement. Delays set in after he dispatched his renewal application, due to post-covid pressures. Slight queries were expressed in the documentation about his cardiac and cognitive functioning, triggering a request for all GP records referring to those health conditions. This then had to be queued for a DVLA doctor. Nine months after applying, Mr AB chased the DVLA, emphasising that his employer needed an assurance that he was fit to drive. Nothing happened. Three months later, his section 88 entitlement expired because a year had passed since his application. Unaware, he continued driving. Fifteen months after his original application, Mr AB chased the DVLA and eventually was told that he had no entitlement. Shortly afterwards he was sacked. He complained of delays, that he had not been given advice

about the time limit on section 88 cover, and that opportunities to avoid dismissal had been missed through DVLA inefficiency. He had been forced to claim benefits, and lodged a compensation claim for his lost earnings.

DVLA response: The DVLA pointed Mr AB to small print in a letter sent shortly after his application. This said that section 88 entitlement relied upon a fully completed application having been received within the previous 12 months. The DVLA made a £100 consolatory payment to reflect the fact that it had not told Mr AB that section 88 cover had expired when he telephoned a fortnight before being dismissed.

ICA outcome: At the ICA stage, the DVLA's chief doctor reflected that focused questionnaires should have been sent to Mr AB's doctors rather than requests for medical records. This was because the request for records inevitably involved a referral to a DVLA doctor when they arrived, which would involve delay. The ICA was certain that two other opportunities had been missed to save Mr AB's job. The first was when he chased up on the phone. He should have been told about the time-limited nature of section 88 cover, and of the need to renew. Also, his case should have been prioritised because he was a vocational driver. The second opportunity was when Mr AB telephoned a fortnight before he was laid off. If he had been told about section 88, and had submitted a valid application without delay, the ICA judged that he would not have been made redundant. The ICA accepted that Mr AB also bore some responsibility for ensuring that his entitlement was valid. He therefore recommended that the DVLA pay 50 per cent of his lost earnings from the point of redundancy until his scheduled retirement date, as well as a further £400 consolatory payment. The ICA also recommended that the advice to contact centre staff talking to vocational drivers facing employer pressure, and relying on section 88 cover, was reviewed to prevent any recurrence.

Vocational #3: **A truck driver gives up on his entitlement after delays**

Complaint: Mr AB complained after major delays set in during the DVLA's handling of his Group 2 licence reapplication. He regarded the restrictions placed on his licensing, and the format of DVLA's medical enquiries, as unreasonable, unjustifiable and unfair. The Agency's lack of responsiveness was also a major problem. He had also, regrettably, lost implied entitlements. Mr AB argued that key licensing decisions had not been supported by medical examinations.

DVLA response: The DVLA accepted that there had been significant delays, and that its communications with Mr AB had not always met reasonable standards. However, it stood by its medical decision-making.

ICA outcome: The ICA found that the DVLA's multi-faceted and lengthy investigation was reasonable considering the complexity of Mr AB's congenital condition. Some of the NHS delay was caused by the pandemic. A year after applying, Mr AB's cover to drive under

section 88 expired. The ICA was highly critical of the fact that he was not told, and recommended that the Agency review its procedures for ensuring continued section 88 cover (by requesting a further application). The ICA found that the Agency did not take action to chase up an NHS appointment for Mr AB, even when the DVLA doctor became aware that he had been waiting for 17 months. The Agency's initial response to his complaint did not engage with his core concern of excessive delay. The ICA was very disappointed that Mr AB gave up on his pursuit of Group 2 renewal after waiting 19 months for his entitlement to be renewed. It could not be right that a driver who was a keyworker throughout the pandemic was forced to change jobs as a result of the Agency's actions. In the absence of a Group 2 licence, when his Group 1 licence was later restricted to three years (he should also have been issued with short-period licences for Group 1 at previous renewals), he inevitably lost his C1/D1 implied entitlements. The ICA recommended that the DVLA should apologise, and make a payment of £300 in recognition of the unreasonable delays and administrative failings that led Mr AB to withdraw his Group 2 application.

Vocational #4: **Protracted processes following application**

Complaint: Mr AB submitted an application to renew his vocational licence. Mention of previous episodes of meningism led the DVLA to embark upon a very slow-paced neurological investigation that concluded with his relicensing almost a year later. Mr AB complained of significant and avoidable delays in the DVLA's investigation of his fitness to drive, resulting in the threat of suspension from employment, loss of overtime earnings, and psychological distress. Mr AB accused the DVLA of a failure to acknowledge and action an ICA referral, and characterised a DVLA doctor as, in effect, bullying and harassing him. He denied withholding consent for medical enquiries.

DVLA response: The DVLA apologised for the delay, but maintained that much of the time that had elapsed was outside of its control.

ICA outcome: The ICA agreed with Mr AB that the processing of his application was protracted. However, much of his frustration had occurred because of the necessary automation of DVLA processes. Confusion about whether Mr AB had withdrawn his consent was due a genuine misunderstanding between Mr AB and a call handler. What Mr AB saw as 'bullying' by a DVLA doctor, the ICA found to be the Agency properly informing him of the risk to his licence if he did not comply with its enquiries. A significant proportion of the time taken was while the DVLA waited for responses from Mr AB's clinicians. The other main causes of delay were the implementation of the Agency's usual (at times clunky) processes and procedures, and the application of clinical judgment, neither of which were in this case within the ICA's scope to criticise.

Vocational #5: **An error is put right and a bus driver gets back on the road**

Complaint: Mr AB, a bus driver who was taking basal insulin alongside metformin for diabetes, applied to renew his vocational entitlement. He did not take his glucose meter to his GP appointment and the DVLA doctor asked that he be reminded to do so before seeing the consultant diabetologist. In error, a non-medical Drivers Medical officer revoked Mr AB's vocational entitlement on the grounds that he was not managing/monitoring blood glucose. The revocation of his ordinary entitlement followed. After the provision of information demonstrating good blood glucose management, Mr AB's entitlements were restored and he was informed of the error.

DVLA response: Mr AB's case was put on priority. A doctor in Drivers Medical noted that her colleague's request that Mr AB's monitoring of his blood glucose be checked with him had not been followed: instead, in error, his entitlements had been prematurely revoked. The revocations were reversed after an intercession from the complaints team. Meanwhile medical enquiries continued under priority. Apologies were offered along with a consolatory payment of £800. Mr AB was repeatedly told that he could refer evidence of financial losses in support of a claim for compensation, but he did not do so.

ICA outcome: The ICA reiterated that Mr AB could make a compensation claim. Fortunately, Mr AB had not, it turned out, been made redundant. The ICA considered the consolatory offer of £800 to be fully in line with the relevant Ombudsman guidance. He therefore did not uphold the complaint of unremedied injustice. The ICA was very appreciative of the meticulously documented medical decision-making on the file, and also commended the DVLA's complaints team for taking action to ensure the revocations were reversed at the first opportunity.

DELAYS

Delays #1: **Medical examination impossible to arrange during pandemic**

Complaint: Mr AB complained about delays in the DVLA's medical decision-making. He asked for compensation.

DVLA response: The DVLA had apologised for the time taken. But it said its medical decision-making had been correct and that there had been no maladministration.

ICA outcome: The ICA said there was no doubt that Mr AB had been waiting a very long time. But he was a vocational driver with complex medical needs. The initial decision to revoke his vocational licence had also been correct in terms of the relevant standards of fitness to drive for Class 2 drivers with insulin-managed diabetes. The ICA said a whole year had been lost because the relevant standards required medical examinations that were impossible to arrange during the Covid-19 pandemic. He sympathised hugely with Mr AB who had undoubtedly lost earnings and suffered other stress and inconvenience.

But in the absence of maladministration, the ICA could not recommend compensation or a consolatory payment.

Delays #2: **Gaps in online notification system**

Complaint: **Mr AB complained about the time taken by the DVLA to complete medical enquiries.**

DVLA response: The DVLA acknowledged that there had been an administrative error in relation to a medical questionnaire. It attributed other delays to the pandemic.

ICA outcome: The ICA found a number of errors – the initial mistake by the DVLA doctor, compounded by this not being spotted by administrative staff when writing to Mr AB's consultant. As the consultant also took his time over replying (perhaps because of pressure on the NHS, perhaps because he was confused by being queried over an answer that was in fact correct), Mr AB's licensing was delayed by an extra two months. The ICA also found that there had been a failure to inform Mr AB properly when medical enquiries were underway. Promised management callbacks had also not been forthcoming. The ICA was also concerned that the DVLA's online notification system (F2D) did not alert customers to the possibility of voluntary surrender of their licences – although there was other information online. In light of the maladministration, he recommended a consolatory payment of £250. He also included in his report DVLA comments indicating that including the option of Voluntary Surrender would be considered for the successor system to F2D.

Delays #3: **Waiting for a consultant response**

Complaint: Ms AB complained about DVLA enquiries into her fitness to drive and the time taken. She said this amounted to discrimination against people with disabilities.

DVLA response: The DVLA had acknowledged delay in first attending to Ms AB's licence application (attributed to the continuing impact of covid). It had made a consolatory payment of £100 in recognition of its failure to explain the operating times to which it was working before chasing external consultants.

ICA outcome: The ICA sympathised with Ms AB. Although generally still forgiving of DVLA delays, a total time of 12 months to attend to a licence application could not remotely be deemed as an acceptable level of service. Although the DVLA had followed its then Operating Instructions of waiting 13 weeks for a consultant response, the ICA thought that the Agency could have been more agile given that Ms AB had herself reported that the consultant would not reply. He recommended doubling the consolatory payment to £200.

ALCOHOL AND SUBSTANCE MISUSE

Alcohol standards #1: Alleged mistaken GP diagnosis of alcohol dependence

Complaint: Mr AB complained about medical decision-making. He said he had a poor command of English and his GP had mistakenly believed that he was alcohol dependent.

DVLA response: The DVLA said it had simply applied the relevant standards. Mr AB's doctors had repeatedly endorsed the view that he was dependent upon alcohol. Mr AB had been relicensed for Group 1 and invited to reapply for Group 2.

ICA outcome: The ICA said that the evidence of alcohol dependence was not strong, but the DVLA had to work on the basis of what it was told by GPs – in this case, on four occasions. It was not for the ICA to say whether Mr AB had been well served by those GPs. Mr AB had been doubly unlucky in that the alcohol enquiries resulted from the then Operating Instructions that required such enquiries in the case of unexplained liver problems.

Alcohol standards #2: Admirable flexibility by DVLA in an alcohol case

Complaint: Ms AB complained about medical decision-making under the standards for alcohol dependence. She said she hugely disapproved of drink drivers and her use of alcohol was years ago after some very difficult personal circumstances.

DVLA response: The DVLA explained the medical standards. However, the Agency had been willing to make further enquiries to see if Ms AB could be licensed exceptionally. This was dependent upon Ms AB giving consent – which she repeatedly refused to do.

ICA outcome: Medical decision-making and licensing decisions were not matters the ICA could consider. He felt that the DVLA had shown admirable flexibility but there was nowhere to go if Ms AB would not give medical consent. He could not advise Ms AB what to do, but he hoped his report would assist her and anyone helping her.

Alcohol standards #3: Inappropriate reference to alcohol dependence

Complaint: Ms AB complained about DVLA enquiries into her fitness to drive. She said she was being discriminated against by repeatedly being asked to undergo medical examinations and tests when she now barely used alcohol at all. She also criticised the delays in agreeing her new licence.

DVLA response: The DVLA had initially said that its medical enquiries were entirely correct. It had admitted delays and poor service.

ICA outcome: The ICA said that, although Ms AB denied any history of alcohol abuse, he felt the Agency had sufficient grounds to treat her application under that medical standard. However, the Agency's repeated use of the term alcohol dependence was in error. The ICA also felt that the time taken to deal with Ms AB's application was unacceptable even given the continuing impact of Covid. At the draft stage, the DVLA's senior doctor had reconsidered his previous advice and accepted that the reference to alcohol dependence was not justified. Via the ICA report, he offered apologies to Ms AB for the distress caused. In addition, the ICA awarded a consolatory payment of £200 in recognition of the delays.

Alcohol standards #4: **Operating Instructions were incorrect**

Complaint: Mr AB complained about DVLA medical licensing decision-making under the alcohol standards. He said he was not alcohol dependent and intended to challenge the licence refusal in the court.

DVLA response: The DVLA said that its licensing decision was correct. However, the Agency had acknowledged that it had unnecessarily asked Mr AB to undergo a medical examination, and that there had been delays in responding to his subject access request. The Agency made a consolatory payment of £150.

ICA outcome: The ICA said it had become clear that the Agency's internal Operating Instructions were incorrect. Were that not the case, the licensing decision could have been made months earlier and Mr AB saved the inconvenience of a medical examination. He therefore increased the consolatory payment to £250.

Alcohol standards #5: **A court overturns an alcohol-related revocation**

Complaint: Mr AB's vocational entitlement was revoked after his consultant psychiatrist referred to a recent history of alcohol misuse and detoxification. He took his case to court and won, with the court referring to evidence produced after the revocation from Mr AB's GP that he did not have a history of alcohol misuse. The court had found that the DVLA's investigation had been insufficient. Meanwhile, Mr AB had lost his job. He pressed the Agency for compensation.

DVLA response: The DVLA considered that the decision to revoke was correct given the consultant's reference to alcohol misuse. Indeed, the medical team reflected that alcohol dependence could have been considered the relevant fitness standard given the reference to detoxification. Mr AB's Group 1 entitlement was revoked for six months, and he could apply for his Group 2 entitlement after a year of abstinence. Full accounts of DVLA handling and decision-making were provided to Mr AB and his MP in the run-up to the court hearing, and afterwards.

ICA outcome: The ICA noted that the courts and the DVLA (the latter acting for the Secretary of State) had statutory powers to determine driving entitlement with regard to medical evidence. Clearly, they had a difference of approach in Mr AB's case. In addition, the court had material from Mr AB's GP that the DVLA did not have at the point of revocation or in the following months. The ICA considered that each body empowered in law to make medical licensing decisions was entitled to set its own threshold. The DVLA's more cautious approach to varying medical information was understandable, and not necessarily indicative of error. Mr AB's case had been handled wholly in line with published policy, and senior medical review had upheld clinical decision-making. In the absence of any failure in customer service, the ICA did not uphold the complaint.

Alcohol standards #6: **DVLA rejects ICA recommendation to speed up process of which applicant was innocent victim**

Complaint: Ms AB complained about delay in the making of a medical licensing decision. She came within the provisions for High Risk Offenders (HROs) and had experienced mental health issues.

DVLA response: The DVLA apologised for the delay, which had been contributed to by the requirements of Ms AB's GP surgery.

ICA outcome: The ICA said all his sympathy was with Ms AB. She was the innocent victim of a dispute to which she was not party. Indeed, she had only been told the reason for the hold-up (the DVLA says a new process should ensure licence holders are informed more speedily in the future). The ICA said that in these circumstances the DVLA should show a more flexible approach. He recommended that if medical notes were not forthcoming from the GP practice within seven days of his report, the DVLA's senior doctor should make a licensing decision on the basis of the information to hand. This recommendation was rejected, although the ICA learnt latterly that on receipt of the medical notes a short-period licence was agreed.

Alcohol standards #7: **Mistaken box-tick gets a driver revoked**

Complaint: Ms AB complained about a DVLA medical licensing decision. She said she had never been alcohol dependent. She sought a six-figure sum in 'compensation'.

DVLA response: The DVLA said that it had refused Ms AB's licence application as a GP had ticked a box indicating a history of alcohol dependence and, by her own admission, Ms AB was not abstinent of alcohol. When the GP surgery rescinded the diagnosis, the DVLA undertook further enquiries resulting in the granting of a full licence.

ICA outcome: Although critical of some aspects of Ms AB's language about DVLA staff, the ICA said all his sympathies were with her. The case illustrated the vulnerability of DVLA

decision-making to GPs (in this case one who had never met Ms AB and who clearly did not understand the DVLA questionnaire or its implications) completing a DVLA form incorrectly. Given the impact of such decisions (in particular in regard to the alcohol standards where the standard for dependence is far more stringent than that for persistent alcohol misuse), the Agency needs to show agility and flexibility. This had been notably absent. It was strongly arguable that Ms AB could have been licensed at least six months earlier than was the case – and quite probably even earlier. In this light, while the ICA regarded Ms AB's claim for £100,000+ as fanciful, he felt the consolatory sum of £100 was far too low. He recommended increasing it to £450 – the maximum for Level 2 injustice on the Ombudsman scale.

Alcohol standards #8: **Does voluntary detox demonstrate alcohol dependence?**

Complaint: Mr AB complained about DVLA medical licensing decision-making under the alcohol standards. He said he was not alcohol dependent and had the support of his doctor.

DVLA response: **The DVLA said that its licensing decision was correct. However, the Agency had acknowledged delay in handling Mr AB's applications.**

ICA outcome: The ICA said the terms of Mr AB's complaint were at the margins of his jurisdiction. He pointed out that the only evidence of dependence had been a voluntary home detox that Mr AB had successfully completed to nip his problem drinking in the bud. The ICA said it was for consideration whether the expert panel had this in mind when advising that detox was an indicator of dependence. The report also covered the 'stricter application' of the alcohol standards after 2022 (Mr AB having been previously licensed for both Group 1 and Group 2) because of what the DVLA said was the correcting of leniency in giving discretion to case handlers to interpret the standards – which it said was a matter for its doctors.

Alcohol standards #9: **Chief Executive intervenes to ensure learning from a revocation with 'devastating' consequences based on incorrect information**

Complaint: Mr AB had successfully completed a residential rehabilitation programme after a history of misusing alcohol and street drugs. He obtained a well-paid job for which he needed to be able to drive. He decided to apply for C1/small lorry entitlement. The examining GP stated on the D4 that Mr AB had been alcohol-free for over a year and was doing very well. References to detoxification were also made. The DVLA then revoked Mr AB's entitlement, and refused his C1 provisional, on the ground that his own GP had stated that he had been sober for only four months (this turned out to be an error). In order to regain his ordinary entitlement, he required a year of abstinence. Three weeks after the revocation, the Agency received a letter from the GP with evidence from the rehabilitation service showing that Mr AB had actually exceeded the necessary year of abstinence. This

enabled Mr AB to get through the gatekeeping stage of reapplication, but – in line with the policy outlined in paragraph 2.19 – did not lead to his relicensing. Priority was applied to Mr AB's case during the new investigation but, as he had forewarned the Agency, as the months dragged by he lost his job and fell into debt. Despite chasers several times a week from Mr AB, his mother, and his MP, and evidence that the GP's statement about just four months abstinence had been incorrect, he remained revoked until the conclusion of a fresh three-stage enquiry process. The essence of Mr AB's complaint was that despite meeting the standards all along, he had been revoked for 27 weeks, wrecking his life.

DVLA response: The DVLA maintained that the ordinary licence revocation had been correct based on information from the GP. When new information from the same GP had been provided, calling into question the licensing position (at the gatekeeping stage), a fresh investigation had been triggered. This was deemed correct and in line with policy. Efforts had been made to expedite matters when Mr AB reapplied for his ordinary entitlement. The Agency made a consolatory payment totalling £200 in recognition of lapses in service, in particular the failure of a franchise doctor to take the necessary urine sample, necessitating a fresh appointment and further delay. However, it maintained that the application of the alcohol dependence standard had been correct, and it could take no responsibility for Mr AB losing his job and the resultant debt and distress.

ICA outcome: All agreed that the refusal of the C1 application was correct. However, the ICA had reservations about the DVLA's use of the GP questionnaire to justify a 27-week revocation. The ICA noted the lack of reference to any recent consultation, and inconsistencies in the doctor-provided evidence about abstinence. This is what had triggered and maintained the revocation. It had been superseded a few weeks later and yet Mr AB remained revoked for over six months and lost his job needlessly. The ICA acknowledged that standard procedures had been followed, and that his jurisdiction did not extend to criticisms of clinical judgement. However, referring to the Ombudsman principle that *'If applying the law, regulations or procedures strictly would lead to an unfair result for an individual, the public body should seek to address the unfairness*' he upheld the complaint. He recommended that Mr AB should be compensated for being avoidably made redundant and forced to take lower paid work, and that he should receive a further consolatory payment of £500. He also recommended that the Agency should equip its doctors to reverse revocations when evidence undermining the basis of the revocation arrived. The DVLA initially regarded the ICA report as exceeding his terms of reference, particularly in its comments on the doctor-made decision to revoke Mr AB's ordinary entitlement, but accepted his recommendations. However, after a personal review by the Chief Executive, the Agency accepted all of the ICA recommendations and wrote to the ICA and Ms AB to apologise for its earlier stance.

Alcohol standards #10: **Two CDT samples cannot be tested**

Complaint: Mr AB complained about delays in making a licensing decision and that he had been asked to undergo a third CDT (carbohydrate-deficient transferrin) test after the first two samples could not be tested (CDT is a biomarker of alcohol misuse). He also said that the DVLA's reasons for the failure of the first two tests had been obscure. Because of the DVLA, he would be unable to drive his disabled partner back from abroad.

DVLA response: The DVLA had apologised for delay and made a consolatory payment of £200. It had provided an explanation of the first CDT failure (the chain of custody had been broken as the paperwork had not been completed properly), but proffered incomplete explanations for the second (an issue with the blood itself). After Mr AB provided the results of a private CDT test he had commissioned abroad, the DVLA senior doctor granted a full, unrestricted licence as there was evidence that Mr AB was now teetotal.

ICA outcome: The ICA said that it was clear the licensing decision might have been made after the first failed CDT test and certainly after the second. It was also apparent that DVLA staff had been uncertain about the reasons for the second test failure and the legal framework for High Risk Offenders (HROs). He recommended increasing the consolatory payment to £350 and that Mr AB should receive an explanation for the failure of the second sample.

Alcohol standards #11: **Speeding up the process**

Complaint: Mr AB complained about delay in making a licensing decision and that his licence application had been refused. He said the doctor who had reported dependence had never met him.

DVLA response: The DVLA had apologised for delay but said its licensing decisions were correct on the information supplied.

ICA outcome: The ICA said he was content that the decision-making was correct and could not uphold the complaint. There had been delays but the DVLA's apologies represented sufficient redress. However, the ICA was concerned that the only evidence for alcohol dependence was a single tick in a medical questionnaire. There were no other markers such as medical detox or fitting. He therefore recommended that the DVLA should initiate further enquiries without putting all the gatekeeping burden on Mr AB, as is the standard procedure. Very pleasingly, this was agreed by the DVLA, assuming Mr AB gave his consent. The ICA felt this was a test case for speeding up the process when there was potentially an incorrect diagnosis of dependence with all the consequences thereof for driver licensing.

Alcohol standards #12: **Long delay in alcohol-related case**

Complaint: Mrs AB complained about delay and medical decision-making. The DVLA had revoked her licence under the standards for alcohol following a police notification.

DVLA response: The DVLA had accepted that no action was taken on Mrs AB's case for nearly a year after information was received from her GP. After a new application was received, there had been further delays (mainly because of errors on a GP questionnaire) until the Agency's senior doctor had agreed a one-year licence. The DVLA had offered a consolatory payment of £250 for poor service.

ICA outcome: The ICA had invited Mrs AB to consider if there was further redress he could offer given that a licence had been issued and a consolatory payment made. She had asked him to continue his review. In doing so, the ICA said he could not comment directly on medical decision-making or licensing decisions. However, his lay view was that they were in line with the relevant standards. It was of course commendable that Mrs AB did not drink and drive or use her vehicle when her mental health was poor. But neither factor was relevant to the fitness to drive framework. However, the ICA was concerned by the delays and said he felt they engaged Level 3 not Level 2 on the PHSO scale. He therefore recommended increasing the consolatory payment to £650.

Alcohol standards #13: **Application for motorhome entitlement leads to revocation of car licence**

Complaint: Mr AB complained that, when he applied to have C1 (motorcaravan) entitlement added to his licence, his ordinary driving licence was revoked under the standards for alcohol dependence. He said he had had a full licence for over 15 years after previously having suffered alcohol problems. After new information was received from his doctor, Mr AB was invited to reapply for his ODL (car) licence and this was granted. A further application for C1 had not been received.

DVLA response: The DVLA had said its decision-making reflected the advice from the specialist advisory panel which was different today than when Mr AB had been successfully relicensed in the noughties.

ICA outcome: The ICA said this case illustrated uncertainty and inconsistency between different DVLA doctors as to the degree of discretion they had. Mr AB's case had been considered by two DVLA doctors. Had his case remained in the hands of the first one, he would have received both ODL and C1 entitlements. In the hands of the second one, he was revoked. The ICA welcomed the DVLA's ongoing review of the alcohol standards.

Alcohol standards #14: **Group 2 application leads to Group 1 revocation**

Complaint: Mr AB complained after significant delays in the processing of his HGV provisional application. He said staff were rude and could not be bothered to assist when he tried to speed things up. The DVLA then revoked his driving entitlement on medical grounds, creating problems for Mr AB and his family, not least as he had a holiday abroad booked and needed his car to work. Mr AB contested the medical basis of the revocation robustly.

DVLA response: The DVLA insisted that the decision to revoke Mr AB's licence was made in line with the published fitness standards on alcohol.

ICA outcome: The ICA found that Group 2 medical enquiries following Mr AB's disclosure of health problems was in line with policy. The DVLA had followed its usual evidence-gathering processes before revoking his Group 1 licence. The customer service provided to Mr AB was generally of a good standard. The ICA's view was that the essence of Mr AB's complaint was directed to the content and application of policy rather than customer service and administration. Mr AB made further complaints in this vein. The ICA reiterated the expert panel-provided position that detoxification engages the alcohol dependence standard. Again, this had been followed in Mr AB's case. The ICA recommended that the panel secretary (a DVLA doctor) should ask the panel to consider updating the index document setting out the standards (*Assessing Fitness to Drive, A Guide for Medical Professionals*) to reflect both the current version of the International Classification of Diseases, and the related World Health Organisation definitions.

Alcohol & drugs: **Delays in medical investigations of a vocational driver**

Complaint: Mr AB complained that, following a declaration of a history of alcohol dependence and persistent misuse of cocaine, the DVLA took far too long to reinstate his driving entitlements, and that its handling of his case was beset with errors. This included dispatch of his short-term licence to the wrong address.

DVLA response: The DVLA offered Mr AB compensation for two errors: 1, for incorrectly advising him to submit a further D2 application, along with a fee, when his licence did not arrive (the sum awarded included a refunded of the £20 fee), and 2; for sending his licence to the wrong address, for which he was awarded £25 to buy two years' of protection against identity fraud. The DVLA also offered a poor service payment of £200. Mr AB considered that this sum was insufficient.

ICA outcome: The ICA found that it took the Agency eight months to process Mr AB's initial application, because of pandemic pressures. He was able to drive while enquiries were carried out. Mr AB fell just short of the three years' abstinence required for Group 2 licensing. After a favourable CDT blood test, he was issued with a Group 1 licence valid for

one year. The six months it took the DVLA to process Mr AB's next licence application was not unusual (given the pandemic), but the ICA recommended that an apology and explanation should be provided for the delays and other poor handling. The ICA recommended an apology, and an additional consolatory award of £150.

Cannabis #1: **When does recreational use constitute drug misuse?**

Complaint: Mr AB complained that the DVLA had wrongly revoked his licence for drug misuse. He said he had lost work and the opportunity to buy a flat. Mr AB initially claimed £250,000 in compensation, later reducing the sum to north of £100,000.

DVLA response: the Agency's senior doctor reviewed the complaint and concluded that two separate reports of cannabis use represented recreational use not a diagnosis of drug misuse. The DVLA acknowledged that the DVLA doctor (who had not documented his decision in any way) had been mistaken in revoking Mr AB's licence without any medical enquiries. The Agency had offered a consolatory payment of £2,000 and compensation of roughly £6,000 but had declined to pay other elements of Mr AB's claim. His solicitors had rejected the offer as insulting.

ICA outcome: The ICA said that he and his fellow ICA were loath to calculate compensation as they were not claims assessors and they had neither the time nor expertise to do so. However, in this case, the ICA felt able to share some views. He said the Level 4 consolatory payment was in line with his expectations and that the claim for 'loss of opportunity' (that is, the loss of capital accumulation had Mr AB bought a property) was rightly regarded by the DVLA as speculative. Nor should the DVLA meet legal fees, or unevidenced taxi fares. However, the ICA felt there were aspects of Mr AB's claim for lost earnings that merited further examination and he recommended accordingly.

Cannabis #2: **Medical use**

Complaint: Mr AB's complaint covered DVLA medical decision-making over a number of years. He said he had been wrongly prevented from driving and sought compensation of £20,000 per annum for five years.

DVLA response: The DVLA defended much of its decision-making but said it accepted that Mr AB's application in 2022 had been wrongly refused. Further enquiries should have commenced once it became clear that his medical use of cannabis was the reason for the drug analysis results. The Agency said it would consider a compensation claim for the period until the licence was eventually issued nine months later.

ICA outcome: The ICA had the benefit of a review by the DVLA's deputy senior doctor who felt that medical enquiries in 2017 were probably not required. The ICA said that, if this was indeed the case, the chances were that Mr AB would have been licensed before he

actually withdrew his application. He recommended that the DVLA consider whether a consolatory payment should be offered for that period. The ICA was content that licence applications in later years had been handled properly. He could not therefore endorse Mr AB's claim for compensation for those years. However, the 2022 application had clearly been mishandled and he recommended a £450 consolatory payment in addition to any compensation that Mr AB was due.

DIABETES

Complaint leads to process improvement for diabetes cases

Complaint: Mr AB complained about DVLA enquiries into his diabetes. He said he had asked to see his GP but had been sent to a consultant. Mr AB also criticised the DVLA's standard letters as intimidating.

DVLA response: The DVLA had made a £200 consolatory payment as Mr AB had not been informed of his possible right to drive under section 88. Its considered opinion (shared at ICA stage) was that Mr AB should have been asked to attend his diabetes review at his GP surgery as he had requested.

ICA outcome: On reviewing the ICA's draft, the DVLA's senior doctor had identified a process improvement for the DIAB1 form. The relevant standard requires insulin-dependent diabetics to undergo regular reviews. It does not insist upon a GP review – indeed many such reviews are conducted by advanced practice nurses. In due course the relevant form and Operating Instructions will be amended. The ICA could identify no maladministrative delay in issuing Mr AB with his new licence. Although they were in strict terms, he also did not feel the DVLA correspondence was unduly threatening as Mr AB had alleged.

MENTAL HEALTH

Mental health: Kind handling over years of the case of a driver denying illness

Complaint: Mrs AB notified the DVLA that she suffered from anxiety and depression, and that she had recently experienced an acute transient psychotic episode involving hospital care. She was being treated with antipsychotic medication. DVLA enquiries culminated in the issuing of a one-year licence in February 2021. Mrs AB's 2022 reapplication progressed slowly, because she disputed the DVLA's claim that she had ever had any health problem relevant to driving. She accused the Agency of dishonesty and obstructive tactics.

DVLA response: A senior medical review within the DVLA confirmed the need for evidence from a medical practitioner that Mrs AB was well. The DVLA cautioned Mrs AB that, if she

declined to facilitate this, then her entitlement would be revoked for 'non-compliance' (as in the end it was).

ICA outcome: The ICA found three minor administrative failings in the handling of Mrs AB's case over the course of a two-and-a-half-year period, and recommended that the DVLA should apologise. Other than that, he found that the Agency had acted in line with its standard policies, and in a compassionate and customer-focused manner. The complaints team had responded patiently and flexibly to Mrs AB's many queries, and had explained clearly and repeatedly why her consent to medical enquiries was required. The ICA found that the DVLA made every attempt to engage with Mrs AB constructively before reluctantly revoking her entitlement.

NEUROLOGY

Neurology #1: **Exemplary DVLA medical involvement in a complex case**

Complaint: Mr AB had been diagnosed with a complex neurological developmental condition. In addition, he experienced episodes of impulsive and irascible behaviour and was in the care of a community mental health team. He complained after the DVLA refused his vocational licence for 15 months, and also for several months revoked his ordinary entitlement. Mr AB felt that the DVLA had been misinformed by his mental health team. Pushing the applications and reapplications along at every opportunity, he also complained of delays and punitive decision-making given his re-engagement with mental health services.

DVLA response: A single DVLA doctor oversaw medical decision-making throughout. Her licensing recommendations reflected the advice of the clinical team treating Mr AB. While the medical standard for neurological developmental conditions did not prescribe a set period of stability, Mr AB's clinical team recommended that 12 months stability be required for his lorry driving licence. The DVLA accepted this and did not relicense Mr AB until this period had been reached, and the community mental health team had given further information about Mr AB's stability.

ICA outcome: The ICA found much to praise in the DVLA's approach. Continuity of medical involvement had been maintained with the DVLA doctor undertaking a case management role at times to ensure that decisions were timely and based on the most recent advice from the treating clinicians. The requirement for 12 months' stability prior to Group 2 licensing flowed directly from the community mental health team's advice to the DVLA, and could not be construed as maladministrative. The ICA was sympathetic to Mr AB's frustration that three further months had passed before he was relicensed, but he regarded the DVLA doctor's caution as reasonable, given the variation in the reports from the consultant as to how well Mr AB was. The ICA saw no evidence that Mr AB's clinical team had acted in bad faith or spite, as he had alleged. He firmly advised Mr AB that his

complaints about the mental health team's dealings with the DVLA were groundless and unfair to healthcare professionals acting in his interests. He commended all the doctors involved in Mr AB's care, and the fitness to drive investigation, as being clearly motivated by concern for his welfare and safety, as well as that of other road users. He did not uphold the complaint.

Neurology #2: **A driver who ignored DVLA warnings is prosecuted and loses his car**

Complaint: Mr AB informed the DVLA of a blackout. The Agency offered him the option of either surrendering his licence or agreeing to medical investigation. He accepted neither, and three months later was given the all-clear by his consultant. He contacted the DVLA who advised that medical enquiries would still need to proceed. Mr AB insisted that he had completed the necessary documentation and included a letter from his consultant confirming that he was not at risk of further blackouts. However, nothing was received by the DVLA and Mr AB was put on notice that he had a month to provide the paperwork. Nothing arrived, and five months later his entitlement was revoked. Over a year later, Mr AB was apprehended by the police and his car was impounded. He complained that he had complied fully with DVLA investigations, and had not been informed of the revocation. The police disposed of his car and prosecuted him for driving without a licence. Mr AB argued that he had fulfilled his obligations and that he should be refunded by the Agency.

DVLA response: The DVLA explained that it had not received the requisite medical investigation paperwork from Mr AB at any point, and that the revocation had been signalled clearly in the letters sent to him. It appeared that he had moved house and may not have received crucial documentation. However, this was not the result of a failure by the DVLA. It therefore declined to meet his costs.

ICA outcome: The ICA could not get to the bottom of what had happened to the paperwork that Mr AB said he had returned to the DVLA. He was satisfied, however, that Mr AB had been put on notice from the outset that this needed to be done, and initially had taken several months to act. It had only been covid-related pressures that had meant that his entitlement had not been revoked somewhat earlier. The ICA did not find there was sufficient evidence to uphold the complaint. He sympathised with Mr AB but noted that his medical investigation was progressed quickly and positively by the Agency when the paperwork arrived after the police prosecution had commenced.

Misunderstanding of the standards relating to sleepiness

Complaint: Mr AB complained that the DVLA had mishandled his vocational driving licence reapplication. He said he had lost income as a result. He sought compensation.

DVLA response: This was a very peculiar story – initially reflecting very badly on the DVLA and then very well. At first, the DVLA said that Mr AB's application had been handled

entirely correctly. However, at the ICA stage it came to light that there had been delays, two cases had been opened – leading to two contradictory licensing decisions, and the DVLA's senior doctor said there had been a misunderstanding of the standards relating to sleepiness. The DVLA had made a consolatory payment and invited Mr AB to make a claim for compensation.

ICA outcome: The ICA fully upheld the complaint on the grounds that, if Mr AB had not pursued his grievance to the ICA stage, the DVLA might still be wrongly arguing that everything had been done correctly – when the opposite was the case. However, the ICA endorsed the consolatory payment at Level 2 (while saying it was not generous at £300 given the extent of the Agency's failures) and said that the invitation to Mr AB to make a compensation claim meant there were no further recommendations he could make.

VISION

Vision #1: **An unnecessary visual field test leading to an avoidable delay in relicensing**

Complaint: Mr AB told the DVLA that he had been given the all-clear by his vision consultant in advance of his upcoming licence renewal. Problems getting through to the Agency followed, with various clerical errors. The upshot was an unnecessary referral to Specsavers, and the needless restriction of his licence (rescinded a week later when it was realised that no medical review was required).

DVLA response: The DVLA investigated and admitted that a string of mistakes had occurred, for which a token goodwill payment of £150 was arranged.

ICA outcome: The ICA identified a series of avoidable delays that had not been remedied by the DVLA locally. Inefficient handling of the information on file led to the mistaken decision to send Mr AB for a visual field test although there was a valid test on file. The ICA recommended that the DVLA should make Mr AB a payment of an additional £100 in recognition of the unreasonable delays that had occurred in his case.

Vision #2: **A driver upset by false allegations of vision problems**

Complaint: Mr AB was reported anonymously as potentially unsafe to drive on the grounds of poor vision. His entitlement was confirmed three months later after he provided charts from his optician showing he met the vision standard. He complained that DVLA enquiries should not have been triggered by malicious and untrue allegations, and pressed the Agency as to the steps it had taken to validate the credentials of the informant before subjecting him to the stressful process of a fitness to drive investigation.

DVLA response: The DVLA referred Mr AB to Specsavers but Mr AB preferred his own opticians and furnished evidence of a satisfactory visual field, and acuity, from there. A DVLA doctor made a pragmatic decision that this was sufficient to support relicensing and she recommended accordingly. The Agency, throughout its dealings with Mr AB, explained its statutory and policy-based approach to reports of driver safety.

ICA outcome: The ICA was satisfied that the Agency had acted in line with its statutory duties, and explained its position clearly and sympathetically to Mr AB through the complaints process. He commended agency staff for their clear record-keeping and pragmatic and sensible decision-making. He was pleased that the standard requirement for DVLA-commissioned Specsavers testing was waived in the circumstances. He did not uphold the complaint.

Vision #3: **A customer puts a tick in the wrong box**

Complaint: Mr AB complained after being revoked under the acuity standards, having wrongly ticked the *No* box when asked if he could read a number plate at the required distance. Later DVLA enquiries focused on his mental health.

DVLA response: The DVLA had acknowledged administrative failures, but it said its licensing decisions were correct on the information provided. If Mr AB could show clinical evidence of three months' stable mental health, his case would be treated as a priority. It had made a consolatory payment for the poor service.

ICA outcome: The ICA said he was content that the licensing decisions were correct (albeit the DVLA's systems were very vulnerable to a tick being placed in the wrong box). Mr AB had been repeatedly advised that he needed to provide evidence from a clinician and the DVLA could not reopen his case until such evidence was provided. Although Mr AB had asked for a larger consolatory payment, the ICA was content that the offer of £300 was not maladministrative.

OTHER MEDICAL

A family fed up with repeated false reports of medical unfitness

Complaint: Mrs AB complained that she and her family were subjected to repeated false reports that they were unfit to drive, the product of a neighbour dispute. She characterised all the reports as malicious and inaccurate and was critical of the DVLA for acting on them. She was particularly annoyed by the DVLA not investigating the provenance of the notifications. Instead, it had focused on her fitness to drive and that of her family members.

DVLA response: The DVLA made a series of disclosures in response to Mrs AB's request for information about the notifications (but did not state who had made the reports). It explained the statutory fitness to drive framework, and the safeguards against malicious notifications. The DVLA expected targets of malicious behaviour to liaise with the police directly themselves.

ICA outcome: the ICA set out the DVLA's policy of investigating notifications of unfitness, emphasising that the motivation of the notifier was not relevant to the veracity of the notification or the fitness of the target driver. Some malicious notifications contained accurate information. Drivers were entitled to drive during DVLA enquiries. The ICA regretted that the DVLA's fitness to drive regime had been abused, but he made no criticism of the Agency for its handling of the complaint and the medical cases. Mrs AB's entitlement was confirmed promptly in each case.

Complaint about a driving assessment centre

Complaint: Mr AB complained about the conduct and outcome of a (debarring) driving assessment and that he had even been asked to undergo one. He also criticised the handling of his correspondence.

DVLA response: The DVLA said its decision to revoke Mr AB's licence was correct because the driving assessment had found him unsafe to drive. After further enquiries, Mr AB had been offered a further assessment, but he had declined the offer.

ICA outcome: The ICA referred to his terms of reference. He could not overturn the outcome of a driving assessment nor adjudicate upon the professional judgements of DVLA doctors (in this case, the decision to require an assessment and the decision to revoke). However, the ICA was critical of delays in responding to Mr AB's correspondence. He was also very surprised that no contact had been made with the assessment centre (which remained in ignorance of Mr AB's complaint and could not comment upon it). He recommended increasing the DVLA's poor service payment from £200 to £300 and that that staff be reminded that all complaints about the conduct of driving assessments should be referred to the assessment centre for their comments. This was out of fairness both to complainants and to the centre staff concerned.

Wrongful revocation

Complaint: Ms AB complained that the DVLA had wrongly revoked her licence. She said this had been remedied belatedly.

DVLA response: The DVLA had accepted that an error had been made. A consolatory payment of £700 had been offered by the Agency but this had been rejected by Ms AB who sought £10,000.

ICA outcome: The ICA said it was clear that a mistake had been made (presumably because a clerk had misread the date of Ms AB's fit that she had reported). The correct action would have been to have initiated further enquiries, not to have revoked. Ms AB was therefore without her licence for six months – causing her great inconvenience. The ICA said the DVLA had correctly identified that this was injustice at Level 3, but he felt the consolatory payment was too low given the distress caused to Ms AB. He recommended it be increased to £900.

More measured approach needed on non-compliance

Complaint: Mr AB complained that he had not received a letter telling him to make an appointment with a franchise doctor. Having failed to attend, he was revoked by the DVLA on grounds of non-compliance. Mr AB said the DVLA should have rung or emailed him when he did not attend rather than revoking. He asked for compensation.

DVLA response: The DVLA said it had followed its standard procedures. The Agency argued that it could not be held responsible for the non-delivery of mail.

ICA outcome: The ICA said he could not say whether the letter to Mr AB (which was correctly addressed) had arrived or not. But he felt the revocation was lawful and no question of compensation arose. However, the ICA felt that the DVLA could exercise a more measured approach. He could not design the DVLA's systems for it, but a follow up phone call or email before revoking might be an option. He recommended that his report be shared with the Director of Operations for his consideration. (The ICA was separately told that a pilot scheme involving telephone calls to customers who did not attend franchise doctor appointments was to be trialled.)

Is the DVLA duplicating a regulatory function that belongs with the police?

Complaint: Mr AB returned from living overseas and reapplied for his UK driving licence. Despite supportive advice from his GP, the DVLA revoked his entitlement, a decision which had significant ramifications for him in terms of his own needs and parenting responsibilities. He complained of delays and discrimination in restoring his licence.

DVLA response: Mr AB's case was subjected to senior review before referral to the ICA. The DVLA's senior doctor recommended relicensing on an annual basis, so that Mr AB's health could be monitored. He did not find that a mistake had been made, but questioned the policy basis of revocations drawing from information about medication side-effects (which are subject to enforcement through the criminal justice system). The DVLA had made a consolatory payment of £300.

ICA outcome: The ICA noted that the DVLA called Mr AB to chase up documentation he had already submitted because of the time needed to scan documents onto the computer system. The ICA was, however, broadly content with the Agency's handling, noting that much of the complaint was directed to policy and operational matters beyond the scope of the complaints procedure. Mr AB's case had been prioritised, and appropriate medical opinions had been sought. The original licensing decision, although later overturned, was not technically incorrect, having been made by a non-medically trained member of staff who was following the DVLA's internal operating procedures. The consolatory payment of £300 was also reasonable given the relatively short delay in restoring Mr AB's licence. The ICA recommended that the DVLA should formally consider whether medication side effects are an appropriate matter on which to base licence revocations.

(ii) : VEHICLE REGISTRATION AND IDENTITY

DVLA unable to help the keeper of a classic car meeting ULEZ specifications

Complaint: Mr AB had a Saab SE 9-3 turbo first registered before 1 March 2001 when the DVLA started adding emissions data to the V5C/logbook. He approached the DVLA to ask that it reflect the combined Total Hydro Carbon (THCs) emissions and NOx emissions of 0.16g/km on the logbook. This would be significant for Mr AB because the ULEZ was being extended to his area, meaning that he would accrue a £12.50/day charge for using his vehicle. This was because Transport for London (TfL) assumed it would not meet the requisite Euro 4 emissions standards (up to 0.18g/km combined THC & NOx). Mr AB's problem was that Saab no longer existed and could not provide emissions data for his car, but he had Certificates of Conformity for identical vehicles (the model remained in production until 2003). He pressed the DVLA to add emissions data for his vehicle to the logbook as this was the only evidence that TfL would accept that his car met Euro 4. He noted that the fields were present on the logbook, but were not populated with data. He argued that he was in a nonsensical situation, in effect being forced to replace a Euro 4 compliant vehicle with another Euro 4 compliant vehicle. This was completely contrary to the avowed environmental aims of the ULEZ scheme.

DVLA response: All of the DVLA's responses were somewhat delayed. It explained that it could not change the vehicle record (the law linking vehicle excise duty to emissions did not come into force until 1 March 2001, and the DVLA's systems reflected this). Nor could it make bespoke changes to individual records, given the volume of its operations. It was able to add Mr AB's vehicle to the clean air zone (CAZ) exemptions list (not applicable to ULEZ). The DVLA did not have access to the ULEZ exemption list.

ICA outcome: The ICA was critical of the delays in the complaint responses, noting that there had been confusion and a lack of ownership of the complaint between the business area (vehicle casework unit) and the complaints team, with both reliant on expert involvement from vehicle business support. However, although very sympathetic indeed to

Mr AB's points, the ICA could not uphold a complaint that the DVLA was failing to discharge a function that was not function that it was there to provide. Mr AB was not paying more tax because of vehicle misregistration. The DVLA was not responsible for TfL's evidential requirements and was rightly under pressure from the government to improve the core services that it exists to provide. The ICA's view was that there is a complaint escalation route attached to ULEZ up to the Local Government Ombudsman (LGO) level open to Mr AB to press TfL to stop conflating an artefact of DVLA vehicle registration software with Euro 4 non-compliance. He did not uphold the complaint.

Q-plating of a vehicle owned for over four decades

Complaint: Mr AB complained about a DVLA decision to Q-plate a vehicle he had owned for over 40 years. He said he could not accept the decision which had devalued his vehicle massively. He said that at some point the DVLA or a predecessor body had mistakenly recorded the vehicle's VIN which he had discovered did not apply to his model of vehicle. He acknowledged that no VIN was visible on the chassis and that it had been ground off. He had then added a plate showing the (incorrect) VIN based on the registration document.

DVLA response: The DVLA said that, in the absence of a VIN on the chassis, it could not link the registration with the original car. It confirmed that Q-plating was appropriate and that the original registration had been 'retired'.

ICA outcome: The ICA sympathised with Mr AB. His vehicle was in beautiful condition and had doubtless given great pleasure over four decades. However, the plain fact of the matter was that Mr AB had knowingly purchased a vehicle with the VIN having been ground off. It was difficult to conceive of an innocent explanation for this. In any event, the DVLA was entitled to say that sufficient doubt about the vehicle's history existed to issue a Q-plate. The ICA could not say why the registration document had the wrong VIN (one digit was incorrect) or when this had occurred. It was probable this had happened when the vehicle was inspected by a DVLA local office 40 years ago, but this was not certain (the VIN could have been ground off afterwards, before Mr AB's purchase).

A modification (holes in the boot) nullifies the identity of a retrofitted 70s classic

Complaint: Mr AB retrofitted a 1970s saloon with an electric engine, removing the original engine and fuel tank and installing an electric motor and battery. The only other modification was to have holes drilled in the monocoque chassis (the boot) to hold the battery mountings securely. He complained after the DVLA refused to register his car under its original identity on the basis that the chassis had been irretrievably modified. The Agency required Mr AB to register with a DVLA VIN and Q-plate and obtain individual vehicle approval (IVA). Mr AB argued that this was inconsistent, referring to other vehicles that had similar modifications without losing their original identity. He also pointed out

that the drilling of holes would occur in other scenarios, for example fitting seat belts and a towbar, without the DVLA nullifying the vehicle's identity.

DVLA response: The DVLA had arranged an inspection that confirmed that the battery was mounted in the boot space using brackets and new mounting holes drilled in the boot floor. These were the only modifications to the chassis. In its correspondence with Mr AB, the DVLA held the line that the chassis was no longer original because it had been modified to accommodate an additional structure not intended by the manufacturer or present at the time that the vehicle was first registered. The Agency classed the whole monocoque body shell a singular piece that comes from the manufacturer in one unit. The DVLA's Rebuilt Vehicles Policy provided that, if any modifications were made to a monocoque body shell or ladder chassis, the vehicle was to be re-registered.

ICA outcome: The ICA acknowledged the irony of Mr AB's position. On the one hand, his complete replacement of the engine and fuel system with retrofitted components did not affect his vehicle's identity. On the other, the drilling of a few small holes in the boot invalidated the whole identity of the car (and the DVLA refused to countenance the filling in of the holes as a means of retaining original identity). The ICA, while conscious of the outcome for Mr AB, found that the DVLA was entitled to define its own policy and to apply it as it had done. The essence of Mr AB's complaint resided in his different definition of the word 'modification'. The ICA found that the DVLA's stricter definition (any change that is out of keeping with the manufacturer's specification and/or the period in which the vehicle was first registered) was reasonable. Mr AB's definition related more to vehicle safety than originality. The ICA expressed concern that the retrofit sector was not up to speed with the Agency's policy on modification and he welcomed the fresh engagement initiatives between the sector and the DVLA. He also welcomed the DVLA's undertaking to review the suite of letters that it sends to vehicle keepers. The ICA partially upheld the complaint because he did not judge that Mr AB's detailed challenges were fully answered. However, he did not regard Mr AB's treatment as unfair as decisions had been made in line with published policy.

A kit car owner waits 10 years to avoid IVA only to be told the requirement stands

Complaint: Mr AB had bought a kit car over 20 years previously and liaised with his local DVLA office about registering it. He provided evidence that he felt proved that it was over 10 years old, meaning that it would be exempt from individual vehicle approval. The DVLA did not accept this evidence and he complained to the Parliamentary and Health Service Ombudsman. The Ombudsman found fault in the DVLA's handling but did not comment on the substance of Mr AB's complaint. Over a decade later, Mr AB provided a copy of his MOT for the car as proof that it was 10 years old and should now be IVA-exempt. He complained that the DVLA had unreasonably refused to accept this evidence, and about aspects of its complaint handling.

DVLA response: The DVLA took advice from the DVSA (which oversees the IVA scheme), and the Department for Transport's International Vehicle Standards (IVS) team who have responsibility for the content and application of automotive industry vehicle standards. These partner bodies confirmed the DVLA's position that, although the decade-old MOT suggested that the car had *then* been complete and finished, there was nothing to show that it had *remained* as such over the following years. In the absence of such evidence, the DVLA insisted that the car could not be classified as an old vehicle under the terms of the 2020 Regulations. It submitted its opinion to a final senior review before ICA stage that upheld this position. It also explained its handling and staging of the complaint, given Mr AB's challenges.

ICA outcome: The ICA was sympathetic to Mr AB's point that an MOT going back 10 years should be regarded as evidence that a vehicle was ten years old. He noted that the Regulations did not say how the age of a vehicle should be established, and that the DVLA's usual approach was to assume that a vehicle's identity was as presented by the keeper, unless there was concrete evidence to the contrary. No such evidence was provided here, and it was unlikely that the car would have changed over the period. The ICA noted that the DVLA had been open to MOT evidence as relevant. Had it not done so already, the ICA would have asked the DVLA to test its thinking about the evidence requirements with its partners. As the subject matter experts agreed, the ICA was satisfied that the position could not be maladministrative. He did not find any fault in the DVLA's complaint handling and did not uphold the complaint.

Purchase of cloned vehicle

Complaint: Mr AB had purchased a cloned vehicle. The V5C he was given at purchase was counterfeit. He sought compensation from the DVLA. He also complained about delay in obtaining a V5C for a replacement vehicle.

DVLA response: The DVLA would not pay compensation. It said that it was not responsible for compensating victims of fraud, and vehicle purchasers had to be satisfied they were buying a genuine vehicle. The Agency accepted there had been some delay in issuing the second V5C.

ICA outcome: The ICA sympathised with Mr AB but there was no case for compensation from the public purse. He understood Mr AB's concerns about the information he had been given, but the Agency was inevitably cautious where fraud was concerned (Mr AB was the innocent victim, but this was not known for certain at the outset). The ICA was mildly critical of the inconsistent explanations given for the delay in issuing the second V5C (which also related to third-party fraud) and to the now-standard correspondence delays. But he did not feel there were sufficient grounds overall to uphold the complaint.

Poor handling of complaint about a cloned car

Complaint: Mr AB complained that DVLA errors had led to his daughter buying a cloned car. The vehicle had latterly been seized by the police. Mr AB said his daughter's loss amounted to nearly £8,000.

DVLA response: The DVLA sympathised with Mr AB and his daughter but said that it was not responsible for the criminal acts of others. Customers were advised that a V5C was not proof of ownership.

ICA outcome: The ICA said there were two questions he needed to answer. First, was the DVLA in any way responsible for the fraud. Second, had there been maladministration in the handling of Mr AB's correspondence. The answer to the first question was no. Mr AB had evidently carried out some due diligence, but this had not included checking if the etched-in VIN in the side windows had been covered over. The taxpayer was not responsible for Mr AB's loss. At the same time, the answer to the second question was yes. There had been long periods when Mr AB had been told nothing and opportunities to open a case had been missed. Mr AB made a good point in saying that he could have approached the person who sold his daughter the vehicle had he known about the fraud earlier. The ICA said that fraud investigations could be protracted and there was a limit on what could be shared – including with victims. However, in this case the handling had been very poor and could not be blamed on covid. He recommended a consolatory payment of £250.

ICA requires further review in motor caravan case

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 his vehicle was identical to commercial vehicles that were acknowledged to be motor caravans. Like many customers, he referred to the insurance implications of the DVLA's decision.

DVLA response: The DVLA had reiterated that body type must reflect how a vehicle appears in traffic. It was not the same as the use to which a vehicle could be put. Mr AB's case had been personally reviewed by the Head of Policy and he had concluded that the proper body type description was van with side windows.

ICA outcome: In line with an Ombudsman decision, the ICA part upheld the complaint and recommended a consolatory payment of £100. In this case, however, he felt the DVLA's decision was not sound. His report included photographs showing the near identical body shape of Mr AB's vehicle and that of commercial motorcaravans. He therefore recommended a further review by the Head of Policy and this was accepted by the DVLA. However, the position remained the same.

More campervan complaints

Complaint: Mr AB and Mr CD complained that the DVLA would not change the body type of their vehicles from van with side windows to motor caravan. They both said that they could not understand what more they could do to meet the published guidance.

DVLA 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 and this work remains ongoing.

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 these complaints 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 ICAs' approach to these cases and which he regarded as setting a precedent, the ICA recommended a consolatory payment for both complainants of £100.

Complaint from specialist club is resolved following ICA intervention

Complaint: Mr AB complained that the DVLA would not process a V5C application for a historic vehicle as his application was endorsed by an official of a club of which he was also an official. He said there was no such stipulation on the application paperwork.

DVLA response: The DVLA said it required the endorsement of a separate club. Indeed, it said its position was so steadfast that it dispensed with step 2 of its complaints procedure.

ICA outcome: Following consideration of the ICA's draft report, the DVLA said it could indeed process Mr AB's application and a V5C would be issued. It also said it would align its Operating Instructions with the published notes. The ICA treated the matter as having been resolved. He also observed that, while Mr AB was entitled to use the complaints process, and indeed had achieved his objective having done so, it was always a shame if relationships between the DVLA and specialist motoring clubs could not be resolved informally. He wondered if in Mr AB's case, a phone call from a senior official would have been more helpful than bureaucratic letters. He further recommended a copy be shared with the Head of Vehicle Casework.

Loss of cherished plate is a 'civil dispute'

Complaint: Mr AB complained about the loss of a cherished plate. He said he had only recently become aware of his loss when trying to sell the rights to another person. He said the DVLA had been the victim of a fraudulent application.

DVLA response: The DVLA found no evidence of fraud on investigation. All transactions had been completed automatically using the correct documentation.

ICA outcome: Like the DVLA, the ICA was restricted in what he could say because it involved a third party (although Mr AB was aware of his identity). The ICA said his review had shown that Mr AB had assigned the plate to a vehicle of which he was not the registered keeper. At this point he had lost all his rights to it. The ICA said it was not for him to speculate on whether this was a mistake by Mr AB or by the dealers from whom he was purchasing another vehicle. In any event, there was no evidence of maladministration by the DVLA who had reasonably treated the matter as a civil dispute. Although there had been delays in DVLA handling, the ICA concluded that the overall outcome was not upheld.

Sad loss of rights to display a cherished plate

Complaint: Mrs AB complained about a personalised registration that she had held on retention following the death of her husband. She said she had been told by the DVLA to reapply for the registration after she obtained probate. However, for reasons beyond her control, she did not obtain probate for a decade, at which point the DVLA said she had lost eligibility to the plate. She said she had intended to pass the plate to her children in memory of their father.

DVLA response: The DVLA accepted that it had told Mrs AB to apply for the rights to the plate after she obtained probate. It also said that transitional arrangements had long since expired and that its current view was that the law did not provide for backdated eligibility. The case had been personally reviewed by the Head of Policy who had concluded that Mrs AB had received poor advice from the Agency but that the plate was by law now retired and would not be reissued to anyone.

ICA outcome: As in so many like cases, the ICA had huge sympathy for Mrs AB. However, the complaint invoked both law and DVLA policy and he was unable to intervene. The ICA drew attention, once more, to the comments the ICAs had made about the 'retiring' of cherished plates in a previous ICA annual report.

A private plate dealer tries unsuccessfully to retain the plate of a scrap car

Complaint: Mr AB, a number plate dealer, bought a scrap car in very poor condition with a desirable plate. Although the car did not meet the eligibility criteria for plate retention (it had a history of SORN exceeding five years) a system glitch allowed Mr AB to retain the plate through an online transaction. Shortly afterwards he scrapped the car. Sometime later the Agency became aware of the mistake and reversed the retention. Mr AB argued that this was unfair, not least because the opportunity of restoring the car to roadworthy

condition and taxing it had been lost irretrievably. This, he argued, meant he should be compensated from public funds.

DVLA response: The DVLA explained that the vehicle had been off the road and out of the licensing and taxing system for over five years when Mr AB had bought it. The previous MOT fail could be viewed online, and it was catastrophic. The V778 retention certificate was invalidated. After several months of fruitless correspondence, the Agency offered a consolatory payment of £100 for poor service. It explained the legal framework that prevented it from restoring title to the plate to Mr AB, noting that there was good evidence that he was not even keeper of the car when the retention was transacted. The system loophole was fixed.

ICA outcome: The ICA was sceptical about Mr AB's claim given the significant expenditure that would be needed to get the car into a roadworthy condition and taxed, clearly significantly more than Mr AB's valuation of the plate. The ICA did not therefore think that Mr AB's case for compensation was a compelling one. As a professional plate dealer, the ICA would have expected Mr AB to have understood the rules, and exercise due diligence before acquiring a wreck in the expectation of retaining the plate. Although the ICA was very critical of DVLA delays (including eight months between learning of the error and remedying it, and seven more months before Mr AB was informed), he felt that Mr AB had ample opportunity to mitigate the impact and/or avoid the related disadvantage and hardship. He felt that the £100 consolatory offer by the DVLA was appropriate. He did not uphold the complaint of unremedied injustice.

Use of mail drop address

Complaint: Mr AB complained that the DVLA would not allow him to register his vehicle to a mail drop address (MDA). He said he was homeless and lived in his vehicle. He also pointed out that other government bodies would use the MDA (including the DVLA so far as his driving licence was concerned). He also said that the DVLA's suggestion that he use a 'care of' address was impractical (his GP practice would not agree to it) and also involved intermediaries and so would delay contact in the event of an emergency – one of the justifications the DVLA used for its policy.

DVLA response: The DVLA said that its policy prevented the use of MDAs. This was for a variety of reasons including the prevention of fraud. It said the legislation for drivers and vehicles was different.

ICA outcome: The ICA could not adjudicate upon law or policy. However, he did not think the DVLA's policy was maladministrative. But whether it offers a customer-sensitive approach to those living on houseboats or leading *Nomadland* lives is another matter. Barge owners are in fact permitted by the DVLA to use a care of address at a marina, etc. if the operator agrees – even though a 'care of' address also does not allow ready access and

involves going through an intermediary, as Mr AB pointed out. After the review was completed, the Agency told us that it was reviewing its current address policy for vehicle registration purposes and this will also take into consideration the use of MDAs.

A losing auction bidder seeks compensation

Complaint: Mr AB was bidding for a plate at a DVLA auction run by its agents, BCA. He complained that, despite submitting a bid identical to the final hammer price for the lot, £X, the lot had gone to bidder 2. He added a complaint that the system had told him that he was the highest bidder just before he lost the auction. He added that he had been getting system errors during the auction on his computer. He requested preferential purchase rights to a comparable plate, and complained at length that the DVLA's investigation was undertaken by BCA and therefore could hold no credence.

DVLA response: BCA explained from the outset that bidder 2 had set his maximum bid at £X some 41 seconds before Mr AB. Both bidders had put the same ceiling on their bids (£X). The system would have advised Mr AB that he was still the underbidder, but was designed not to reveal other bidders' maximum bids (meaning that it would not refuse a bid equal to the maximum already on the table). Bidder 2's bid had been £W (with a maximum at £X). Mr AB's bid of £X meant that the system automatically upped Bidder 2's bid to £X. Mr AB had 41 seconds to increase the bid and did not do so. The system had behaved as expected. This was substantiated by a full investigation by BCA that found no system errors on the day.

ICA outcome: The ICA was not sympathetic to Mr AB's points that he had been unfairly treated, that the auction should have been frozen pending independent investigation, and that he should be given preferential access to a comparable plate. The system had been clearly explained and, after a comprehensive investigation, the suggestion that it had performed as expected had been substantiated. The ICA did not uphold the complaint.

The police take several years to act on DVLA reports of a cloned car

Complaint: Mrs AB bought a high value sports utility vehicle from an online platform at a bargain price. Unbeknownst to her, it was a clone. Her HPI report proved the bona fides of the original vehicle, not the car she had bought that had an altered VIN plate and counterfeit V5C logbook. Mrs AB attempted to register to the car to herself, but for unknown reasons her postal application was not processed by the DVLA. Approaching a year later, she applied for a logbook again and after some to-ing and fro-ing, the Agency's vehicle fraud experts identified anomalies. The DVLA referred the matter repeatedly to the police but it was well over four years before they removed the car from Mrs AB. She complained that she had spent money insuring and maintaining a vehicle for over four years, and had repeatedly tried to register it to herself. In this time, she had not been told

that it was a clone. As a victim of crime, it had been on her to keep pushing, which could not be right. She sought compensation.

DVLA response: The DVLA reflected that it might have handled differently a precursor notification of potential fraud in relation to the vehicle. However, after Mrs AB had attempted to register herself to the car, it had repeatedly referred its suspicions to the police and followed its policy of informing the keeper of anomalies. The police were the lead agency for the identification and detection of crime. The DVLA had followed the necessary steps as registrar. The Agency had later implemented improvements to its systems, but they would not have been sufficient to prevent the sale of the cloned vehicle to Mrs AB in the first place. It declined her compensation claim.

ICA outcome: The ICA spoke to Mrs AB at length and they were of the same mind that she had, first and foremost, been the victim of crime. There was no compelling evidence that the sale of the car to her could have been prevented by the DVLA. The ICA could not establish the fate of Mrs AB's original application for a logbook. Had this been processed at the time, the fact that she had bought a clone would have been established three-and-a-half years sooner. The ICA had reservations about the compensation claim. Mrs AB had used the vehicle over the four-year period that it was in her possession. In this time, she had assumed that she did not have to pay tax while, she thought, the registration was pending. The ICA regretted that Mrs AB's enjoyment of the car had been hindered by question marks about its registration. But the police were the lead agency and it had taken them years, and multiple notifications, to correctly identify that the car was a clone. The ICA found that the DVLA had acted within policy and he did not uphold the complaint.

A radical conversion necessitates a Q-plate

Complaint: Mr AB converted a mass production hatchback into a pickup, having spoken to the DVLA and understood from his call that this conversion would have no impact on the taxation class or particulars of the car. He completed the work and was asked by the Agency to complete a V627/1 built-up vehicle report. On it he referred to changes he had made to the top of the monocoque chassis and rear to create the pickup area. He complained that the DVLA then insisted that his vehicle should be registered with a Q-plate, and that its tax category had gone up from £20 to £325 per year. Despite his complaints and comparisons with other vehicles with radical alterations that retained their age-related registration, the DVLA held the line that a Q-plate and IVA were mandatory.

DVLA response: The DVLA referred Mr AB to the INF26 radical alteration guidance. This says that any altered chassis, frame or monocoque body shell necessitates Q-plate registration. The DVLA was able to allow Mr AB to retain the personalised plate he had put on the vehicle. It advised him that an enhanced IVA test might affect the tax class but this was a matter for the DVSA. It held the line that the decision was correct.

ICA outcome: The major difficulty the ICA had was that there was no record of the DVLA providing Mr AB with assurance that major alterations to his vehicle would not affect the tax or registration. The ICA noted the DVLA's assurance, backed up by its operating instructions, that its clerks would not make concrete commitments before work had been carried out and considered. On the other hand, the ICA found Mr AB's account that he had been given this assurance persuasive. Mr AB later rang up pretending to be contemplating the conversion and was given the same incorrect advice. But in the absence of evidence as to what the DVLA had said before the purchase and conversion, the ICA could not adjudicate. He was satisfied that the Agency had applied the relevant policy. He did not agree with Mr AB that the presence of radically altered vehicles on the road retaining original registration meant that the rules should be bent in his case. As the Agency had followed its established, published policy, he was unable to uphold the complaint.

A classic restored for rally use is ordered to be fitted with Q-plates

Complaint: Mr AB restored a vehicle that he believed was a highly desirable rally car. He applied to register it only for the DVLA to begin an investigation into its provenance. He supplied photographs and the Agency sought specialist advice. Based on that advice, the DVLA told him that modifications to the vehicle engaged the INF26 policy, that in turn necessitated Q-plating. Mr AB argued strongly that the modifications were congruent with the age of the vehicle, and that of others in rally use at the time. The DVLA disagreed. Mr AB complained that the DVLA was ignoring the historical evidence that showed that his modifications were period-specific.

DVLA response: The Agency's initial feedback focused on modifications to the chassis. 10 months after Mr AB's attempt at registering the car, it was noted that the opinion of a specialist working for the manufacturer was that the chassis itself and the stamped in VIN were fake. This unwelcome news was referred to Mr AB. Undeterred, he continued to furnish evidence that the modifications to his vehicle were in keeping with a rally car of the late 70s.

ICA outcome: The ICA was content that decision-making had been conducted in line with the INF26 modified vehicles policy. He was, however, critical of the fact that only the modification to the monocoque chassis had been mentioned as a reason for Q-plating when more compelling additional evidence (an expert opinion that the VIN and chassis did not belong to the registration claimed by Mr AB's vehicle) was on file all along. The ICA was pleased that this was brought to Mr AB's attention eventually, but was disappointed that it had taken so long, giving Mr AB false hope that his detailed arguments about historicity could succeed. The ICA recommended that the Agency apologise to Mr AB for this and take steps to ensure that its Kits and Rebuilds team put all the cards on the table at the earliest opportunity in future.

The DVLA commendably rethinks Q-plating a classic after poor handling at early stages

Complaint: Mr AB applied for a replacement logbook for his wife's 1971 classic sports car. An error in his transcription of the car's vehicle identification number (VIN) led the DVLA's Kits & Rebuilds team (K&R) to seek advice from the owners' club. The owners' club noted an irregularity in the VIN plate that was not appropriate to the age of the car. After further investigations, the DVLA told Mr AB that the car must be Q-plated unless he could reunite it with its original VIN plate. Mr AB produced further evidence including the heritage certificate, and the outcome of an owners' club inspection confirming that all the major components of the car were commensurate with a 1971 build. He complained that the DVLA refused to take this into account, and insisted on the impossible-to-satisfy requirement for the original VIN plate. The DVLA also initially refused to entertain age-related registration under the reconstructed classics scheme on the ground that this scheme was intended for rebuilt vehicles and not open to Mr AB who considered that his car was original.

DVLA response: Mr AB's correspondence and evidence was referred repeatedly to the DVLA's policy experts who maintained that the absence of the original VIN plate could only result in the negation of the claimed identity.

ICA outcome: The ICA noted that no other vehicle had claimed the registration mark in the half-century prior to Mr AB's ownership of it. He also noted that the owners' club was fully supportive of age-related plating; its evidence had been given considerable weight in the case against retention of the registration, but discounted when it came out in support of Mr AB's request for at least age-related registration. The ICA was also sceptical about the Agency's emphasis on the provenance of a small metal VIN plate (apparently readily copyable) as opposed to all of the major components of the car. He considered it more likely than not that the car was original and asked the DVLA to reconsider its position. On review, the Agency decided that the link with the original registration had been broken by the removal of the VIN plate but that the evidence from the owners' club and the heritage certificate confirmed a 1971 build. The car could be issued with a DVLA VIN and an age-related plate. The ICA welcomed this. He was however very critical of complaint handling, noting that it had taken four and a half months for Mr AB's clearly-expressed complaint to be answered as such. He recommended that Mr AB be offered a consolatory payment of £250 for this and that the Agency ensure that its soon to be reworked complaints policy guaranteed that any representation from a customer that is clearly a complaint is treated at step 1 of the complaints procedure. He partially upheld the complaint.

DVLA not responsible for the 'theft' of vehicle

Complaint: Mr AB's classic cars were stored on the land of a third party, through an arrangement made by an intermediary. Mr AB learnt that the vehicles had been removed

and reported them stolen to the police and the DVLA. He was therefore dismayed to learn that one of the cars had been issued with a new V5C, thereby facilitating it being sold on. He spent several thousand pounds on solicitors trying to recover the vehicles to no avail. He pressed the DVLA for compensation. In his complaint, he emphasised that he had been told when he informed the DVLA of the theft that a block had been put on the issue of a V5C. He had not been told that a claim was latterly made for keepership, and was denied an opportunity of countering it.

DVLA response: When Mr AB had rung, the vehicle record was already frozen, but the DVLA's enquiries had not found evidence of unlawful activity. Shortly after Mr AB's call, the record was unfrozen and the latest keeper claim was reactivated. The DVLA sent Mr AB a V712 letter, as the registered keeper, to check whether he still claimed keepership of the car. For unknown reasons, this was not received. The DVLA explained that it required the police to notify theft directly onto the vehicle register; it would not process a keeper's theft notification. In the absence of police notification, or any response to the V712 letter from Mr AB, the change of keepership had been transacted routinely.

ICA outcome: The ICA was critical of the DVLA for not listening to Mr AB's initial call when he challenged logbook issue. This was because the assurance he had taken from it had defined his complaint – that an opportunity to hinder or prevent fraud had been missed by the DVLA. On this basis, the ICA partially upheld the complaint and recommended that a consolatory payment of £100 be made. The ICA, however, expressed reservations about the extent to which Mr AB could reasonably hold the DVLA responsible for the loss of his vehicles. The police were the lead agency and they had decided that the vehicles' removal was part of a civil dispute. The police had not marked the vehicles as stolen on the register. Even if Mr AB had asserted keepership, with the vehicles not in his possession, his claim would not have succeeded. The ICA concluded that Mr AB's complaint, like others he had received, was based on a significant overestimation of the DVLA's role in the investigation of crime. The DVLA was there to assist the police and would have provided details of keepership applications to the police had it been asked.

The £25 fee for a 'replacement' registration certificate

Complaint: Mr AB and several other customers complained that the DVLA had charged £25 for a replacement V5C when the first one had never been received.

DVLA response: The DVLA had said that the £25 fee was set in legislation. Customers were advised to approach the DVLA if a registration certificate was not received within four weeks.

ICA outcome: The ICA sympathised with Mr AB but he could not criticise DVLA settled policy based on legislation. However, he pointed put that the six weeks grace period

before charging £25 was an exercise of discretion and did not follow directly from the legislation. Alternative, more customer-friendly options were available.

(iii) : VEHICLE TAX AND ENFORCEMENT

A dispute over list price affecting tax rate

Complaint: Mr AB complained that he was charged the additional rate of tax (ART) that related to a car with a list price when new that was greater than £40,000. He contended that the list price of his car was below this threshold.

DVLA response: The DVLA insisted that the applicable list price was that provided by the manufacturer or retailer of the vehicle when it was first registered. The DVLA had a different manufacturer-provided list price to Mr AB, that was over £40,000, and the Agency would only reconsider its position on receipt of proof from the manufacturer that the figure originally provided was incorrect.

ICA outcome: The ICA was unable to uphold Mr AB's complaint. This was because the DVLA's policy position, as relayed to Mr AB, was that, under the law, the list price is defined as the price published by a car's manufacturer, importer or distributor on the day immediately before the date of the car's first registration. The ICA found that the DVLA acted in line with its own policy in requiring Mr AB to provide evidence direct from the manufacturer of the car: any change to the list price for the vehicle could only be made on the basis of information provided by the manufacturer. The customer service provided to Mr AB by the Agency was of a good standard.

A bereaved person inheriting her late partner's car is subject to enforcement action

Complaint: Ms AB complained that the DVLA did not respond to her requests for advice and instead clamped her late partner's vehicle resulting in costs to her. She complained that the DVLA refused to refund that money to her and about delays in its complaint handling.

DVLA response: The DVLA had no evidence that it had received Ms AB's correspondence asking it for advice and was satisfied that the enforcement action had been taken appropriately.

ICA outcome: The ICA found that there had been some minor delays in the DVLA's handling of Ms AB's complaint but was satisfied that she had received appropriate apologies for that. Given Ms AB's circumstances, the ICA had asked the DVLA to exceptionally make a consolatory payment to her equivalent to the fees she had paid. The ICA was disappointed that the DVLA declined to do so and reminded Mrs AB that she

could go to the Ombudsman. She did so, and after initial queries from the PHSO, the DVLA agreed to pay Ms AB £260.

Unknown technical fault prevents customer from paying VED

Complaint: Ms AB complained that nine attempts to renew her direct debit to pay vehicle tax had failed as a result of a DVLA technical fault. She asked for details of what had gone wrong.

DVLA response: The DVLA had sent a series of holding letters while its technical experts engaged with contractors to try to explain the fault. Unfortunately, they could not replicate what happened or offer an explanation. The DVLA had initially offered Ms AB £50 for poor service, but this was increased to £200 before the ICA referral.

ICA outcome: The ICA could offer no insight into the technical problem Ms AB had encountered. He confirmed, however, that this had been investigated seriously and exhaustively by the Agency and its IT contractor. The ICA said that, the DVLA having increased its consolatory payment, there was no remaining injustice to remedy. He told Ms AB that, had this not been done, he would have made a recommendation. He also said that, in anonymised form, Ms AB's case was likely to feature in the ICAs' quarterly and annual reports.

A driver has his car auctioned off after ignoring the advice as to how to recover it

Complaint: Four-and-a-half months after tax cover expired on Mr AB's car, it was clamped. Over the following days and weeks he expressed his fury at the Agency in no uncertain terms. He belatedly paid the tax but not the unclamp fee. After six days, the car was impounded. Mr AB continued to berate the Agency and its clamping agent. The deadline to pay the pound fees was extended. Eventually, in the absence of payment, the vehicle was disposed of to auction. Mr AB insisted that it had been the DVLA that had prevented him from taxing all along, and that his losses should be restored to him.

DVLA response: The DVLA set out the events of Mr AB's case. There had been clear opportunities to renew the tax before the clamping. He could have removed any effects from the vehicle in the six days before it was lifted to the pound. It extended the deadline for recovery from the pound. All relevant policies and legislation had been followed. The Agency also pursued Mr AB for an out-of-court settlement and when he did not pay, initiated legal proceedings.

ICA outcome: The ICA found no fault in the DVLA's response to Mr AB's challenges. He agreed with the Agency that there had been ample opportunity to renew the tax. He accepted Mr AB's point that the whole enforcement had been disproportionate (the annual vehicle excise duty for the vehicle was only £20 and Mr AB had no history of avoidance).

However, the Agency was acting in line with its legal powers and the ICA could not uphold the complaint.

Customer entitled to minimise his outgoings

Complaint: Mr AB complained about information given to him by an adviser and available online when he wanted to end his direct debits for VED and pay the full amount upfront. He said that, therefore, when he came to pay the full amount, it had increased in line with a tax announcement in the Chancellor's Budget. He asked to be refunded the extra £35.

DVLA response: The DVLA said that its policy was not to encourage customers to pay double tax in any one month and that the adviser's advice had been correct. In its initial response, the Agency thanked Mr AB for his feedback about the information online. The Agency latterly accused Mr AB of trying to game the system to avoid the tax increase. It had declined to refund the £35 or make a goodwill payment in light of Mr AB's feedback on the online information.

ICA outcome: The ICA said he felt the DVLA was conflating not doing anything wrong with providing good customer service. He was content that Mr AB was entitled to try to minimise his outgoings and that the information on gov.uk was not helpful. He did not uphold the complaint as the DVLA could not offer a refund of tax properly set by the Chancellor. But he recommended a modest consolatory payment and that his report be shared with the Director of Operations.

An eye-watering annual VED bill for an ex-diplomatic vehicle

Complaint: Mr AB bought an ex-diplomatic car and was warned by the vendor that it came with a very high tax rate (£660 per year at the time). Mr AB had run a similar car, of a similar age and paid slightly over half that amount in VED. He produced evidence that the vehicle had been used in the UK in the five years before its registration by the DVLA in support of his argument that it should have been taxed not at the pricey 'M' but at the preferential 'K' category as a high CO_2 emitting vehicle, as his previous car had been. He provided a homologation certificate obtained from the manufacturer in support of his case.

DVLA response: Eventually, the DVLA explained that cars exceeding CO_2 emissions of 226g/km had needed to be registered for the first time with the DVLA before 22 March 2006. If registered before that date, they would benefit from class K VED banding, representing a considerable discount over identical cars registered after that date. Mr AB's car had been logged by the Agency as in diplomatic use prior to its 2011 presentation for first registration under the Vehicle Excise and Registration Act 1994 (VERA). During its period of diplomatic use (from new until 2011) it was not considered as registered for the purposes of VERA. On first registration in 2011, it was therefore many years too late to

benefit from K categorisation, instead attracting the very high M rate. (The DVLA had lost some of Mr AB's paperwork, and sent compensation to the wrong address. In total it made him goodwill payments of £150.)

ICA outcome: The ICA established that the assigning of the M VED category had been correct, if anomalous in Mr AB's experience. He criticised the time it had taken for the DVLA to fully answer Mr AB's challenges. Mr AB reflected during the review process that his complaint was directed to legislation and policy rather than customer service and he made the decision to sell the car. The ICA regarded Mr AB's decision as prescient as he could not uphold the complaint.

Vehicle repairs turn into a saga leading to a penalty for not paying tax

Complaint: Mr AB handed over his elderly vehicle for extensive repairs that, unfortunately, dragged on for many months. In this time his MOT, followed by tax cover, expired. He had expected the garage to resolve this but it did not do so. Eventually, a month after the expiry of tax, the car was MOTed. Mr AB was unable to backdate tax to the beginning of the previous month. The DVLA issued a late licensing penalty that was pursued up to debt collecting agency level. Mr AB complained that the DVLA systems had prevented him from paying arrears of tax. He did not think that SORN should be declared while a vehicle was in the garage (as advised by the Agency in its responses). He regarded enforcement as the product of defective systems.

DVLA response: The DVLA insisted that Mr AB should have notified SORN. It continued to escalate the debt that was being pursued by a DCA at the point of ICA review.

ICA outcome: The ICA echoed Mr AB's grievance about the proportionality of the enforcement over a £30 per year sum that he had already settled. The ICA was sure that all parties (including the taxpayer) would wish that complaints like Mr AB's could be resolved before his stage. He was critical of other aspects of DVLA handling. However, he thought that the Agency made a reasonable point that Mr AB should have notified SORN (the whole saga of the car being in the hands of the garage, in the end, exceeded six months). The Agency's system was deliberately set up to prevent keepers from settling tax arrears online. The ICA was of the view that Mr AB could have telephoned and sorted this out, and that he had an opportunity to do so in the weeks after getting the MOT in place, before the irreversible enforcement machinery was triggered. As the enforcement had been pursued in line with policy, the ICA, although disapproving of it, was unable to uphold the complaint.

A keeper is stung by the law on tax refunds under the first licence rate scheme

Complaint: Mr AB bought a wheelchair accessible vehicle (WAV) for his father who was terminally ill. Regrettably, his father died before using the vehicle. Mr AB had paid in

excess of £600 vehicle excise duty (VED) under the first licence rate scheme (intended to incentivise people to buy low-emission vehicles from new). He was therefore dismayed to receive £123 for the nine months of VED against the car at the point of his disposal of it. He complained that it could not be the policy intention to discriminate against people buying WAVs from the limited available range.

DVLA response: The DVLA explained the policy intention of the first licence rate that may differ from the annual VED rate. If a refund is due during the currency of the first year's licence, then it is paid on the standard VED rate unless the first year rate is lower than the standard rate (not the case here). The refund policy derives from legislation based on the lowest of the two sums defining the refund. The DVLA sympathised but explained that it could not vary the statutory rules.

ICA outcome: The ICA was also sympathetic but was satisfied that the DVLA's application of law and policy in the sphere of tax collection flowed from legislation and Exchequer policy. The correct sum had been paid to Mr AB and the DVLA, as an executive agency, had no leeway to vary or disapply the provisions. He did not uphold the complaint.

Bank of mum and dad has to settle a hefty enforcement bill

Complaint: Mr and Mrs AB disposed of their car to their son. The notification they sent to the DVLA did not arrive and the vehicle was still registered to them at their old address three years later. Their details were then provided to a parking company in relation to an alleged infringement of parking conditions. The notification of the intended enforcement was referred to them from their old address and they ensured that the car was then registered to their son. However, the enforcement was not resolved and the parking company continued to pursue it at the old address. This resulted in a County Court judgment against Mr and Mrs AB that had severe financial consequences as they were remortgaging at the time.

DVLA response: The DVLA explained that Mr and Mrs AB had been removed from the register after the parking company had begun the enforcement. No other requests had been received for Mr and Mrs AB's details. The DVLA was not responsible for the fact that the enforcement was pursued to their old address, and against them, as opposed to their son. The Agency made a poor service payment of £100 for an inconsequential clerical error.

ICA outcome: The ICA could not say that it was the DVLA's fault that out of date details were held on the record three years after the ABs had disposed of the car. He noted that there were mechanisms in place for disposing and newly registered keepers to chase up non-registration. The ICA was very sorry to read of the impact of the County Court judgment on Mr and Mrs AB but he could not establish a causal link between DVLA error and the family's losses. He did not uphold the complaint of unremedied injustice.

Untaxed car impounded and sold at auction for a pittance

Complaint: Mr AB's complaint followed the impounding of his car and its later disposal by the DVLA's agents, NSL, by auction. A month after this, NSL received the first appeal from Mr AB, by which time he was no longer keeper. He queried how a car worth £20,000–£30,000 had achieved a mere £7,500 at auction, given its condition and specification. He contested the basis of the enforcement and the DVLA's refusal to furnish him with information about it.

DVLA response: The DVLA held the line that the car had been left untaxed on the public highway and that Mr AB had been given every opportunity to avoid on-street enforcement and to recover the vehicle.

ICA outcome: The ICA was unable to uphold Mr AB's complaint because the DVLA and NSL had acted in line with the law in the disposal of Mr AB's car (and in the various deductions made from the sale price before Mr AB was paid out). Mr AB's other complaints were matters for consideration by the auctioneers who sold the vehicle.

Refunds of vehicle excise duty

Complaint: Ms AB complained about a refund of VED after she sold a car on the last day of the month. As the online notification system was not available after 7.00pm, the notification was in fact made the next morning. She said she had been anticipating three months refund of tax but only received two. She pointed out that the DVLA could take tax at any time but not refund it in the evenings. Other customers made similar complaints.

DVLA response: The DVLA told Ms AB (and other complainants on the same point) that it was tied by the legislation. It looked forward to the time when online notification was not time-limited but explained that this was for the good reason that its systems did not update in real time.

ICA outcome: The ICA told Ms AB and others that there had been no maladministration as the DVLA had applied the law on VED rebates. He also felt that the current restrictions on online transactions, while unfortunate, were not the result of maladministration.

Bad luck results in enforcement action

Complaint: Mrs AB complained about a clamping and legal action taken by the DVLA. She explained that the vehicle had been taken for a planned MOT (and hence was not required to be taxed). She provided evidence to show that the MOT had been cancelled while the vehicle was in transit. It had then been returned to the location where it had been SORNed. Unfortunately, it had been parked part on the road, part on the drive, and had been spotted by NSL and clamped. Mrs AB said this was 'bad luck' and there had been

unfairness as there had been no intention to do anything other than attend the MOT and re-tax the vehicle.

DVLA response: The DVLA said the clamping was lawful and the consequent legal action for the offence had been endorsed by a magistrates' court.

ICA outcome: The ICA said he could not overturn a decision of the courts. He also knew how strictly the law on vehicle tax and licensing is drawn and the DVLA were not acting maladministratively in applying it. For these reasons he could not uphold the complaint, notwithstanding his sympathy for Mrs AB. She had indeed been the victim of very unusual circumstances and a great deal of bad luck.

Serial failure to pay VED by direct debit

Complaint: Mr AB complained that the DVLA had cancelled his direct debit (DD) for road tax. He also challenged the action taken for unpaid tax.

DVLA response: The DVLA said it had cancelled the DD after two attempts to take payment had failed. It noted that this was in the context of a serial failure to pay direct debits over a period of time. The Agency also said its enforcement activity was correct.

ICA outcome: The ICA said he was content that the DVLA had to protect the DD scheme and that its policy of cancelling the right to pay by direct debit was appropriate and properly made known to customers. He did not uphold the complaint.

Case sensibly resolved without ICA review

Complaint: Mr AB complained about the DVLA's cancellation of a direct debit for VED for his vehicle when he enquired about a missing V5C. The DVLA had wrongly thought he was saying he had disposed of his vehicle. He was then required to pay for a full year's VED.

DVLA response: The DVLA had sent a new V5C. A £50 consolatory payment had been offered.

ICA outcome: The ICA approached the DVLA to see if the remaining dispute could be settled informally. Thus, in a phone call with Mr AB, the DVLA had apologised for the clerk's error (and the fact that the clerk had not double-checked Mr AB's intentions before cancelling the direct debit). This had all been fed back to the team involved to prevent any repetition. The consolatory payment was also increased to £100. Mr AB was content that this settled matters and the ICA was able to close the case.

(iv) : **OTHER CASES – DRIVERS**

DVLA rejects ICA recommendation to issue manual licence

Complaint: Mr AB complained that the DVLA had refused to issue him with a driving licence showing manual entitlement. He said he had passed his test more than 50 years ago when automatic cars were an extreme rarity and had only ever driven cars with a manual transmission.

DVLA response: The DVLA said that its historic records showed no sign of a manual entitlement. Mr AB was invited to submit evidence of his entitlement.

ICA outcome: The ICA corresponded with Mr AB and was able to present to the DVLA additional evidence (such as the date and location of Mr AB's driving test, and details of Mr AB's first car – which was never constructed with an automatic transmission). He invited the DVLA to issue a manual licence on the balance of probabilities. The DVLA declined to do so and wrote inviting Mr AB to submit evidence from a prescribed list – evidence the ICA felt Mr AB had no chance of supplying. However, in the circumstances, there was no more the ICA could achieve and he withdrew the case as discontinued.

Customer concerned to prevent identity theft

Complaint: Mr AB complained about the use of his full name in correspondence associated with the DVLA's medical enquiries. He said this was a breach of his data rights. He also complained about the advice he received from the DVLA's contact centre, the quality of written responses, and the fact he could not speak with their authors.

DVLA response: The DVLA said that its use of names and initials was not a data breach. It said the use of a single middle initial on driving licences was a security measure. The Agency did however accept that the service it had offered Mr AB was poor and had made consolatory payments totalling £250.

ICA outcome: The ICA listened to transcripts of calls to Mr AB and was content that they were appropriate. Like many customers, Mr AB was concerned to prevent identity theft, but the ICA could not adjudicate on the alleged data breach issue as this was a matter for the Information Commissioner. The ICA was also content the total of £250 as consolatory payment was appropriate and proportionate. For this reason, he did not uphold the complaint.

Customer wrongly revoked for three years

Complaint: Mr AB had been revoked many years ago under the New Drivers Act. Latterly, he had been convicted of other offences. Over the years, he had challenged the

convictions by way of appeal and statutory declarations. He said the DVLA had wrongly revoked his licence and sought compensation – variously at six and seven-figure sums.

DVLA response: The DVLA said that it had simply acted as a record keeper. But the Agency later acknowledged that Mr AB had been wrongly revoked for some three years.

ICA outcome: This was a very complicated story. The ICA said there was even some doubt that Mr AB had a valid licence when taking his practical test. However, the DVLA now acknowledged it had wrongly revoked Mr AB for a long period (this rested upon a legal issue which the ICA could not adjudicate upon) and this poor service required a consolatory payment. He recommended a payment of £750.

ID documents destroyed #1

Complaint: Ms AB complained about licence applications she had been making over many years. She said the DVLA had lost her personal ID and had not explained the procedure for her to reapply for her licence.

DVLA response: The DVLA denied that it had not explained the application procedure to Ms AB. However, while the Agency had repeatedly said that Ms AB's ID had been signed for on delivery, it came to light during mapping before the ICA referral that the documents had in fact been returned by the Royal Mail some seven months later (for reasons that were a puzzle) and then destroyed. The DVLA had made a consolatory payment of £450.

ICA outcome: The ICA said that there was no remaining injustice to rectify. However, it was clear that Ms AB was confused and uncertain about making a licence application, and he recommended that a dedicated member of staff should liaise with her personally to help her through the process.

A driver discovers that his entitlement had been quashed over two decades ago

Complaint: Mr AB complained that the DVLA had erased his driving entitlement under the New Drivers Act 1995 (NDA) without telling him. He also complained that the erasure was an error because he had not accrued six penalty points within the two-year probationary window provided in the NDA. He was critical of the DVLA for being unable to produce evidence of the first of the two convictions. At the time he had been exclusively driving work vehicles. He maintained that someone else must have accrued the offences because nobody had mentioned them at the time. He decided in the end to re-sit the driving test and, happily, passed the theory and practical just over a month after his case was referred to the ICA. He remained deeply aggrieved, emphasising the significant impact of being unable to drive and work. He said he had faced eviction and been unable to provide for himself and his children.

DVLA response: The DVLA maintained that records of the first offence had been routinely 'pruned' given the passage of time (well over 20 years). It could refer to the footprint of the court update, however, and provide details of the second offence. It emphasised that it is merely a registrar acting on notifications from the courts. For it to remove the offences from the record and reverse the NDA quashing, it would need court authorisation. The DVLA pointed to the fact that Mr AB had corresponded extensively on the matter some four and a half years previously – the quashing of his licence could hardly have been a surprise. It could do little more than reiterate the advice it had provided at the time.

ICA outcome: the ICA was satisfied that the DVLA had explained its position sufficiently, and provided documentary evidence to support its imposition of the revocation. He reminded Mr AB that he had indeed been informed of this four and a half years previously, and had not progressed a complaint at that stage. The ICA acknowledged the massive impact on Mr AB of the loss of his entitlement. However, he identified no error or omission by the DVLA sufficient for him to uphold the complaint.

VIEW DRIVING LICENCE (VDL) PROBLEMS

VDL #1: Incorrect record on VDL

Complaint: Mr AB's driving entitlement had been wrongly showing as revoked on its View Driving Licence (VDL) system and he had also been advised by the Agency not to drive. This was the result of the DVLA failing to update its records when Mr AB appealed against a driving conviction. Mr AB came within the terms of the New Drivers Act.

DVLA response: The DVLA had admitted its error and made a consolatory payment of £650. The Agency had also unsuccessfully explored with the sentencing court whether any legal remedy was possible. The Agency said that it would consider a claim for compensation for lost earnings but did not consider the evidence thus far provided to be sufficient.

ICA outcome: The ICA was content that the consolatory payment was in line with the guidance. He was also satisfied that the DVLA had insufficient evidence to warrant the payment of compensation. Indeed, at the time in question, Mr AB was only entitled to a provisional licence and was lawfully disqualified – leading the ICA to doubt that he could have carried out a driving job as claimed.

VDL #2: Inability to access VDL preventing someone from working

Complaint: Mr AB complained about the DVLA's View Driving Licence (VDL) service. Mr AB said he was unable to view his details and accordingly he and potential employers were unable to check for any endorsements on his driving licence. This was due to a marker being placed on his record in February 2023 that he was not told about (Mr AB was

entitled to full category A motorcycle entitlement having passed an A2 test two years earlier). Mr AB is an HGV driver and was unable to secure employment because he could not view his details online. He sought compensation.

DVLA response: The DVLA had acknowledged poor service and invited a claim for compensation. It had offered a consolatory payment of £50 for a failure to complete a SAR.

ICA outcome: The ICA said this was a sorry affair and he sympathised greatly with Mr AB. The ICA proposed a consolatory payment of £450, an apology, and that the DVLA should conduct a review to try to ensure that such circumstances could not recur for another customer. The ICA said he welcomed the DVLA's proposal to consider a compensation claim – which the ICA said was richly merited.

VDL #3: **Disabled driver who was the victim of crime unable to hire vehicle**

Complaint: Ms AB complained that she was unable to obtain information using the VDL system. It latterly became clear that she had been the victim of identity fraud with a licence in her name being issued to a person unknown living at another address. She had been badly affected by her experience and was unable to hire a disability car to take her elderly mother on holiday because of the VDL problem.

DVLA response: The DVLA had provided limited information about what it felt had occurred. It had acknowledged wrongly sending a letter to the fraudster's address and had made a consolatory payment of £350 for poor service.

ICA outcome: The ICA had every sympathy for Ms AB as the victim. He noted that the DVLA's standard correspondence had caused her additional distress and noted that, unlike many other organisations, the DVLA did not have dedicated victim support officers on its staff. Although he could not dictate the DVLA's staffing model, he recommended that a copy of his report be drawn to the attention of the Director of Operations. The ICA felt the DVLA's other actions meant there was no longer any injustice to remedy, and was satisfied that the consolatory payment was in line with the relevant guidance.

VDL #4: **Driver unable to work**

Complaint: Mr AB complained that he had been unable to work for a period because the DVLA could not provide him with a check code via the VDL system. He also challenged the entitlements on his licence. Mr AB sought £4,000 in compensation and accused the DVLA of racist discrimination.

DVLA response: The DVLA had said that it had provided a certificate of entitlement and that it was down to Mr AB's employer whether to accept this. It had acknowledged a glitch in the VDL system.

ICA outcome: The ICA said that he could not endorse Mr AB's claim for compensation as the DVLA had provided a document widely accepted at home and abroad in lieu of the VDL system. However, he proposed a modest consolatory payment of £200 for the inconvenience Mr AB had suffered. He did not see any evidence of racism in what had occurred and was content with the Agency's explanations of why the entitlement codes on Mr AB's licence had changed. However, the ICA counselled the DVLA that in its meetings with stakeholders the DVLA might remind them that the VDL system and check codes (on which they increasingly rely) may not be available through no fault of a particular driver and that alternatives are available.

Loss of Biometric Residence Permit #1

Complaint: Ms AB's lawyers complained that the DVLA had lost her Biometric Residence Permit (BRP) and that the consolatory payment totalling £500 made by the Agency was insulting. They claimed for over £8,000 to include their fees and Ms AB's potential loss of earnings without her BRP.

DVLA response: The DVLA had apologised for the loss of the BRP. It had made a consolatory payment and met Ms AB's Home Office fees. It said it would not pay compensation as there was no evidence that Ms AB would actually have found work. Nor would it meet legal costs as it had told Ms AB these would not be met.

ICA outcome: The ICA said Ms AB was the innocent victim of maladministration. He did not doubt the impact of a lost BRP on a vulnerable person with no relatives in this country and with mental health problems. He said the DVLA's explanations for not paying compensation or for legal fees were sound. However, the sum of £500 was at the very bottom of level 3 on the PHSO scale. Drawing upon a previous case where the DVLA had also lost a BRP, and with the benefit of a peer review, he recommended increasing the sum to £850.

Loss of Biometric Residence Permit #2

Complaint: Mr AB complained that the DVLA had lost his BRP when he applied for his provisional driving licence. He argued that it was discriminatory that foreign nationals had to supply physical documents that were vulnerable to loss.

DVLA response: The DVLA said that there was no certainty that the BRP had gone missing at the Agency. However, it took Mr AB at his word, met the costs of a replacement, made a

modest consolatory payment, and quickly arranged for a check code from the Home Office such that Mr AB's licence could be speedily issued.

ICA outcome: The ICA said he could not determine if the DVLA's policy was discriminatory or if a data protection impact assessment was required as Mr AB argued. These were matters for the Equality Commission and Information Commissioner respectively. The ICA said he had considered making a recommendation such that the DVLA should make the giving a check code the default position. However, he was aware that a digital process was to replace the physical BRP from 2025 onwards, meaning that BRPs should no longer be necessary or at risk of going astray. The ICA commended the DVLA's actions and concluded there was no remaining injustice to be remedied.

Exchange of foreign licence #1

Complaint: Mr AB complained that the DVLA would not exchange his Singaporean licence for a GB one. The Agency had in fact then lost the Singaporean licence, and failed to action a request from Mr AB to retain a call recording.

DVLA response: The DVLA said it could not exchange the licence as Mr AB had taken his driving test in India, with which this country did not have an exchange agreement. The Agency had made a consolatory payment of £150 for the lost document and offered to compensate Mr AB for any costs he incurred in replacing it. However, this was of no value to Mr AB as the Singaporean authorities would not issue him with a new licence as he was no longer resident there.

ICA outcome: The ICA spoke with Mr AB. It was clear that Mr AB accepted the legal position that an exchange was not possible. However, Mr AB hoped that his application for a provisional licence so that he could take his theory and practical tests could go through without further paperwork. The ICA agreed to make enquiries and the DVLA exercised commendable flexibility in agreeing to this. The ICA also increased the consolatory payment in light of the Agency's failure to check and retain a call recording as Mr AB had requested.

Exchange of foreign licence #2

Complaint: Mr AB complained that the DVLA would not exchange his overseas (African nation) driving entitlement for a GB one. He said he had lost his original licence but had been told that a Certificate of Entitlement (CoE – in effect a pass certificate) would suffice. However, on providing the CoE his application was rejected. Amongst other things, Mr AB said the information on gov.uk was not up to date and made no reference to the need to have both a licence and CoE in order to exchange the overseas licence.

DVLA response: The DVLA said its policy was now to require both a licence and CoE for exchanges with documents from Mr AB's home country. It said this was necessary as the normal checks were not possible as it was difficult to get information from that particular overseas authority. The Agency accepted that Mr AB had been given incorrect information by its contact centre and had offered a consolatory payment of £50.

ICA outcome: Although not a lawyer, the ICA said he was content that the DVLA's policy which had been introduced in March 2023 was lawful, as the Secretary of State had a wide discretion as to the documentation he required to exchange a foreign licence for a GB one. However, the communication of this policy – both to Mr AB and generally – was very poor. He recommended that the DVLA consider what changes to make to its internal and external communications about exchanging licences from Mr AB's country of origin. He also increased the consolatory payment to £250. However, he told Mr AB that he did not warm to his comments about female staff.

No title on licence

Complaint: Mr AB complained that the DVLA had sent him a driving licence with the title 'Mr' when he had specifically asked for no title. He said his preferred title was Br for Brother. He also wanted additional words added to his signature on the licence.

DVLA response: The DVLA had apologised and offered a consolatory payment. It had also said that it did not regard the additional words as forming part of the signature and that it did not use the title 'Br'.

ICA outcome: The ICA said there was no remaining injustice for him to remedy.

Licence without preferred title #1

Complaint: Mr AB complained that the DVLA would not issue him a driving licence with his preferred title or with his preferred signature (which consisted of a statement) or with a colon instead of a middle name or initial. He accused the DVLA of malfeasance.

DVLA response: The DVLA had explained its policy and the statutory framework. It had offered a consolatory payment of £200 for a failure to provide Mr AB with call recordings under a subject access request.

ICA outcome: The ICA said that the DVLA's approach to licence applications was the outcome of policies rather than the direct requirement of the legislation. Nevertheless, he did not believe there had been any maladministration in the application of those policies. If Mr AB believed there had been malfeasance, etc. he would need to take legal advice.

Licence without preferred title #2

Complaint: Ms AB complained that the DVLA had wrongly issued her with a licence with the title Miss rather than her preferred Ms. She further complained about the DVLA insisting she return her licence for disposal – she said this risked her personal data and she and other customers would prefer to destroy the licence herself. She also criticised the design of the licence.

DVLA response: The DVLA had apologised for its mistake re the licence. It said requiring customers to return old licences helped prevent their misuse, but in Ms AB's case she would be allowed to destroy the licence. At the ICA stage, the DVLA identified that it had not been fully explained why and how the driving licence had changed post-Brexit and a consolatory payment of £100 had been made.

ICA outcome: The ICA said there was no remaining injustice to remedy and did not uphold the complaint.

DVLA's reliance on payable orders

Complaint: Mr AB complained that when his partner SORNed her car the DVLA did not refund her tax. He criticised the DVLA's reliance in payable orders and not using the BACS system.

DVLA response: The DVLA had acknowledged that the payable order had been sent to the wrong bank. It had remedied the problem and made a consolatory payment of £50.

ICA outcome: The ICA felt there was no remaining injustice to remedy. He said he shared Mr AB's hope that the DVLA could adopt the BACS system for payments (work on this is under way), but he could not formally recommend changes to the Agency's payment procedures. The reliance upon payable orders (cheques by any other name) was not maladministrative. The only maladministration in this case was in sending the payment to the wrong bank (paradoxically, in an attempt to ensure Mr AB's partner received the refund while she was out of the country and unable to pick up her own post).

Postcode lottery results in lost documents

Complaint: Mr AB complained that the DVLA had lost his licence and Biometric Residence Permit (BRP) when declining to exchange a foreign licence for a GB one. He said the DVLA would not accept responsibility for its errors.

DVLA response: The DVLA had repeatedly said that it had followed correct procedures. It acknowledged that the documents had been sent to the wrong postcode but implied this

was because Mr AB had made a mistake on the application form. It did however make a consolatory payment for mishandling his complaint.

ICA outcome: In the absence of the application form, the ICA acknowledged that he could not be certain what had occurred. But he thought it incredibly unlikely that Mr AB had chosen another postcode where there was a similar address to his own. He thought it much more likely that he had not included a postcode and the DVLA system had found one (that was incorrect). DVLA efforts to regain the documents had not been answered (perhaps because the address was incomplete and they could not be delivered by the Royal Mail). The ICA was very critical of the DVLA's handling. No attempt had been made to contact the Royal Mail. The clerk and manager involved had not been asked for their recollections. Statements had been made to Mr AB that could not be justified. He recommended that enquiries be made with the Royal Mail, that the information on gov.uk be updated to explain why applications like Mr AB's were being rejected, and that the consolatory payment be increased. This was one of the most interesting 'missing documents' cases the ICA had seen, and one where he had adopted a forensic approach.

Tracked mail goes missing at DVLA

Complaint: Ms AB complained about difficulties she had faced in renewing her driving licence.

DVLA response: The DVLA had explained that Ms AB's initial application had been rejected as she had not enclosed her most recent licence. The Agency had offered a £100 consolatory payment for poor service (delays and indifferent advice from the contact centre) and had agreed to waive the application fee and for the Complaints Team to handle the application personally as a priority. Ms AB had rejected the offer and appeared disinclined to submit any further licence application.

ICA outcome: The ICA was able to share a Royal Mail tracking number for one of Ms AB's application but the Agency said they could not trace the item. Given this further poor service, the ICA invited the Agency to increase its consolatory payment to £250. When this was agreed, and given the other actions agreed by the DVLA, the ICA felt there was no more he could achieve. He therefore closed the case as a Quick Resolution. (A curious affair. Ms AB had enclosed a licence she had previously claimed not to have received.)

Renewal of photo licence

Complaint: Mr AB complained about his new photo licence. He said that as a result of renewing early he had lost 42 days.

DVLA response: The DVLA had said that by law licences could not be for longer than 10 years and it could not post-date the ones it issued. In addition, the reminders were sent out 56 days in advance of the expiry of the current licence.

ICA outcome: The ICA agreed that the currency of driving licences was a matter of law. He was also content that customers were advised that new photo licences (which differ of course from the entitlement to drive itself) run from the date the renewal is transacted. He could not uphold the complaint, therefore. However, the ICA was surprised that the DVLA had not listened to the recording of a phone call that had been criticised by Mr AB. He recommended that the DVLA locate and listen to the call and, if necessary, write to Mr AB with their observations.

Exchange of Canadian licence

Complaint: Mr AB complained about the difficulties he had faced in exchanging a Canadian driving licence for a GB one. He said the DVLA had provided conflicting information and failed to exchange on the basis of a valid Canadian document he had supplied.

DVLA response: The DVLA had said it could not exchange the Canadian entitlement because it had expired. Mr AB could only have a new provisional entitlement.

ICA outcome: The ICA could not provide Mr AB directly with what he required. There was no doubt that the Canadian entitlement had now expired. But his review had revealed serial mishandling by the DVLA. He recommended a consolatory payment of £350. More importantly, he proposed that the DVLA establish a single point of contact for Mr AB with the aim of using his Australian test pass as the basis for a successful exchange. The ICA said that the DVLA had acted as the bureaucratic enforcer of rules rather than as a customer-focussed organisation doing all it could to get people on the road – in their interests and that of the country as a whole.

CDs no longer in use

Complaint: Mr AB complained that the DVLA had not provided phone recordings in a form he could access and thus failed to recognise his special needs. He said he did not possess a CD player and thus could not play the disks the DVLA had supplied.

DVLA response: The DVLA initially said that because of the file size the recordings could not be provided in any other format. It later successfully provided the call recordings as MP3 files.

ICA outcome: The ICA initially invited Mr AB to withdraw his complaint as it had been resolved. However, Mr AB said it should not have taken this long. The ICA agreed – he was

himself regularly sent call recordings by the DVLA as MP3 files. While the lack of ownership of a CD player was not a protected characteristic, the ICA said the grievance should not have taken so long to resolve. However, he agreed with the DVLA that the threshold for a consolatory payment was not met.

DVLA rejects ICA recommendation to offer redress for poor service

Complaint: The DVLA was informed that Mr AB had been disqualified under the totting-up procedure. Mr AB then made a statutory declaration and the DVLA was notified that the disqualification should be lifted. The DVLA removed it from his driving record seven calendar days later. Mr AB claimed compensation from the DVLA as he was unable to work for these seven days.

DVLA response: The DVLA had declined to pay any compensation. It said its target was to act upon court notifications within three working days but had actually taken five days for reasons of 'current workload'.

ICA outcome: The ICA said he did not believe the target of three days was maladministrative but he was surprised it was not publicised in any way. He made a recommendation in this regard. However, notwithstanding that it appeared an initial error might have been made by the court (this was not clear from the paperwork), the term 'current workload' did not mean that taking five days was acceptable. He therefore recommended the DVLA pay Mr AB for either one or two days lost earnings (depending on whether a mistake had or had not been made by the court). Regrettably, this was rejected by the DVLA who would now need to write to Mr AB to explain why a recommendation from the independent tier had been rejected.

Mistake by HMCTS cannot be remedied

Complaint: Mr AB complained about a disqualification from driving following a conviction for drink driving. He said the DVLA should reduce his ban by the 134 days he had been mistakenly informed by the court that he was banned (when in fact the ban had been suspended by the Crown Court as he was appealing against conviction).

DVLA response: The DVLA said that it was simply a record keeper. It could not reduce the disqualification without an express order of the court. Although the court had asked the DVLA to consider doing so, the court itself acknowledged that it had no power to rescind the suspension of the ban after it had expired, and no power but to disqualify for 12 months (less any period for a drink driving course).

ICA outcome: The ICA acknowledged that Mr AB in effect was serving a disqualification of 14 months when the judicial intention (in line with the legislation) was that it should be nine months. However, any error on the part of the magistrates' court in wrongly

informing Mr AB that his suspension remained in place – despite it having been lifted by the Crown Court – was a matter for the HMCTS complaints procedure. The ICA did not think the DVLA had acted maladministratively, and the Court had confirmed to the ICA that its 'direction' to the DVLA had been on the basis that the DVLA had discretion. Absent such discretion, and given that the court itself had no power to reduce the statutory 12 month ban, there was nothing that could be done – notwithstanding the evident unfairness to Mr AB.

'Lost' motorcycle entitlement #1

Complaint: Mr AB complained that the DVLA unreasonably refused to register his motorcycle entitlement despite having previously indicated that it would accept a sworn affidavit that he had held a full motorcycle licence.

DVLA response: The DVLA had been corresponding with Mr AB for nine years. It could find no trace of any record of a motorcycle entitlement in its microfiche and electronic records. Its assumption was that Mr AB had not provided his old local authority 'red book' licence within the 10-year window for conversion in the mid-1970s. The DVLA explained the law and historic transitional arrangements for the transfer of driver records from local tax offices/authorities to Swansea. In the absence of documentary evidence of the entitlement, the Agency informed Mr AB that he would have to pass a motorcycle driving test.

ICA outcome: The ICA was sympathetic to Mr AB's case and, having read the papers, did not doubt that he had held the entitlement. However, DVLA's requirements for evidence were a matter of established policy. In the absence of any documentary evidence to support Mr AB's case, the ICA did not consider it maladministrative that it required him to pass a driving test, however absurd that requirement felt to Mr AB. He could not uphold the complaint.

'Lost' motorcycle entitlement #2

Complaint: Mr AB insisted that he had passed his motorcycle driving test in the late 1980s. Some 15 or so years later, when issued with a photocard licence, he noticed that motorcycle entitlement was not on it. His representations over the following dozen years were considered in 2017 by an ICA. The ICA reported that the DVLA had found anomalies in some of the documentation that Mr AB had put forward. Crucially, the Agency could not marry Mr AB's evidence with microfiche copies of the driver record. The DVLA's approach to Mr AB's requests for motorcycle entitlement therefore hardened; it would only accept original documentation. Five and a half years after the first ICA review, Mr AB approached the ICA with further evidence. This included material from his local police force seeming to confirm that he had repeatedly presented a DVLA-issued licence containing category A motorcycle entitlement when required to do so following alleged

motoring offences. He also shared a document from a senior police officer stating that Mr AB had repeatedly produced a substantive motorcycle entitlement when required to do so.

DVLA response: The DVLA maintained that there were significant anomalies in key items of evidence produced by Mr AB that called into question the integrity of his case. It also reiterated, after further searches and senior managerial review, that the evidence in its totality was insufficient to support motorcycle entitlement.

ICA outcome: The ICA emphasised that he was not empowered under the Road Traffic Act 1988 to issue a driving licence on behalf of the Secretary of State. He considered whether the DVLA's responses to Mr AB's challenges had been reasonable. In doing so, he noted the valid reservations the Agency had about aspects of Mr AB's evidence. The ICA added his own comments on apparent inconsistencies. On balance, the ICA thought it more likely than not that Mr AB had been licensed and somehow his entitlement had been lost to the system. However, he could not find the DVLA's requirements maladministrative given the lack of evidence on its microfiche systems to triangulate against the material that Mr AB produced. He did not therefore uphold the complaint.

Passport Office changes have consequences for DVLA customers

Complaint: Mr AB complained that he was unable to apply online for his post-70 licence. He said his wife had faced the same problem 18 months previously and said the DVLA's systems were not fit for purpose. He also said the information on gov.uk was misleading.

DVLA response: The DVLA had explained that it could no longer upload digital signatures from HM Passport Office records. It said it hoped to apply its own digital solution in due course. This was in testing phase but the Agency could not give a timetable for implementation.

ICA outcome: The ICA sympathised with Mr AB but the DVLA was not responsible for the Passport Office's changes. He looked forward to the time an alternative digital solution could be found and hoped Mr AB's complaint would be a spur to that. The ICA said that, one mishandling of the correspondence aside, there had been no maladministration by the DVLA. He had considered whether to recommend changes on gov.uk but he accepted the DVLA's view that it did not want to do anything to discourage customers from using digital channels. In any event, changes to gov.uk took time and were not in the gift of the DVLA.

The DVLA declines to insert a changed name in the honorific section of a licence

Complaint: Mr AB complained that the DVLA would not add his first name (an honorific associated with the nobility) to the title entry on his driving licence.

DVLA response: The DVLA said its policy was not to use titles that had been purchased (in this case, it appeared the name had been changed by deed poll).

ICA outcome: The ICA said this was a matter of DVLA policy on behalf of the Secretary of State over which he had no jurisdiction. He had not seen Mr AB's licence but if there was anything showing in the title field it could be removed, but the requested honorific could not be added.

Misleading wording on postbox

Complaint: Mr AB complained about the signage on a postbox outside the DVLA offices in Swansea that he said was misleading. He also criticised the refund of VED he had received, and revisited a previous complaint about the release of his data to a private parking company.

DVLA response: The DVLA had explained the law on VED rebates, and said that neither the PHSO nor ICO had taken forward the data complaint so that matter was closed. It said that Mr AB's views on the wording on the postbox had been drawn to the attention of the relevant department.

ICA outcome: The ICA did not uphold the complaint. He said the question of VED rebates was set in legislation, and the data release issue was now closed. However, he shared Mr AB's view that the wording on the postbox was potentially misleading and recommended that his views be shared with those responsible. The DVLA latterly confirmed that this was being taken forward.

(v) : OTHER CASES – ACCESS TO DATA

A driver unhappy that his data had been passed to debt collectors by a parking company

Complaint: Mr AB was ticketed on three occasions by a private parking company. After enforcements had been directed to him, he complained that the DVLA had, first, disclosed his data in the absence of reasonable cause, and second, failed to act on clear evidence that the private parking company had passed his data onto debt collectors. Mr AB argued that this was contrary to KADoE (the keeper at date of event – the contract that recipients of keeper data must adhere to in order to have access to data through the DVLA's electronic portal).

DVLA response: The DVLA provided details of each disclosure, along with the basis (the investigation of potential keeper liability and the pursuit of outstanding charges). It referred Mr AB to government initiatives in improving public confidence in private parking arrangements. The DVLA regarded the provision of Mr AB's details to debt collectors as

within the overall reasonable cause mandating data disclosure. It outlined the regulatory framework attached to the private parking regime.

ICA outcome: The ICA referred to the June 2022 Information Commissioner opinion confirming the legitimacy of data disclosure to car park management companies to recover fines. He was satisfied with the DVLA's explanation that the disclosure of Mr AB's data to debt collectors was within KADoE and the legal framework. If Mr AB had evidence that the liability matter had been settled in his favour definitively, then he needed to get it on the table. As presented to the DVLA and the ICA, Mr AB's case was simply a difference of opinion with the parking company as to his liability. The ICA did not uphold the complaint.

Fog on the Tyne

Complaint: Mr AB complained about the DVLA's release of his data to the company running the Tyne Tunnel (TT2). It was not in doubt that his number plate had been misread by an ANPR for one that had used the tunnel without payment and this mistake had not been picked up manually either. Mr AB said this was a breach of his personal data.

DVLA response: The DVLA said that the release of data under a KADOE was lawful under Regulation 27. In the event of any errors it expected the authority to whom data had been wrongly released to correct the problem immediately. The DVLA was satisfied that this was what TT2 had done.

ICA outcome: The ICA said he was not a lawyer but he was content that the release of data had been lawful. He noted that the ICO had audited DVLA procedures and was content that they were compliant with data protection law.

Change of keeper causes controversy

Complaint: Mr AB complained that the DVLA had registered his vehicle to someone else. He also complained that the DVLA would not release data from its register that he said would enable him to trace the person he accused of taking his vehicle without permission.

DVLA response: The DVLA said that it had received a V62 application and had followed its standard procedures of contacting Mr AB as the existing keeper where no notice of disposal had been received. The Agency said that the police were treating the matter as a civil dispute and not as theft. It was clear that Mr AB was no longer in possession of the vehicle and therefore not its keeper.

ICA outcome: The ICA sympathised with Mr AB for the loss of his vehicle (that had been stored on land by a friend, now deceased). But he was content that the re-registration was in line with the law. However, the ICA was critical of the DVLA's correspondence and its

failure to explain why the request for data had been declined. He part upheld the complaint and recommended an apology.

(vi) : OTHER CASES – EQUALITY ISSUES

Disparity in treatment of disabled and able-bodied customers

Complaint: Mr AB complained about (i) DVLA processes in relation to the 50 per cent VED reduction for those in receipt of PIP, and (ii) the service he had received from the DVLA.

DVLA response: The DVLA had explained its procedures. It had mistakenly refunded Mr AB the full rate of VED but chose not to reclaim it. The Agency had also made a small separate consolatory payment for poor service.

ICA outcome: The ICA was limited in what he could say about VED and PIP. He could not design the DVLA's systems for it nor mandate its investment and IT priorities. However, he noted the DVLA's acknowledgement that there was a 'disparity' in the treatment of disabled and able-bodied customers. There was a system limitation that the DVLA's Chief Executive had expressed her frustration to the ICAs about. The ICA was impatient to see a remedy to the problem. In respect of service issues, it was clear that there had been some failures – a poorly drafted letter and the failure to deliver a promised manager callback amongst them. But he also noted good service – including a decision to provide Mr AB with paper copies of the V10 form in the future. Having listened to a series of phone calls, the ICA noted that Mr AB himself could sometimes be less than considerate, whatever his frustrations. Looking at the total paid to Mr AB (including the wrongful refund from which he benefited), the ICA was content this was consistent with the guidance on Level 2 injustice.

A customer reliant on assistive technology frustrated with DVLA communications

Complaint: Ms AB complained about the mis-registration of a vehicle belonging to a third party to her address, which had resulted in enforcement action from her local council being directed to her home. Ms AB had liaised with the council, who called the bailiffs off. The council's advice was that Ms AB should get the vehicle deregistered from her address. However, the council would not tell her the registration number and she would not open enforcement correspondence addressed to a third party. The DVLA did not, initially, deregister the vehicle, instead asking for the registration number. After a further month of liaising with the council, and going around in circles, Ms AB complained again. She added a second complaint that the DVLA had failed to abide by its Equality Act 2010 duty to make a reasonable adjustment in its communications with her, namely to send all communications in plain unformatted email (Ms AB relied on text reading software that frequently crashed if text was formatted or objects were embedded within it).

DVLA response: The DVLA promptly acknowledged the difficulties Ms AB faced but said it needed the registration number to act. Standard advice to liaise in the first instance with the enforcing authority was provided. A month later, after further communications from Ms AB, the DVLA involved a specialist team who were able to access the vehicle record and the vehicle was deregistered from Ms AB's address. Unfortunately, the DVLA sent its step 1 complaint response to Ms AB in the form of a PDF rather than plain text email. It apologised for this unreservedly.

ICA outcome: The ICA reproduced the DVLA's policies referring to its duties and commitments under the Equality Act 2010, noting the emphasis on preventing indirect discrimination and making reasonable adjustments. Ms AB had been under the impression that the DVLA had known about her need for adjustments for years, but the ICA could not substantiate this through a review of the documentation. With the unfortunate exception of the step 1 response, the ICA concluded that the Agency had acted in line with its disability policies. The ICA also accepted that the involvement of the specialist team had been exceptional. With hindsight, all would agree that the correction of the registration should have occurred at the first opportunity. However, the ICA was judging staff decision-making based on the information available to them at the time. The ICA found that the complaint responses were well written and sympathetic. He partially upheld the complaint on the basis that the PDF had been sent after Ms AB had made her requirements clear. For this he recommended a consolatory payment of £100. He noted with approval that the DVLA had offered, exceptionally, to ensure that Ms AB was notified directly should any vehicle be registered to her address in future by a third party.

3: DVSA casework

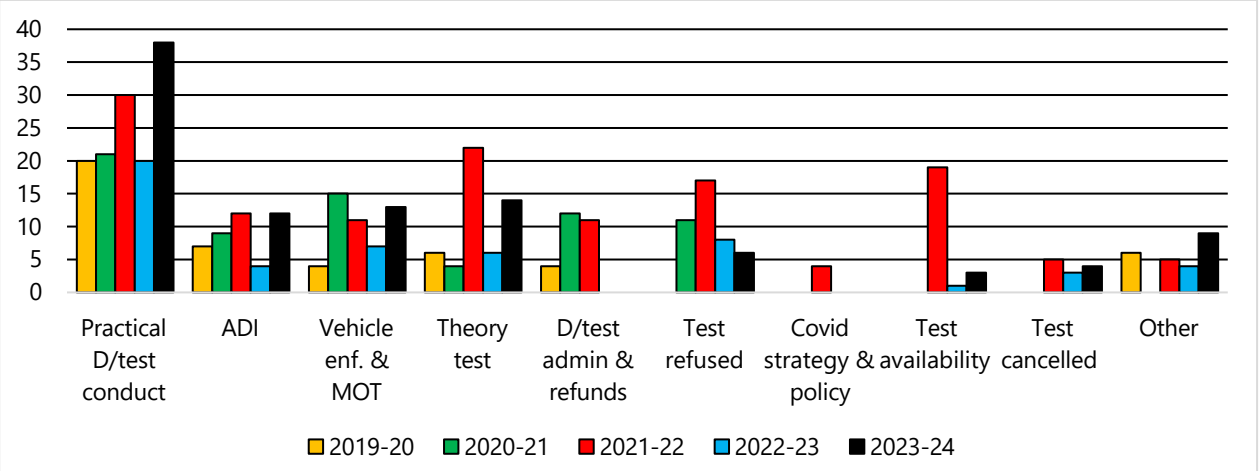
Incoming cases

3.1 We received 99 cases from the DVSA in comparison with 53 cases in 2022-23, a significant increase of 88 per cent. (By coincidence, we closed the same number.)

3.2 The vast majority of DVSA cases involve theory or practical driving tests. Given the costs involved and the well-publicised difficulties many candidates have faced in booking, it is hardly surprising that a failed test can be the trigger for a grievance. However, not even a court can overturn the outcome of a driving test, and we are careful to focus our attention upon the alleged conduct of a driving examiner not on their decision-making.

3.3 An increasing proportion of the complaints we receive about driving tests are from those training to become Approved Driving instructors (ADIs). Again, this is not surprising given the significant investment of time and money that such training requires, and the impact of failing the part 3 test three times (whereby candidates must retake parts 1 and 2).

3.4 In Figure 3.1, we chart the 99 incoming cases by main topic area, going back to 2019. **Figure 3.1**: **Incoming DVSA cases, 2019–2024, by main topic**[7]



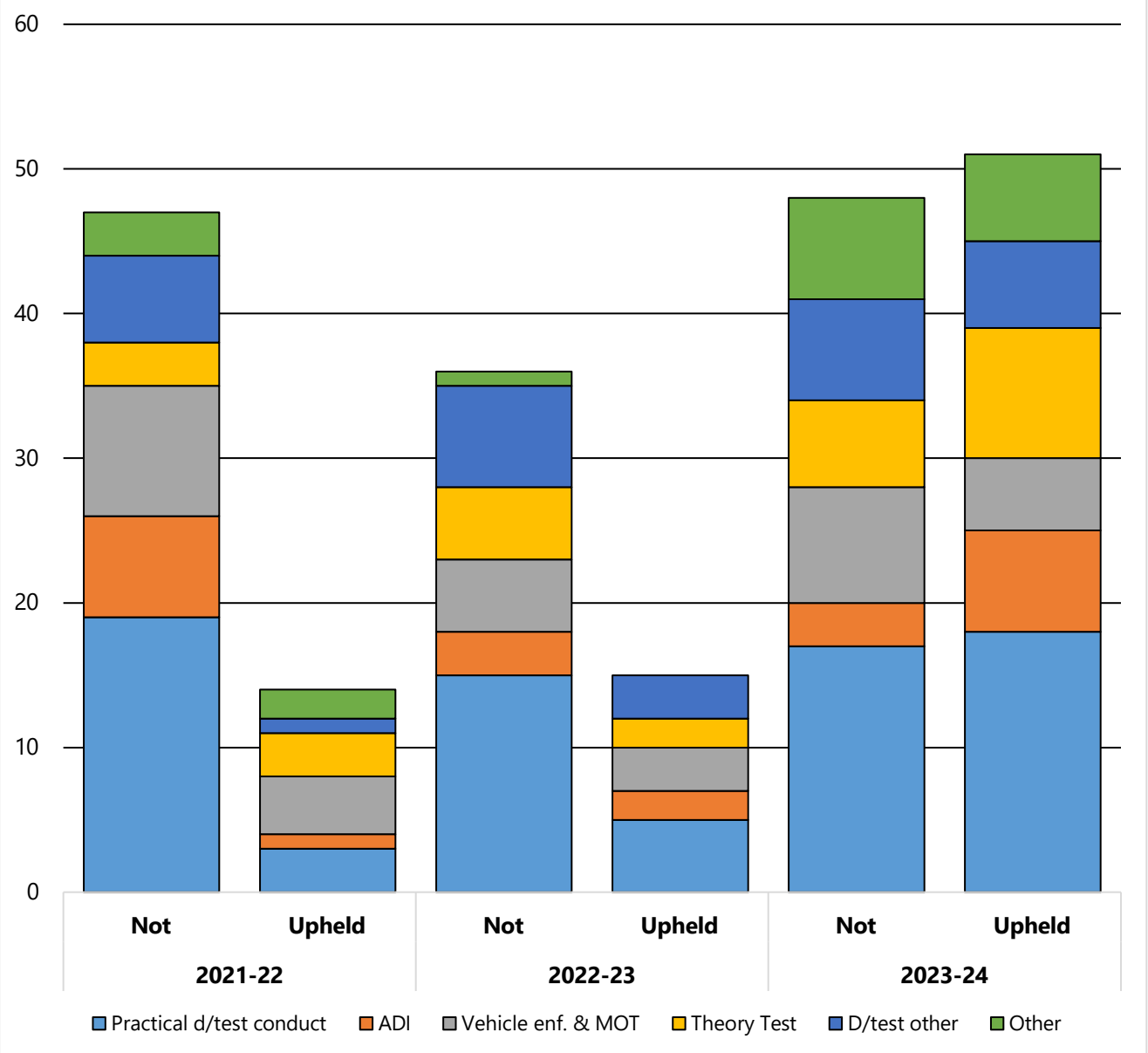
[7] **Practical d/test conduct**: complaints about the attitude, conduct and/or judgment of DVSA examiners; **ADI**: complaints brought by approved driving instructors or people being trained for the role, often related to the conduct of tests or the DVSA's oversight of the profession or the DVSA's regulatory 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.

Cases we completed

3.5 We completed 99 DVSA cases in the year, the overall outcomes of which are summarised in Figure 3.2, alongside outcomes for the previous four years.

3.6 The overall uphold rate for the DVSA (aggregating partial and full upholds) was 52 per cent, significantly higher than last year's 29.4 per cent, as well as the 33.2 per cent achieved by the other DfT public bodies combined, 2023-24. This hike in partially upheld cases reflects delays in the DVSA's referrals to the third ICA stage that were, happily, addressed effectively in the later months of the year. We present comparative figures for case outcomes going back to 2021 in Figure 3.2.

Figure 3.2: DVSA case completions by outcome for the past three years



Themes arising from DVSA casework

Discrimination complaints

3.7 We welcome the DVSA's success in recruiting more women and ethnic minority driving examiners. However, there remains an imbalance between the make-up of the examiner workforce and that of candidates (whether learner drivers or those training to become instructors). Allegations of racial biases in test conduct and outcomes are a feature of our postbag as 11 cases in the next section illustrate.

3.8 While we are generally cautious in reaching findings of fact in driving test cases, we have been critical of the DVSA's dismissal of complaints based on there being no evidence. We have reminded the Agency that racism is frequently covert; that biases may be unconscious; and that there is rarely any opportunity for candidates to gather evidence of examiner conduct, for example in the form of a recording (as recordings of tests are banned under DVSA policy). We have also acknowledged that such allegations may be hurtful for staff, and unfounded. Too often, however, we have found the reaction of staff (both the examiner and the investigating manager) to complaints to be defensive rather than reflective. At times, it has seemed to us that complainants have been told off for reporting racism 'without evidence'. We have found that a dismissive attitude, and superficial investigation, do not sit well with the Agency's claimed 'zero tolerance' approach to discrimination.

3.9 We are not persuaded that the DVSA or its theory test centre (TTC) partners always conduct sufficiently thorough investigations, particularly into discrimination allegations. And the ritual assertion that as civil servants all examiners adhere to the Civil Service Code and do not discriminate is unsurprisingly found unpersuasive by many complainants. In two cases we summarise, we were highly critical of the DVSA's investigations of complaints from candidates refused tests because they allegedly did not resemble their photocard licence picture ('*Alleged racism #6: The ICA is highly critical of the DVSA in a theory test ID check case*', and '*Another candidate refused on the ground of not resembling their photocard picture*'). In another, we were critical of the Agency for backing an examiner who had made assumptions about the driving skills of a candidate based on stereotypes about her heritage ('*Alleged racism #4: An examiner links driving deficits with country of origin*').

3.10 We balance our criticisms of TTC complaint handling with the recognition that DVSA management overseeing the sector has on occasion surpassed our recommendations in terms of improving services. Our recent visits to TTCs have given us further assurance that the suppliers are determined to learn and improve through complaints. The team preparing cases for us has also tried, heroically on occasions, to put right deficits in local investigations and provide remedies. But we have suggested that the Agency should have better systems for grading complaints within

its two stage local procedure. Discrimination complaints should be prioritised and given due weight well before our stage.

Policy on recordings

3.11 We remain of the view that the DVSA policy to refuse to entertain any video or audio evidence in the investigation of complaints is simply out of kilter with developments in every other walk of life. It is true that video evidence may not tell the whole story: for example, dashcam recording has the weakness of only showing forward and backward views, and may be of little assistance in judging matters (like the pace, position and signalling of other vehicles at a roundabout) that are sideways to the vehicle. However, this does not mean that dashcam footage is of no value (for example, it will clearly show the position of the vehicle in terms of lane alignment). In one case we commended the Agency for flexing somewhat, and revising its position, after we asked it to review dashcam footage (*'The Agency exceptionally reconsiders the circumstances of a fail after receiving dashcam footage'*).

Sanctions imposed on driving test candidates who are allegedly abusive to staff

3.12 The heightened pressures experienced by candidates and examiners in practical driving tests are perhaps reflected in the increased flow of complaints to us about the Agency's use of the 'HS1' policy (that we noted in last year's Annual Report – we summarise several cases in the next section). This is where an incident of verbal and/or physical abuse (typically a candidate targeting an examiner) is reported by staff on an HS1 form and investigated by management. Sanctions include the requirement to undertake future tests with a second (usually senior) examiner present. This necessitates a booking review marker (BRM) being placed against the learner's record. Candidates with BRMs are blocked from using the online booking portal. Candidates may also be barred from the driving test centre (DTC) where the alleged incident occurred.

3.13 The Agency discourages candidates from trying to learn potential test routes associated with a specific DTC. However, HS1 sanctions represent a significant setback to a candidate when the costs of learning are often already stretched over long intervals between difficult-to-book test appointments. There are no formal appeal mechanisms for sanctioned candidates (both sides, we are sure, hope that a test pass will obviate protracted further contact; however, that is not always the case).

3.14 Sanctioned candidates have complained to us that:

- their conduct has been grossly misrepresented and/or misinterpreted (on occasion, because of cultural factors)
- sanctions have been disproportionate

- notifications of sanctions have been delayed (sometimes the sanction, and on occasion the HS1 incident report, has arrived after the complaint)
- incident reports have been made in anticipation of complaints, rather than because the candidate has acted inappropriately
- managerial investigations have neither sought nor taken account of candidates' experience of events, and are biased in favour of employees

3.15 In the reviews we summarise in the next section, we found some of these criticisms to be valid. We have also asked candidates and examiners to reflect on their impact. On one occasion, after we asked the Agency to review an HS1 sanction, it removed the BRM; we welcomed this, and so did the candidate, whom we were satisfied had reflected on her actions. While we have been uneasy about the fairness of one-sided management investigations, and unappealable, unlimited restrictions, we have also been cautious in our comments. We cannot criticise the Agency for acting to protect its staff based on properly recorded, contemporaneous evidence (in several cases we have seen, the investigating manager has witnessed the conduct, and the impact). We have also been particularly mindful of the well-documented increase in the verbal and physical abuse of DVSA staff during and after the pandemic.

Complaints from candidates with hidden disabilities

3.16 We have over recent years reported increasingly on the increase in complaints from candidates disclosing hidden disabilities (in particular, neuro-divergence in the Theory Test Centre context). We report on several this year. At times, we have found that the DVSA and its theory test suppliers have relied too much on candidates choosing not to disclose neuro-divergence in advance. Staff behaviour towards candidates displaying and/or disclosing neuro-divergence in TTCs in particular, has too often been uninformed as to people's potential needs (for example, for a hood to be worn up to block extraneous stimulation). We have found that, on occasion, rules have been enforced unnecessarily and harshly.

3.17 As with some racism complaints, we have criticised the Agency for superficial responses that have relied on generic policy positions, rather than evidenced accounts of events. We have reminded the DVSA of the Ombudsman's *Carrying out the investigation* guidance.[8] Not every complaint requires the detailed investigation methodology prescribed by the Ombudsman. However, we reiterate, the DVSA should improve its grading of incoming cases to identify higher risk complaints before our stage.

[8] With its emphases on obtaining staff accounts, customer accounts, investigating thoroughly, and reaching clearly-expressed conclusions: https://www.ombudsman.org.uk/organisations-we-investigate/complaint-standards/uk-central-government-complaint-standards/uk-central-government-good-complaint-handling-guides/carrying-out-investigation

DVSA response to ICA comments

3.18 The DVSA told us that it is working on an action plan to review the issues raised within our annual report, specifically those identified in the themes arising from DVSA casework.

CASES

(i): **PRACTICAL DRIVING TESTS**

HS1 SANCTIONS

HS1 case #1: **A candidate indulges in primal screaming after a test refusal**

Complaint: Ms AB complained following the refusal of her driving test, on the grounds that her vehicle was too dirty and unsound for the test. She denied this and provided pictures. She described the examiner as rude, obstructive and dismissive. The examiner, meanwhile, made a report under the DVSA's 'HS1' (health and safety) procedure where they alleged hysterical and hostile behaviour from Ms AB, necessitating a police callout. This account was supported by other staff evidence that Ms AB contested. She had expressed her distress at the refusal but there was no grounds to request the police. She emphasised that she had not, at any time, been aggressive. She thought it likely that her appearance had led staff to make false assumptions about her background and lifestyle. She complained about the HS1 restrictions placed on her ability to book future tests.

DVSA response: The DVSA defended the judgement of its staff about the condition of Ms AB's car and the imposition of the HS1.

ICA outcome: The ICA explained that it was very difficult for him to resolve complaints that turned on one version of events versus another. However, it seemed to him that the DVSA's responses to Ms AB's complaint were reasonably based on contemporaneous evidence in the form of the examiner's assessment, supported by statements two other members of staff, and the Agency had been given no reason to doubt their professional judgement. As he was not persuaded that there had been maladministration on the part of the DVSA in relation to these matters, the ICA could not uphold Ms AB's complaint, nor recommend the reinstatement of her test fee.

HS1 case #2: **An angry candidate is excessively penalised**

Complaint: Ms AB complained that the examiner had betrayed unconscious bias at the beginning of her test and during it. Ms AB realised during the drive that she had failed the

test. She decided to carry on but complained that the examiner kept asking her whether she wished to go back to the centre. In the debrief, Ms AB objected vehemently to the feedback, in particular the suggestion that she had driven in front of a moving bus. The examiner became distressed and exited the debrief, going on to submit an HS1 incident form. As a result, Ms AB was blocked from booking future driving tests using the online portal and was required to sit in future with a second examiner present in the car. She complained that this was grossly unfair given the fact that she had not shouted or sworn, and that the DVSA's investigation into the incident had given no weight to her own account of events.

DVSA response: The DVSA explained the basis of the seven serious faults and why it had engaged the HS1 restriction on Ms AB's future bookings. She had been verbally aggressive towards the examiner who had been distressed as a result.

ICA outcome: The ICA could not adjudicate over the demeanour and performance of either the candidate or the examiner during and after the test. He noted Ms AB's account that the examiner was cold towards her after getting her name wrong. However, this did not sit with her statement that she had found the examiner cordial. The examiner's experience of that conversation was diametrically opposite. She said Ms AB had complained incessantly about every aspect of the test and blamed others for her difficulties. Nobody disputed that the fail had been correctly applied. The ICA found the examiner's, and her manager's, account of the impact of the debrief more compelling than Ms AB's. The ICA had no doubt that the examiner had been very distressed. The ICA asked Ms AB to reflect on her own personal impact. But he agreed with her that the fairness and proportionality of maintaining the HS1 restriction was debatable. There had been no shouting or swearing, or personal attack or threat. The ICA welcomed the DVSA's acceptance of his advice to lift the HS1. In other regards, the ICA was comfortable with the Agency's handling of the complaint (although he felt that the first stage had been rather prolonged).

HS1 case #3: **Different accounts of candidate behaviour after failing a driving test**

Complaint: Ms AB complained about the conduct of her driving test and the HS1 report that had been made about her behaviour by the driving examiner. Ms AB also complained that the DVSA had failed to investigate the examiner's report or her complaint about it, but instead put restrictions on her account. That meant she could no longer book a test on-line.

DVSA response: The DVSA was satisfied that it had acted appropriately, in line with its zero tolerance approach to acts of physical or verbal assault to staff.

ICA outcome: The Associate ICA was unable to comment on the conduct of the driving test as she was not present, and it was not recorded. She was generally satisfied with the

action that the DVSA had taken to manage Ms AB's driving tests going forward. However, she was concerned that the DVSA had not responded to an aspect of Ms AB's complaint and that action had not been taken to contact the driving instructor who had witnessed the relevant incident. As a result of that, the Associate ICA asked the DVSA to apologise to Ms AB and to place a note on her records to show that there was no independent evidence that she had insulted the examiner during the discussion that was witnessed by the driving instructor. Ms AB took her complaint to the Ombudsman, who declined to investigate it on production of the Associate ICA's records of her dealings with the instructor.

HS1 case #4: **Alleged attempt to bribe examiner**

Complaint: Ms AB complained about the HS1 restrictions placed upon her son following a practical driving test. She pointed out how inconvenient it had been – particularly at a time when driving tests were at a premium. She also reported that the family home had been visited by the police, although no further action had been taken. Ms AB said that no letter regarding the HS1 had been received from the DVSA.

DVSA response: The DVSA said that Ms AB's son had sworn at the examiner and offered a bribe to allow him to pass the test. It had speculated that the HS1 letter had gone missing in the post.

ICA outcome: The ICA said he was content the HS1 had been properly imposed. It was also DVSA policy to report attempted bribery (however gauche and unlikely) to the police – the later actions of the police were not a matter for him. The ICA criticised the delay in making the ICA referral but judged that no further redress was necessary beyond the apology offered.

HS1 case #5: **An examiner is alarmed by a candidate**

Complaint: Mr AB had lived in the UK for two years and was receiving support through a resettlement programme for refugees. Refugee advocates characterised him as vulnerable, and needing extra support in his daily life. The examiner reported that Mr AB had repeatedly asked her to make it easy for him so he would pass. Eventually, the examiner became intimidated and asked Mr AB to stop the car. She got out, at which point Mr AB pursued her, and tried to grab her. She said Mr AB was shouting and waving his arms. He only calmed down when he saw her switching on the body-worn camera. The examiner terminated the test. Mr AB presented at the test centre later with his instructor and two other men and said that he had apologised, and that the incident had been a misunderstanding. Once again, the examiner felt intimidated and told Mr AB and the others to back off. She made a report through the DVSA's HS1 procedure, and to the police. Mr AB, supported by his advocate, insisted that he had not asked for special treatment or help from the examiner, and that her interpretation of his behaviour on the day had been incorrect. He had not been able to articulate himself and was very distressed

by the outcome of the test, and by the characterisation of his behaviour. His support worker provided some of the traumatic background suffered by Mr AB prior to his arrival in the UK.

DVSA response: The DVSA insisted that Mr AB *had* acted aggressively, and that the restriction should remain in place. This restriction barred Mr AB from attending his local DTC.

ICA outcome: The ICA noted that, whatever Mr AB's intentions had been, he had repeatedly scared a member of staff performing her duties. While he had expressed considerable regret at the sanction, the ICA did not detect any empathy for the impact on the examiner from Mr AB. He could not criticise the Agency for acting on a contemporaneous report of a serious incident. He did not, therefore, uphold the complaint.

OTHER PRACTICAL TEST COMPLAINTS

The Agency exceptionally reconsiders the circumstances of a fail after receiving dashcam footage

Complaint: Mr AB complained that he accrued a serious fault in his practical driving test through examiner misjudgment. He had been failed for pulling out in the path of a motorcycle already on the roundabout, thereby causing that driver to sound their horn and take evasive action. His own dashcam evidence proved that the examiner had made a mistake (and that the DVSA's investigation had been flawed), but the Agency had refused to consider it. Mr AB insisted that the motorcycle had been in the wrong lane and had failed to indicate. He made wide-ranging criticisms of what he regarded as a corrupt and dishonest driving test regime, threatening legal action and self-harm.

DVSA response: The Agency repeatedly provided Mr AB with information about sources of mental health support. The LDTM interviewed the examiner and refuted Mr AB's complaints that the examiner's judgement had not reflected Highway Code provisions. A detailed response was provided at the second stage, emphasising that it was up to candidates to adjust to all road conditions, including erratic driving by other road users.

ICA outcome: The ICA was content that the matter had been subjected to a detailed investigation, and that the Agency's position had been properly explained. He echoed earlier ICA reservations about the DVSA's refusal to admit video evidence and asked Mr AB to send the clips to him (Mr AB did not do so until after the review). The ICA was pleased to note that Mr AB had been reminded of available support mechanisms. He did not initially uphold the complaint. After the ICA had concluded the case, Mr AB sent him footage of the roundabout manoeuvre. The DVSA reflected that it corroborated Mr AB's

account to a significant extent. Exceptionally, after further review by the LDTM, the Agency refunded Mr AB his test fees.

'Rude' examiner #1: **A 'cruel' examiner puts the candidate off and they fail**

Complaint: Ms AB complained that the cruel and unsympathetic attitude of the examiner had a significant effect on her performance. She could feel herself panicking and did not feel safe. She said the examiner had repeatedly spoken over her, raised his voice and shouted. She had tried to terminate the test but he had insisted that she finish. Afterwards, she had a panic attack.

DVSA response: The Agency's managerial investigation elicited a very different version of events from the examiner. He had not been unprofessional and harsh at all, in his own judgement, but rather it had been Ms AB's behaviour that had inhibited the process of the test. In response to Ms AB's complaint that this was unfair, and that her account should be given weight, the Agency waived its second stage and referred the matter directly for ICA review.

ICA outcome: The ICA expressed the usual reservations about his ability to resolve a complaint based on diametrically opposed accounts of examiner and candidate behaviour. He commended the Agency for conducting a good quality local investigation in which the views of the instructor had also been sought (unsuccessfully, regrettably). He was also pleased that the Agency had skipped its second stage as it clearly had nothing more to say. As in other cases, he recommended a £100 consolatory payment to reflect the fact that it had taken several months for the case to be referred for ICA review.

'Rude' examiner #2: **Another candidate traumatised by examiner attitude**

Complaint: Ms AB complained that, on two occasions, she was allocated an examiner whose manner was off-putting and intimidating, undermining her performance. She felt stared at, and the examiner had made no effort to calm or reassure her despite her clear manifestations of anxiety (including legs and hands shaking). On the second occasion, she had fluffed the reverse bay park exercise despite her proficiency over a two-year period in the manoeuvre. In the end, she was so intimidated and afraid, she asked for the test to be terminated prematurely. Because the Agency could not guarantee her a different examiner, Ms AB booked at a different test centre where she passed the test.

DVSA response: The examiner, supported by her manager, had not thought that the candidate was overly anxious, and flatly denied the depiction of her own behaviour.

ICA outcome: The ICA found Ms AB's depiction of the examiner's handling to be far more nuanced and persuasive than the account obtained in the DVSA investigation. Clearly the examiner had been unsuccessful in projecting the 'pleasant, outgoing approach' set out in the DT1 guidance as a technique for helping candidates relax. However, as in most other

driving test complaints, the ICA could not say whether the deficits described by the candidate were the product of failings in the examiner's approach, or simply an unavoidable lack of rapport in inevitably tense circumstances. He noted that some candidates preferred minimal interactions with the examiner so they could concentrate on the drive. Others valued a bit of light-hearted interaction. Examiners could not get it right every time. As in other cases belatedly referred for ICA review (on this occasion, it had taken nearly five months) he recommended that the Agency make a consolatory payment of £100 and partially upheld the complaint.

'Rude' examiner #3: **Another candidate deeply upset by examiner conduct**

Complaint: Mr AB sat three practical C+E driving tests at the same centre. He complained about the attitude of the examiner in tests 1 and 3 that had left him traumatised. He had found her manner, body language and attitude so hostile that he had abandoned test 3, pulling over in a layby on an A-road to be picked up by his instructor. He also disputed the examiner's judgement. He had found her whole approach completely debilitating. The impact was that he had been unable to sleep for days, resorting to medication. Her approach had cost him nearly £1,000 in fees, vehicle hire and lost income.

DVSA response: The DVSA subjected the complaint to a management investigation where the examiner gave a completely different account of her conduct. She had tried to chat to put the candidate at ease, but this appeared to be interfering with his concentration on the road and so she had confined her comments to instructions. The investigating manager noted her exemplary record of customer care, and that the account of her behaviour was completely at odds with previous performance management/appraisals. The Agency gave detailed accounts of the fails on tests 1 and 3. Happily, Mr AB passed test 4 but made it clear he wished to pursue his complaint given the traumatic prior events.

ICA outcome: It was particularly difficult to review Mr AB's case because the argument was not so much about what the examiner had said or done, but rather how she had spoken (in other words her attitude). The ICA noted that complaints about attitude were complex. This is because Person A's experience of Person B's attitude may be that Person B is being hostile. However, Person C may prefer the very direct and blunt approach of Person B, particularly in a driving test when they are fully focused on not only driving safely, but demonstrating that they are doing so. There were often cultural aspects, and examiners could not always apply the right approach to every candidate. The ICA found that the DVSA had reasonably accepted the outcome of a thorough local investigation. He could not reach any firm conclusions about the performance of Mr AB or the examiner, and so could not uphold the main part of the complaint. However, he noted the near-four month interval between the request for ICA referral, and the time the referral was made. For this he recommended a £100 consolatory payment.

'Rude' examiner #4: **Driving test one of the most 'bizarre' and 'unpleasant' experiences of the candidate's life, compounded by LinkedIn**

Complaint: Mr AB had found the examiner offhand from the outset. However, events took a dramatic turn during the drive after Mr AB had pulled over to the left, and been told to move off when safe. Mr AB said that there was static traffic behind him and he duly started to pull away. However, the examiner applied the dual brake, grabbed his wrist, squeezing him really hard, and shouted '*No no no!*' in his face, spitting at him in the process. Mr AB said that he was in shock. It had been difficult to book a test in the first place. He thought the examiner might have a mental health condition. In any event, he objected to his attitude, characterising his delivery of the fail outcome as 'smirking' and provocative. The examiner allegedly said that complaining would be a waste of time because his decision would never be overturned. The examiner had left the debrief mumbling insults, according to Mr AB.

DVSA response: The examiner denied making physical contact or spitting. Two months later, Mr AB renewed his complaint, having found that the examiner had access to his online profile on LinkedIn. Mr AB was fearful of victimisation, given the examiner's hostile conduct in the test. The DVSA apologised, and as a gesture of goodwill paid Mr AB a consolatory sum of £62. The examiner recognised that he had made an error of judgement and he apologised. Mr AB offered to settle the complaint at £400 but the Agency declined.

ICA outcome: The ICA could not adjudicate over either party's performance during the drive. However, he noted the partial denial of the complaint in the examiner's account. He concluded that the examiner probably had overreacted to what he regarded as a potential collision. The ICA judged that a raised voice was not a particularly professional response to the situation. The ICA also understood why Mr AB's perception of the examiner based on the test had exacerbated his anxiety about the examiner looking at his online profile. However, the ICA noted that information that was readily accessible on the Internet could not be said to have any quality of confidence. He did not agree with Mr AB that the examiner viewing his profile meant that he was corrupt. The ICA judged that the examiner's actions did not sit comfortably with the Civil Service Code provisions on integrity (but he could see no improper gain for the examiner in looking Mr AB up other than in satisfying his own curiosity). He felt that an additional £100 consolatory payment should be made in line with the Ombudsman guidance, as well as a further £100 for the significant delay in ICA referral.

Capability of vehicle presented at motorcycle test

Complaint: Mr AB complained about his failed Mod 1 motorcycle test. He said that his vehicle was built for economy, not power, and was unable to reach the required speed for

the hazard avoidance element. He asked for a refund of his Mod 1 and Mod 2 fees (he had booked the Mod 2 for the same day, anticipating that he would pass the Mod 1).

DVSA response: The DVSA said that it was Mr AB's responsibility to ensure that his vehicle could met the test requirements. It pointed out that he had reached the speed necessary for the emergency stop and could therefore have also achieved that for hazard avoidance. As a goodwill gesture, it had refunded the Mod 1 fee.

ICA outcome: The ICA said that he could not adjudicate on the technical issue of whether Mr AB's bike was capable of meeting the hazard avoidance speed required. He was content that the DVSA had provided Mr AB with helpful responses and that the goodwill gesture was appropriate redress. It had been Mr AB's decision to book the Mod 2 for the same day, and at his own risk. However, the ICA noted that the DVSA does keep a list of bikes that are not suitable for test and recommended that the Agency consider if this should be extended to cover smaller bikes.

'Temporary' warning light scuppers driving test

Complaint: Ms AB complained about the decision of the examiner not to proceed with her practical driving test. She said that a warning light that was showing in her vehicle was a feature that showed if rear seat belts had been locked and would have extinguished after a short period.

DVSA response: The DVSA said that it was its policy to cancel tests if vehicles were not roadworthy. An illuminated warning light was specifically cited in the information about using your own car at a test on gov.uk. The policy was to ensure health and safety and in these circumstances no refund was due. It was Ms AB's responsibility to ensure that her vehicle could meet the published requirements.

ICA outcome: The ICA was critical of the DVSA's investigation. The LDTM had quoted from the manual produced by an entirely different manufacturer and from a dealership's advice regarding air bags (that would be irrelevant if the examiner was correct about the light that was showing). The Agency had also failed to respond to Ms AB's allegation that she had been left alone in the car when the test was abandoned. There had also been the usual, regrettable delay in making the ICA referral. In the circumstances, the ICA recommended a consolatory payment equivalent to the forfeited test fee.

Poor investigation into complaint about practical driving test

Complaint: Mr AB complained that his son should not have been marked with a serious fault for driving slowly and being overtaken on a road where the national speed limit (60mph) applied. He also criticised the examiner personally and other examiners for being

patronising to younger drivers and encouraging them to drive too fast. He said the Highway Code made it clear that a speed limit was the maximum not a target.

DVSA response: The DVSA said it was content that the test had been marked fairly and conducted in line with the guidance.

ICA outcome: The ICA said that he agreed that driving too slowly could constitute a potential danger to the driver and other road users and was therefore a potential serious fault. However, he was concerned that the road markings on the A-road in question could have been obscured by vegetation (pictures on Google maps supplied by the DVSA suggested this) and he recommended that the Local Driving Test Manager (LDTM) assure themself that the route was a fair one and consider alerting candidates that the national speed limit applied. He was also concerned by the complaint handling. The LDTM and examiner had not been consulted initially (despite the DVSA letter saying that an 'investigation' had taken place), the same member of staff had issued two replies at stage 1 when it was clear Mr AB sought escalation, and the ICA referral was three months late. He repeated a recommendation that relevant staff should be reminded that complaints about examiner conduct always required input from the LDTM before they were answered.

Covid-cancellation does not give rise to free retest

Complaint: Mrs AB complained that the DVSA would not offer a refund or free retest for her son whose test had been cancelled at short notice after he tested positive for covid. She said she had acted in a responsible way by cancelling to protect the examiner from the virus and that the DVSA policy was not aligned with government guidelines. She said the requirement for a note from a medical practitioner was unreasonable and a more flexible approach was required.

DVSA response: The DVSA said that its policy had changed in June 2022 and it was now up to candidates to decide whether to cancel because of covid. It said its policy was designed to treat everyone equally.

ICA outcome: The ICA said that government and agency policy were outside his remit. However, he had continued his review to assist Mrs AB and the DVSA. He noted that government guidelines did not advise covid tests for young people unless proposed by a clinician. Mrs AB had therefore (albeit understandably) gone beyond those guidelines when testing her son. The ICA said he could understand the argument for greater flexibility (busy GPs etc were unlikely to spend time validating a covid test they had not ordered) but there were dangers in the more flexible approach Mrs AB advocated. The requirement for independent clinical evidence was also an anti-fraud measure (the danger of short notice cancellations being falsely attributed to covid). The DVSA decision was not unreasonable and neither was the decision not to make a refund.

Late arrival leads to cancellation of practical driving test

Complaint: Mr AB complained that the practical driving test booked for his daughter was cancelled by the examiner as she and her father were deemed to have arrived late. Mr AB said that – having gone to the former test centre by mistake – they had arrived some five minutes late, having tried unsuccessfully to ring ahead. They believed the test should have proceeded. They asked for a refund or free retest.

DVSA response: The DVSA said that the candidate was 10 minutes late. It could not allow the test to go forward and declined to pay a refund. The Agency explained that Mr AB had perhaps been unable to get through on the phone because, to try to clear the backlog, the LDTM had been taking tests.

ICA outcome: The ICA could not adjudicate on the factual elements, but it was not maladministrative for the DVSA to rely on the examiner's contemporaneous record. Nor was a grace period of just five minutes unreasonable given the pressure on test times and the impact on other candidates. However, the ICA was surprised to discover that the last written reference to a five minutes grace period was in a document issued nearly 25 years ago issued by the former DSA. He recommended that the DVSA consider if further guidance should be issued to examiners and made available to the public. The ICA did not want to encourage people to turn up late, but there were also the interests of transparency to consider.

A candidate refused on the ground of not resembling their photocard picture

Complaint: Mr AB was refused a practical driving test on the ground that he did not resemble the picture on his photocard driving licence. He complained that he had lost a significant sum of money, both in additional driving lessons in preparation for the test, and in the costs of the test itself. He had proffered his passport to the examiner, to no avail. The other examiner who double-checked his likeness had been in a hurry, merely glancing at him and rubberstamping his colleague's opinion. He had been allowed to sit tests at the same centre before and after the booking, with the same photocard, and no questions had been raised about his identity. If he was suspected of fraud, he asked, why was the matter not reported to the police?

DVSA response: The DVSA said that security checks were essential. The examiner had sought a second opinion from a colleague who agreed that Mr AB did not look like his driving licence picture. Such decisions were delegated to examiners on the day who were told they must refuse tests if they are not completely satisfied with the identification. Reducing candidate impersonation was a government objective. The DVSA had internal policies for reporting impersonation cases, hence the fact that the police were not involved.

ICA outcome: The ICA accepted that the staff on the day were best placed to form an opinion on whether Mr AB looked like the picture on his photocard licence. He noted estimations from the Agency that impersonation cases had trebled in five years (to over 2,000 in 2023). He did not find that the DVSA was liable for Mr AB's financial losses. However, he was disappointed by the complaint handling. The DVSA's responses had been informed only by the examiner's scant notes on the driving test form on the day. Mr AB's specific points, including that he had provided his passport, were not addressed. The matter should have been investigated by a local manager (comments were obtained from a manager only at ICA referral stage). This lack of local input was all the more pronounced in the ICA's view, because Mr AB's request for a conversation with local management had been refused. The ICA considered that there was a lack of accountability here, and that the Agency had fallen some way short of its ambitious customer service aspirations. He partially upheld the complaint, recommending that the DVSA take steps to ensure that refusal/impersonation complaints were properly investigated by local management, gathering information from the staff involved to address all of the points raised by the customer. He also recommended that the DVSA make a £100 consolatory payment to Mr AB in recognition of its poor handling of his correspondence.

(ii) : **THEORY TEST CENTRE COMPLAINTS**

Fanciful claim for compensation

Complaint: Mr AB complained about a driving theory test that he had intended to take several years previously. He said that his request for special measures had not been actioned. He asked for compensation of £2 million.

DVSA response: The DVSA said that it had no records belonging to its former contractor, Pearson Vue, and did not know what had happened. The Agency had offered to assist Mr AB with any new booking.

ICA outcome: The ICA said that he assumed the records had been destroyed when Pearson Vue lost the contract and that the DVSA would not have had cause to ask for them given the protections of GDPR. He dismissed the claim for £2 million. However, the ICA noted that the handling of Mr AB's correspondence had been very poor with long delays
(including at the ICA referral stage). Although some of this was out of remit as it concerned a SAR, he part upheld the complaint but made no recommendations.

The police attend a fracas after a late arrival

Complaint: Mrs AB complained on behalf of her daughter, Miss AB, that staff in a TTC had been hostile and sarcastic when Miss AB had unavoidably arrived two minutes late and learned that she was too late to take the test. Miss AB attributed the refusal to the forceful manner in which she had (accidentally) presented her licence. Her mother entered the test

centre and remonstrated with the staff. They asked Mrs AB to leave the building and both sides called the police. Mrs AB complained that she and her daughter had been greatly distressed by the experience. She was infuriated by the DVSA's characterisation of her conduct as being problematic, insisting that a staff member had smirked while shouting at her to leave the building.

DVSA response: The DVSA responses majored on Miss AB's lateness and the lack of capacity to fit her in. Candidates were reminded to present 15 minutes before the appointment time so that they could check in. The Agency ducked the attitude complaints.

ICA outcome: The ICA could not be sure of what had been said, and how it had been said. He was disappointed that the DVSA investigation did not seem to consider Mrs AB's complaint of a bad attitude and an unprofessional approach from the staff. He reminded the Agency that allegations of staff misconduct should be investigated with reference to evidence from the staff concerned, and management. The management investigation should also draw from what the manager knows of the staff member, including whether other similar complaints had been made about them. He asked that his comments be brought to the attention of TTC managers for future reference.

A theory test candidate's dad incensed by a question on First Aid

Complaint: Mr AB complained that the curriculum of the motorcycle and moped theory test unfairly exceeded the parameters of the Highway Code. His son had failed the multiple-choice by eight points. Mr AB highlighted a question about First Aid and signage intended for tram drivers as unfair questions. He asked that the fail be reversed into a pass or that his son be refunded the test fee. He was also concerned that candidates were being effectively encouraged to attempt First Aid when they might not have the appropriate training, thus potentially putting themselves and other road users at risk.

DVSA response: The DVSA initially provided a generic response saying that the test centre would look into the issues raised. Nothing then happened for four months until, after multiple chasers from Mr AB, the DVSA told him that all questions used in the theory test were based on three documents – *The Highway Code*, *Know your Traffic Signs* and *Riding – The Essential Skills*. The DVSA would not discuss specific questions, as questions and answers were not published (in order to protect the integrity of the test). The tram sign was in *Know your Traffic Signs* – candidates needed to be aware of all traffic signs. First Aid was covered in Annex 7 of the Highway Code. Apologies were offered for the poor initial response and for the delays.

ICA outcome: The ICA noted that the published advice (also available through the DVSA's helpline) clearly referenced the three documents. This is a matter of policy over which the ICA could not adjudicate. He noted that the First Aid information in the Highway Code was

carefully framed with expert advice and clearly intended to equip people arriving on the scene of an accident with key principles for protecting others and themselves. The ICA recommended a consolatory payment of £75 for delay.

A candidate with a dodgy theory test certificate demands a licence

Complaint: Mr AB asked the DVLA and DVSA to issue him with a full driving licence. Neither Agency was able to assist as he had not passed either part of the driving test. Mr AB complained that the theory test was rigged. He then claimed that he had passed the theory test in 2021, but that the pass had not been processed by the DVSA. He asked for this error to be corrected. In the meantime, Mr AB was able to book a practical driving test using the online booking system. This was cancelled, with the DVSA reiterating that it did not have a record of a valid theory test pass for him. He submitted copies of a numbered theory test certificate, insisting that the DVSA was acting in error.

DVSA response: The DVSA explained that the test certificate Mr AB had provided to them had not been produced by the DVSA. Its records showed that Mr AB had not passed a theory test.

ICA outcome: The ICA found Mr AB's claims improbable. He pointed out that there would have been no need for the Agency to 'process' Mr AB's theory test pass, because test pass certificates were issued by them directly. The ICA agreed with the Agency that it seemed unlikely that, had Mr AB passed his theory test in 2021, he would have continued to book, pay for and attend, a further five theory tests throughout 2022. The ICA dismissed the complaint.

Strike action means theory test expires

Complaint: Mr AB complained that his practical driving test had been cancelled at the last minute by the DVSA because of a strike by examiners. He said there was no time to rebook as his theory test would expire. He wanted it extended, plus compensation. Promised manager call-backs had not happened either.

DVSA response: The DVSA said that its advice was that candidates should still attend for a test as it could not be certain what impact the strike would have. It said it could pay out-of-pocket expenses (OOPE) in line with its policy, but the theory test could not be extended. It said that attempts had been made by a manager to ring Mr AB but they had been unsuccessful. It had made a £50 goodwill payment for poor service.

ICA outcome: The ICA said that the two-year validity of a theory test was mandated by legislation and he could not assist. Likewise, he could not recommend compensation beyond the terms of the OOPE policy. It was clear that the manager had tried twice to contact Mr AB but the ICA was less impressed by a letter declining a manager call-back on

the grounds that all complaints had to be in writing. This was potentially a lost opportunity to resolve the dispute. The ICA increased the poor service payment to £100 in line with the PHSO scale of injustice.

(iii) : **EQUALITY COMPLAINTS**

Allegations of driving examiner racism

Alleged racism #1: **Poor attitude and setting up an ADI Part 2 candidate to fail**

Complaint: Mr AB complained that the examiner on his Part 2 ADI test had deliberately required him to undertake manoeuvres repeatedly (contrary to the guidance), had been rude and offhand, had lost his temper, and had wrongly marked a serious fault when he approached a congested roundabout. Mr AB believed that the examiner had been racist. He asked that his test fees be refunded and for a different examiner next time. Unfortunately, when he presented to test again, it was the same examiner and Mr AB refused to proceed, thereby forfeiting the fee.

DVSA response: The DVSA explained the serious fault. The examiner expressed the view that Mr AB was not ready to drive at the high level of proficiency required of an ADI. There was no evidence of racism. The Agency upheld the handling of the test by the examiner but agreed that a second examiner would sit in on the next occasion that Mr AB sat the test.

ICA outcome: Given his terms of reference, the ICA approached the professional judgement of the examiner with caution as he was not present, and had no competence or evidence with which to substitute his own view on the merits of Mr AB's driving. The ICA acknowledged the difficulties that Mr AB and other candidates who felt that they were receiving racist treatment faced; it was virtually impossible to provide concrete evidence, and racism was usually covert. The ICA also felt that adverse judgements and grumpy behaviour should not be conflated automatically with racism. People could be offhand without being racist. The ICA said this without reaching firm findings about the attitude, behaviour and performance of either Mr AB or the examiner. He noted that the investigation had been conducted by an ADI enforcement manager and that all elements of the complaint had been answered. He did not uphold the complaint on the evidence available to him.

Alleged racism #2: **A candidate who failed five times claims racism was in play**

Complaint: Mr AB had been driving lorries professionally for seven years. He complained that he had been failed on five occasions in his HGV Class 1 driving test at a specific test centre. He alleged racism and discrimination on the part of the examiners there. He refuted the characterisation of his behaviour by the DVSA staff as aggressive and

unreasonable (Mr AB had accused an examiner of racism in the car park outside the test centre). He therefore contested the requirement (under the DVSA's HS1 policy for aggressive candidates) that he could not book a new test online and had to have a senior examiner sitting in, in future tests. During the ICA review, on the sixth occasion, Mr AB was successful.

DVSA response: It took the DVSA almost four months to inform Mr AB that the HS1 policy had been applied, after which it responded to his complaint (made around the same time). It declined his repeated requests that the restriction be lifted. A local manager investigated his complaints, and spoke to the examiners concerned. He did not uphold the complaint and this was reflected in the Agency's responses.

ICA outcome: The ICA could not adjudicate over the different accounts of Mr AB's, and the examiners' attitude and performance during and after the tests. He considered that Mr AB's own account of his behaviour pointed to an inappropriate challenging of an examiner in a public area in front of another candidate. The ICA again acknowledged that it was very difficult indeed for people to prove racist treatment. However, staff also had a right to undertake their duties without being accosted and subjected to allegations in the street. The ICA could not say whether there were any grounds to Mr AB's complaint but he could not criticise the DVSA for acting in line with properly conducted local investigations. He partially upheld the complaint because of the significant delay in the notification of the HS1 sanction, and complaint response and recommended that the Agency should apologise for this. In future, the DVSA should ensure that HS1 correspondence did not sit behind delayed complaint responses. He congratulated Mr AB for his success in the test.

Alleged racism #3: **An unsuccessful candidate alleges racism and homophobia**

Complaint: Mr AB complained that the driving examiner on his practical test was racist and homophobic. He had been, he said, singled out '*as the only white, gay male in the test centre*'. He said the test had been rigged against him. He pointed out that he was the only white candidate at the test centre.

DVSA response: The DVSA had conducted its standard enquiries. It said the LDTM did not recognise the description of the examiner and that the test had been conducted fairly.

ICA outcome: The ICA said that he could not say exactly what had occurred during Mr AB's test, but accusations of racism and homophobia required a very high threshold. The ICA was content that the DVSA had conducted appropriate enquiries and could also rely upon its system of management checks and whether any pattern of allegations was present.

Alleged racism #4: **An examiner links driving deficits with country of origin**

Complaint: Mrs AB complained that she had been failed in her practical driving test because the examiner was racist, as evidenced by his reference to her country of origin during the debrief when he was explaining why her lack of use of her mirrors had led to the fail. Her account was that he had asked where she was from during the drive (he'd assumed from her skin colour, a non-European country) and then, during the debrief had suggested that she had picked up bad driving habits there. In fact all of her driving had been within Europe and she was an EU citizen. Mrs AB asked whether a person of white British origin would have assumptions made about their driving habits in the same way. She inferred that the fail had been based on a racist stereotype rather than her actual performance in the test.

DVSA response: The Local Driving Test Manager spoke to the examiner and referred his angry refutation of the complaint to the Agency's complaints team. This was reflected in the response to Mrs AB who was told that the examiner had been attempting to put her at ease and that the outcome had no relation to her country of origin. In further correspondence, the Agency provided the examiner's account of what had been said but stood by its position that the examiner had acted appropriately.

ICA outcome: The ICA noted that the manager in the investigation had emailed Mrs AB's instructor who'd been present in the debrief. The instructor and the manager expressed their discomfort with the examiner's choice of words – the examiner had been told by the manager that they were ill-advised. The ICA agreed, explaining that linking deficits in performance with a person's origin was wrong (even if it was intended to be helpful, or in this context, an icebreaker). He did not conclude that the examiner had been racist but he pointed to the many resources emphasising that people who are not white and/or UK born are likely to experience questions about their origin in a different way to UK-born white people. However well-intentioned, such questions can have the effect of seeming to denigrate the person's origin, and/or make them feel like an outsider, subject to different standards. When the person initiating this line of conversation is in a position of power, the risks in doing so are greater. The ICA partially upheld the complaint and recommended that the DVSA make training available to examiners to equip them put candidates at ease confidently, without stereotyping.

Alleged racism #5: **Alleged racism and Islamophobia**

Complaint: Mr AB complained that his examiner demonstrated likely racist/Islamophobic attitudes before, during and after his practical driving test. He found her offhand from the outset, unclear and somewhat delayed in giving instructions during the drive, making it very difficult for him to respond. He felt that the serious fault he accrued had been fabricated. He characterised the DVSA's complaints investigation as biased. He contrasted

his experience with two previous attendances for practical driving tests at a nearby centre where the staff had been polite and professional.

DVSA response: The DVSA conveyed the management view that the complaint ran contrary to performance management evaluations of the examiner's performance. There was no history or evidence of racism or bias. The DVSA explained why the serious fault had been allocated. It did not uphold the complaint in the absence of evidence. It emphasised the measures in place to educate and inform staff about diversity, and the continual performance monitoring and management of examiners.

ICA outcome: The ICA was unable to adjudicate over the two different accounts of Mr AB's and the examiner's performance on the day. He was satisfied that the Agency's rebuttal of the complaint was based on a robust local investigation. However, he sympathised with Mr AB's point that the allegation of racism/discrimination was impossible to evidence. The ICA noted that much racism is insidious, and perpetrators will conceal their underlying beliefs and attitudes. The ICA accepted that Mr AB's experience was congruent with that of people who had justifiably reported racism to him. However, in the circumstances of this case, he was unable to reach any findings of fact as to the examiner's conduct. He did not uphold the complaint.

Alleged racism #6: **The ICA is highly critical of the DVSA in a theory test ID check case**

Complaint: Mr AB was challenged by TTC staff about his identity and was eventually refused the test after staff had checked his details. He complained that this decision, and the staff's rude treatment of him, was unfair and represented discrimination and racism. There was no doubt, he said, that his driving licence photograph looked like him and he had been able to produce his normal signature and provide his date of birth. He noted his very different experience in a different test centre. He requested the reimbursement of his test fee that he had been, he said, promised on the day.

DVSA response: Two months later, the DVSA provided a generic response that did not refer to any local investigation of the complaint. In later communications, this position was maintained until, about three months in, comments were obtained from the test centre
(again generic, claiming that the correct policy would have been followed, and a refund would not have been offered). Despite valiant efforts to gather further information at the ICA referral stage, the Agency at no point obtained accounts from the staff involved as to the events of Mr AB's presentation.

ICA outcome: The ICA was highly critical of the generic, dismissive and unevidenced nature of the DVSA's responses. Clearly, comments from the staff involved should have been obtained and included in the replies to Mr AB. This may not have resolved his complaint, but it would have reinforced the accountability that the DVSA aims to promote

through the complaints process. The ICA noted that Mr AB had been asked to produce evidence of racism in the knowledge that it was highly unlikely that he would be able to do so. Meanwhile, his account of a positive experience in another test centre was ignored, as was his request for reimbursement. The ICA reminded the DVSA of its zero tolerance approach to discrimination, an approach that Mr AB had been told about in correspondence that at the same time completely dismissed his own experience. He recommended reimbursement of the theory test fee and a consolatory payment of £250. Through the review, the DVSA conveyed its unreserved apologies for its failure to investigate and handle the complaint properly. Mr AB's experience was taken forward with the management team overseeing theory test complaints to ensure that proper investigations occurred in all cases alleging discrimination and/or staff misconduct. The ICA welcomed the Agency's reflection at his stage. He upheld the complaint.

Alleged racism #7: **An unsuccessful candidate infers racism**

Complaint: Mr AB complained about a practical driving test. He said the examiner had unnecessarily commented on a crack on the windscreen and by asking about his normal residence had enquired unnecessarily into his (English) ethnicity. He accused the examiner of bias and discrimination and asked for a refund of the test fee, for disciplinary action to be taken, and to be able to choose a different examiner in the future.

DVSA response: The DVSA said that it was confident the test had been correctly judged by the examiner. No refund would be offered. The Agency had explained the comments on the crack on the windscreen and pointed out that this had not prevented the test from proceeding. It said the examiner's comments were not intended to enquire into Mr AB's ethnicity but were to put him at his ease.

ICA outcome: The ICA could not adjudicate upon factual elements but said he did not think there had been maladministration on the part of the DVSA. He did not think that a Welsh examiner enquiring about an English candidate represented bias or discrimination. There was no case for disciplinary action or refund of the test fee.

Alleged racism #8: **A candidate accuses the Agency of 'Hitlerian' policies**

Complaint: Mr AB complained that his practical driving test had been terminated prematurely due to racism by the examiner. The examiner took the decision after Mr AB (who was from overseas) was unable to understand the *show me / tell me* module before the drive. Despite the use of a language translation app, Mr AB could not decipher the examiner's request that he demonstrate his rear fog lights. Mr AB argued that a UK national who failed to answer the *show me / tell me* module correctly would accrue only a minor fault. He, on the other hand, had in effect failed the test. Mr AB (who may have been using AI technology in formulating his complaint) characterised the decision as racist, and the Agency as applying 'Hitlerian' policies.

DVSA response: The DVSA explained that the test had been terminated on health and safety grounds because the examiner was not confident that Mr AB would understand his instructions during the drive. The examiner had spent 20 minutes trying to assist Mr AB in identifying the rear fog lights, without success. He had involved his manager in the decision. There was no legal obligation for an examiner to conduct a test in an environment where they did not feel safe.

ICA outcome: The ICA dismissed Mr AB's complaint of racism. The examiner, in fact, had gone overboard to accommodate him. The ICA found that Mr AB's complaint was unfair and unfortunately worded. He did not uphold the complaint that the termination of the test had been unreasonable.

Alleged racism #9: **A candidate alleging that several driving examiners are racist**

Complaint: Mr AB accused driving examiners in three DTCs of 'trickery' and 'racism' in denying him a driving test pass despite his exemplary performances. He was particularly aggrieved at being failed for not stopping when a pedestrian was waiting by a crossing. He then phoned the test centre and accused the staff angrily of racism, repeatedly. As a result the 'HS1' sanction was activated meaning that he could not book a test online, had to attend future tests in a car fitted with dual controls, and had to have a second examiner sit in, in future. Over many months he complained that all he had done was exercise his right to complain, for which he was being victimised. In emotional and at times accusatory terms, he described the impact of revocation and his views of the attitude of DVSA staff.

DVSA response: The incident where Mr AB had phoned the test centre had been witnessed by several staffers – the phone was put onto loudspeaker. Efforts at calming Mr AB down had been unsuccessful and the HS1 was applied as a last resort. The Agency explained the basis of the last three driving test fails and held the line that the HS1 was proportionate and justified and would remain in place.

ICA outcome: The ICA noted the lapse between the request for the referral to him and his receipt of the file, and checked with the Agency if there was provision for the HS1 to be reviewed. The Agency agreed to review the sanction in six months' time if Mr AB requested it. The ICA was satisfied with this. In other regards, the ICA found the DVSA's investigation and responses to the complaint to be of a good standard. He could not rule out racism as a factor, and he acknowledged that much racism is covert by nature and very difficult to prove. However, a perhaps more plausible explanation for Mr AB's experience was that he was not driving at the requisite standard. The ICA urged Mr AB to reflect on the feedback on his driving skills rather than blaming the examiners for the outcomes of his many tests. He did not uphold the complaint. After the six months was up, Mr AB asked the ICA to check if the HS1 was still in place. On further review, the DVSA agreed to

lift it. Mr AB, who was caring for his sick wife, welcomed the decision and undertook not to repeat his verbally abusive behaviour in future.

Alleged racism #10: **The DVSA cannot assume that civil servants can never be racist**

Complaint: Mr AB complained about the outcome of his second and third ADI part 3 tests. He suggested that her had been the victim of improper discrimination.

DVSA response: The DVSA said that it was confident the tests had been correctly judged by the examiners. No evidence of discrimination had been presented other than the fact that Mr AB had been unsuccessful. The Agency said there was no provision to overturn the outcome of the tests.

ICA outcome: The ICA also could not overturn the test outcomes. He was also satisfied that the DVSA could rely upon its professional examiners to conduct tests fairly. However, a question posed by Mr AB had not been answered. He also part upheld the complaint in relation to the delay in making the ICA referral. Most importantly, the ICA said he had become frustrated by the DVSA's simple assertion that, as its examiners were civil servants, they necessarily adhered to the Civil Service Code and did not discriminate. The ICA said he expected the DVSA to be more proactive in showing that it treated candidates equally. He recommended therefore that the DVSA directing board consider how best it could demonstrate that it met the Equality Act requirement in relation to test outcomes.

Alleged racism #11: **Examiner's use of language other than English**

Complaint: Mr AB, who is training to become an ADI, complained about the conduct of the examiner during his Part 3 test. He said the examiner had counted out the bays in a language other than English (Mr AB's language) and that this was racially motivated.

DVSA response: The DVSA had apologised for the embarrassment caused to Mr AB but said that this had not been intentional. The examiner had been trying to put Mr AB at his ease. The DVSA had refunded the test fee (although Mr AB said he did not want this as he did not disagree with the outcome of the test) but explained that it could not negate the test as a whole. The DVSA had also agreed to ensure a different examiner for a future test.

ICA outcome: The ICA said that he could not say why the examiner had spoken in a language other than English – whether this was well-intentioned or racist – but he felt it had been unwise. He also said that it might have breached the regulations since the government had decided from 2014 that all driving tests had to be conducted in English or Welsh (with no interpreters, etc). On the other hand, he felt that the DVSA had responded sensitively to the complaint. The offer of a test refund and to ensure a different examiner were not standard practice in his experience. The examiner had also been spoken to. However, to avoid any recurrence, the ICA recommended that the DVSA should consider if

further advice should be offered to all examiners to ensure that all tests were conducted in English and Welsh only.

Allegation of ageist discrimination

Complaint: Mr AB, a PADI, complained about the conduct of the examiner during his Part 2 test. He said the examiner was rude and displayed ageist discrimination. He wanted the record of his failed test expunged from the record. He also criticised the DVSA complaints procedure as unfair and not impartial.

DVSA response: The DVSA said the result would stand. It said its examiner had conducted the test in line with the regulations and had denied acting in a discriminatory manner. He had been supported by the ADI manager.

ICA outcome: The ICA said that he could not say exactly what had happened but the DVSA had conducted a sufficient investigation. There was no power in law for a driving test to be overturned. If Mr AB continued to believe there had been unlawful discrimination against him, he would need to take legal advice or consult the Equalities and Human Rights Commission.

An autistic candidate denied reasonable adjustments in a practical test

Complaint: Ms AB registered for a disabled practical driving test and disclosed mental health and neurological conditions that required additional support and adjustments. However, no accommodation of her needs was made at all. She contrasted this with the positive experience in her previous test where the examiner had taken time before the drive to listen to her account of her needs. On the second occasion, no such conversation took place and no apparent effort was made to assuage her anxieties. Ms AB attributed the deficits in her performance on the day to the attitude and approach of the examiner.

DVSA response: The LDTM established that the examiner had no recollection of whether or not he had had the prescribed conversation with Ms AB before the drive. During the drive, he had judged that she wished to concentrate on the road and he had therefore not spoken more than necessary. Ms AB was initially told that she should have booked a disabled test which allowed for extra time. However, in the second stage response, the Agency reflected that additional time was only available for candidates with specific requirements (including profound deafness, and/or physical adaptations to their vehicle). The Agency apologised for misrepresenting the disabled booking process, and for the likely omission of its examiner of the discussion with the candidate about the disability prior to the drive. It refunded the test fee.

ICA outcome: The ICA found that, more likely than not, the examiner had omitted the conversation prior to the drive that would have gone some way to assuaging Ms AB's

anxieties (although the outcome of the previous test where this had happened had been the same). The ICA was pleased to see that Ms AB had had her test fee reimbursed. It had taken five months for the case to be referred for independent review, for which he recommended a further consolatory payment of £100 and that the resource servicing the Agency's complaint stage 3 be reviewed. He partially upheld the complaint.

Theory Test Centre (TCC) – hidden disability complaints

TTC hidden disability #1: **Theory test arrangements for those with special needs**

Complaint: Ms AB complained about arrangements at a TTC. She said they did not take account of her special needs and was concerned for future candidates.

DVSA response: The DVSA said that it was committed to treating candidates fairly and equitably.

ICA outcome: In a long report, the ICA considered the DVSA's Equality Act responsibilities. In general, he was satisfied that the DVSA made known what could and could not be taken into TTCs and the arrangements for searching, etc. Although he could not adjudicate upon some factual issues – whether Ms AB had been able to use wipes, what happened about her Fitbit, the circumstances surrounding a comfort break – he felt the issues were important and recommended that a copy be shared with the Head of Operations for their consideration. Given the long delay in making the ICA referral – so long after covid – this represented maladministration and he recommended a consolatory payment of £100.

TTC hidden disability #2: **An autistic candidate subjected to harsh treatment**

Complaint: Mrs AB complained that her son had been rudely treated when he presented two minutes late for a theory test. He was autistic and struggled with self-esteem. He found the attitude of the member of staff who refused to allow him to undertake the test to be smug and unprofessional.

DVSA response: The TTC staff explained that they had been dealing with an incident that day and had not been able to give Master AB the attention they would have wished. Mechanisms for booking special needs tests were explained. The Agency reiterated the advice to present 15 minutes before the test start time in order to clear admission and security checks.

ICA outcome: The ICA noted that a properly conducted local investigation had occurred in which the staff involved were asked to feed back on the complaint. This was reflected in the formal responses that were timely and sympathetic. His only reservation concerned the length of time it took the case to be referred to him – for this he partially upheld the

complaint and recommended that the Agency should make a consolatory payment of £100.

TTC hidden disability #3: **A protracted & unfounded complaint about theory test adjustments**

Complaint: Ms AB complained over three and a half years about the failure of the former theory test provider to offer reasonable adjustments. Her first complaint was that an oral language modifier (OLM) was not provided despite her provision of evidence from her education provider evidencing her neuro-diversity. Secondly, despite seeking adjustments on three occasions, no accommodations were made. Thirdly, an offer of an OLM was withdrawn. Finally, the theory test provider had failed to respond to her complaints, and the DVSA had not addressed her points.

DVSA response: The theory test provider had checked with the DVSA at the outset and established that Ms AB had not provided evidence that would justify OLM. She was given the phone number to seek advice on other non-standard accommodations, but did not do so. It explained that changes to the service had been launched from September 2020, with the booking service being brought in-house from September 2021. The Agency said that Ms AB would need a letter from a doctor or a teacher in support of the adjustments she sought. The evidence she had provided did not approach the high threshold for OLM, and her high scores in the multiple-choice without OLM suggested that she was not a candidate for it. The chief executive offered extra time, a reader recorder and a separate room, as well as bespoke staff support to assist in the booking process. The DVSA had never offered OLM. A sincere effort was made to remedy earlier miscommunication through the Chief Executive's involvement in 2023. Shortly after this, Ms AB passed the theory test.

ICA outcome: The ICA felt that the Agency could have been clearer, sooner, about why Ms AB was not a candidate for OLM. He was supportive of the Agency's position that this adjustment had been correctly refused. The ICA partially upheld Ms AB's account that promised accommodations had not been made. He balanced his criticism with an acknowledgement that the Agency had clearly made efforts to explain to Ms AB how to set up non-standard accommodations under the system that applied at the time. The ICA did not uphold the complaint that a concrete offer of OLM had been made and then withdrawn. But he agreed with Ms AB that she should have been told more, sooner, about what the available adjustments were, and how to set them up. In its responses to the ICA, the DVSA emphasised that it was taking the needs of disabled candidates seriously and working with theory test services to improve accessibility, with appropriate consultation with stakeholders. Non-standard tests could now be largely arranged online without the need to telephone. The ICA welcomed these improvements. He partially upheld the complaint.

TTC hidden disability #4: **An autistic theory test candidate is shouted at and refused an adjustment**

Complaint: Mr AB complained that he had been shouted out soon after his arrival for his motorcycle theory test by a staff member. This was in response to his request that he be allowed to wear a baseball cap to shade his eyes as it helped to reduce stress given his autism. He described further aggression from the staff member, including a demand that he remove his jumper in front of other candidates and be searched, and empty his pockets. Mr AB had felt singled out, and regarded his treatment as discrimination.

DVSA response: The TCC simply stated that the staff had been polite and had not intended to upset Mr AB. He could have logged his requirements in advance. He had not been searched aggressively, and agreed procedures had been followed. He had taken his bag out to his vehicle and then, upon his return, had been asked to take his top off in line with standard procedures. Staff were trained to deal with every candidate with professionalism. Extra accommodation for testing conditions was available to people who disclosed autism in advance.

ICA outcome: The ICA was concerned about this and other cases where autistic candidates had complained about the attitude of TTC staff. He did not regard the TTC 'investigation' as remotely convincing. Staff accounts of what had happened were absent. Instead, the DVSA relied on generic statements of what should have happened, and flat denials. The ICA concluded that the staff member had overreacted to Mr AB continuing to wear a hat (that was banned in the absence of a cultural or medical reason to wear one). The ICA did not, on the available evidence, conclude that the staff member had been responding to Mr AB's statement that he was autistic. He suspected that she had regarded him as non-compliant with the rules. He also thought it likely that Mr AB's brief departure from the centre aroused staff suspicions, prompting the search. He was very critical of the investigation, and noted that themes in previous ICA cases were reflected (the lack of a proper local investigation, and the provision of generic statements of intent and policy rather than a plausible account of events). The ICA pointed to NHS and National Autistic Society guidance and information. He concluded there had been a lack of awareness of the condition at staff and management levels in the test centre. He welcomed the DVSA's undertaking to collaborate with the National Autistic Society in identifying training and support to all theory centre staff and management. He was also pleased to note that, after Mr AB's booking, provision for non-standard accommodation in theory tests could be made online. The DVSA also agreed to revise its guidance to TTC staff to include neurodivergence as a condition where the wearing of a hat would be permissible. The DVSA accepted the ICA's recommendation to make Mr AB a goodwill payment of £250 and to apologise to him, and to refer the report to the director with overall responsibility for TTCs for their information. He upheld the complaint.

OTHER: **THEORY TEST**

A candidate complaining about government policy on theory test currency

Complaint: Mr AB complained in the run up to the expiry of the currency of his theory test that the DVSA would not extend it, or refund him, given pandemic-related limitations on his ability to take the practical.

DVSA response: The DVSA explained that the currency of the test was set in law. In response to Mr AB's challenges that the test was ineffective, the Agency referred to research suggesting that it was a contributor to road safety. It declined to refund him and explained it could not extend the currency of the test.

ICA outcome: The ICA was content that the DVSA had provided a sympathetic and accurate account of why it could not assist Mr AB. He noted that the Minister overseeing the DVSA during the pandemic had specifically addressed this point in Parliament, and he provided Mr AB with a link to the debate, as well as his congratulations for having passed the practical test a fortnight before his theory test expired. He did not uphold the complaint.

(iv) : **ADI and ATB COMPLAINTS**

Prospective ADI 'ridiculed' during Part 3 test

Complaint: Mrs AB complained about the conduct of the examiner in the aftermath of her ADI Part 3 test. She said he had ridiculed her such that she now wished to abandon her efforts to train as an ADI. She said she had enjoyed the test and did not question the outcome, but the debrief had left her feeling awful.

DVSA response: The DVSA was content that the test had been marked fairly and conducted in line with the guidance. The ADI Manager had reported accompanying the examiner on many occasions and the behaviours he was accused of were not ones she recognised.

ICA outcome: The DVSA could usefully have spoken to Mrs AB's ADI who accompanied the test. However, the ICA was content that (just about) sufficient enquiries had been conducted such that there had been no maladministration. The ICA could not adjudicate upon the factual elements, but speculated that communication problems between the examiner and Mrs AB had played a part. He hoped that Mrs AB would revisit her decision to abandon a prospective career as an ADI.

Multiple complaints against DVSA by an ADI

Complaint: Mr AB made a wide-ranging complaint against the DVSA, criticising the cover design of the Highway Code, the Agency's advice that those other than ADIs could provide training for car and trailer, the advice in the Highway Code relevant to pulling up on the right, the standards of training for driving examiners and the professionalism of the DVSA as a whole, and delays in handling his correspondence.

DVSA response: The DVSA had rejected Mr AB's complaints apart from the one relating to delay – caused by the impact of the pandemic.

ICA outcome: The ICA was content that the cover of the Highway Code was not intended literally to show the route round a roundabout. He also found that the DVSA was entitled to interpret the law on car and trailer training as it did. The ICA could not conduct a review of examiner training or the professional standards of the DVSA as a whole. But he agreed with Mr AB that the wording of the Highway Code did not precisely cover the moving to the right manoeuvre and recommended that this be drawn to the attention of those responsible for its next iteration.

Removal of ADI from register

Complaint: Mr AB, and ADI, complained about the conduct of his third standards check and the consequent decision by the registrar to remove him from the ADI register. He said the standards checks were becoming too strict. He also argued that the DVSA always took the side of its examiners.

DVSA response: The DVSA was content that the checks had been conducted properly. It said it was its policy not to seek the views of pupils in investigating complaints.

ICA outcome: The ICA said that this was essentially a regulatory decision that was outside his remit and a matter for the courts. He was content that the DVSA had conducted appropriate enquiries and that not asking pupils for their views was not maladministrative – albeit it limited the extent of the Agency's investigation. The ICA could not adjudicate upon the factual aspects of Mr AB's complaint.

Complaint against ADI

Complaint: Mr AB complained that the DVSA had retained the record of a complaint against him when it accepted that a photograph supplied by the complainant did not show what the complainant alleged. He denied the claims against him.

DVSA response: The DVSA said that it took no view on the merits of the allegations but they did not just centre on the one photograph. It said its policy was to retain complaints

against ADIs for a period of two years to see if a pattern of allegations built up. The Agency had accepted that Mr AB's request for an ICA review had been overlooked and had made a goodwill payment of £100.

ICA outcome: The ICA could reach no view on the factual aspects of Mr AB's complaint (whether the photograph showed Mr AB parked opposite a junction, for example). But he was content that the DVSA on behalf of the Secretary of State was entitled to keep information (including relating to a possible neighbour dispute) that could speak to the question of whether an ADI was a fit and proper person. However, the ICA found serial mishandling of Mr AB's correspondence (two complaint streams had been conducted in parallel with little or no awareness of the other) and he recommended increasing the consolatory payment to £150.

Another complaint about an ADI

Complaint: Mr AB complained about an ADI who was teaching her daughter. Ms AB said the ADI admitted to shouting at her daughter and she pressed for him to be removed from the register.

DVSA response: The DVSA had presented Ms AB's account to the ADI. He had explained the circumstances of raising his voice, arguing that he had been wrongly accused of cutting the lesson short. The DVSA had concluded that there was insufficient evidence to suggest the fit and proper person test was engaged.

ICA outcome: The ICA was satisfied with the DVSA's conclusions. Although raising your voice to a child in the cramped conditions of a car, and the stressful circumstances of driving lessons, was undesirable and unprofessional, a single act could not be deemed to engage the fit and proper person test. Ms AB had the comfort of knowing that the allegation would remain on the ADI's file for two years. The ICA part upheld the complaint on grounds of delay in making the ICA referral.

A trainee ADI upset at being back to square 1 after failing his part 3 for the third time

Complaint: Mr AB complained after failing the third of his ADI part 3 tests. He contested the examiner's judgement on the suitability of the route, his handling of two situations where he had applied dual controls, his instructional skills and interventions, and the pupil's handling of a challenging road situation. He asked that he be given a fresh opportunity at sitting the test at a different centre with a different examiner. After the DVSA had responded, Mr AB's pupil provided a statement in support.

DVSA response: The DVSA's ADI Enforcement Manager spoke to the examiner and reviewed the marking of the test. He endorsed the conduct and outcome of the test. The

examiner denied being disinterested. The DVSA took note of the pupil's evidence but did not regard it as calling the handling of the test into question. Examiner allocations were random, so the DVSA could not guarantee an allocation in future.

ICA outcome: The ICA was satisfied that the complaint had been investigated to a good standard by local management, and that a full account of the marking was provided in the DVSA's response – congruent with the contemporaneous record. The Agency gave due regard to the pupil's evidence. The ICA could not reach any firm conclusion as to the merits of the complaint, and was unable to uphold those aspects that related to Mr AB's instructional abilities. However, given the four month delay in the ICA referral, he recommended that the Agency apologise and make a £100 consolatory payment.

No refund for a candidate with Covid-19

Complaint: Mr AB was a candidate for an ADI Part 2 driving test. Shortly before the test, he tested positive for Covid-19 at home using a lateral flow kit. He did not need to see his doctor. He informed the Agency that he could not attend the driving test and applied for refund of the £111 test fee. He complained of the Agency's refusal to refund it, and that the underlying policy (that required provision of a medical fit note) was contrary to government guidance on Covid-19.

DVSA response: The DVSA insisted that Mr AB needed to produce a fit note covering the test date. It referred Mr AB to the NHS policy advice that if the GP would not provide it, then Mr AB would have to pay for it. This approach was applied across the board and was not, as alleged by Mr AB, contrary to government policy. At ICA referral stage, the Agency made a consolatory payment of £100 to reflect the delay that Mr AB had experienced (approaching four months) in the ICA referral being made.

ICA outcome: The ICA found that Mr AB's complaint was addressed to policy rather than customer service or administration. There was indeed an unfairness flowing from that policy. Candidates contracting an infectious disease (not just Covid-19) within the three day cancellation window before the driving test, with a duration of seven days or less (and therefore not entitled to an NHS fit note), would forfeit the test fee unless they commissioned their own sickness certification. The ICA regarded this as flowing from NHS and DVSA policy, and reflecting the overarching government policy drive towards business as usual after the pandemic.

(v): VEHICLE STANDARDS (MOTs and Vehicle Safety Branch – VSB)

Allegation that defect was safety-critical

Complaint: Mr AB complained about the decision of the VSB not to deem difficulties with his vehicle as a safety-critical defect. He described a juddering noise on full lock and an inability to control the vehicle. He said the DVSA had failed to answer his questions.

DVSA response: The DVSA said that it had received no other complaints about Mr AB's model of vehicle. It had followed its standard procedures in investigating his report of a safety-critical defect but had concluded that the handling difficulties Mr AB encountered were a feature of the vehicle and not a defect.

ICA outcome: The ICA said he could identify no maladministration. The VSB had followed its published procedure and he could not second guess the conclusions that the problems Mr AB undoubtedly faced were not a safety-critical defect. His understanding was that a VSB conclusion would only be challengeable by judicial review. The DVSA had provided a high quality of service in its long correspondence with Mr AB. It was not required to comment on Mr AB's more speculative questions or on matters involving the dealership and manufacturer for which the DVSA had no responsibility.

A 'safety' system that could kill

Complaint: Mr AB complained to the manufacturer, and then the DVSA, that his car had a designed-in feature ('Safelock') whereby occupants could be inadvertently locked in by accidental operation of the key fob lock by a person outside of the vehicle. 'Safelock' disabled all internal controls rendering windows and door locks inoperable without deactivation with a key. This had occurred inadvertently, distressing his wife who was trapped in their car for 20 minutes. Mr AB remained dissatisfied after the VSB declined to take regulatory action, insisting that the mitigations were not sufficient.

DVSA response: The VSB found that sufficient guidance and warnings for the system were in place. The owner's manual was clear about how to lock the car while temporarily disabling the system. There was no evidence of a defect or sudden risk of harm or injury, therefore the Agency's role and powers under the General Product Safety Regulations 2005 were not engaged.

ICA outcome: The regulatory position involved technical judgments that the ICA approached with caution. The ICA, who had a similar model of car with the same troublesome feature, sympathised with Mr AB but found no fault in the Agency's handling. He judged that the VSB's position was well explained (although he felt the DVSA referred too often to the lack of a defect given the broadly drafted 2005 Regulations). There were hundreds of thousands of models fitted with the same feature. Mr AB remained

dissatisfied and resolved to pursue the matter given his concern that someone vulnerable could be harmed if inadvertently trapped in a car. The ICA made further enquiries of the VCA who explained that the approval for the 'Safelock' system had been outside of its sphere of operations.

Slow pace of vehicle recall arrangements after a safety-critical defect was identified

Complaint: Mr AB reported a defect that he judged would be potentially catastrophic if it occurred at speed. The manufacturer denied any fault. Meanwhile, Mr AB had paid approaching £3,000 for a repair that he felt was clearly the responsibility of the manufacturer. He was anxious that the component could fail on the other side of his car. Although the DVSA agreed that this did engage the definition of a safety defect, Mr AB said the resultant investigation took far too long (it was approaching two years before he was told that a recall had been recommended) and he was not appropriately updated on events. He could not understand how something safety-critical could progress at such a slow pace.

DVSA response: The DVSA had informed Mr AB a month after his report that the matter had been raised with the manufacturer. Just over a year later, it closed his case as his complaint had been subsumed within a 'master case', in other words another complaint about the same problem. Just over a year after his original report, Mr AB resumed his dialogue, aware through networking with other owners that other cases had been picked up. He asked repeatedly for a timeline for the investigation to conclude but was told that the VSB remained in dialogue with the manufacturer and could not provide an update until the investigation was concluded. As the two-year point approached, Mr AB complained of delay, emphasising the potentially catastrophic consequences of component failure. At this point the DVSA informed him that it had recommended recall. Three months later, as the ICA review concluded, concrete arrangements for this were still not in place.

ICA outcome: The ICA emphasised from the outset that the Regulators' Code mandated a risk-based approach, and that formulations of risk and proportionality of regulatory intervention were for the DVSA's subject matter experts, not him. He noted that the Regulators' Code was prescriptive about communications with regulated bodies, but not with reporters of potential regulatory issues. However, the ICA pressed the DVSA on its arrangements for updating people whose cases had been subsumed within a 'master case'. The DVSA apologised that Mr AB had not been informed of this formally, and given the option of requesting an update at the end of the investigation. It also provided Mr AB, via the ICA report, with an update on the recall and more information about its risk formulation. The ICA partially upheld the complaint on the basis that the DVSA could have said much more, much sooner, about its regulatory approach.

A motorcycle MOT station proprietor considers closing after MOT changes

Complaint: Mr AB had been running a motorcycle repair business, including an MOT station, for over 30 years. He was skilled in the calibration of roller brake testers, a procedure he had undertaken himself for over a quarter of a century. He was therefore dismayed when the DVSA announced updates to the MOT testing guide and manuals in January 2023. This included the requirement that calibration could only be completed by the original manufacturer or a calibration specialist. This meant that Mr AB would incur the additional expense of hiring a specialist to do a job he was perfectly capable of undertaking himself. This pressure arrived on top of the damage and disruption caused to his business by the pandemic, and by pandemic-related changes to MOT validity. Mr AB said he had had enough and had decided to close his business.

DVSA response: The DVSA's MOT Testing Service team explained that DVSA could not police calibration in MOT stations, and that its inspectors had noted numerous examples of calibration certificates being completed without proper checks on the equipment. By limiting the practice to specialists, the DVSA felt that it was ensuring that the equipment was maintained to an acceptable standard in the interests of road safety.

ICA outcome: The ICA noted that this was a matter of policy rather than customer service and administration, and therefore approached Mr AB's criticisms with caution. He agreed with Mr AB that the change in policy was not preceded by a consultation. During Mr AB's dealings with the Agency, he was pointed to the then live consultation on the future of MOT. The ICA could see how this was frustrating. However, he accepted that the DVSA had legitimate concerns about safety, and that the blanket approach was sufficiently well explained and justified. Although very sympathetic, he did not, therefore, uphold the complaint.

Alleged failure to take regulatory action

Complaint: Mr AB complained about the lack of response by the DVSA to his report that a neighbour was operating in the construction industry without an appropriate licence.

DVSA response: The DVSA said it did not routinely provide feedback to members of the public. It had acknowledged delay in making the ICA referral.

ICA outcome: The ICA could not sensibly act as a point of appeal against DVSA regulatory action (or decisions not to act). He also accepted that there could be good grounds for not disclosing information to those who made reports of unlawful activity. However, the ICA noted that Mr AB's correspondence had serially received no reply. Given the delay in the ICA referral too, the ICA part upheld the complaint and recommended a consolatory payment of £150 for poor service.

HGV tester needs to be retrained

Complaint: Mrs AB complained that the DVSA would not transfer the ability to conduct Mod 4 HGV tests to one of her staff. She said she had contracts to fulfil and asked for compensation.

DVSA response: The DVSA said that there were different arrangements for Mod 3a and Mod 4 and that the tester in question had not completed the number of required tests in the past year. He would therefore have to be retrained.

ICA outcome: The ICA said that the DVSA had a duty to support trainer/testers - not least in view of the national shortage of HGV drivers. However, it also had to ensure that standards were upheld. Mrs AB's complaint engaged DVSA policy and its regulatory responsibilities and was therefore at the margin of his jurisdiction. And he could not substitute any views of his own for those of the DVSA when its policy on the frequency and number of tests conducted was concerned. Mrs AB had also accepted contracts in advance of obtaining authorisation for her organisation, site and assessors. The ICA made three recommendations: that a copy of his report be shared with the Head of Operations, that the DVSA consider adding to the information on gov.uk, and that relevant staff be drawn attention to the delay on the part of a third-party supplier in providing the necessary certificates to enable Mrs AB's organisation to carry out tests. However, there was no case in the ICA's view for compensation.

Age of second-hand vehicle

Complaint: Mr AB complained after purchasing a second-hand vehicle he discovered was older than advertised. He said the IVA should have picked up on the correct age of the vehicle.

DVSA response: The DVSA said that its policy was that examiners should take the age of the vehicle from the application form. The Agency also said that it could not account for differences between the state of the vehicle at the time of the IVA and four months later.

ICA outcome: The ICA said that the DVSA could not be expected to compensate Mr AB for his losses. However, the handling of the correspondence had been very poor and there had been significant delays. He therefore recommended a consolatory payment of £200. (Sister case to DVLA case 109).

A tall customer reliant on wife-nav as well as satnav accrues an MOT fail

Complaint: Mr AB, who is very tall, customarily has a satnav device positioned in the corner of his windscreen on the front passenger side. This enables his wife to provide real-time feedback on his compliance with the speed limit, as well as the planned route.

Mr AB has over 40 years of offence and accident-free driving experience. He complained that his car was subjected to a fail under section 3.1 (field of vision) of the MOT inspection manual on the basis that the satnav was a significant obstruction to the view. Although the car was immediately retested with the satnav removed under the pass after rectification arrangements (PRS), Mr AB remained troubled by the suggestion that driving with the device in situ was unsafe. He challenged the Agency's account that the examiner had been justified in his judgement. No previous examiner had a problem with the positioning of the device. He pressed the DVSA to quash the VT30 fail.

DVSA response: The vehicle examiner corresponded with Mr AB, noting that it was not a standard fitting on the car. The fail could not be quashed in the absence of fraud. If it was quashed, then the pass would also be quashed. The vehicle enforcement manager told Mr AB that nothing should be on the windscreen unless the vehicle was type approved with it. A test carried out correctly, albeit with contested defects, cannot be removed from the record. The opinion of the tester as to whether the device was a significant obstruction did not need to be framed in light of the height of the driver. It was impossible to compare previous MOTs as the historic position/s of the device could not be known for certain.

ICA outcome: The ICA was sympathetic to Mr AB's complaint given the position of the device and the fact that previous testers had not allocated a fail because of it. However, the ICA also accepted that the tester was entitled to apply professional judgement within the parameters of the Inspection Manual to an obstruction exceeding the prescribed size, within 'Zone B' of the windscreen. The ICA noted that the Highway Code and the underlying legislation was cautiously drafted. He was delighted, on speaking to Mr AB, to learn that he had been able to position the device satisfactorily and no longer regarded the MOT outcome as commensurate with a ban on driving in his preferred fashion. The ICA did not uphold the complaint.

A biker alleges an unsafe radiator mounting ran risks of catastrophic coolant leak

Complaint: Mr AB complained that the design defect on his motorcycle meant that slippery coolant could, without warning, leak from the radiator over the vehicle's tyres, presenting a significant risk to injury. He had repeatedly had the fault repaired on both of his bikes. He sought the recall of all affected machines.

DVSA response: The VSB requested further information from Mr AB and the manufacturer. On the basis of that evidence, in particular the manufacturer's assurance that the design had been modified and all vehicles sold from earlier that year and onwards had been modified, it concluded that there were insufficient grounds to take the case forward under *The Code of Practice on Vehicle Safety Defects* (the Code). It reiterated this position when Mr AB complained the following year following similar repairs to a different machine, like the first, first registered some time before the modification implementation programme had come into effect.

ICA outcome: The ICA was satisfied that the Agency had implemented its published approach to reports that a vehicle was unsafe. Investigations followed, and the reports had been referenced to other information, including from the manufacturer (and in particular, that there had been no reported accidents related to the defect, and that the defect was now rectified). This was explained clearly and sympathetically by the Agency. As in other cases affected by post-pandemic pressure on staff resources, the ICA was critical of the length of time it had taken to refer the matter for review (five months). On this basis he partially upheld the complaint and recommended a consolatory payment of £100.

An MOT provider infuriated by not being allowed to know an employee was suspended from testing

Complaint: Mr AB managed an MOT testing garage. His employee, Mr CD, was taken on to assist the company in meeting a significantly increased demand for MOT tests. Mr AB enrolled Mr CD on the required course in a local college, at a cost of £850. He was dismayed to later learn that Mr CD was subject to a cessation order from the MOT scheme because of serious misconduct. The order had another two years to run, meaning that Mr CD could not feasibly be kept on as an MOT tester, and Mr AB had wasted time and money in putting him through the course. Mr AB protested initially to the college for not checking Mr CD's status, but the college said that it had no way of knowing, and that the process relied on Mr CD declaring his cessation order. Mr AB challenged the DVSA and was told that it was his responsibility as authorised examiner (AE) to ensure that staff were of good repute and this included not being subject to cessation. He maintained that only the DVSA and Mr CD were aware of the cessation, and through no fault of his own he had incurred losses. He insisted that DVSA data about 'cessated' testers should be available to colleges so that opportunistic efforts at re-entering the MOT testing workforce like those of Mr CD could be nipped in the bud.

DVSA response: The DVSA maintained that responsibility for ensuring that candidates were of good repute rested with the employer. Mr CD would have had a letter spelling out the extent of his cessation. His decision not to disclose this was another matter related to good repute (or rather the lack of it). The data protection act prevented the DVSA from disclosing details of disciplinary action to prospective employers. However, the Agency would consider adding an explicit declaration of a current cessation on the tester eligibility form.

ICA outcome: The ICA noted that it fell to the Information Commissioner to determine complaints about information release/withholding by the DVSA. This was the first case on this topic that the ICAs had come across in 11 years of DVSA casework. The ICA was not persuaded that, even if the information processing requirements could be met, Mr AB's experience would justify significant re-engineering of college application portals to cross-check the DVSA list of suspended testers. He noted that the information given to

testers subject to cessation was sufficiently clear about the duration. He welcomed the Agency's proposed requirement that course applicants explicitly declare a live cessation. He commended the MOT Policy Team's handling of the complaint, noting that its responses were clear, accurate and clearly referenced to the guidance and policies.

(vi) : **OTHER MATTERS**

EU law no longer relevant to CPC training dates

Complaint: Mr AB complained that the expiry dates for his lorry and bus CPC were aligned, meaning he would lose seven months currency on the HGV training. He asked for this to be corrected and said he had received misleading advice from the contact centre.

DVSA response: The DVSA said it was its policy to align the expiry dates and had explained this was in response to customer feedback and to pressure from the EU. It had apologised for any misleading advice given and for the delay in making the ICA referral.

ICA outcome: The ICA said the DVSA policy was clear and published. It was therefore outside his jurisdiction. However, he was concerned that the rationalisation for the policy had not been properly explained (the fear of infringement procedures was no longer relevant as these could only be taken against EU member states). He recommended that a copy of his report be considered by the Director of Strategy. It might be that the current system was sensible in terms of UK drivers operating without hindrance in Europe or in the wider interests of road safety. But whatever the merits or otherwise of Brexit, the threat of infringement procedures was no longer a reason for alignment with EU law. The ICA upheld the complaint in terms of delay but did not feel that redress beyond the apologies offered was required.

MOT required for Part 2 test

Complaint: Mr AB complained that his ADI Part 2 test could not go ahead. He said the advice on gov.uk was unclear. He had attended in a vehicle subject to local authority licensing as a hired car and it did not have a MOT. However, local authority testing was more intensive. Mr AB was concerned that his time might run out to complete all stages of ADI training given the current delays in arranging tests.

DVSA response: The DVSA said its published policy was that an MOT was necessary. It mistakenly advised that Mr AB might be able to apply for an extension to the two-year time limit if there was a good reason. It had refunded the test fee.

ICA outcome: The ICA said he could not adjudicate upon DVSA policy, but he asked the Agency to reconsider if an MOT was always required (the DVSA said an MOT was the only means the Agency had to check roadworthiness). However, it agreed to reconsider the

advice on gov.uk. The DVSA also apologised for the mistaken information it had provided Mr AB and offered a consolatory payment of £150 that the ICA considered to be appropriate. The ICA also explored whether extra effort could be made to rearrange Mr AB's Part 2 test, but in the event it would take place the following week. The ICA commented that training to become an ADI was a protracted and expensive affair, and he wished Mr AB well in his ambition.

Disclosure of legal advice in footpath controversy

Complaint: Mr AB complained about a DVSA decision to accede to a local authority notice to carry out works in relation to a public footpath on one of its test centres. He said the route of the footpath was incorrect. He also argued that the failure to spot this error undermined the legal advice the DVSA had obtained and that the Agency should withhold the lawyers' fees.

DVSA response: The DVSA said that it had asked for a legal opinion and then followed that opinion. Any concerns about the route of the path should now be directed to the local authority.

ICA outcome: The ICA said he could not adjudicate upon the position of the footpath or the quality of the legal advice. He was content that the DVSA had conducted itself properly in seeking advice and then following that advice. There was no case therefore for withholding the fee. The only option would have been to have sought a second opinion but the case for doing so was weak given the categoric nature of the first advice. However, the ICA was surprised that Mr AB had been given access to the DVSA's legal advice as this was privileged and not disclosable under FOI/DPA. He recommended that those responsible be formally reminded of this principle.

4: National Highways casework

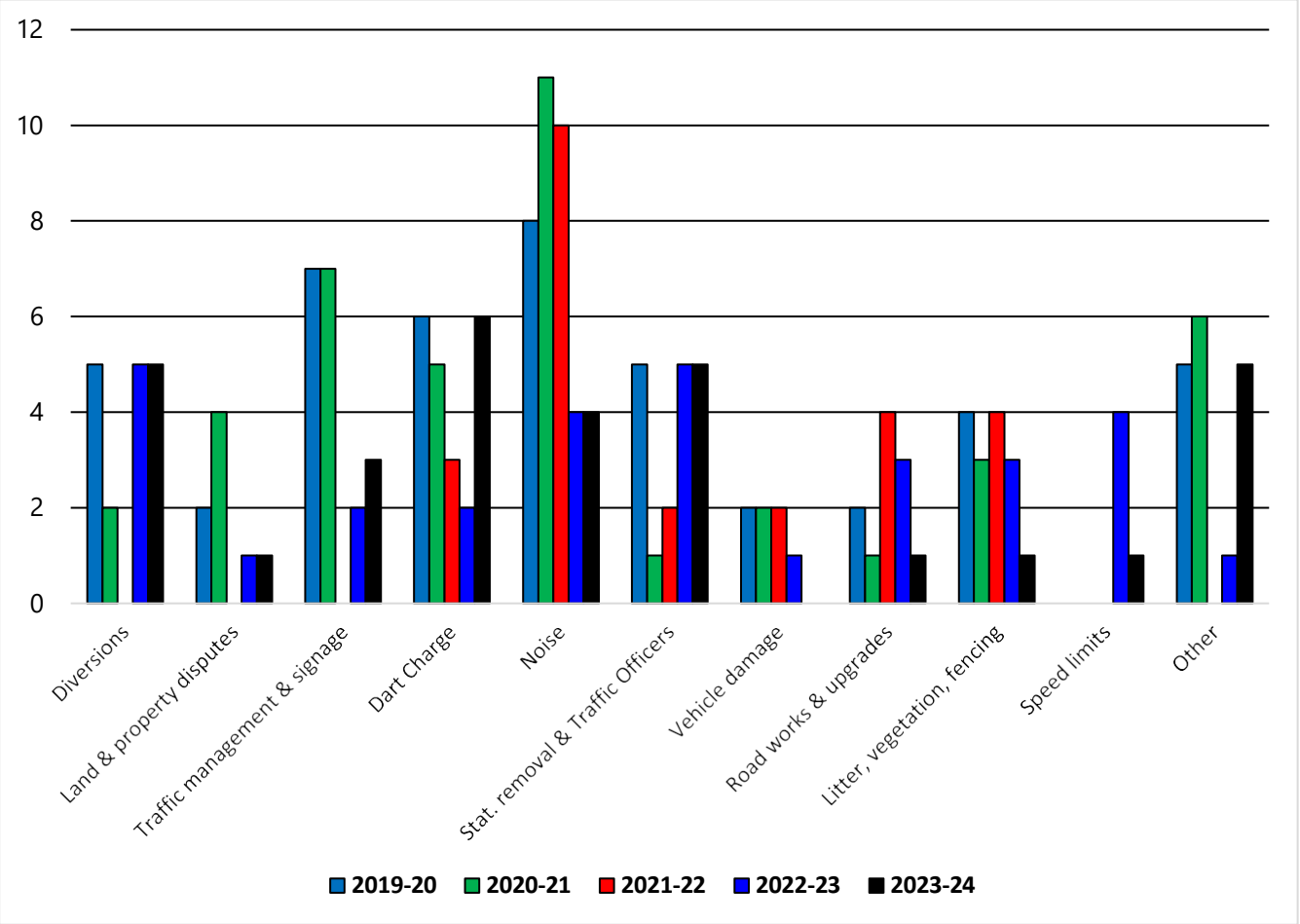
Incoming cases

4.1 The 32 complaints we received from National Highways represented a continuation of the steady rate of referrals we reported last year (when the company sent us 31 cases).

4.2 Amongst the topics raised were problems arising from the exercise by traffic officers of statutory powers to remove vehicles from the carriageway deemed to represent a danger, noise nuisance, diversion schemes and concerns about SMART motorways. We also continued to receive a small number of complaints relating to charging at the Dartford Crossing between Essex and Kent.

4.3 Figure 4.1 charts incoming cases over the last five 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, 2019–2024**



4.4 Some of the people complaining to us are in essence questioning professional traffic management decisions, but these are not matters that we can resolve. Professional judgment is excluded from our jurisdiction, but in any event we are simply not qualified to substitute our lay opinions for those of National Highways' engineers. It is a commonplace as a driver to observe speed limits or lane closures that appear unrelated to any works being carried out. But drivers are rarely in possession of all the facts and, with our eyes on the road ahead, we will rarely be able to take in all the circumstances. This does not mean that professionals never make mistakes. But the threshold for a finding of maladministration is necessarily a high one.

Cases we completed

4.5 We upheld to some extent 10 of the 36 (27.7 per cent) National Highways' cases we completed in the year (compared to 12 out of 32 last year). The numbers upheld to some extent against complaint areas are as follows:

- Dart Charge: 2
- Statutory recovery: 2
- Noisy works: 1
- Defective lighting on the M6: 1
- Detours & diversions: 2
- Japanese knotweed: 1
- A-road signage: 1

CASES

Statutory recovery woes #1: **Substantial and unnecessary recovery charge for a lorry**

Complaint: Mr AB complained on behalf of his company that National Highways had unreasonably engaged statutory recovery powers to remove a broken-down lorry from the motorway. He complained that his company's recovery service was *en route* and that National Highways' contractor, who attended first, wrongly classified the damage to the truck (a detached propshaft) as 'substantial', thereby costing his firm £3,000 (as opposed to the £350 he felt was the correct charge).

National Highways response: National Highways explained that the truck's wheels had not been free and rolling and it had taken 30 minutes to make the vehicle towable. The 'substantial damage' classification had therefore been correctly engaged and the tariff correctly applied to an unladen vehicle exceeding 18T. The company could not refund the cost or revise the roadside assessment behind it.

ICA outcome: The ICA noted the difference of opinion between Mr AB's staff and the traffic officer about the extent of the damage (Mr AB believed that the vehicle could be

freewheeled onto the recovery truck) but could not adjudicate over it from his desk. He was satisfied that the recovery had been effected in line with National Highways' policy and the law, and although sympathetic, did not uphold the complaint.

Statutory recovery woes #2: **No grace period for a puncture self-repair**

Complaint: Ms AB experienced a puncture on a Smart motorway with all moving lanes. She managed to limp her car up an exit slip road, and off the carriageway so that it was straddling the grass and the margin of the road. She phoned her father who attended and removed the wheel, leaving the car on the jack. They set off to get the tyre repaired with the intention of recovering the vehicle themselves. When they returned, the vehicle had been recovered by National Highways using its statutory recovery powers. Ms AB complained, first, that the designation of the vehicle as 'substantially damaged' (informing the £300 recovery fee) was incorrect. Second, it should have been apparent that a recovery was underway, and they should have been allowed a two-hour grace period to recover the car themselves.

National Highways response: National Highways initially explained that the vehicle had been left on a stretch of carriageway subject to motorway regulations. No error had occurred. In further correspondence, the company explained that the vehicle had not been left in a place of relative safety (PoRS), nor in an area with hard shoulder where people were allowed to walk about. It had therefore been inappropriate to apply a notice to the vehicle or to engage the two-hour grace period. There had been no message to the Regional Control Centre or note left on the car anyway. The Operations Director at stage 1 noted that the wheels of the car were just on the carriageway which meant that it could be deemed to have been on the road. He therefore applied the slightly lower recovery tariff of £250. In the stage 2 letter, the company's chief executive reiterated that the recovery had been conducted in line with standard policy and the company's statutory powers.

ICA outcome: The ICA noted that Ms AB's complaint contained an assumption that the exit slip road verge had been a PoRS. He was sympathetic to her point. He noted that she had displayed remarkable composure and driving skills to bring her vehicle to a halt away from the moving carriageway on a stretch with no hard shoulder. There were many considerably more hazardous places where the car may have stopped, for example a live lane on the main carriageway. However, he accepted that the traffic officer who attended had been following company procedure in his designation of both the damage and the location of the vehicle. He could not therefore uphold the complaint. He was critical of National Highways for not picking up on Ms AB's complaint that it had taken two hours to recover the car from its contractor's pound. The ICA said that this should have been referred to the recovery contractor for comment. National Highways apologised and offered to investigate further should Ms AB wish.

Statutory recovery woes #3: **A haulage manager alleges extortionate costs**

Complaint: Ms AB ran a haulage company. One of her HGVs became immobilised in floodwater. She complained that statutory recovery of the truck had been imposed, even though her company had its own recovery arrangements. She also queried the 'S18' (£5,763.00) statutory charge that was levied. This charge was based on an assessment of the truck as not being upright, being fully laden and exceeding 18 tons.

National Highways response: The local operations manager rang Ms AB shortly after she complained and explained that the truck had been partially off the road and was not upright, rather it was leaning at an angle. This was because the nearside wheels were off the road. The tariff had therefore been correctly applied. Two heavy recovery vehicles had been needed to winch the truck to safety, one to pull it and the other to prevent it from falling over. It had been in situ for nearly 11 hours before statutory recovery was imposed, due to pressure on the traffic officer resource. There had been sufficient time for Ms AB to mobilise her own recovery. Photographs demonstrated the lean that the vehicle was on. NH quoted Home Office advice that a vehicle is upright only if it is entirely upright.

ICA outcome: The ICA was sympathetic to Ms AB's argument. The vehicle had been recorded as upright in the TSO log, and was clearly resting on all four wheels. It wasn't damaged or broken down. The Home Office advice repeatedly quoted by NH provided example situations that were of no relevance to Ms AB's circumstances - the ICA was mildly critical of NH for quoting the Home Office guidance selectively. But he noted that the purpose of the escalating tariff set out in the regulations was clearly to reflect the higher cost of recovering vehicles in complex situations. He could not substitute his own opinion for that of the professionals who had assessed the breakdown at the scene, and who had needed to deploy two vehicles for the recovery. He did not, therefore, consider the NH's position to be maladministrative. He did not uphold the complaint.

Statutory recovery woes #4: **Incident on SMART motorway**

Complaint: Mr AB complained about the statutory removal of his vehicle from a SMART motorway. He said the traffic officer and the police officer who attended had behaved deplorably, and said he had not been offered a tow. He also said that National Highways had wrongly recorded that he had broken down on a live lane when in fact he had reached a verge off the motorway. He asked for a refund of the fees.

National Highways response: National Highways said that the police had been called because of Mr AB's own behaviour. It said the removal was in line with its statutory powers and would not refund the fees. The company said that there might have been a miscommunication regarding the location of the vehicle but no meaningful confusion as to its whereabouts.

ICA outcome: The ICA could not adjudicate upon factual elements – Mr AB's own conduct (it was alleged that he had locked himself in the recovery vehicle when it got to the services, for example) or that of the traffic officer. But he was content that she was acting within her statutory powers and clearly was in no doubt as to the location of Mr AB's vehicle. The ICA said he did not share National Highways' absolute confidence that there had been no confusion as to the location of the vehicle on the part of the control centre, but he was content overall that there had been no maladministration. Having viewed Mr AB's dashcam footage, there was no doubt that this must have been a very frightening incident (decelerating in the inside lane with no way of pulling off while large lorries overtook him) but Mr AB's criticisms of SMART motorways were a matter for the political process not for his review.

Statutory recovery woes #5: **Good handling of a recovery case**

Complaint: Mr AB complained about a statutory removal. He disputed factual aspects including the location of the car and whether the police had attended. When National Highways offered him a repayment plan for return of his vehicle he withdrew his complaint. However, he then changed his mind and asked for his complaint to be continued.

National Highways response: National Highways had explained its legal powers and the fact that the car was intruding into a live lane and had been abandoned. The company had waived some of the storage fees (thereby saving Mr AB many hundreds of pounds) and agreed a payment plan by direct debit with him.

ICA outcome: The ICA had initially discontinued his review when informed that Mr AB had reached an agreement to this effect with National Highways. He then reopened it, noting that he could not normally adjudicate upon factual elements but the photographs provided by National Highways clearly showed the car was partly on the live lane. By Mr AB's own account, he did not have breakdown insurance, nor a phone with him, and had therefore gone off to see a relative who owned a garage. The ICA commended National Highways' flexibility in agreeing the payment plan and waiving some of the fees. Mr AB had now been reunited with his vehicle.

Statutory recovery woes #6: **Stretching the two-hour allowance to breaking point**

Complaint: Mr AB had a puncture on a Sunday morning on a busy trunk road and managed to get his car into an emergency refuge area. He set off on foot to the local garage where he alerted National Highways to the breakdown, mentioning that he had no cover and would arrange recovery locally. Seven and a half hours and several phone calls later, with his own breakdown service on their way, Mr AB was dismayed to learn that his car had been subject to statutory recovery and he had to travel some distance and pay £150 to release it. He complained that National Highways had not made it clear that two

hours was the maximum that traffic officers would ordinarily allow a vehicle to remain in an emergency refuge area. He had been given every ground to think that National Highways would wait for his recovery. He requested a refund of his costs.

National Highways response: National Highways informed Mr AB from the outset that it was illegal to leave the vehicle unattended. He was asked to ring back when his recovery arrangements were sorted out. Mr AB then missed several calls from National Highways whose traffic officers wanted to know what was happening. That afternoon he explained that the vehicle was in a layby, but declined to make it clear that he himself remained in the service area. A local tyre company would attend that evening. Some six hours after Mr AB's initial report, traffic officers attended the emergency refuge area and arranged statutory recovery. National Highways explained that the refuge area had to be kept available for emergencies. Signage made this clear. The total interval between National Highways logging the car and recovery arriving was vastly beyond the usual two hour allowance.

ICA outcome: The ICA listened to the calls and noted that Mr AB had been given reasonable notice that he was expected to remain with the car. He had not done so and this had affected the messaging from National Highways' customer contact centre. The ICA agreed with Mr AB that National Highways had not put him on notice that his stay in the refuge area was too long, and that it would arrange statutory recovery of his car. In considering his claim to taxpayers' money, however, the ICA noted that Mr AB was travelling without breakdown cover. He had also decided to abandon the car despite being told that he should remain with it. He had failed to pick up repeated calls from local traffic officers. And there was always going to be a three figure charge for recovery. Much of the inconvenience Mr AB experienced is inherent to the unpleasant process of breaking down. The ICA did not see that the taxpayer should underwrite Mr AB's losses. He recommended that National Highways apologise for not making it completely clear that he had grossly exceeded the allowed time in the emergency area. He partially upheld the complaint.

Average speed checks fury

Complaint: Mr AB was ticketed for speeding on an average speed check stretch of the motorway where roadworks were underway. He challenged National Highways to prove that the Traffic Signs Manual requirements for the spacing of average speed check signage had been met. He argued that they had not been met, and that NH was complicit with malicious prosecution by the local police force. He also queried the validity of the Temporary Traffic Order, and the evidence produced by National Highways in support of its account of the inspection regime for temporary signage. He repeatedly demanded that the company view his 'irrefutable dashcam evidence' that the signage had not met the Traffic Signs Manual criteria.

National Highways response: National Highways explained that responsibility for the accurate signing of roadworks resided with the organisation undertaking the works (section 174 of the Highways Act 1980) and not with National Highways as highways authority. It provided check logs for the day on which Mr AB had been ticketed covering all the signs in the scheme, the time of the inspections, the visibility of the signs and their location. It emphasised that it was not an enforcement authority. The scheme had been designed and implemented in line with the Traffic Signs Manual. At the final stage of the complaints correspondence, the Chief Executive addressed the outstanding points.

ICA outcome: The ICA was not impressed with the sneering tone and content of Mr AB's correspondence. He understood why National Highways declined to attend his home to watch his dashcam footage. He could have supplied it had he wished to. The ICA noted that National Highways had a published policy of limited responses to complaints that amounted to proxy appeals against prosecutions. It had justifiably reiterated its confidence that the signage had met the relevant standards, while providing the underpinning evidence. The ICA regarded National Highways as having met its customer service and administrative responsibilities in its dealings with Mr AB. He did not uphold the complaint.

Noise from adjacent road #1

Complaint: Mr AB complained about noise nuisance from a major road. He wanted a noise barrier installed and a pothole repaired.

National Highways response: National Highways said that the noise mitigation provided was a low-noise surface previously installed. It had offered to meet the costs of noise reducing headphones and the route manager had attended upon Mr AB personally.

ICA outcome: The ICA could not conduct a primary investigation of the noise nuisance suffered by Mr AB but could identify no malpractice on the part of National Highways. Indeed, the route manager emerged especially well. He recommended a further letter to Mr AB with details of the road surface used and its impact upon the noise generated.

Noise from adjacent road #2

Complaint: Mr AB complained about the noise emanating from a motorway next to his home. He wanted a noise barrier installed and a noise reducing surface installed. He said the problem had worsened since the felling of trees as a result of ash dieback.

National Highways response: National Highways said that noise mitigation had been provided some years previously in the form of insulation. Mr AB's house was the only one in the Noise Important Area (NIA) and there were limited resources. A noise survey had

been caried out and a face-to-face meeting held with Mr AB. There had also been repeated correspondence.

ICA outcome: The ICA sympathised with Mr AB and his neighbours regarding the noise nuisance they suffered. But he could identify no maladministration on the part of National Highways. It had simply followed its policy on NIAs and the ICA could not dictate where and when a low noise surface should be installed on a motorway in relatively good condition. Some minor errors aside, the ICA was also impressed by the number and quality of replies to Mr AB.

A knotty problem

Complaint: Mr AB complained about Japanese knotweed and ivy on adjoining National Highways land. He said the company had agreed to spray twice yearly and had reneged on its commitment. He said that if the company could not arrange for clearance of the vegetation then they should recompense him and his neighbours for arranging this privately.

National Highways response: National Highways said that the treatment of Japanese knotweed had been successful and it had been eradicated. Ivy was not treated as an invasive species, and there was now no need for twice-yearly spraying. National Highways had also warned Mr AB under its unreasonable contact policy.

ICA outcome: The ICA sympathised with Mr AB and his neighbours regarding the proximity to Japanese knotweed. He also noted that ivy, while not regarded as invasive, quickly spread and could cause damage to brickwork and fencing. However, the ICA could not instruct National Highways on how to use the resources at its disposal. Nor could he say whether the knotweed had been eradicated and the ivy controlled. It was not unreasonable for National Highways to now reconsider whether twice-yearly spraying was required on this part of its land. Nevertheless, the ICA also inferred that the spraying had not been conducted on a predicable basis during covid and after the transfer of the relevant contract from Colas to Kier. He therefore part upheld the complaint.

Multiple collisions in ice-rink conditions on an entry slip in winter

Complaint: Mr AB's son lost control of his car early one winter's morning on ice at the entry slip road to a motorway and wrote it off. He reported that other vehicles were careening across an untreated icy surface. Mr AB and his wife attended to assist, and Mrs AB was struck by an out-of-control vehicle (happily she made a good recovery although understandably remained traumatised). Mr AB insisted that the road surface had not been treated. He quoted a police officer's opinion in support and would not accept statements from National Highways that the correct dry salt treatment had been applied at the prescribed intervals, on two occasions in the 24 hours before the incident.

National Highways response: National Highways initially provided the times of the salt treatment. After Mr AB had complained in more detail, a regional director provided pictures of the gritting routes and timings, and of the plant, along with an explanation of how different factors might affect the efficacy of treatment – not always effective given the many variables. Nonetheless, National Highways was confident that it had treated the stretch. Mr AB felt that the necessary forensic deep dive into the evidence had not occurred and he remained unconvinced that the gritting had really happened.

ICA outcome: The ICA understood why National Highways' first response had not convinced Mr AB as it lacked detail and did not properly address his concerns. The ICA welcomed the fact that the subject matter expert from National Highways had phoned Mr AB and spoken to him in some detail about the way that the different forms of treatment worked. The Regional Director's response was of a good standard, and the ICA included further information from National Highways in his final report. This explained why the data provided to Mr AB showed not only the routes taken by the gritters but also that systems within each vehicle had confirmed that grit was actually being distributed (safeguards included alarms in the cab alerting the driver if grit was not being spread). The ICA was satisfied that National Highways had addressed his questions and challenges in sufficient depth.

Respectful treatment of complaint about use of the Dartford Tunnel

Complaint: Mr AB drives an HGV. He complained that he had been stopped at the Dartford Tunnel as it was wrongly believed that his vehicle was too wide. He said he had lost time and work as a result, had been victimised and that the traffic officer had demonstrated spite. He asked for compensation.

National Highways response: National Highways had explained the powers of traffic officers. It could only investigate further if given the exact details of the time and date of Mr AB's experience.

ICA outcome: The ICA sympathised with Mr AB but was unable to adjudicate on the factual details. These included the width of Mr AB's vehicle, and events had followed a simple misjudgement (then corrected) by the traffic officer or were the result of victimisation and an excess of zealotry (as Mr AB alleged). The ICA said that he understood why traffic officers exercised caution given the impact of damage to the tunnel to all road users. He found that no compensation was due for the exercise of legal powers. The ICA was a little surprised that the stage 1 complaint had been dealt with entirely on the phone (with no follow-up letter) and that no efforts had been made to speak to the traffic officer concerned (although the ICA acknowledged that this would have been difficult without the exact details). However, he felt the stage 2 letter was particularly good and internal emails

showed that Mr AB's complaint had been treated seriously and with respect (as the ICA would expect).

Dart Charge grief #1: **Late payment does not prevent enforcement visit**

Complaint: Mr AB complained about a visit from an enforcement agent in relation to PCNs issued following non-payment of the Dart Charge. He said he had paid all the outstanding sums. Despite this, he had to show his bank statement before the enforcement agent could check back with his HQ and it was confirmed that no moneys were owing. Mr AB asked for repayment of the fees and compensation.

National Highways response: National Highways had apologised for any embarrassment and inconvenience caused. It was not in doubt that the fees were paid the previous Friday to the Monday of the enforcement agent's visit. However, the enforcement company's system did not update in real time and it was not known that Mr AB had paid in full.

ICA outcome: The ICA sympathised with Mr AB while acknowledging that he had not paid the Dart Charge, had not notified the DVLA of his change of address, and had not responded promptly to notices and reminders to pay that he had received. It was unfortunate that the enforcement company's systems did not update immediately, but it was understandable why the agent had appeared at Mr AB's home. The ICA also could not identify any maladministration by National Highways – save that its letters had not engaged at all with Mr AB's claim for compensation. For the avoidance of doubt, however, the ICA said that in his view no compensation was payable. The ICA said it was disappointing the enforcement agent had not turned on his body-worn camera. This may have been inadvertent but it meant that neither National Highways nor the ICA could assess the agent's conduct and demeanour. The ICA recommended that his views be shared with the enforcement agents so that they consider if further advice about the use of body-worn video cameras could be shared with their staff.

Dart Charge grief #2: **letters sent to home of former partner**

Complaint: Ms AB complained about Dart Charge penalty notices and enforcement letters sent to a former partner at her home address. She said he had not lived there for eight years and he had returned the correspondence marked 'Gone Away'. She said the continued correspondence amounted to harassment and was a breach of data protection.

National Highways response: National Highways said that it had obtained Ms AB's address from a credit agency as part of its checks to ensure the address on the DVLA record was correct. It said as soon as it became aware that the keeper of the vehicle was not resident at Ms AB's address, it had removed her from its records.

ICA outcome: The ICA found that no fewer than nine letters had been sent to Ms AB's address. He entirely understood why this had caused her inconvenience and worry. The ICA said that the threshold for a consolatory payment was not met but he made no fewer than four recommendations to Dart Charge: that they should enquire why the credit agency provided an address that was eight years out of date (the ICA compared this to writing to David Cameron at 10 Downing Street); that they should take legal advice on whether they could write to other addresses when there was one on the DVLA database; that they should consider the process when letters were returned marked 'Gone Away' (the ICA appreciated that Dart Charge could not just take this on face value or everyone would do it); and that they should apologise for not escalating Ms AB's complaint more quickly.

Dart Charge grief #2: **Debt collectors visit after customer is unable to pay**

Complaint: Mr AB's complaint followed the issuing of PCNs for alleged crossings. Enforcement action followed, including Charge Certificate issue and referral to debt collection agents. In his representations to NH, Mr AB emphasised that he was constrained by the system that did not allow the payment to be taken within the prescribed window. Further, enforcement correspondence had been addressed to an incorrect address. Mr AB pointed to a systemic problem with Dart Charge's revenue collection system giving false assurance to customers that payments had been taken.

National Highways response: Dart Charge/National Highways held the line that the charges were issued correctly, and it had no grounds to intervene. The company advised Mr AB to liaise with the debt collection agency to settle the matter. It also referred to previous enforcements directed against Mr AB in relation to earlier crossings. The company maintained that it had carried out its processes correctly.

ICA outcome: The ICA found that the former address had been provided to the company by the DVLA. Any dispute about whether that had been updated would need to be raised with the DVLA directly. The company's initial response to Mr AB's complaint was good, in that it set out the full sequence of events of the previous year. It also explained the appeal process and why it was not possible to simply cancel them (Mr AB had benefitted from a goodwill cancellation a year earlier). The ICA was unable to uphold Mr AB's complaint that there was a problem with the Dart Charge payment website on the days he had tried to pay, noting that over 40,000 payments were made across those two days.

Dart Charge grief #3: **A customer is 'hammered' by enforcement**

Complaint: Mr AB complained that he had been subjected to grossly disproportionate enforcement action after paying for two crossings slightly belatedly. He claimed that he had been unaware of the enforcements until the bailiffs became involved, at which point they had escalated to over £600. In the end he paid in order to prevent further escalation of the debts. Two years later, threatened with redundancy, he renewed his

correspondence with National Highways, demanding that the money be restored to him given the failure of Dart Charge to alert him to the escalating enforcements.

National Highways response: Dart Charge had escalated the two enforcements in line with its standard protocol, while holding Mr AB's late payments on credit for future crossings. Five months after the crossings, notices of enforcement were issued by the debt collection agency against the two charges. Dart Charge had meanwhile communicated each escalation stage, along with the options to pay or appeal, to Mr AB at his correct address (as provided by the DVLA). Each escalation stage was triggered by the lack of any response from Mr AB. Eventually, debt collection agents had visited Mr AB at his home and he had later paid. Dart Charge explained the escalation process and the option to complete An Out Of Time Witness Statement and appeal the enforcement to the Traffic Enforcement Centre. It was unable to close an enforcement after it had reached Order for Recovery stage, however (and saw no reason to do so anyway). The out of time option was reiterated when Mr AB, supported by his MP, complained two years later.

ICA outcome: While sympathetic to the heavy price Mr AB paid for trying to pay late for his crossing, the ICA noted that the escalation correspondence had been directed correctly to Mr AB's address, and that for unknown reasons he had not responded to it. The ICA surmised that Mr AB had perhaps thought that the crossings were settled, and that the escalations would eventually cease. Unfortunately, the opposite was the case. The ICA judged that Dart Charge's responses to the correspondence were sympathetic and helpful. He noted that the correct legally mandated protocols had been followed in escalating the debts, and that Mr AB had had numerous opportunities to appeal settled before the sums of money could mushroom. As there had been no failure in service, he could not uphold the complaint.

A misplaced land compensation claim

Complaint: Mr AB complained about the compensation he had been offered following a compulsory purchase of land by National Highways for a motorway widening scheme. He said this engaged the full range of subjects within the ICA remit (unfair treatment, staff behaviour, etc).

National Highways response: National Highways said that it was content with the offer it had made. Ultimately this would be for the Upper Tribunal (Lands Chamber) if the parties could not agree.

ICA outcome: The ICA disagreed with Mr AB's contention that his terms of reference were engaged. It was clear that this was a contractual/commercial dispute, that ultimately it was a matter that could only be determined by the court, and that the calculation of compensation was manifestly the exercise of professional judgment. The ICA concluded

therefore that he could not conduct the review Mr AB had requested. (Although coded as a not uphold, this case could perhaps be better regarded as having been discontinued.)

Night-time disturbance cases

Disturbance #1: **Years of unheralded vegetation clearance in the early hours**

Complaint: Ms AB had lived near a busy motorway interchange for 20 years. She complained for years about unheralded night-time works on the slip road near her back garden. This caused her and her family immense disturbance, making sleep impossible, and exacerbating vulnerable family members' chronic ill-health. This series of complaints in the main concerned vegetation clearance work in the very early hours of the morning involving chainsaws and strimmers. Despite repeated undertakings by NH and its contractor, the promised 48-hour warning of works was not provided. Ms AB's complaint was compounded by repeated unsatisfactory dealings with the customer contact centre in the small hours of the morning.

National Highways response: National Highways was consistently apologetic. On no fewer than six occasions, the company undertook to ensure that advance notification worked properly in future. Despite these good intentions, Ms AB was repeatedly disturbed without advance warning. NH emphasised the safety-critical nature of the work and on one occasion undertook to review the necessity to undertake it in the middle of the night. Its contractor attempted to complete the noisier tasks early in the work cycle. A member of staff from the contractor team visited Ms AB's sister at the family home and offered apologies and undertakings to ensure advance notification worked better in future. At regional director level, Ms AB was told that the intention was that people should receive two weeks' notice of nighttime disturbance for cyclical maintenance.

ICA outcome: The ICA commended National Highways for its repeated, sincere acknowledgement of the disturbance the family was facing. He was pleased to see personal contact, including a home visit, over the months of the engagement. However, he noted that each response to the complaint read as if it had been raised for the first time. In fact, this was a family complaining of the same thing, only to receive the same apologies and ineffective undertakings, time after time. The ICA partially upheld the complaint and recommended that NH at a senior level engage with the family with the aim of producing a clear contract setting out what they could expect from the company in terms of warnings of, and mitigations to, future nighttime disturbance.

Disturbance #2: **Diversions**

Complaint: Mr AB complained about night-time disruption from a diversion necessary because of major road widening. He said his son was suffering sleep deprivation.

National Highways response: National Highways had apologised for the disruption but said that the diversion route was unavoidable.

ICA outcome: The ICA could see that National Highways had endeavoured to answer all Mr AB's questions. He was also conscious that an ICA could not deliver what Mr AB sought – a change in National Highways operations. Given that Mr AB had indicated that he might involve his MP/PHSO, the ICA asked Mr AB if he wished to withdraw his ICA complaint. When this was agreed, the file could be closed.

Disturbance #3: **Heavy goods nuisance because of a poorly conceived diversion**

Complaint: Mrs AB lives in a suburb on an A-road used as a diversion route by National Highways when it closes the M20. Her complaints arose from frequent closures necessitating diversions for coast-bound traffic. She was critical of National Highways' policy of implementing the closure a clear junction north of the affected carriageway which she said caused HGVs to funnel through narrow residential streets near her in the middle of the night for long periods. She repeatedly offered alternative diversion options, insisting that the closure should occur at the last junction before the affected works. She was also critical of National Highways for failing to coordinate its activities across the county.

National Highways response: National Highways explained that it was committed to the established diversion arrangement for closures on the stretch in question. It explained how, through emphatic signage, HGVs were discouraged from using the stretch of A-road close to Mrs AB's home. It outlined why closures were taking place, and why a low bridge on the route preferred by Mrs AB meant that all steps needed to be taken to prevent HGVs from diverting that way. Eventually, after six complaints from Mrs AB, National Highways put her on notice that she was at risk of engaging its unreasonably persistent customer policy.

ICA outcome: The ICA felt that National Highways had generally provided reasonable accounts of why it favoured the diversion arrangement that Mrs AB was complaining about. But he felt that more could have been said about why the closure was sited somewhat higher than appeared necessary. He was also critical of the company for not engaging sufficiently with Mrs AB's detailed prescription for an alternative diversion. He also concluded that National Highways had referred prematurely to its unreasonable persistence policy, given that aspects of the complaint were unanswered. The ICA felt that what was missing was an opportunity for Mrs AB to engage with subject matter specialists face-to-face to understand their decision-making. While Mrs AB clearly was drawing on extensive local knowledge in formulating her own diversion suggestion, it would be National Highways, and not her, who would have to take responsibility for knock-on disruption elsewhere in the network. He partially upheld the complaint and recommended

that National Highways retract its threat of invoking the unreasonableness policy, and offer Mrs AB a face-to-face meeting.

Disturbance #4: **Good engagement in noisy manhole cover case**

Complaint: Mr AB complained about noisy manhole covers on a trunk road, the quality of the repairs and the time taken.

National Highways response: National Highways had accepted that there had been delays but said this had resulted principally from more urgent works in the vicinity which were safety-critical and took priority. It also said that all but one of the manhole covers were the assets of another body.

ICA outcome: The ICA was in no position to adjudicate upon factual elements – in particular, the quality of the repairs, what Mr AB had been told by the contractors about their access to levelling equipment, and why a discussion with a team leader had gone badly. But he was content that National Highways had attempted to engage with Mr AB both in writing and in person. The company had also repaired an asset that belonged to someone else. He could identify no maladministration in any of this.

Budgetary constraints mean that elderly signage is inconsistent

Complaint: Mr AB complained that temporary black-on-yellow directional signage had been erected on various stretches of trunk road alongside the standard green and white. This confused him, firstly because they were duplicating existing advanced direction signs (ADS) and secondly, only applied to traffic on the eastbound carriageway. Mr AB challenged National Highways about the rationale for this duplication, remaining dissatisfied with the explanations provided by the company.

National Highways response: Signage on the stretches had been identified for repair/replacement due to deterioration. However, the process took a long time, meaning that there was some duplication. NH tried to work with old signage conventions in certain localities, alongside the standard regime. Yellow and black temporary direction signs were simpler and cheaper to produce than white and green. National Highways' Regional Director provided an assurance that the deteriorated signage would be phased out in the next three to six months. In the meantime, there had been no reported difficulties with the temporary signs. Unfortunately, delays set in at various points in the complaints process.

ICA outcome: The ICA was mildly critical of National Highways as some of the efforts to resolve Mr AB's complaint were not reflected in the documentation available. However, he was satisfied that National Highways was not complacent about the mixed messages that more eagle-eyed drivers might construe from the format of its signage. It explained to Mr AB that funding constraints meant that it would take some time before the original signs

could be replaced and a timescale for this was provided latterly. On balance, the ICA felt that Mr AB's complaint was mainly addressed to resourcing matters over which he, and most National Highways staff, had no control. All would wish for timelier repairs but National Highways had to work within the available resources and was clearly doing so.

Seven hour delay after motorway is closed

Complaint: Mr AB complained about the closure of a motorway following an accident. He said he had been held up for more than seven hours. He criticised National Highways' decision-making, signs showing a 40mph limit when traffic was stationary, and the absence of toilet facilities. He said that his partner had medical difficulties on the day in question.

National Highways response: National Highways had apologised for the impact on Mr AB and other drivers. It said that the accident had caused damage to the central reservation, a diesel spillage, and risk across five lanes. The company had provided its lessons learnt debrief as a result of a FOI request. This had led Mr AB to make further complaints about the management of the incident.

ICA outcome: The ICA fully appreciated the impact on Mr AB and others. But he could not dictate how National Highways managed emergency incidents. The lessons learnt exercise illustrated the difficult trade-offs that had to be made, and any inconvenience caused was not the result of maladministration. Although National Highways had not answered Mr AB's questions about the gantry signs (perhaps because they were judged as rhetorical or de minimis) or about the lack of toilets, the ICA was not persuaded that further correspondence was required.

Land not for sale

Complaint: Mr AB complained about the refusal of National Highways to sell him some redundant land. He said he felt there might be a racist motivation behind National Highways' decision.

National Highways response: National Highways said there was no improper motive behind its decision. The land was not for sale as it was not deemed surplus to requirements. The land might be needed by another government department and National Highways had its own intentions for its use as office space. The company had put Mr AB in touch with its property consultants.

ICA outcome: The ICA could identify nothing racist or improper in National Highways' decision-making. Quite simply the land was not for sale. Indeed, if it were ever regarded as suitable for disposal the ICA assumed this would be subject to a competitive process. The ICA was impressed by the care and attention that had been given to the

correspondence with Mr AB and its quality. He wished Mr AB well in his ambitions but was unable to uphold his complaint.

Reasons for a lane closure

Complaint: Mr AB complained about a speed limit restriction and closure of a lane on a motorway. He said he had seen no broken-down vehicle and accused National Highways of lying.

National Highways response: National Highways had acknowledged that its initial response had been incorrect (it had referred to another incident). But its contemporaneous log recorded the broken down lorry on the exit from a services, the lane closure, and the later removal of the restrictions. The company had warned Mr AB that his comments/conduct could trigger the unreasonable customer contact policy.

ICA outcome: The ICA he had no reason to question the detailed contemporaneous log. It was probable that Mr AB had not seen the broken-down lorry as his eyes were on the road ahead or it was obscured because it was on the slip road. The ICA did not feel that invoking the unreasonable contact policy could be justified by Mr AB making excessive complaints. He was entitled to use the complaints policy as he had done. Moreover, the language of his correspondence – while in strong terms – was not abusive. However, National Highways said it was concerned too about the tone of his phone calls. The ICA did not think it proportionate to enquire further as the policy had not in fact been invoked. He hoped that Mr AB could avoid future accusations that the company was lying to him and that there would be no need for the policy to be deployed. He was unable to uphold Mr AB's complaint, nor were any recommendations required.

5: Network Rail casework

5.1 Network Rail sent us 12 cases for review (compared to 19 last year, and 13 in 2021-22). The complaint areas in incoming cases were as follows:

- Noise nuisance: 4
- Vegetation management: 2
- Graffiti removal: 3
- Bridge closure: 1
- Nuisance from tunnel (water vapour): 1
- Lorry movements (maintenance): 1

5.2 Of the 16 cases we completed this year, 4 were upheld to some extent.

5.3 Network Rail's lineside neighbours have no recourse to any Ombudsman scheme (complaints to the PHSO or Rail Ombudsman about Network Rail will not be in jurisdiction; only our involvement – at best tangential to the index complaint – is in PHSO scope). During the year we have benefitted from discussions with the Rail Ombudsman, Transport Focus and London TravelWatch – the independent watchdogs for the rail industry, to ensure that customers with misplaced or multi-jurisdiction complaints are correctly signposted. We advise our Network Rail complainants to raise lineside concerns with elected representatives if they remain dissatisfied after our stage.

Themes arising from Network Rail casework

5.4 Many of the complaints we receive focus on issues such as noise and disruption with which we are very familiar from our National Highways jurisdiction. We sympathise strongly with complainants, but must also acknowledge that noise and other nuisance are the sometimes inevitable result of living close to a railway as they are neighbouring a motorway or major trunk road.

5.5 Complaints about graffiti may also occur about both road and rail infrastructure. However, we accept that with finite resources Network Rail needs to prioritise which graffiti it seeks to paint over or remove.

5.6 Some of our complainants have not demonstrated much understanding of the operational pressures upon Network Rail to ensure a safe and reliable railway system. Indeed, some complainants have demonstrated a sense of 'entitlement' that we have not found attractive.

5.7 During the year we greatly benefited from participating in, and delivering training, in the company of Network Rail's Community Relations Teams. We judged that their attitude and approach spoke very well indeed of the company's determination to develop a consistent lineside customer-centred orientation across its regions.

CASES

A village descends into 'chaos' when a footbridge is closed #1 and #2

Case #1

Complaint: Ms AB complained that the closure of the pedestrian footbridge at the railway station in her village had been heavy-handed and disproportionate, and had created massive difficulties for 'downtrodden' local residents and businesses. She regarded the temporary footbridge that was put in place two weeks after her complaint as ugly and complained about the brash and inconsiderate 'operatives' undertaking engineering work at the station. The customer service was appalling and atrocious, she said.

Network Rail response: Network Rail explained that the closure had been deemed essential and safety-critical when the bridge was inspected for scheduled maintenance. There had been no opportunity to manage the closure. An eight minute pedestrian diversion had been put in place and elected representatives were being updated regularly about progress. Apologies were repeatedly offered for the impact, along with undertakings to continue to prioritise a substantive solution.

ICA outcome: The ICA noted that all involved would have preferred the closure to have been proactively managed. However, he was not an authority on bridge inspections, maintenance and risk assessment. He therefore accepted the expert view that the bridge had to be closed immediately in a non-scheduled way. He found that representations from Ms AB and others, although often rude, were invariably responded to politely and informatively by Network Rail. All the company's commitments to offer a good service to its network neighbours had been met. The ICA noted that people in the local community using social media had been very approving of the temporary structure. He did not uphold the complaint.

Case #2

Complaint: Mr AB complained of inertia and 'chaos' following Network Rail's sudden closure of the station footbridge in the village. He repeatedly lauded the skills, importance, expertise and prestige of the people using the station, contrasting his Home Counties village favourably with a 'pitiful northern suburb'. Nonetheless, the captains of industry that Mr AB was advocating for were, by his account, struggling with the burden of an extra eight minute walk. Mr AB said the temporary footbridge (installed three weeks after he

started complaining, and ahead of schedule) was not good enough. He characterised Network Rail's service to his village as 'abysmal'.

Network Rail response: Throughout its correspondence, Network Rail expressed sincere regret for the inconvenience. Again, this had been unscheduled following expert advice that immediate closure was required on safety grounds. The pedestrian diversion was put in place and then, shortly afterwards, the temporary structure was installed.

ICA outcome: The ICA reiterated that Network Rail had responded in a timely, courteous and informative way to unreasonably pitched challenges and complaints, vastly exceeding its 20-working day target. Commendably, a dialogue with the Route Director had been offered (Mr AB demanded that the Chief Executive speak to him). The ICA accepted the view of the engineers on immediate closure. He noted that other sections of the community had been delighted by the temporary structure. He did not understand Mr AB's point that a 'gesture of goodwill' should be made by Network Rail to his 'affluent and desirable village', but in any event, he did not uphold the complaint.

A member of the public dismisses a service she had never used

Complaint: Ms AB complained after seeing a notice of scheduled vegetation management in an area some way from her home. She said that Network Rail's helpdesk was based on the opposite side of the country to where she lived and staffed with northerners, and was therefore ill-equipped to address local concerns.

Network Rail response: Network Rail immediately expressed regret for the concern raised by the notification, and explained why it was needed. The following day, the Route Director for the region provided more information about the necessity for vigilant vegetation management on the clay embankment. He also gave notice of a Zoom meeting that all local residents would be invited to attend. Unfortunately, the tone of Ms AB's correspondence became disparaging. NR repeatedly explained that its devolved business model involved a central helpdesk that triaged incoming concerns to the relevant local team. Ms AB continued to criticise the helpdesk, seemingly on principle as she had never used the service. In its final response, Network Rail noted that the reason Ms AB had not received mailshots about the work was because she did not even live in the affected area.

ICA outcome: The ICA saw little useful purpose in Ms AB's complaint about a helpdesk service that she had never used. There was no unremedied injustice, and he was critical of the derogatory tone of her emails. The ICA thought that Network Rail's response to challenges about its helpdesk model and about the format and purpose of vegetation management work were exemplary. He dismissed the complaint.

Noise from night-time works

Complaint: Mr AB and Mr CD complained about the noise caused by night-time works on a railway bridge adjoining his block of flats. They criticised Network Rail for the lack of notice and asked for compensation. Mr CD also threatened to take the law into his own hands and disrupt the works.

Network Rail response: Network Rail had offered hotel accommodation but declined compensation for what it said were essential works. Night-time working had been agreed with the relevant authorities. The company acknowledged that the works had twice over-run and apologised for the inconvenience. Network Rail had explained its internal and external communications. It said that notifications to people in Mr AB's block had been delivered but had not got further than the concierge in the flats.

ICA outcome: The ICA said there was clearly a lot of learning to be had from the experience of Mr AB and Mr CD and that of others. The arrangements for notifying residents had relied upon the concierge. The company had been unduly optimistic about the time the works would take. And Network Rail had identified too late in the day how the noise nuisance could have been moderated. The ICA was not persuaded that a case for compensation was made out. However, he recommended that the company consider a form of community redress to benefit all residents. He also recommended that his report be shared with the chief executive. He told Mr CD that he hoped he would not take forward any proposed direct action.

Noise pollution from screeching trains

Complaint: Mr AB initially complained about the screeching noise caused by trains on a stretch of railway near his home. His complaint then focussed on how Network Rail had handled his correspondence.

Network Rail response: Network Rail had explained how it was trying to reduce the screeching sound by applying a lubricant. Network Rail had offered a telephone call to Mr AB but he had rejected that option as not being consonant with a formal complaints process.

ICA outcome: The ICA said there was nothing he could say on the engineering issue. He said that all trackside neighbours should be protected from noise pollution – not just those living in tranquil areas of the country as Mr AB had emphasised in his complaint. But he was content that Network Rail had handled Mr AB's correspondence appropriately. The Ombudsman's principles encouraged a flexible approach and the ICA had no criticisms of the offer of a phone call. It was of course Mr AB's right to reject the proposal as he had done. The other correspondence had been comprehensive and courteous. The ICA did not uphold the complaint.

A villager outraged by safety-critical repairs

Complaint: Mr AB complained after Network Rail announced major work to prevent a potential landslip near his village. This would involve wagons removing the spoil from the site using narrow village lanes. Mr AB emphasised the urgency of this query given his rather implausible estimate of 73,500 lorry loads passing through the small village (the true figure was not inconsiderable, but in the region of 2,000). Mr AB rubbished Network Rail's responses, highlighting the pollution risk and complaining that his escalation demands had not been met in line with the complaints policy.

Network Rail response: Network Rail escalated Mr AB's case through three tiers of management in a week and a half, generally replying on the same or the next day. It had drastically reduced the necessity to use the village roads by creating a longer diversion route. It had also taken steps to improve communications with the community. In response to Mr AB's further demands, it produced a diagram of the model of tipper truck that would be employed and an outline schedule during which the spoil would be moved. Network Rail emphasised that the work was safety-critical as the embankment was in danger of subsidence – it was essential to remove large quantities of soil. Network Rail declined to escalate in line with Mr AB's demands as its Senior Public Affairs Manager had ably dealt with his questions and challenges. However, after communications from him rumbled on, it was formally escalated to its Chief of Staff who closed down the correspondence.

ICA outcome: The ICA found that the local Parish Council had put forward a cogent and persuasive representation to Network Rail the week before Mr AB had involved himself in the matter. On the day that Mr AB had launched his complaint, the Senior Public Affairs Manager for the company announced significant concessions to the community's concerns. These involved rerouting half the traffic, and improving communications. The Parish Council had expressed broad appreciation of these concessions. The ICA commended the very rapid and fulsome responses to Mr AB's questions and challenges, and dismissed the notion that there had been a lack of urgency. He did not uphold any part of the complaint.

Leaf-fall from a tree

Complaint: Mr AB wanted a tree on Network Rail land adjoining his home felled or reduced in size. He acknowledged that the tree posed no immediate risk but said it could do so in the future. He also said he was put to the inconvenience of clearing up leaf-fall and other debris and jet-washing his patio.

Network Rail response: Network Rail would inspect the tree as part of its routine maintenance schedule. It's policy was not to fell healthy trees that posed no risk and it

drew attention to its biodiversity objectives. The company said it would not pay for leaf-fall, pointing out that it had some 20 million trees on its land.

ICA outcome: The ICA could not uphold the complaint. It was quite clear that Network Rail's decision was in line with its published policy. Nor did he think it was maladministrative for the company to refuse to pay for leaf clearance, etc. However, the ICA was mildly critical of a delay in responding to Mr AB – outside the company's 20-day target – that he said was likely to have added to Mr AB's discontentment.

Damage from adjacent trees

Complaint: Mr AB complained about trees to the rear of his property adjacent to the railway. He said they were a hazard and had caused damage to his property.

Network Rail response: Network Rail had initially said that the trees were safe and had declined to assist. It latterly commissioned an arborist's report that suggested that the trees were not in a good condition but that immediate action was not required. However, during the course of the ICA review, the company agreed to fell the trees and to meet Mr AB's claim for damage.

ICA outcome: The ICA did not feel there was anything more that he could achieve, save that he felt Network Rail had not sufficiently considered the inconvenience and anxiety Mr AB had suffered. He therefore recommended a consolatory payment of £200 before closing the complaint as having been discontinued.

New houses built over Victorian railway tunnel

Complaint: Mr AB complained about water vapour escaping from an air vent from a major railway tunnel over which his new-build home had been developed. He said this caused dirt and nuisance for his home.

Network Rail response: Network Rail had placed a mesh over the vent and said it would consider a permanent mesh in due course. The company said the water vapour was harmless and that it had made clear to Mr AB before his purchase that no mitigation was planned. (The vent had been no problem for 150 years or more when the land above the tunnel was green fields.)

ICA outcome: The ICA spoke with Mr AB who understood the limitations of the ICA's remit as a non-expert with no authority to tell a DfT body how to use the resources at its disposal. However, it became clear that Mr AB sought conversation with an engineer to understand why the vent (which dated from the age of steam) could not be closed entirely. When this was agreed by Network Rail, the ICA was able to close the case.

A customer infuriated by Network Rail's refusal to remove 'non-offensive' graffiti

Complaint: Mr AB complained that Network Rail refused to remove tag-style graffiti from a railway bridge close to his home. He objected to Network Rail's account of its policy that only offensive graffiti (for example racist or sexist material) would be prioritised for removal, arguing that this amounted to discrimination, contrary to the Equality Act.

Network Rail response: Network Rail explained that funding constraints meant that its resources were reserved for safety-critical work. Removing non-offensive graffiti was not safety-critical.

ICA outcome: The ICA asked Network Rail for more information about why it could not remove the graffiti while undertaking other work in the vicinity, as it had done in another case. Network Rail explained that removing graffiti requires the use of specialist equipment with an associated cost. In this instance, the company had concluded that sending a specialist team would incur significant costs that the business could not fund on a regular basis. The ICA accepted that Network Rail's policy had been reasonably explained to Mr AB. He did not see that the application of that policy represented unfairness commensurate with a breach of the Equality Act (although he emphasised that he had no jurisdiction to adjudicate on this). The ICA saw no grounds to uphold the complaint.

Removal of homophobic graffiti from bridge

Complaint: Mr AB complained about homophobic graffiti on a railway bridge. A year had passed without it being removed. In his correspondence, Mr AB accused Network Rail staff of endorsing homophobia and he criticised the delays and the inability to give a clear timetable. When the graffiti was painted over, he also criticised the methodology.

Network Rail response: Network Rail had accepted that there had been a delay (which its file did not explain). However, it said such works required agreement with other parties including the Council and TfL.

ICA outcome: The ICA upheld the complaint in part. He felt that the year to remove the offensive graffiti was in breach of the company's own graffiti policy. However, he said Mr AB also had to understand the complexity of such works above a very busy road (Network Rail could not simply dictate when they were carried out). He also shared the company's concern about some of Mr AB's language. The ICA also pointed out that this was the second review he had conducted where the works to paint over graffiti had not been conducted with any finesse. There were lessons here for Network Rail's Southern Region and its contractor, which were escalated internally to the regional managing director.

6: DfT and other Public Body casework

(i): HS2 Ltd

6.1 There were no cases from HS2 Ltd received during the reporting year.

6.2 We speculate that many causes of grievance may now find their way to the Independent Construction Commissioner, Sir Mark Worthington. We also acknowledge the excellence of the company's engagement processes and its high-level and detailed stage 2 complaint reviews.

6.3 We note that Sir Mark has reported a significant fall in complaints to him in the final quarter of 2023.

(ii): Maritime and Coastguard Agency

6.4 We received two complaints about the MCA in 2023-24, double last year's intake.

6.5 The two cases summarised below illustrate the MCA's responsibilities both for seafarers and for vessels.

CASES

Medical decision-making

Complaint: Mr AB complained about a restriction on his ENG 1 (Seafarer Medical Certificate). He said he had been the victim of discrimination and that his personal data had been breached. Mr AB disputed the addition of the restriction (Subject to medical surveillance/treatment). There were no duties he could not carry out and the restrictions were concerned with duties on board. He also criticised the Chief Medical Adviser who had made the decision to include the restriction.

CAA response: The MCA explained its policy and cited the published Approved Doctor (AD) guidance. It denied discrimination or any breach of Mr AB's data rights.

ICA outcome: The ICA's lay view was that the decision to include the restriction followed from the terms of the MCA's published policy. Moreover, he did not think there had been discrimination (although he took a broader view than the MCA which had focussed on the nine protected characteristics under the Equality Act) or any data breach. He was also content that Mr AB's correspondence had been handled appropriately. It was a feature of the MCA complaints procedure that stage 2 involved the personal oversight of the chief

executive, ensuring the most senior possible scrutiny of decision-making (including that of the Chief Medical Adviser).

A fishing boat owner complaining of inconsistent and negligent regulation

Complaint: Mr AB was dismayed to discover that the MCA would not certify his boat, even though 'doubler' repairs to its hull, he thought, had been known to the Agency for years and approved by it in out-of-water inspections. He complained that the MCA's regulatory oversight had clearly failed, either in application, or in documentation, as he could prove that the deficits had been in situ over a period in which the MCA would have certified the vessel. Putting this right in a limited timeframe had been a very expensive business for Mr AB that he regarded as the product of MCA negligence.

CAA response: The MCA explained that it had absolutely no knowledge of the hull damage until the vessel was in Mr AB's possession. The regime that it oversaw required that vessel owners report damage and repairs proactively to the regulatory body. There had been only a single out-of-water inspection/certification episode during the span of time cited by Mr AB, and there were no deficits on record. The MCA made various concessions to assist Mr AB but insisted that the damage be properly repaired before his vessel could be certified.

ICA outcome: The ICA was satisfied that the MCA was unaware of the deficits. However, the Agency's evidence as to the rigour of the one out-of-water survey in the relevant period was inconclusive. The ICA found that the MCA should have used the opportunity of Mr AB's complaint (and his reference to evidence as to when the deficits were first identified) to satisfy itself as to whether the conduct and documentation of the relevant survey had been up to standard. The ICA felt that the Agency had taken shelter behind the lack of records, rather than considering whether they pointed to a lack of faults on the hull, or a lack of regulatory rigour. He recommended that the Agency review Mr AB's evidence and, if necessary, assess whether the survey of the vessel had been conducted and documented correctly. He also recommended that the Agency apologise to Mr AB for not addressing the essence of his complaint, that opportunities had been missed. He partially upheld the complaint.

(iii) : Civil Aviation Authority

6.6 We received three complaints about the Civil Aviation Authority, a significant reduction from last year's 12. The subject matter was medical delays, certification difficulties for a drone business, and the Authority's handling of reports of a low flying microlight (the latter complaint being brought by an aerospace professional with a good grasp of the regulations).

6.7 As the case studies below demonstrate, CAA complaints tend to focus on technical issues, outside the ICAs' personal experience or competence and perhaps ill-suited to an administrative complaints procedure.

CASES

An aerospace expert dissatisfied with the CAA's response to reports of a low-flying microlight

Complaint: Mr AB, who had extensive experience in the aerospace industry, complained on two occasions of breaches of the low flying regulations by a microlight aircraft over his home (a congested area as defined by the low flying regulations, meaning that aircraft must not fly at a height less than 300m above the highest obstacle with the radius of 600m from the aircraft or elsewhere at a height less than 150m above the ground or water; or 150m above the highest obstacle within a radius of 150m of the aircraft). With reference to the guidance on CAA low-flying breach investigations (CAP1422), Mr AB complained that the CAA had not undertaken a fully evidence-based investigation, that it had not kept him informed (in particular of the outcome of his second report), that the investigator was potentially biased, and that his own extensive evidence of a breach of the regulations had not been responded to or given due weight.

CAA response: The CAA's Safety & Airspace Regulation Group (SARG) contacted Mr AB and the pilot of the microlight. No further action was taken given what was deemed to be insufficient evidence. This represented initial review/triage by an aviation expert under CAA procedures and not an investigation. In further communications with Mr AB, the Authority apologised for failing to inform him of the outcome of his second report. It acknowledged that he had submitted evidence that had been considered by the SARG. Unfortunately, a further delay occurred in the CAA's completion of its second stage. No action against the pilot was taken.

ICA outcome: The ICA was clear from the outset that he did not act as an appellate body for regulatory decisions made by the CAA. He also noted that the customer service standards within CAP1422 were not engaged by Mr AB's complaint as the matter had not progressed to full investigation. Instead, the generic regulatory document ('Safety and Airspace Regulation Enforcement Guidance') that provides the CAA's overall approach to enforcement applied. The emphasis in this document was on communications with individuals and organisations subject to regulation, rather than complainants. The Authority accepted the ICA's criticisms that it had failed to be clear throughout the complaints procedure that the CAP1422 policy was not in play, even though Mr AB had quoted from it extensively. The ICA was also critical of the delay in informing Mr AB of the outcome of his second report. He asked the Authority to spell out exactly why Mr AB's evidence had been deemed insufficient. Through his report, the ICA conveyed SARG's conclusion that the identification of the microlight by Mr AB, and his evidence, had not

been sufficient to justify further investigation. The ICA recommended that the CAA apologise to Mr AB for the failings he had identified, and it did so through his review.

A drone operator complains that the CAA will finish his business

Complaint: Mr AB was trying to get his operating safety case (OSC) approved by the CAA's Remotely Piloted Aircraft System (RPAS) Sector Team. He complained of significant delays, inconsistency and a lack of clarity from the CAA resulting in his being unable to run his drone business for many months. Despite his repeated iterations of safety mitigations, Mr AB complained that the approval had not been forthcoming. Alleged deficits were identified sequentially by the CAA, rather than on first presentation. This meant that he was repeatedly sent back to square one. He was particularly aggrieved by refusals to approve his safety mitigations that did not fully explain what he needed to do to meet the regulatory threshold. This was costing him considerable sums in lost revenue and, potentially, would ruin his business.

CAA response: The CAA's Safety and Oversight Manager (SOM) overseeing the RPAS Sector Team responded to the complaint, emphasising that challenges to inspector decisions were checked within the unit. The SOM had interviewed all the inspectors involved in Mr AB's applications and was satisfied that the position on his OSC was correct. Some subjectivity and inconsistency between inspectors was inevitable but this was being addressed by more of a team-based approach. As inspectors became more experienced and knowledgeable, the requirement for underpinning evidence had increased. This meant that areas where Mr AB had passed muster through his OSC in the past were now being subjected to more scrutiny. The CAA was reviewing its online application system in light of Mr AB's criticisms. At its second stage, a further managerial review occurred upholding the original position. Mr AB would have to continue to liaise with the RPAS Sector Team until his application was satisfactorily evidenced. Mr AB continued to complain that he was not given the necessary steer as to how he could improve his OSC. He met with the CAA and further feedback was given on the third iteration of his OSC. Unfortunately, the dispute rumbled on for months after the ICA review.

ICA outcome: The ICA did not regard the CAA's response to the complaint of delay as sufficient. He agreed with Mr AB that things had taken too long and recommended that the CAA apologise and progress its work on the application as expeditiously as possible. The ICA expressed reservations about the extent to which the Authority was meeting provisions of the Regulators' Code. This included that, in responding to non-compliance, the Authority should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. The CAA, however, argued that the application of that paragraph (2.2) of the Regulators' Code should be heavily contextualised given findings in aviation investigations. Inspectors could not provide 'potted' responses or spoon-feed applicants unable to demonstrate the requisite standard; applicants needed to prove that they were safe. The CAA emphasised

that the complaints brought by Mr AB were exceptional and that it did not regard them as sufficient to call into question the overall approach. The root cause of Mr AB's problems was that he had not evidenced his safety mitigations sufficiently. Resources were limited in the RPAS Sector Team and it was necessary to communicate by email, contrary to Mr AB's preference. Further, Mr AB had not adhered closely to the provided template for his OSC which had increased the overheads of repeated reviews. The ICA partially upheld the complaint. Given the technical judgements involved, he could not make any finding on the extent to which the CAA had adequately informed Mr AB of the reason for his lack of success against specific safety requirements.

Communication lapses in the medical relicensing of a pilot

Complaint: Mr AB complained about delays in the CAA's processing of his attempt to convert a current EU medical certificate through the SRG1217 route (UK medical certificate application for conversion of a current EU medical certificate – this route was closed forever on 31 December 2022 as part of the process of applying amended legislation and regulatory requirements in light of UK EU transition). These delays meant that he was required to use the new process that involved commissioning a UK Aeromedical Examiner (AME) and paying £195 (as opposed to £108 that would have been the charge had the SRG1217 application been processed). He had submitted it just before the SRG1217 window closed having had no advice from the CAA following his earlier submission of MED160 (application for aviation medical certificate) paperwork.

CAA response: The CAA explained that the MED160 application had not been sufficient to trigger the SRG1217 conversion process. All it did was start the wheels turning in the appointment process for a UK AME (the very process that Mr AB was seeking to avoid). Unfortunately, a clerical error meant that Mr AB's query a couple of months before the SRG1217 conversion window closed was not answered. There had been another error when he was referred in 2023 to the no-longer-applicable SRG1217 paperwork. The CAA apologised but declined Mr AB's claim for losses as a result.

ICA outcome: The ICA noted that Mr AB's application had arrived very late in the life of the SRG1217 conversion route, and that would-be converters had been put on notice by the Authority that it might not be able to process all of the applications. The ICA could not tell the CAA to act contrary to policy and law. He did, however, regard the administrative failings as remediable through a £100 consolatory payment that the CAA agreed to make.

(iv) DfTc

6.8 No new complaints involving the department centrally were received in 2023-24. One case received in 2022-23 was closed on the basis that it involved law and government policy and was thus outside the ICA's jurisdiction.

CASES

Categorisation of quad bike not in ICA remit

Complaint: Mr AB had constructed his own quad bike. He complained that it was treated as a category M passenger vehicle. This had a number of consequences – including that it had to be fitted with seat belts which Mr AB contended would be unsafe in the event of an accident.

DfT (C) response: There had been correspondence over a number of years. The department said that the power and weight of Mr AB's vehicle meant that it could not be treated as a motorcycle. There was no discretion in applying the statutory Regulations. It was possible these would change in the future now that the UK had left the EU.

ICA outcome: The ICA said that the complaint was outside his jurisdiction on a variety of grounds. It was a regulatory decision. It was a decision endorsed personally by the Secretary of State in correspondence with Mr AB's MP. And the complaint involved the law and government policy. It was clear that Mr AB felt very strongly, but the ICA could identify no maladministration or breach of the Nolan Principles. Mr AB argued that he had been the subject of reverse racism as a white Englishman, but the ICA said he could see no evidence of this and – while it was Mr AB's own choice how he pursued his complaint – he deprecated some of the language Mr AB had used.

(v) Vehicle Certification Agency

6.9 We are pleased to note that 2023-24 was another referral-free 'clean sheet' year for the agency, that has sent us three cases since April 2013. Without wishing to issue spoilers for our 2024-25 Annual Report, however, we think it likely that we will have at least one VCA case to summarise next year.

Appendix 1

THE DEPARTMENT FOR TRANSPORT
INDEPENDENT COMPLAINT ASSESSORS – TERMS OF REFERENCE
JULY 2024

Introduction

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

    - put right any injustice or unfairness suffered by members of the public as customers or in consequence of the actions, inactions or decisions of the DfT and its public bodies
    - improve services delivered through the DfT and its public bodies
    - provide assurance that the DfT and DfT public bodies have followed proper procedures and that maladministration has not occurred

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. The ICA process is intended to assist customers and users of DfT/DfT public body services; it is not best designed for resolving disputes between fellow professionals.

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))
    - other bodies reporting to DfT as set out in Annex C

4. All complaints intended for ICA review must be referred to the ICAs by the DfT or DfT public body concerned. Complainants cannot refer their cases to the ICAs themselves.

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

6. 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

7. An agreed protocol, Annex A to these Terms of Reference, defines the scope of the ICA scheme.

8. The DfT/DfT public body will tell all complainants that they can ask for an ICA review in the final response to the complaint and in published information about the DfT/DfT public body's complaints procedure. This includes responses to complaints made by Members of Parliament and others acting on behalf of the complainant. The ICAs will pass back self-referred complaints to the relevant DfT public body or the DfT.

9. 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 is at Annex B.

10. 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.

11. 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.

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

13. 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).

14. 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.

15. 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 detailed review would be disproportionate

16. Having considered the factors set out in paragraph 15, 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.

17. 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.

18. An ICA may exceptionally conduct formal interviews with relevant parties, but should tell the DfT or DfT public body (and DfT ICA sponsor if appropriate) beforehand. Phone contact with complainants does not constitute a formal interview.

19. The ICA will review the complaint and set out their conclusions about the way the matter has been handled.

20. An ICA may discuss a case with another ICA or ICA associate if they feel it would be helpful. An ICA may also, with prior agreement from DfT ICA sponsor, co-opt an associate ICA to support case handling.

21. The ICA will aim to complete their draft review of the case within three months. They should tell the complainant and the DfT or 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.

22. The ICA will send a draft report to the Dft/DfT public body for it to check for factual accuracy.

23. If the DfT/DfT public body thinks it might be difficult to accept and/or implement the ICA's draft recommendations, it should comment at this stage. It should try to reach an agreement with the ICA about their findings and recommendations. If the DfT or DfT public body and the ICA cannot resolve any difference of opinion, and the DfT or DfT public body does not agree to implement a recommendation, the DfT or DfT public body should tell the complainant and the ICA, in writing, after the ICA issues the final report.

24. 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.

25. The ICA's final report will, where appropriate, include the ICA's findings and conclusions (with reasons) as to:

    - whether the DfT or DfT public body has been fair and has met the relevant standards in its administration (including in its complaint handling), consistent with the UK Central Government Complaints Standards

    - whether 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

26. 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 and Health Service Ombudsman (PHSO).

27. 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.

28. 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.

Remedies

29. 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

30. When making a recommendation for any financial payment, the ICA will consider the DfT or DfT public body's policy, relevant HM Treasury guidance (currently Managing Public Money) and relevant Parliamentary and Health Service Ombudsman documents, in particular the Principles for Remedy and Our Guidance on Financial Remedy, and the UK Central Government Complaint Standards (https://www.ombudsman.org.uk/organisations-we-investigate/complaint-standards/uk-central-government-complaint-standards/uk-central-government-complaint-standards-summary-expectations).

31. 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.

32. When the ICA has made recommendation(s) about redress, the DfT/DfT public body must respond to the complainant in writing, stating whether they will comply with the

recommendations and giving a clear explanation for their decision. A copy of what is sent to the complainant must be sent to the ICA who handled the review.

Confidentiality/personal information handling

33. The DfT or DfT public body should make clear to complainants they will share their personal information with the ICAs when they ask for ICA review and before they refer any case to the ICAs. The sharing of a complainant's personal data must be agreed with them before it is passed on.

34. 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.

35. The DfT/DfT public body may also use complainant personal data for producing anonymised statistical information.

36. 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.

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. The DfT ICAs may retain data for longer if a case is or is thought likely to be subject to Ombudsman consideration. DfT/DfT public bodies have their own data retention and archive policies with which they will conform.

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.[9]

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:

[9] 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.]

- 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.

Reporting by ICAs

44. 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 include:

- how many complaints were referred to them
- how many complaints they upheld, partially or fully
- what recommendations and suggestions, if any, they made to the department and/or DfT bodies
- what recommendations and suggestions, if any, the ICAs made for the improvement and better performance of the complaints procedures of the DfT/ DfT body
- 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 body should know about

45. 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.

46. The department will publish the ICAs' annual report and its response to any recommendations on its website as soon as possible following receipt.

47. 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

48. 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 unless an ICA judges that an acknowledgement is not required in the circumstances
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

49. 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

50. 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 (ICAs) 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[10] – 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] With the sole exception of complaints about the HS2 Residents Commissioner.

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
- is currently subject to police investigation or court proceedings.

14. If your complaint falls within the first 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 complainants preferred method of communication and that these details have been agreed, are current, and valid	
Date:	Person making referral (if different from email)

I confirm that the above information has been verified.

Any other comments:

Annex C

LIST OF DfT BODIES COMING WITHIN THE ICA JURISDICTION

British Transport Police Authority (BTPA)[11]

Civil Aviation Authority (CAA)

Driver and Vehicle Licensing Agency (DVLA)

Driver and Vehicle Standards Agency (DVSA)

High Speed Two Ltd (HS2 Ltd)

LCR Property/London & Continental Railways (LCR)

Maritime and Coastguard Agency (MCA)

National Highways (NH)

Network Rail (NR)[12]

Vehicle Certification Agency (VCA)

as well as

The central Department for Transport itself (DfT(c)).

[11] Not the British Transport Police.

[12] Network Rail does not come within the jurisdiction of the Parliamentary and Health Service Ombudsman. Complainants who remain dissatisfied following an ICA review should be advised to contact an MP who can raise the matter with the DfT or with a Minister.

Appendix 2

COMPLAINTS STATISTICS FOR THE DEPARTMENT FOR TRANSPORT'S DELIVERY BODIES 2023-24

Department for Transport – Complaints 2023-24

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 2023-24 and the previous three years is provided in Table 1.

These show an overall reduction in complaints which we put down largely to operational recovery following the pandemic and its impact on delivering services as well as improving handling business queries that would become complaints by implementing lessons learnt.

Table 1: Gross number of complaints (e.g., Stage/Step 1)

Year	2023-24	2022-23	2021-22	2020-21
DfTc	7	8	24	12
BTPA	0	0	0	0
CAA	131	199	270	153
DVLA#	6,836	13,684	28,197	10,226
DVSA	9,884	9,819	8,699	5,985
National Highways	5,597	5,994	4,886	4,242
HS2 Ltd	1,107	1,147	1,637	1,877
MCA	77	52	66	84
Network Rail *	12,791	10,199	7,391	9,005 (1,636*)
ORR	1,232	1,118	1,079	1,257
VCA	22	15	10	11
Total	**37,684**	**42,235**	**52,259**	**32,852**

DVLA data reflects 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' or those from MPs managed at 'Step 1'. Due to variations in the information requested DVLA complaints data published elsewhere may differ from that published here.

Lessons from complaints handling and improvements made during 2023-24.

The following improvements either to complaint handling or service delivery processes have been reported by the central department complaints team and those of its public bodies acting on the feedback from complaints. Any queries relating to the data individual examples or data should be directed to the central department or public body reporting here.

Department for Transport (DfTc – central department)

The trends we have spotted this year have been that we have had less complaints being escalated up to stage 2 and 3, the majority of our complaints were dealt with as stage 1 responses. Additionally, we have spotted an increase in complaints but not DfT related complaints.

We have been receiving a large number of complaints relating to other public bodies and private limited companies, such as Transport for London, certain bus companies, London Taxi's as well as Uber and Bolt. We have simply been forwarding these on or have been providing further information to the complainant on how to make their complaint directly and explained we cannot assist.

Civil Aviation Authority

Following complaints relating to our Engineers' licence and Private Pilot's Licence (PPL) applications, improvements have been made to the application process, which has reduced the processing time.

Collaboration and engagement between our Licensing and Finance Teams has introduced new guidance for processing customer refunds to ensure there is a clear approvals process, providing consistency and status tracking ability.

Our CAP1404 has been updated to reflect the difference between 'Provisionally Suspend' and 'Suspend' in relation to airspace infringement cases, to ensure a better understanding, how it fits with legislation and the importance from a safety perspective.

Our Whistleblowing policy and process has been updated to ensure we are as transparent as the law allows in responding and ensuring our decisions are fully documented through improved record keeping.

To improve communication, consistency, collaboration and the customer experience:

- The guidance on applications from Type Rating Examiner (TRE) with EASA qualifications has been updated on our website
- Where complaints involve multiple teams, we identify a lead investigator to manage them
- The RPAS Operational Authorisation Application Assessment process has been updated to reflect that if an application reaches five hours and is believed will go over seven hours, the applicant must be informed before any further charges are applied

Improved internal processes relating to correspondence addressed to our CEO / Chair's office when a complaint is identified, to ensure complainants are guided to the best route open to them.

Quality control checks have been introduced on Flight Instructor (FI) renewals to ensure correct tracking and reduce delays for applicants.

Monthly meetings have been introduced by our Flight Operations and General Aviation teams to improve communication internally between teams to ensure a joined-up approach with stakeholders.

Basic information on our complaint handling process provided to all new employees at their induction.

Driver and Vehicle Licencing Agency (DVLA)

The DVLA Complaints process has been simplified since the 1 April 2024, and the GOV.UK complaints page has been updated to reflect that DVLA complaints have reduced over the last two financial years following operational business recovery post covid.

A British Sign Language (BSL) service has been introduced to provide a video relay service for deaf customers to communicate with DVLA using their first language.

During the year customer application forms for driving licences have been redesigned to make it easier for customers to complete them and avoid follow-up queries.

Updates to the information on GOV.UK have been made to clarify identity requirements.

A new Ten-Year Renewal (TYR) online service, which is integrated with the new 'Driver and Vehicles account', has been launched. This service enables a user to upload their own driving licence photo and signature and allows customers a new option, instead of having to use their passport photo.

We have improved processes to obtain missing or additional information for medical applications.
To better explain medical licensing decisions, letters have been reworded using simpler language. A QR code has been introduced, which directs customers to a video that clearly explains the appeals process and the next steps when someone has had their driving entitlement revoked.

Driver and Vehicle Standards Agency (DVSA)

The practical car driving test remains the service that is the biggest driver of complaints to DVSA. Very high demand for car practical driving tests has resulted in waiting times longer than DVSA would want for its customers, yet complaint volumes have not increased in line with these waiting times. In 2023-24 DVSA responded to 95 per cent of correspondence within 10 working days, exceeding its 90 per cent target and has been working to reduce the time it takes to process out-of-pocket expense claims that result from cancelled driving tests.

DVSA complaints handlers supported the piloting of the PHSO's complaints standards training modules and will be rolling this out to all complaints-handling colleagues in due course.

DVSA has incorporated learning from ICA complaints into monthly theory test operations meetings. The agency is incorporating the review of feedback into work to make improvements to theory test services for disabled and neuro-diverse candidates. This includes considering the need for additional training for staff in customer facing roles as well as for improvements to booking processes for candidates who ask for more support.

High Speed 2 (HS2)

We marked the third year of main works construction of the new railway in 2023. Key highlights included reaching the halfway point of building the UK's longest railway viaduct along the Colne Valley near London, and our tunnel boring machines completed about 21 miles, about a third of the total tunnelling for HS2.

Our diesel-free construction sites increased to 19, cutting carbon emissions and pioneering clean construction technology. However, it's important to recognise the changes made to the project: the government announcement which paused activities at Euston to concentrate on construction between Old Oak Common and the West Midlands, and the cancellation of Phase 2a, 2b and HS2 East. The development at Euston will now be led by a development corporation, while the Old Oak Common and Curzon Street section of Phase One will be prioritised to deliver passenger benefits as soon as possible.

We recognise that no one chose to live by any of HS2's construction sites. We always try to do the right thing, treating people and places with respect, and make sure our supply chain does everything possible to reduce disruption for residents and local businesses.

Over the past year, we held 537 public events, engaging with 17,748 people. Our website received more than 1.6 million visitors and we sent 667 local updates and newsletters to 49,972 subscribers.

We received 38,371 enquiries to the HS2 helpdesk, responding to 62 per cent at the first point of contact. We received 1,107 total complaints in 2023 -24 compared with 1,147 for the same period the previous year, a decrease of 3 per cent. We resolved 97 per cent of complaints in 20 working days – 100 per cent at the first stage of the complaints process. None were escalated to the Parliamentary and Health Service Ombudsman. We met our corporate commitment of 100 per cent urgent construction-related enquiries and complaints being resolved in two working days.

Maritime and Coastguard Agency

We have seen a 48 per cent increase in complaints this year compared to last year, mainly due to the implementation of an online oral exam for seafarers to obtain certificates of competence.

The online exams have reduced the need for resits and improved the waiting times for face-to-face exams. However, some issues have been encountered with the booking system, such as slow responses, misinformation and third-party interference. A semi-manual process has been implemented to overcome these issues until a strategic solution has been developed.

We have since seen a reduction in complaints received.

National Highways

In 2023-24, we continued to improve the timeliness of our responses to customer contact. As of March 2024, we achieved a 12-month rolling score of 92.1 per cent, a 1.3 per cent increase, compared to 90.8 per cent for April 2022 to March 2023.

The main way we improved in this area last year was in cross-business engagement and collaboration, including:

- increasing the accessibility to training across the business to empower our people to deliver a professional and friendly service to our customers by telephone, while also supporting a timelier response to customer contact
- identifying learnings in how customer contact progresses through our contact management system and implementing improvements, including the reporting of

open calls, to minimise delays where contact requires input from multiple or more relevant team(s)
- developing case templates to help our customer contact centre advisors find out the right information at first point of contact, enabling a more efficient response process
- developing customer contact assurance mechanisms to ensure enquiries and complaints that cannot be answered at first point of contact reach the relevant business area, and to ensure the accuracy of recording customer contact
- developing better and more accessible guidance to provide clear roles and responsibilities and to improve the quality when responding to customer contact
- sharing learnings across the business of how correspondence teams are structured to best manage customer contact
- sharing knowledge with the customer contact centre to help advisors answer more customer enquiries at their first point of contact
- liaising with other government departments to share best practice and identify areas for improvement
- seeking customer feedback following their contact with us, to identify drivers of customer satisfaction and dissatisfaction

Improving how we manage complaints.

Our performance is improving, and this has been recognised by The Institute of Customer Service. Receiving complaints is, however, unavoidable and in 2023–24 we worked to further improve how we manage this contact, including by:

- continuing to develop a customer contact platform, which will consolidate all our Customer Relationship Management data onto one platform
- setting up ECHO (Every Customer Has an Opinion) surveys for complaints to help us identify our customers' evolving needs and expectations for responses to their contact and make continual improvements to our procedures and guidance
- using our correspondence forum to share best practice across the business
- attending DfT's complaints forum and cross-government complaint groups to identify improved ways of working
- releasing and embedding contact handling guidance to provide support to our people and customers when the nature of contact is difficult
- updating our corporate complaints process to ensure it remains fit for purpose and aligns to the complaint's standards set by the Parliamentary and Health Service Ombudsman

Network Rail

Complaints were expected to remain roughly stable during 2023-24, but spikes in contact during P11 and P13 resulted in a 25 per cent increase on the previous year. This increase largely focussed on activities in two of our stations which received very negative feedback via social media and through our online web form.

Despite this, proportionally, complaints still only accounted for 11 per cent of our overall contact. The top reason for customer complaints related to the work we carry out in communities and not providing advanced notification to them.

As in previous years, people who contact us are asking for information about the organisation (e.g. specific projects, 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. Unexpectedly, there was a decrease in ICA referrals this year, down by seven compared to the previous year. It is not clear whether this is because our regional community relations teams have resolved the complaints earlier in the process, or whether there is ongoing lack of awareness of and/or adherence to the company's complaint process.

We have created a dedicated complaints page on our company website. We have also created and published a guide for managing unreasonable contact, both for our staff who are handling complaints, and an externally facing guide to help manage customer expectations. In addition, we have completed bespoke complaints-handling training and invited the ICAs to our national conference to talk about their experience of complaints and to provide expert guidance to our regional teams.

Office of Rail and Road – non-ministerial department

The Office of Rail and Road is a non-ministerial department that reports direct to parliament not DfT, and therefore only reports its complaint data to DfT for information, given its role over National Highways and Network rail and works with DfT. This includes using the DfT ICAs to help resolve any difficult complaints and it is therefore a source of independent resolution for its complainants.

The majority of correspondence received by the Office of Rail and Road relates to concerns about the rail industry and the strategic road network. We aim to respond to 95 per cent of all such enquiries within 20 working days of receipt, excluding safety cases which can often take longer than 20 days to investigate due to the complexity of often multi-part enquiries. This metric is evaluated on a monthly, quarterly, and annual basis.

In the period 2023-24, we received a total of 1,232 general enquiries and complaints. This is a slight increase on the previous reporting year. However, the performance target for 2023-24 has been exceeded at 97 per cent. We received a total of three complaints directly relating to the way in which the Office of Rail and Road handled an initial enquiry. All these complaints were investigated at senior management level and were responded to within 20 working days.

In October 2023, we launched an updated Complaints Handling Guidance that required input from all teams across the business. We are now rolling out a series of training sessions on handling complaints for colleagues within the Safety Directorate. This will help improve service standards and best practice in areas that experience high volumes of correspondence and subsequently help improve the customer service experience.

Complaints received by Independent Complaints Assessors

The data in Table 2 has been corroborated by the ICAs and each of the named DfT sources, 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 (ICA Annual Report has cases received#)

Year	2023-24	2022-23	2021-22	2020-21
DfTc	0	9	2	4
CAA	3	12	6	2
DVLA	222	216	162	193
DVSA	99	75	136	72
HS2 Ltd	0	0	3	4
MCA	2	1	3	3
National Highways	32	31	34	42
Network Rail	12	19	13	2
VCA	0	0	0	1
Total	370	354	359	323

Complaints to the Parliamentary and 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 that there has been 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 2023-24.

Table 3: Number of complaints investigated, upheld, and not upheld by PHSO

Organisation	Complaints accepted for detailed investigation			Investigations upheld or partly upheld^			Investigations not upheld or discontinued		
	23/24	22/23	21/22	23/24	22/23	21/22	23/24	22/23	21/22
DfTc	0	0	0	0	1	0	0	0	0
DfT ICAs	0	0	2	0	0	1	0	0	0
CAA	1	0	1	0	1	1	0	0	0
DVLA	3	1	4	2	4	5	1	3	2
DVSA	0	0	0	0	0	0	0	0	0
HS2 Ltd	0	0	2	0	0	2	0	0	0
National Highways	1	0	0	0	0	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	5	1	9	2	6	9	1	3	2

^Completed investigations often occur from cases accepted for detailed investigation in previous years

Investigations into complaints by PHSO into DfT or its public bodies

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, and the time between the conclusion of an investigation; issue of a report with recommendations, and when those recommendations are complied with or not can fall into a subsequent year.
Table 4 includes the number of recommendations made by PHSO following an investigation of a complaint and whether those have been complied with over the last three 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		
	2023-24	2022-23	2021-22	2023-24	2022-23	2021-22	2023-24	2022-	2021-22	2024-24	2022-23	2021-22
DfTc	0	1	1	0	4	1	3	3	1	1	2	0
DVLA	2	4	5	3	13	9	1	13	8	1	0	1
HS2	0	0	2	0	2	0	0	2	0	0	0	0
CAA	0	1	1	0	4	1	1	4	1	0	0	0

Here you can access the PHSO website here through this website link:

Welcome to the Parliamentary and Health Service Ombudsman | Parliamentary and Health Service Ombudsman (PHSO)