

Report to:	QSMTM Q3
Report by:	Euan McCulloch, Head of Enforcement
Meeting Date:	14 February 2024
Subject/ Title:	Investigations Performance (VC202037)
Attached Papers	None

Purpose of report

1. To report to the Senior Management Team (SMT) on investigations performance in Q3 of 2023/24.

Recommendation and actions

2. It is recommended that SMT:
 - (i) note this report and
 - (ii) agree the recommendations regarding publication set out in the “Publication” section below.

Executive summary

The Commissioner’s duty under section 49(1)

3. Under section 49(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), the Commissioner is required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.
4. The Commissioner has little, if any, control over the number of applications made to him.
5. Decision notices issued by the Commissioner, including notices determining an application to be frivolous, withdrawn, etc., can be appealed to the Inner House of the Court of Session.

Applications received

6. We received 167 applications in Q3 of 2023/24.

Applications received	Number
Q3 2023/24	167
Q2 2023/24	131
Q1 2023/24	119
Q4 2022/23	139

7. This is considerably higher than the number of applications received in Q3 of 2022/23 (112) and in Q2 of 2021/22 (145) (and, by some margin, the highest quarterly figure for the current year). It should be noted, however, that 76 applications were received in November, an abnormally high figure for any month.

Cases awaiting validation

8. The Commissioner can only investigate applications which comply with section 47(2) of FOISA, where a review has been sought from the authority and where, for example, the relevant timescales set out in Part 1 of FOISA have been complied with. We refer to the checking process as “validation.”
9. By the end of the quarter there were 74 applications awaiting a decision on validation, an unusually high figure. In this regard, the number of applications received in November should be taken into account, along with staff absence in the (small) Validation Team in December.

Applications under investigation

10. We define “applications under investigation” as any open, validated applications. The cases will not always be under active investigation.
11. At the end of Q3, we had 432 applications under investigation. Although this is an increase on the number under investigation at the end of Q1, the rate of increase remains steady:

Applications under investigation	Number
Q3 2023/24	432
Q2 2023/24	419
Q1 2023/24	406
Q4 2022/23	392

12. As noted previously, given the lack of investigative resource over much of 2022, cases are taking a long time to be allocated (as at the end of Q3, we still have over 200 cases waiting to be allocated to investigators).
13. Three new investigators started in Q4 of 2022/23, bringing the team complement back up to normal levels, although we are still being affected by long term absence. Further recruitment took place towards the end of 2023/24 Q3, to fill two vacancies (partly created by changes at higher levels) and the focus will remain on maintaining capacity without unnecessary delay.

Applications closed in Q2

14. We closed 102 cases in Q3, 65 fewer than we received: again, the unusually high number of applications in November should be noted. The table below shows the stages at which the cases were closed. Resources were diverted away from approving decisions for a number of reasons during the quarter and the need to return to this key area of work has been recognised.

	Validation	Investigation	Decision notice	Total
Q3 2023/24	62	20	20	102
Q2 2023/24	44	40	34	118
Q1 2023/24	40	27	33	100
Q4 2022/23	54	46	32	132

Average age of cases

- 15. Section 49(3)(a) of FOISA requires the Commissioner to issue a decision within four months of receipt of a valid application, or such other period as is reasonable in the circumstances. While, realistically speaking, it is not possible to close *all* cases within four months, our aim is to close cases, *on average*, within four months. However, we have not been able to achieve this for a number of years.
- 16. The average age of closed (valid) cases increased in Q2. We cannot reasonably expect this increase to level out until significant inroads are made into the backlog.

As at end	Months
Q3 2023/24	16.4
Q2 2023/24	12.3
Q1 2023/24	10.2
Q4 2022/23	7.8

- 17. The average age of open (valid) cases also continued to increase in Q3.

As at end	Months
Q3 2023/24	12.2
Q2 2023/24	11.3
Q1 2023/24	10.8
Q4 2022/23	8.2

KPIs – overview

- 18. Detailed below is our performance against each of our KPIs in Q3. The KPIs work on a rolling basis, which means that the performance in one year affects the next.
- 19. At the end of Q3, six of the KPIs were being met (a small improvement on last quarter’s five).
- 20.

KPIs – validation

- 21. These KPIs focus on how long it takes us to determine whether an application is valid.

Determination on validity to be made in 70% of cases in less than one month

- 22. This target was exceeded at the end of Q3 (78.6% actual).

Determination on validity to be made in 90% of cases in less than two months

- 23. This KPI has also been exceeded – 95.7%.

Determination on validity to be made in 97% of cases in less than three months

- 24. This KPI has also been exceeded – 98.3%.

KPIs – Failure to respond (FTR)

- 25. These KPIs focus on how quickly we close cases where the sole reason for the application being made to us is that the public authority has failed to respond.
- 26. FTR cases are, in the main, investigated by our Validation Officers.

60% of FTR cases to be closed in less than 1.5 months

27. This KPI was exceeded in Q3 (75%).

100% of FTR cases to be closed in less than four months

28. This KPI was met in Q3.

KPIs - substantive cases

29. These KPIs focus on how long it takes us to close “substantive” (i.e. non-FTR) from the date of receipt.

30. Performance against substantive KPIs remains a significant concern, given that performance falls well below the KPIs. The relevant issues relating to high caseload, resources and mitigations have been rehearsed in previous performance reports and are discussed again (under “Resources Impact”) below.

50% of substantive cases to be closed in less than four months

31. Not met – 9.4%, a small improvement on Q2.

75% of substantive cases to be closed in less than six months

32. Not met – 9.4% (down on last quarter’s 14.1%).

95% of substantive cases to be closed in less than 12 months

33. Not met – 9.4%. As indicated previously, a consequence of the long delays in cases being allocated for investigation (but considerably down from last quarter’s 34.4% and therefore of concern).

KPIs: “All cases”

34. This set of KPIs looks at all of the applications made to us.

70% of cases to be closed in less than four months

35. 71.6% - met (just – but the first time this, or any other “all cases” KPI, has been met this year).

85% of cases to be closed in less than six months

36. Not met – 71.6% (the best performance against this KPI this year).

97% of cases to be closed in less than 12 months

37. Not met – 71.6%. An improvement on Q2’s 65% but in line with Q1’s performance.

Risk impact

38. We have procedures in place providing detailed guidance on the investigation of applications. We also have set KPIs for these investigations. Failure to comply with the KPIs is likely to undermine confidence in the way applications are processed. This committee report, in allowing SMT to keep track of investigations performance, mitigates against this risk.

Equalities impact

39. There are no direct equalities impacts arising as from the recommendations in this committee report.

Privacy impact

40. There are no direct privacy impacts arising from the recommendations in this committee report.

Resources impact

41. The number of applications received in previous years, together with the fact that the team has not been at full capacity since early in the pandemic, continues to place a lot of pressure on the team. We are, however, continuing to seek and implement ways of managing the whole caseload, including the backlog, more efficiently and effectively, with a view to easing that pressure. With that in mind, “Project Blue” was established during the quarter, bringing a more dedicated approach to the management of the backlog, while we have also put arrangements in place to cut case times by taking a “right first time” approach to submissions from public authorities.
42. As indicated above, we remain focused on maintaining capacity at all levels. All established posts within the team were filled or in the process of being filled by the end of the quarter.

Operational/strategic plan impact

43. This committee report reflects objective 6 in the Commissioner’s strategic plan for 2020-24: to be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent.

Records management impact (including any key documents actions)

44. None.

Consultation and Communication

45. Once approved, the report will be communicated to the Enforcement Team..

Publication

46. I recommend that this committee report is published in full.