

Report to:	Monthly Senior Management Team Meeting
Report by:	Head of Policy and Information
Meeting Date:	12 July 2024
Subject/ Title:	Annual Interventions Activity Reporting Q1- Q4 2023-24 (VC 211475)
Attached Papers	Annual Interventions Activity Report Q1- Q4 2023-24 (VC211398)

Purpose of report

1. To report on interventions activity by the Scottish Information Commissioner ('the Commissioner') across 2023-24 to the Senior Management Team (SMT), as required by the Commissioner's Governance Reporting Requirements.

Recommendation and actions

2. I recommend that the SMT:
 - (i) Note the attached report and activity it sets out
 - (ii) Agree that we make a bid for designated resource to carry out our Intervention function
 - (iii) Agree that this Committee Report and the attached paper can be published as set out in the publication section below.

Executive summary

Interventions

3. The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 both give the Scottish Information Commissioner ("the Commissioner") the power to act where a public authority is not complying with requirements they set out, or with the Scottish Ministers' Codes of Practice. These powers include:
 - promoting good practice
 - assessing whether an authority is following good practice
 - issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
 - issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
4. An "intervention" is the term used to describe the action which the Commissioner will take proactively to improve the practice of individual authorities more generally, rather than in relation to the outcome of a specific information request via an application investigation. The Commissioner's [Intervention Procedures](#) set out the specific detail of how and when interventions will be conducted.

Reporting on interventions activity

5. In 2020-21 the Commissioner began reporting on intervention activity via a report to the SMT. Initially the report was annual, and from 2021-22 reports will be made quarterly.
6. Due to resource restrictions (we have no dedicate resource for intervention activity), intervention activity has been restricted throughout 2023-24. The Commissioner recognises the significant impact and effectiveness of his intervention activity in driving up practice of public authorities across Scotland.
7. Although we continue to implement intervention activity without dedicated resource, we hope to gather and collate data throughout 2024-25, to form a business case bid for dedicated resource for this activity moving forwards.
8. These reports are provided in line with policy set out in the Commissioner's [Intervention Procedures](#) and [Enforcement Policy](#).

Intervention caseload during 2023-24

9. Intervention activity, although restricted, continued during 2023-24. We started 2023-24 with seven Level 2 Interventions, by the end of year, we had closed five. One additional Level 2 intervention with Midlothian Council was opened during the year, escalated from Level 1. It is anticipated that all interventions relating to poor timescale performance will be opened at Level 2 moving forwards. Two Level 1s currently open are likely to be escalated to Level 2 or 3 during the year (NHS Forth Valley, Heriot Watt University). Greater Glasgow and Clyde NHS was escalated from a Level 1 to a Level 3 early in 2024-25.
10. There remains consistent and effective activity at Level 1 and non-compliance notifications, with 286 cases recorded where we acted in response to practice concerns identified.
11. There were eight Level 2 interventions which continue to be actively monitored during 2023-24. Five interventions were closed during the course of the year. All of these, relate to compliance with timescales.
12. The Scottish Ministers' intervention remains open at Level 3, with a new Level 3 intervention with the Scottish Ministers opened in February 2024. Level 4 intervention with Aberdeenshire Council was closed on 11 April 2023.
13. Ordinarily, Intervention work is spread across both Enforcement and P&I functions – this has not been possible in 2023-24, with the bulk of substantive Intervention activity undertake by the P&I Team. Throughout 2024-25, HOPI proposes gathering data on the effectiveness on our Interventions in order to inform a business case for a dedicated resource to carry out this function.

Interventions	2023-24(full year)
Non-compliance notifications	227
Level 1	59
Level 2	8
Level 3	2
Level 4	0
TOTAL	297

Risk impact

14. Timely and accurate reporting on enforcement activity is necessary to ensure the Commissioner demonstrates good practice and governance and mitigate strategic risk to the Commissioner's reputation and public confidence in the role.
15. Reporting on interventions also contribute to mitigation of operational risks, including by supporting efforts to ensure the Commissioner demonstrates robust and defensible decisions; ensuring the organisation engages properly with stakeholders; and ensuring we have appropriate and effective policies in place for every aspect of our business.

Equalities impact

16. There are no direct equalities impacts arising as a result of the recommendations in this report.

Privacy impact

17. There is no new direct privacy impact arising from this committee report or attached paper.

Resources impact

18. Interventions are delivered within planned operational resources (though no specific or dedicated resources are provided or allocated for this function). Intervention work is to be spread across both Enforcement and Policy Teams. As they are provided within existing resource, then at a time of high caseloads (as we are currently experiencing) the resource

which can be applied to interventions is necessarily more limited. Furthermore, fulfilling the intervention function will necessarily divert resource away from other workstreams, including applications casework.

Operational/ strategic plan impact

19. Reporting on intervention activity is required as set out in the current operational plan, and governance reporting arrangements.
20. Reporting on intervention activity contributes to the following strategic objectives as set out in the Strategic Plan 2020-2024:
 - (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
 - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

Records management impact (including any key documents actions)

21. None identified – other than any updates required to the Commissioner's Governance Reporting Arrangements.

Consultation and Communication

22. The report will be published on the Commissioner's website and content highlighted in the Commissioner's newsletter where appropriate.

Publication

23. I recommend that this committee report and attached report be published in full.