

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	26 January 2023
Subject/ Title:	Investigations Performance (VC179517)
Attached Papers	None

Purpose of report

1. To report to the Senior Management Team (SMT) on investigations performance in Q3 of 2022/23.

Recommendation and actions

2. It is recommended that SMT:
 - (i) note this report and
 - (ii) agree the recommendations regarding publication set out in “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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.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, etc., can be appealed to the Inner House of the Court of Session.

Applications received

6. We received 112 applications in Q3 of 2022/23.

Applications received	Number
Q3 2022/23	112
Q2 2022/23	133
Q1 2022/23	142
Q4 2021/22	158

7. Last year, we received 626 applications. Numbers have reduced this year and we are likely to receive fewer than 550 applications this year. Given the fluctuations in the number of applications received (for example, 22 in October followed by 57 in November), it is difficult to be more precise about the number of cases we are likely to receive.

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. Despite having received 112 applications in Q3, by the end of the quarter there were only 14 applications awaiting a decision on validation.

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 Q2, we had 384 applications under investigation. Unfortunately, the number of applications under investigation continues to increase despite constantly trying to find ways to streamline our procedures and speed up investigations.

Applications under investigation	Number
Q3 2022/23	384
Q2 2022/23	344
Q1 2022/23	298
Q4 2021/22	253

12. As noted at the last QSMTM, on 1 September 2022, we introduced new procedures for inviting comments from public authorities. These will reduce the time during which an application is “lying fallow” after validated and should speed up some investigations once a case is allocated to an investigator. However, given the lack of investigative resource, cases are taking a long time to be allocated (as at the end of Q3, we have around 200 cases waiting to be allocated to investigators), so we will not know whether the new approach is successful until the start of 2023/24.
13. We will not be able to make real progress with reducing the number of applications under investigation until we have additional resources in place. Unconditional offers have recently been issued to the three candidates who were successful at interview in August (there was a substantial delay in obtaining security clearance for all three – security clearance is carried out on behalf of the Commissioner by a third party). Two of the new investigators should start in February and the third in April.
14. At the start of next month, I will be meeting with members of the (UK) Information Commissioner and the Office of the Irish Information Commissioner to discuss the issues we are all facing with backlogs and to discuss various approaches to reducing backlogs.

Applications closed in Q3

15. We closed 110 cases in Q3, two fewer than we received. The table below shows the stages at which the cases were closed.

	Validation	Investigation	Decision notice	Total
Q3 2022/23	33	29	48	110
Q2 2022/23	30	20	23	73
Q1 2022/23	42	26	35	103
Q4 2021/22	52	44	45	141

Average age of cases

16. 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, we would like to be able to close cases, *on average*, within four months. However, we have not been able to achieve this for a number of years.
17. The average age of closed (valid) cases at the end of Q3 has increased slightly from Q2.

As at end	Months
Q3 2021/22	7.7
Q2 2022/23	7.2
Q1 2022/23	7.3
Q4 2021/22	6.3

18. The average age of open (valid) cases at the end of Q3 also continues to increase.

As at end	Months
Q3 2021/22	7.8
Q2 2022/23	7.4
Q1 2022/23	7.0
Q4 2021/22	5.7

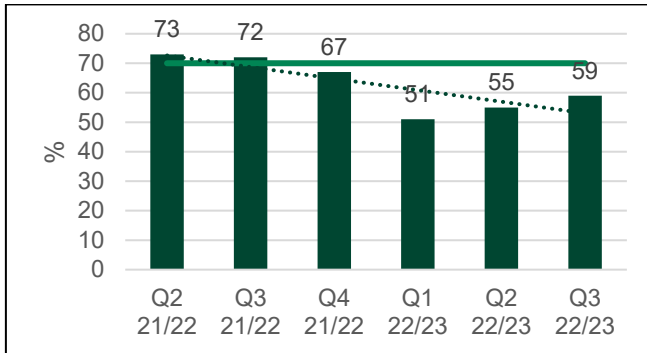
KPIs

19. 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 will affect the next. Information on performance in previous quarters is therefore included.
20. At the end of Q3, only two of the KPIs were being met (both relating to validation).

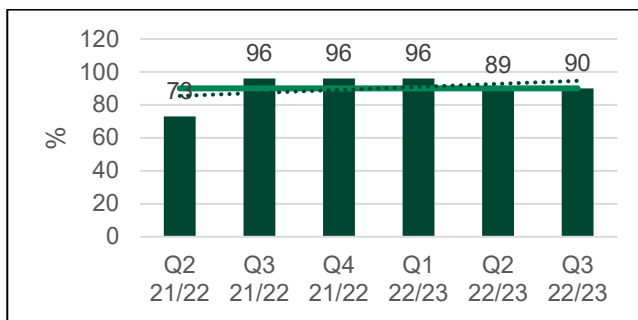
KPIs – validation

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

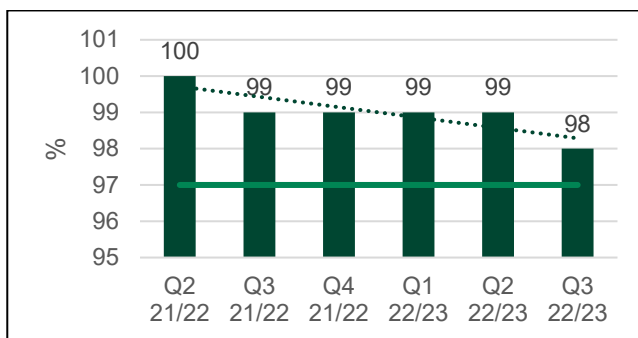
- Determination on validity to be made in 70% of cases in less than one month (59% - not met, but there has been steady improvement in 2022/23)



- Determination on validity to be made in 90% of cases in less than two months (90% - met; performance against this KPI has been consistently good over the past year)



- Determination on validity to be made in 97% of cases in less than three months (98% - met; again, performance against this KPI has been consistently high, despite the large number of applications being processed)

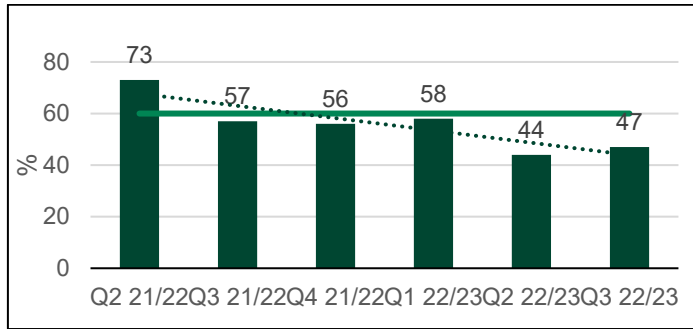


KPIs – Failure to respond (FTR)

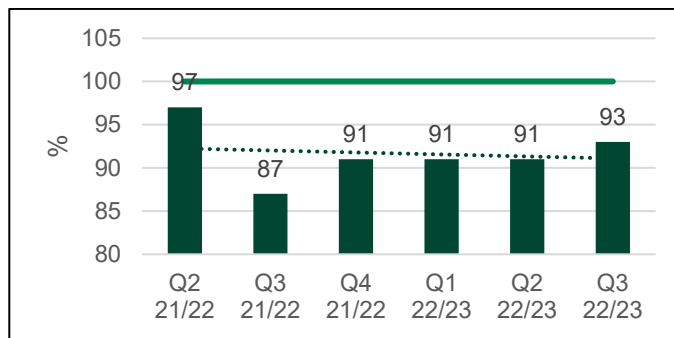
22. These KPIs focus on how quickly we close cases where the sole reason for the application being made to us is that the public authority has failed to respond.

23. FTR cases are investigated by our Validation Officers. Where we receive a high number of applications, this affects the time which they are able to spend on FTR cases.

- 60% of FTR cases to be closed in less than 1.5 months (47% - not met)



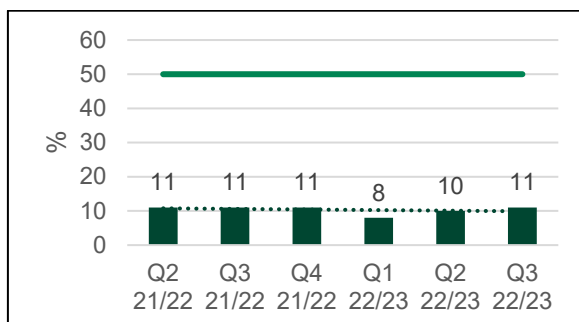
- 100% of FTR cases to be closed in less than four months (93% - not met, but, in the circumstances, performance remains good)



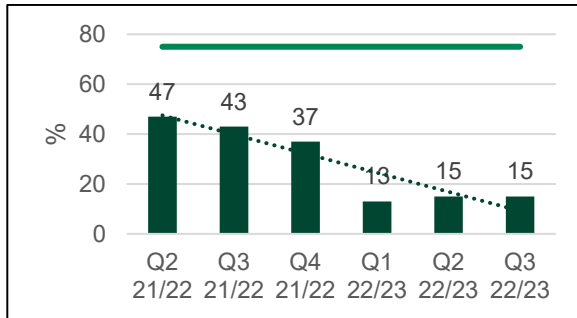
KPIs - substantive cases

- These KPIs focus on how long it takes us to close “substantive” (i.e. non-FTR cases) from the date of receipt.
- Performance against substantive KPIs remains the biggest concern, particularly in relation to the four month and six months KPIs, where performance falls well below the KPIs, and where there has been little sign of improvement.
- As noted previously, because of the high caseload, a number of long-term absences and changes in role in the team since the start of 2022, there is a big delay in allocating substantive cases to FOIOs for investigation. As the FOIOs’ personal targets show (personal targets run from date a case is allocated to an FOIO for investigation rather than the date we received the application), once cases are allocated they are generally deal with quickly.
- Clearly, the recruitment of additional FOIOs will have a positive impact on these KPIs as we will be able to allocate cases more quickly.

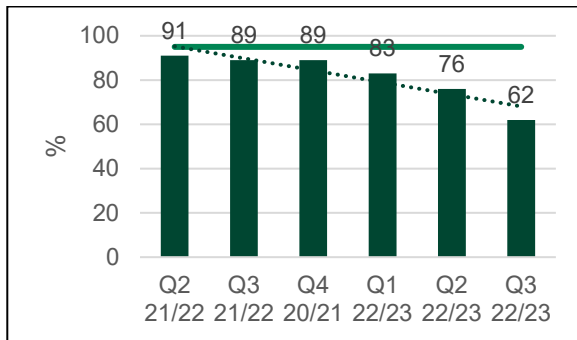
- 50% of substantive cases to be closed in less than four months (11% - not met)



- 75% of substantive cases to be closed in less than six months (15% - not met)



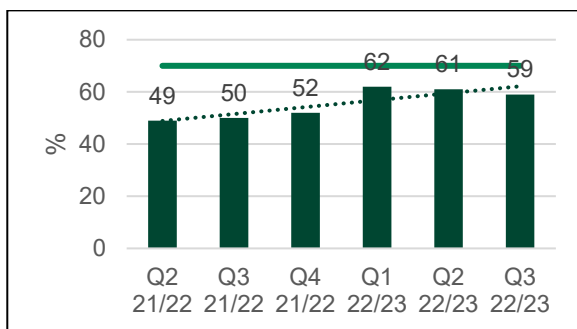
- 95% of substantive cases to be closed in less than 12 months (62% - not met)



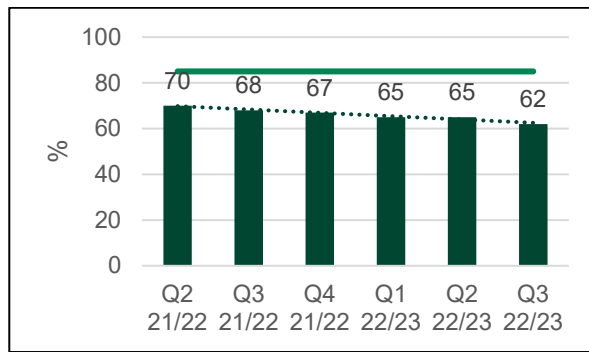
KPIs: "All cases"

28. This set of KPIs look at all of the applications made to us. Although none of the KPIs have been met, it is good to note that we still close almost 60% of applications made to us in less than four months.

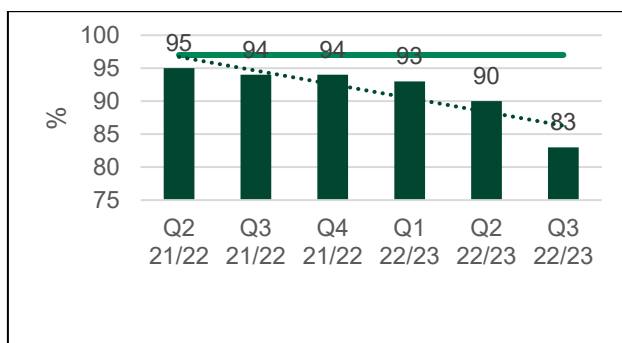
- 70% of cases to be closed in less than four months (59% - not met)



- 85% of cases to be closed in less than six months (62% - not met)



- 97% of cases to be closed in less than 12 months (83% - not met)



Risk impact

29. 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

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

Privacy impact

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

Resources impact

32. The number of applications received, together with the fact that the team has not been at full capacity since before the start of the pandemic, continues to place a lot of pressure on the team.
33. In addition, since January 2022, there have been a large number of changes to the team and periods of long-term absence which have affected overall performance.

34. However, as noted elsewhere, we are recruiting three additional investigators and hope that they will all be in place very soon.

Operational/strategic plan impact

35. 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)

36. None.

Consultation and Communication

37. Both Deputy Heads of Enforcement commented on this draft report.

Publication

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