

<b>Report to:</b>	QSMTM
<b>Report by:</b>	Margaret Keyse, Head of Enforcement
<b>Meeting Date:</b>	24 August 2023
<b>Subject/ Title:</b>	Investigations Performance (VC191831)
<b>Attached Papers</b>	None

## Purpose of report

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1. To report to the Senior Management Team (SMT) on investigations performance in Q1 of 2023/24.

## Recommendation and actions

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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

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### 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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.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 Decision notices issued by the Commissioner, including notices determining an application to be frivolous, withdrawn, etc., can be appealed to the Inner House of the Court of Session.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 119 applications in Q1 of 2023/24.

Applications received	Number
Q1 2023/24	119
Q4 2022/23	139
Q3 2022/23	112
Q2 2022/23	133

7. This is lower than the number of applications received in Q1 in 2022/23 (143) and in Q1 of 2021/22 (149).

## 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 119 applications in Q1, by the end of the quarter there were only 19 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 Q1, we had 406 applications under investigation. Although this is an increase on the number under investigation at the end of Q4 of 2022/23, the rate of increase has slowed over the past two quarters:

Applications under investigation	Number
<b>Q1 2023/24</b>	<b>406</b>
Q4 2022/23	392
Q3 2022/23	385
Q2 2022/23	346

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 Q1, we have over 200 cases waiting to be allocated to investigators).
13. Three new investigators started in Q4, bringing the team complement back up to normal levels although we are still being affected by long term absence.

## Applications closed in Q4

14. We closed 100 cases in Q1, 19 fewer than we received. The table below shows the stages at which the cases were closed.

	Validation	Investigation	Decision notice	Total
<b>Q1 2022/23</b>	<b>40</b>	<b>27</b>	<b>33</b>	<b>100</b>
Q4 2022/23	54	46	32	132
Q3 2022/23	33	29	48	110
Q2 2022/23	30	20	23	73

## 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 Q1.

As at end	Months
<b>Q1 2023/24</b>	<b>10.2</b>
Q4 2022/23	7.8
Q3 2022/23	7.8
Q2 2022/23	7.2

17. The average age of open (valid) cases also continued to increase in Q1.

As at end	Months
<b>Q1 2023/4</b>	<b>10.8</b>
Q4 2022/23	8.2
Q3 2022/23	7.8
Q2 2022/23	7.4

18. Nevertheless, as noted below, 65.7% of all cases closed in Q1 were closed in less than four months.

**KPIs – overview**

19. Detailed below is our performance against each of our KPIs in Q1. The KPIs work on a rolling basis, which means that the performance in one year affects the next.

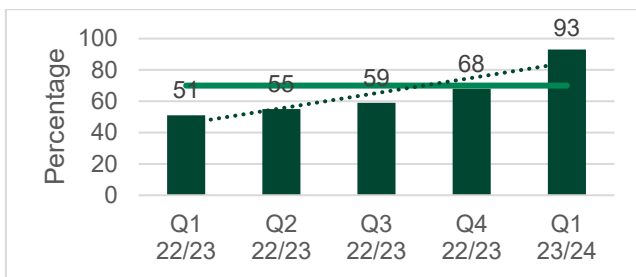
20. At the end of Q1, five of the KPIs were being met. Of the KPIs not met, there has been an improvement in performance in four when compared against performance in Q1 of 2022/23.

**KPIs – validation**

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

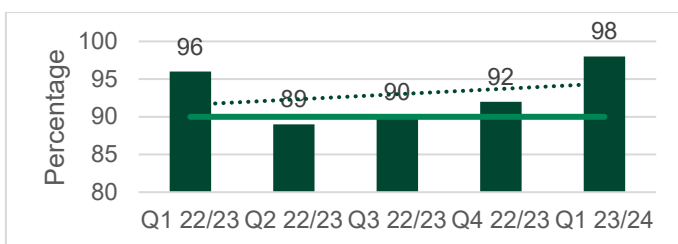
*Determination on validity to be made in 70% of cases in less than one month*

22. This target was being met at the end of Q1. There has been a steady improvement over the past year.



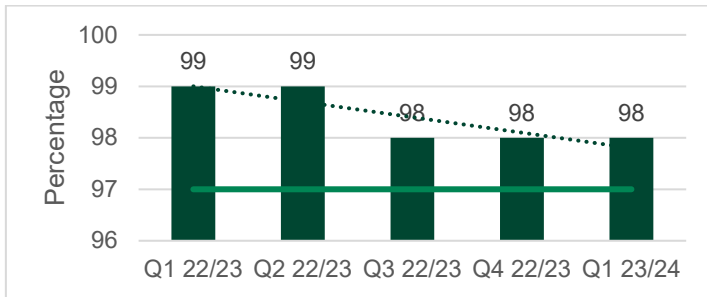
*Determination on validity to be made in 90% of cases in less than two months*

23. This KPI has again been exceeded – 98%.



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

24. This KPI has again been exceeded – 98%.



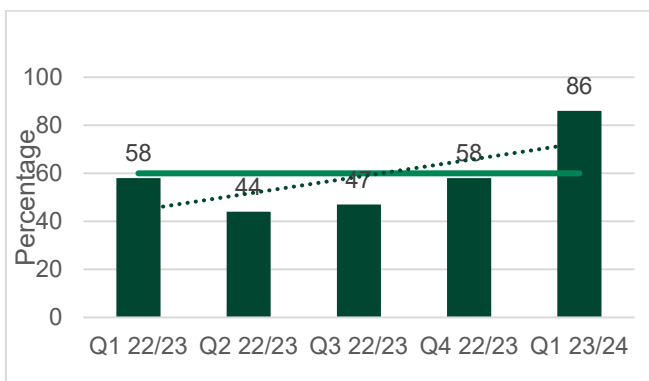
**KPIs – Failure to respond (FTR)**

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. (In Q1, 33% of all validated applications were FTR cases, which is surprisingly high.)

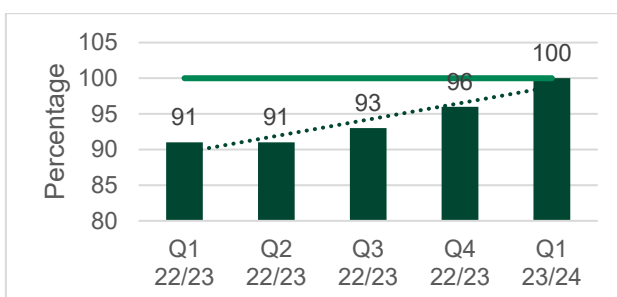
*60% of FTR cases to be closed in less than 1.5 months*

27. This KPI was easily exceeded in Q1.



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

28. This KPI was met in Q1.



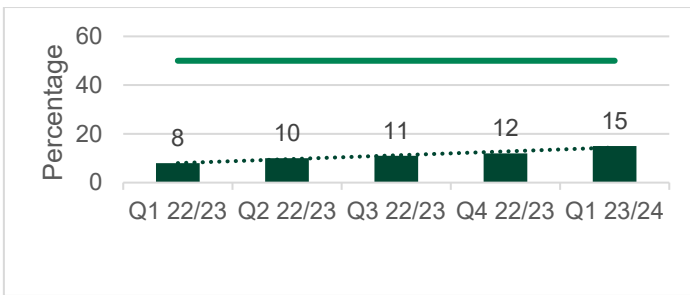
**KPIs - substantive cases**

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

- 30. Performance against substantive KPIs remains my biggest concern, given that performance falls well below the KPIs.
- 31. As noted previously, because of various issues including the high caseload, a number of long-term absences and changes to the team make-up 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.
- 32. As noted elsewhere, with the appointment of three new investigators in Q4, the team is back up to complement, so, provided the number of new applications remains steady, we should start to see an improvement on these KPIs towards the end of 2023/24.

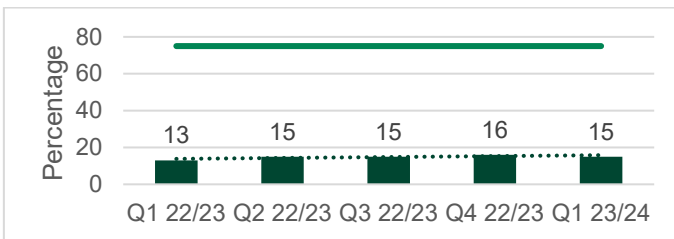
*50% of substantive cases to be closed in less than four months*

- 33. Not met – 15%, although there continues to be a small improvement.



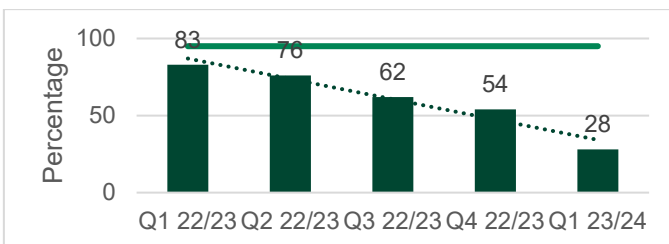
*75% of substantive cases to be closed in less than six months*

- 34. Not met – 15%.



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

- 35. Not met – 28%. This remains very concerning and results from the long delays in cases being allocated for investigation.

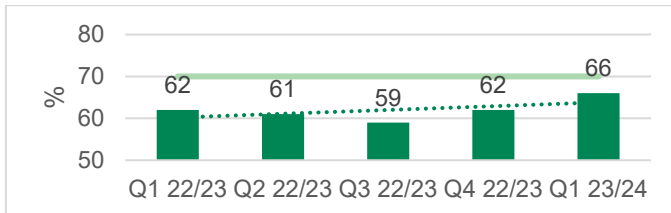


**KPIs: “All cases”**

36. This set of KPIs looks at all of the applications made to us. Although none of the KPIs have been met, of the cases closed in Q1, 66% were less than four months old. This is an improvement on Q4 of 2022/23, when 62% of all cases were closed in less than four months and on Q4 of 2021/22, when 52% of all cases were closed in less than four months.

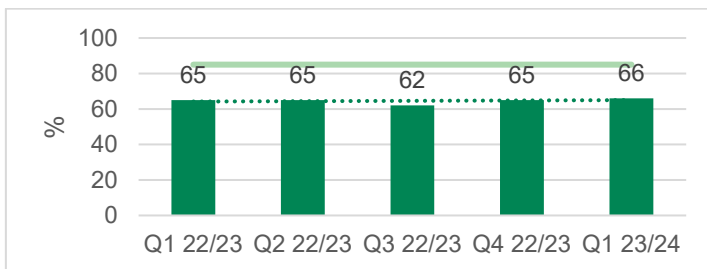
*70% of cases to be closed in less than four months*

37. 66% - not met – but there has been some improvement since Q1 in 2022/23.



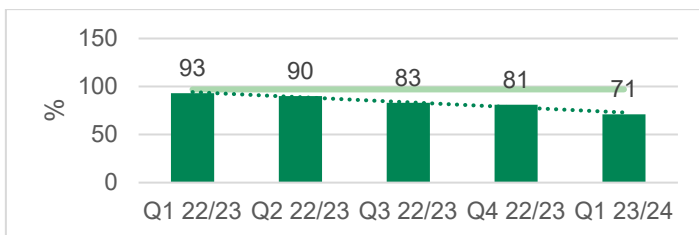
*85% of cases to be closed in less than six months*

38. Not met – 66%, but performance has remained steady.



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

39. Not met – 71%.



**Risk impact**

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40. 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**

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

## **Privacy impact**

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

## **Resources impact**

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43. 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.
44. With the number of new applications back to more normal figures, and three new investigators started, we are starting to see the backlog and delays plateauing and I hope that we will see improvement in performance over the forthcoming year. The issues caused by delays in allocation of cases must not deflect from the high quality of work carried out by the team in 2022/23, particularly during a period of change.
45. However, the Enforcement Team is about to face another period of flux, which is likely to further affect performance (particularly in Q3) until the new Commissioner and new Head of Enforcement are in post.

## **Operational/strategic plan impact**

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46. 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)**

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47. None.

## **Consultation and Communication**

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

## **Publication**

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