

Report to:	QSMTM Q4
Report by:	Jill Walker, Deputy Head of Enforcement Presented by Cal Richardson, Deputy Head of Enforcement
Meeting Date:	29 May 2024
Subject/ Title:	Investigations Performance (VC 206463)
Attached Papers	None

Purpose of report

- To report to the Senior Management Team (SMT) on investigations performance in Q4 of 2023/24.

Recommendation and actions

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

Executive summary

The Commissioner’s duty under section 49(1)

- 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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.
- The Commissioner has little, if any, control over the number of applications made to him.
- Decision notices issued by the Commissioner, including notices determining an application to be frivolous, withdrawn, etc., can be appealed to the Inner House of the Court of Session.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

- We received 165 applications in Q4 of 2023/24.

Applications received	Number
Q4 2023/24	165
Q3 2023/24	167
Q2 2023/24	139
Q1 2023/24	119

- This is higher than the number of applications received in Q4 of 2022/23 (139) and in Q2 of 2021/22 (145).

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 165 applications in Q4, by the end of the quarter there were only 28 applications awaiting a decision on validation. (A decision on the validity of all 27 of these cases was made by the end of April 2024.)
- 10. This compares well with the number of cases awaiting validation in quarter 2 (where 27 were awaiting validation) and is a significant improvement on the circumstances in quarter 3 (where 77 were awaiting validation).

Applications under investigation

- 11. We define “applications under investigation” as any open, validated applications. The cases will not always be under active investigation.
- 12. At the end of Q4, we had 493 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
Q4 2023/24	493
Q3 2023/24	431
Q2 2023/24	417
Q1 2023/24	406

- 13. 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 Q4, we still have over 200 cases waiting to be allocated to investigators).
- 14. Three new investigators started in Q4 of 2022/23, with a further three starting in Q4 of 2023/24 bringing the team complement back up to normal levels. We are also expecting to welcome two further investigators in quarter Q1 of 2024/25 on fixed term contracts. It is hoped that with these additional resources more applications under investigation will be allocated for active investigation and progressed.
- 15. Steps being taken as a consequence of ‘Project Blue’ mean that all of the cases received prior to 2024 which are awaiting allocation are being assessed prior to being allocated for investigation to ensure that they are being progressed as efficiently as possible. At the same time all of the new applications received in 2024 are being progressed in line with our Investigations Handbook and are, on average, being allocated for active investigation within one month of validation.

Applications closed in Q4

- 16. We closed 152 cases in Q4, 13 fewer than we received. However, this is an increase on the number of cases closed in each of the previous quarters. The table below shows the stages at which the cases were closed.

	Validation	Investigation	Decision notice	Total
Q4 2023/24	73	29	50	152
Q3 2023/24	63	20	20	103
Q2 2023/24	46	40	34	120
Q1 2023/24	40	27	33	100

17. We closed 475 cases in 2023/24, 115 fewer than we received. Whilst we have had an increase in resources into the organisation since Q4 of 2022/23 and 2023/24, it has taken time for the impact of that increase to show in our performance. We also continue to experience some reduction in investigative resource due to long term absence.

Average age of cases

18. 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.
19. The average age of closed (valid) cases decreased slightly in Q4, from Q3. Although slight, this is a positive improvement, and the first time that we have seen a decrease this year. We would hope to see this continuing as inroads are made into the backlog.

As at end	Months
Q4 2023/24	14.2
Q3 2023/24	16.4
Q2 2023/24	12.3
Q1 2023/24	10.2

20. The average age of open (valid) cases remained the same as Q3.

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

KPIs – overview

21. Detailed below is our performance against each of our KPIs in Q4. The KPIs work on a rolling basis, which means that the performance in one year affects the next.
22. At the end of Q4, no KPIs had been met. Of the KPIs not met, there has been an improvement in performance in two of them over the year.

KPIs – validation

23. 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

24. This target was not met in Q4 (48.4% actual).

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

25. This KPI was also not met - (79.3%. actual)

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

26. This KPI was also not met– (96.7%. actual)

KPIs – Failure to respond (FTR)

27. 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.

28. FTR cases are, in the main, investigated by our Validation Officers.

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

29. This KPI was not met in Q4 (51.9%).

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

30. This KPI was not met in Q4. 92.6% of FTR cases were closed in less than four months.

KPIs - substantive cases

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

32. Performance against substantive KPIs remains a significant concern, given that performance falls well below the KPIs.

33. As noted elsewhere, it is hoped that with the additional investigative resources in post we will begin to see an improvement in the time taken to allocate valid cases for investigation and thereafter the throughput of investigations and case closures will be more efficient. Similarly, the work being done on ‘Project Blue’ to attend to the backlog cases should have a positive impact on compliance with KPI’s in the medium to long term.

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

34. Not met – 7.7% (a decrease on last quarter’s 9.4%)

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

35. Not met – 9.6% (an improvement on last quarter’s 9.4%).

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

36. Not met – 19.2%. As indicated previously, a consequence of the long delays in cases being allocated for investigation (but a considerable improvement from last quarter’s 9.4% and showing some improvement).

KPIs: “All cases”

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

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

38. Not met – 66% (a reduction on Q3 which was 71.6%)

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

39. Not met – 68% (a reduction on Q3 which was 71.6%)

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

40. Not met – 71.3% (A slight reduction on quarter Q3 which was 71.8%, but an increase on Q2).

Risk impact

41. 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

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

Privacy impact

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

Resources impact

44. 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, following its establishment work continued on “Project Blue” bringing a more dedicated approach to the management of the backlog, while we continue to take a “right first time” approach to submissions from public authorities. Alongside this all new applications received in 2024 are being progressed in line with the Investigations Procedures and being allocated for investigation within one month of validation.
45. As indicated above, we remain focused on maintaining capacity at all levels. All established posts within the team were filled by the end of the quarter.

Operational/strategic plan impact

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)

47. None.

Consultation and Communication

48. DHOEs and HOPI, in HOE’s absence, were consulted in the production of this report. Once approved, the report will be communicated to the Enforcement Team.

Publication

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