

Report to:	QSMTM
Report by:	Margaret Keyse (IH and DPIA) and Helen Gardner-Swift (DPIA)
Meeting Date:	8 August 2019
Subject/ Title: (and VC no)	Investigations Handbook and DPIA (VC122012)
Attached Papers (title and VC no)	Investigations Handbook: VC111773 DPIA: VC118275 Email of 6 May 2019 (VC122149)

Purpose of report

1. To seek approval of the Data Protection Impact Assessment (DPIA) carried out in relation to the revised Investigations Handbook and, if approved, to seek approval of the Handbook itself.

Recommendation and actions

2. It is recommended that SMT:
 - (i) approve the Investigations Handbook DPIA and, only if agreed
 - (ii) approve the Investigations Handbook.
3. If the Handbook is agreed, it is recommended that SMT agree that the new procedures come into effect on 1 September 2019.
4. Finally, it is recommended that SMT agree:
 - (i) the key documents recommendations (see “Records Management impact” below) and
 - (ii) the publication recommendations (see “Publication” below).

Executive summary

5. The Investigations Handbook sets out in detail how applications made to the Commissioner are investigated, from receipt through to decision and, if relevant, appeal. The current version of the Investigations Handbook was introduced in 2014. It has, however, been subject to a large number of changes since then in line with changing practice and law (for example, the changes to data protection legislation in May 2018).
6. A full review of the Investigations Handbook took place earlier this year. This involved meeting with members of the SMT, DHOEs, investigators and members of the Validation Team and P&I.
7. Our internal auditors, Scott Moncrieff, also undertook a desktop review of the Investigations Handbook. Their suggestions have been taken into account.

8. In May, HOE circulated a draft of the revised Investigations Handbook to SMT for comment. Along with the Investigations Handbook, HOE circulated an email setting out the principal changes to the Investigations Handbook (attached).
9. Comments were received from all members of the SMT and these have been taken into account in the latest draft of the Investigations Handbook.
10. A DPIA was also prepared in May in relation to the review of the Handbook (see “Privacy Impact” below for additional information on the DPIA).
11. SMT are asked to approve the DPIA. If approved,
 - (i) SMT will then be asked to approve the revised Investigations Handbook
 - (ii) the Commissioner will sign the DPIA when the DPIA is finalised.
12. If the Investigations Handbook is approved, HOE recommends that it is brought into force on 1 September 2019. That will allow time to carry out training and to complete the additional work required in line with both the Investigations Handbook and DPIA – see Appendix 1.

Risk impact

13. The recommendations arising from the DPIA/revised Investigations Handbook are likely to have a positive impact on the following risks in the Operational Risk Register: 1; 2; 9; 10 and 16.

Equalities impact

14. It is not expected that any of the protected characteristics will be affected by the subject of this committee report. These are very much internal procedures for dealing with applications made to the Commissioner.

Privacy impact

15. In advance of the GDPR and DPA 2018 coming into effect in May 2018, a lot of work was carried out to the Investigations Handbook to ensure that we were able to comply with the changes to the legislation. This meant that, when the formal key document review took place at the start of 2019, most of the changes required for data protection compliance had already been made.
16. Given the extent of the review of the Investigations Handbook in 2019, and the importance of the Investigations Handbook to the work carried out by Commissioner, a draft DPIA was prepared and was the subject of comment by the GDPR Working Group and others. The draft DPIA was subsequently sent to our DPO for comments. Our DPO was positive about the DPIA, but suggested a number of helpful recommendations and additions to the DPIA, including further consultation with the Enforcement Team. These have all been addressed in the current version of the DPIA submitted for approval.
17. It should be noted that the latest version of the Investigations Handbook has already been amended to take account of the recommendations in the DPIA.
18. Appendix 1 gives details of additional changes to be made in line with the DPIA.

Resources impact

19. One of the aims of reviewing the Investigations Handbook was to streamline the procedures and reduce the impact on the team, particularly in the light of an increasing number of applications being received and the fact that RSLs and their subsidiaries will become subject to FOISA.
20. It is expected that the changes to the validation procedures will, in particular, free up resources, but a number of other, more minor, changes should also help reduce the impact on resources (see the email of 6 May 2019).

Operational/ strategic plan impact

Strategic plan

21. One of the aims in our strategic plan is to be recognised as an organisation of accessible experts, that is run efficiently, governed effectively and leads in the delivery of our statutory functions. In achieving this, we ensure that delivery of our functions meets and keeps pace with recognised standards and is delivered openly and transparently.

Operational plan

22. Under our Operational Plan, HOE is lead manager with responsibility for registering, validating, investigating and deciding applications in line with approved procedures and KPIs. It is hoped that the changes proposed to the Handbook, in streamlining the procedures, will have a positive impact on our KPIs – although the changes are unlikely to have an effect on KPIs until the next financial year.
23. The Operational Plan also requires managers to report on performance for their areas of responsibility, including carrying out quality assurance reviews. The Handbook contains new procedures on carrying out reviews and will allow us to reintroduce such reviews.

Records management impact (including any key documents actions)

24. Both of the documents submitted for approval will be key documents:
 - (i) The DPIA is a new key document. HOCS recommends that it is reviewed at least annually and as and when any issues affecting personal data/privacy arise during the implementation of the new procedures. HOE and HOCS also recommend that it is published via our Guide to Information.
 - (ii) The Investigations Handbook will replace the existing version on our website. HOE recommends that it is formally reviewed every four years. However, the Investigations Handbook is very much a “living document”, so it will remain subject to review in line with changes in practice.
25. Our previous guidance on carrying out quality assurance of investigations (VC60483) now forms part of the Investigations Handbook. That guidance is a key document. As this document is no longer needed, we recommend that it is taken out of the register of key documents.

Consultation and Communication

26. As noted elsewhere, there has been a lot of consultation in relation to both documents.
27. HOE is aiming to train on the new procedures before our two new investigators start on 26 August 2019 so that their induction can focus on the new procedures and they do not have to learn two sets of procedures.
28. HOE has already spoken to the Policy and Information Team about using social media, etc. to communicate the new procedures more widely – see also Appendix 1.

Publication

29. We recommend that this committee report and email of 6 May 2018 are published in full.
30. We recommend that the other attachments (i.e. the draft DPIA and draft Handbook) are withheld in full on the basis that they are exempt from disclosure under section 27(1) of FOISA. This allows information to be withheld if it is held with a view to it being published within 12 weeks and it is reasonable in all the circumstances that the information be withheld from disclosure until then.
31. When approved, the draft DPIA and Handbook will be put into a final form and published on our website later this month. It is reasonable to allow us to put the documents into a final form (note, for example, that the Investigations Handbook contains tracked changes and some comments) before publication.

Appendix 1

If approved, the following actions will require to be carried out to bring the DPIA and Investigations Handbook fully into effect. We have marked whether these require to be done before or after 1 September. Where they do not need to be done until after 1 September, we have given a provisional date for completion. All actions will be the responsibility of the HOE, unless stated otherwise.

Additional changes required by the Investigations Handbook

Paragraph	Subject	Target (all 2019)
20	<ul style="list-style-type: none"> Amend SL01 (provision of key documents) 	1 September
51	<ul style="list-style-type: none"> Amend SL06 (schedule to be completed for all cases where withheld information sought) 	1 September
64	<ul style="list-style-type: none"> Amend pro-forma document schedule template 	1 September
77	<ul style="list-style-type: none"> Scheme of delegation to be amended to allow DHOES to approve straightforward decisions (as defined in the Handbook) If required (advice to be sought from HOCS), arrange for DHOEs' contracts to be updated to reflect this change Decision notice templates to be amended to include "sign off" by DHOEs Amend drop-down lists in VC to reflect new weighting options 	1 November
77	<ul style="list-style-type: none"> A small number of IOs to be trained on approving FTR decisions Scheme of delegation to be amended to allow IOs to approve FTR decisions If required (advice to be sought from HOCS), arrange for those IOs' contracts to be updated to reflect this change Decision notice templates to be amended to include "sign off" by IOs Amend drop-down lists in VC to reflect new weighting options 	1 December
182	<ul style="list-style-type: none"> Training to be given on using search tools in in WP 	ASM before end of December ¹
Appendix 2	<ul style="list-style-type: none"> Key questions for public authorities: EIRs questions to be added 	1 November
Appendix 3	<ul style="list-style-type: none"> Decision notice templates to be amended to: <ol style="list-style-type: none"> Allow for easier printing Amend wording so that the name of the applicant only appears on the heading page 	1 September
Appendix 3	<ul style="list-style-type: none"> All published decisions to be anonymised: <ol style="list-style-type: none"> Amend standard letters to applicants Amend "What happens next" – guide for applicants Amend privacy notice 	1 September

¹ Suggest training be given to everyone (i.e. not only Enforcement Team) to assist searching re information requests, subject access requests, enquiries, etc.

Additional changes required by DPIA (where not already addressed)

Paragraph	Subject	Target (all 2019)
3	<ul style="list-style-type: none">Use Network Meetings, the Knowledge Hub, etc. to remind public authorities that their privacy notices should make it clear that they may disclose personal data to the SIC for the purposes of his investigations	1 December
20	<ul style="list-style-type: none">Amend “What happens next” so that applicants are reminded to let us know if their contact details changeSame change to be made to the relevant standard letters to applicants	1 September

Margaret Keyse

From: Margaret Keyse
Sent: 06 May 2019 13:11
To: Management
Cc: Kim Berry
Subject: Review of Investigations Handbook and QA (Investigations)

In Virtual Cabinet: 0

Dear All

The Investigations Handbook sets out in detail how we investigate applications made to the Commissioner, from receipt through to appeal. The current version of the Handbook was introduced in 2014, although it has been subject to a large number of updates over the years in line with changing practice and law (for example, the changes to data protection legislation in 2018).

The Handbook was due to undergo a formal review shortly after Daren took up post. However, it was agreed that the formal review should be postponed to allow the Commissioner to get up to speed with how the procedures work in practice. The review was subsequently postponed to allow the review to take account of any changes suggested by Scott Moncrieff following a desktop internal audit review into the Handbook. (The recommendations from the internal audit are discussed in more detail below.)

An in-depth review of the Handbook has taken place, involving meetings with members of the SMT, DHOEs, investigators, members of the Validation Team and P&I.

I am now circulating a draft of the revised Handbook for your comments before submitting it for formal approval in line with our Key Documents Procedures. The Handbook is in **VC111773**. Given the size of the document, I will leave copies for each of you in your pigeon holes. I'd be grateful if you would add any comments to the version in VC.

(Please note that we agreed with Scott Moncrieff, following their review of the Handbook, that we would aim to have the revised Handbook approved by SMT by the end of May 2019 and to introduce the changes by 1 June 2019, subject to the approval process.)

All of the changes to the Handbook have been tracked (except for the section on Quality Assurance) to allow SMT to see easily what changes have been made.

A number of the changes made have been made with the aim of making the procedures clearer (e.g. more lists), but, as SMT will see, a number of changes have been suggested to our procedures. These are summarised below.

Validation

This is where the biggest changes have been suggested. We are in effect recommending that we return to previous practice where the validation officers have more autonomy over their cases and do not need HOE/DHOE agreement before validating (or refusing to validate) an application. This recognises the expertise of the VOs and the fact that, while cases can be very complex, many of the cases are straightforward.

The procedures do still require the VOs to obtain advice from the HOE/DHOE in any case which isn't straightforward.

A number of other changes have been suggested – for example, VOs will review new applications on receipt, rather than waiting for files to be opened. This means that cases which are clearly incapable of being validated can be dealt with quickly, and (often time-sensitive) advice given to applicants to allow them to make a valid application where possible.

The changes to the validation are designed to simplify the process and cut down on unnecessary administration of cases.

These changes are in line with what was agreed at the start of the year with the Commissioner. Scott Moncrieff are also content with the proposals.

Weighting and allocation

This is another area where big changes have been proposed. I propose changing who can sign off decisions:

- IOs will be given the power to sign off FTR decisions – this will be limited to a number of experienced IOs who have undergone specific training
- DHOEs will be given the power to sign off straightforward cases (as defined in the Handbook) without the need for them to go through a second level approval.

If the proposals are accepted this will require a change to the Scheme of Delegation.

Format of decision notices and anonymisation

As a result of the introduction of the GDPR and the Data Protection Act 2018, we changed our practice in relation to the naming of applicants in individuals. We now only name applicants where they specifically consent to be named.

In practice, very few requesters respond to correspondence asking whether they consent to be named. This means that we now name applicants in only a very small number of cases. I am therefore proposing that we change our policy and do not name any of our applicants in the published versions of decisions. This will help prevent any unintended data breaches – for example by naming an applicant in the DRU or by failing to anonymise a decision fully. (I have already discussed with P&I publicising this change in our practice and explaining why this is happening.)

I also recommend changing the way we prepare decisions – see **VC114945** for a mock-up of what the decision would look like (a copy is in your pigeon holes along with the revised Handbook, together with that decision looked like when it was issued in March).

I am recommending that, except in the heading of the decision, applicants will not be referred to by their name in decisions but simply as “the Applicant.”

Given that all decisions will need to be anonymised for publication on our website, this will significantly reduce the administration involved in preparing an anonymised version and reduce the likelihood of the name of an applicant remaining in the decision.

As SMT will be aware, one of the issues raised by Scott Moncrieff was the need to reduce the administration involved in the issue of a decision. I am also proposing that we change the format of the decision to allow decisions to be printed off “in one go” rather than in three separate sections (first page, content and backing) as they are at the moment. This will mean no longer using the heavier format paper for the first page and backing, but we know that public authorities prefer to work with electronic versions so are likely just to destroy the hard copies. (We must “give” decision notices - section 74 of FOISA makes it clear that emailed decisions aren’t “given.”)

P&I were consulted on the proposals and their comments have been taken into account.

Quality assurance

As SMT will also be aware, it was agreed that the QA (Investigations) procedures would be reviewed at the same time as the Handbook.

Scott Moncrieff commented on a revised version of the procedures which moves QA away from focussing solely on the role of the IO and focusses more widely on whether applications were dealt with in line with the Handbook from receipt through to issue of the decision, compliance, etc. (The only comment Scott Moncrieff had to make was on the number of cases I had proposed to QA per year.) I believe widening the focus of QA will give us a better oversight of how the Handbook is working in practice.

I have included the QA procedures in the Handbook (see Appendix 10): the QA procedures contain references to specific paragraphs of the Handbook. The Handbook is subject to frequent updates, which means that paragraphs often change. Having the QA procedures in the same document as the Handbook will allow the references to be updated automatically through the use of cross referencing.

EIRs questions

I had agreed with the team that we would include questions on the EIRs in the Handbook. These have been drafted, but are not yet complete. These will be added over the next couple of months.

Next steps

I appreciate that this is a big document, but I would be grateful to receive comments on it as soon as possible and by Friday 17 May. That will allow me to submit the Handbook for formal approval before the end of the month. (There is no MSMTM this month – we have the QSMTM instead. Depending on the comments I receive, approval can either be done by email or by arranging a special meeting of the SMT.

(I would like to train my team on the new procedures in the first week of June, with the aim of bringing them into effect by 10 June.)

Other work will be carried out before formal approval is sought – e.g. other documents will need to be amended to take account of the changes. Importantly, a DPIA will be carried out and the results shared with SMT when the Handbook is submitted for approval. (Many of the changes suggested take account of the need to process personal data as little as possible, so I hope that there won't be anything negative coming out of the DPIA. If there is, then approval will have to be delayed until we make the necessary changes.)

Over the summer, and in line with recommendations from Scott Moncrieff, we will do some more work on the procedures to make them simpler to follow, e.g. by introducing more flowcharts. SMT will be asked to review those additions in October.

Thanks

Margaret