Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	29 April 2021
Subject/ Title:	Item 6: Investigations Performance (VC149785)
Attached Papers	2020/21 Report on applications as at 31 March 2021 2020/21 Report on investigations performance KPIs as at 31 March 2021

Purpose of report

1. To report to the Senior Management Team (SMT) on investigations performance in Q4 of 2020/21.

Recommendation and actions

2. It is recommended that SMT:

   (i) note this report and

   (ii) agree with the recommendations regarding publication set out in the publication section at the end of this report.

Executive summary

Summary of performance

3. As SMT is aware, investigations performance, particularly in Q1 of 2020/21, was severely affected by COVID-19: for much of Q1, we had no access to our case management system and only three members of the Enforcement Team were able to work remotely (myself and the two Deputy Heads of Enforcement).

4. By the middle of Q2, the Enforcement Team was fully back up and running, the backlog was reducing and we were starting to see some improvement with the KPIs. However, we received an unexpectedly high number of applications in Q3. This, together with the fact that Scotland went into a further lockdown, placed additional pressure on the team.

5. Q4 saw some reduction in the number of applications received compared to Q3. However, the effects of the pandemic, etc. have continued to affect the performance of the team.

6. While no KPIs have been met, this should not detract from the hard work of the team or what the team has achieved in what has been a difficult year.

Applications received

7. The number of applications received in Q4 was smaller than the very high number received in Q3, but still high in comparison to the first part of the year. In fact, 65% of the applications received in 2020/21 were received in the second half of the year:

Applications received in	Number
Q1	60
Q2	108
Q3	171
Q4	146

8. A feature of this year has been the number of applications we have received from the same applicant. 12 applicants made five or more applications to us in 2020/21. Five of the 12 made 10 applications or more. One applicant made 30 applications and another 56.

Cases awaiting validation

9. Thanks to the hard work of the validation team, the number of applications awaiting a decision on validation reduced dramatically from the end of Q3 (52) to the end of Q4 (13).

Applications awaiting validation	Number
End of Q1	51
End of Q2	20
End of Q3	52
End of Q4	13

10. A decision has now been made on the validation of all of the applications received in 2020/21 and a breakdown of the types of cases received will be dealt with in more detail in the 2020/21 Annual Report and Accounts once the final breakdown (i.e. including the 13 cases still waiting to be validated at the end of March 2021) has been prepared.

11. However, it is clear that there has been a reduction in the number of invalid applications received this year compared with the previous three years. While this is positive, it has had a knock-on effect on the number of cases going forward to investigation

12. The number of "failure to respond" cases has only increased slightly, contrary to concerns at the start of the pandemic.

Applications under investigation

13. The number of applications under investigation has increased throughout the year.

Applications under investigation	Number
End of Q1	102
End of Q2	147
End of Q3	149
End of Q4	206

14. This is the highest number of investigations we have had for at least the past 10 years and is affecting the speed with which cases can be allocated and investigated: we have been unable to allocate cases to investigators as soon as they are validated and are continuing to take steps manage applicants' expectations regarding timescales.

15. Work has been undertaken to conjoin cases wherever possible, focussing on the subject matter of the cases. We are investigating ways of publishing additional information on our website about the stage cases are at to give applicants up to date information.

16. This figure only includes live investigations and not cases which are, for example, still in the appeal period. It is not uncommon for communications to continue with applicants on cases (including information requests and subject access requests) when decisions have been issued. Anecdotally, this has increased during the pandemic. This also affects the time available to be spent on live investigations.

Applications closed in 2020/21

17. 486 applications were received and 407 were closed. The 407 cases were closed at the following stages:

	Validation	Investigation	Decision notice	Total
Q1	17	4	26	47
Q2	21	41	32	94
Q3	35	47	55	137
Q4	45	37	47	129
2020/21	118	129	160	407

18. The very low number of cases closed in Q1 reflects the lack of access to our case management systems. (In addition, while some cases were technically closed, we were unable to backdate the closure when we again had access to the system.)

19. It should also be noted that it was not until May 2020 that we were able to issue decisions by email after the Coronavirus (Scotland) Act 2020 came into effect and SMT was satisfied that the procedures to be introduced minimised the possibility of data breaches.

Average age of cases

20. Section 49(3)(a) of the Freedom of Information (Scotland) Act 2002 requires the Commissioner to issue a decision within four months of a valid application, or such other period as is reasonable in the circumstances.

21. The average age of closed (valid) cases (YTD) remains high, but has reduced throughout the year:

As at	Months
End of Q1	7.2
End of Q2	6.7
End of Q3	6.3
End of Q4	6.0

22. The average age of open (valid) cases (YTD) is also on a downwards trend:

As at	Months
End of Q1	6.5
End of Q2	6.2
End of Q3	5.9
End of Q4	5.7

KPIs

23. Given everything that has happened in 2020/21, it is perhaps not surprising that the team failed to meet any of its 11 KPIs.

24. However, in many cases, the actual variance is very small. For example, in four of the 11 KPIs, the variance was less than 5%. In seven of the 11 KPIs, the variance is less than 10%.

25. The Appendix to this committee report tracks the progress made over the year for each of the 11 KPIs.

26. If we focus on work done in Q4, the following KPIs were met:

TYPE	KPI	ACTUAL
Validation	90% of cases to be validated in less than 2 months	96.2%
	97% of cases to be validated in less than 3 months	99.5%
All applications	70% of cases to be closed in less than 4 months	72.9%

Looking forward

27. Although the team is in a much better place than this time last year, the large number of open investigations is of concern.

28. As noted above, a big feature this year has been the number of multiple applications from the same applicant. While there are many valid reasons for one applicant to make multiple applications, they are, in some cases, accompanied by the breakdown in the relationship between the applicant and the authority. The team aims to work on identifying these sorts of cases as they arise to see if early, more proactive, intervention can help both the applicant and the public authority.

29. We are also looking to further streamline our procedures for straight forward cases.

30. As planned last year, but not introduced because of the pandemic, we aim to increase the number of people who can approve decisions.

31. There is no doubt that the pandemic has affected the ability of other authorities to comply with our investigations: we are aware of cases where staff were moved to deal with other duties or where authorities have been unable to access its premises to search for the information which is the subject of an application made to us. We fully expect that this situation will improve as the year goes on.

Risk impact

32. There is a risk that, if case journey times are not in line with set KPIs, the Commissioner may come under closer scrutiny and criticism from stakeholders and may undermine confidence in the way applications are processed. The Appendix shows in detail the improvement made in each of the team's KPIs throughout the year.

Equalities impact

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

Privacy impact

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

Resources impact

35. Resources are not impacted directly from the recommendations in this committee report. However, the number of cases under investigation is putting a lot of pressure on the resources of the team and has had a negative impact on performance against KPIs.

36. The team has not been at full capacity at any time over the past year due to previous staff turnover and staff reducing their hours. It is hoped that we will be able to recruit to the team to bring it back up to full strength during the forthcoming year.

Operational/ strategic plan impact

37. 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)

18. None.

Consultation and Communication

19. The report will be published.

Publication

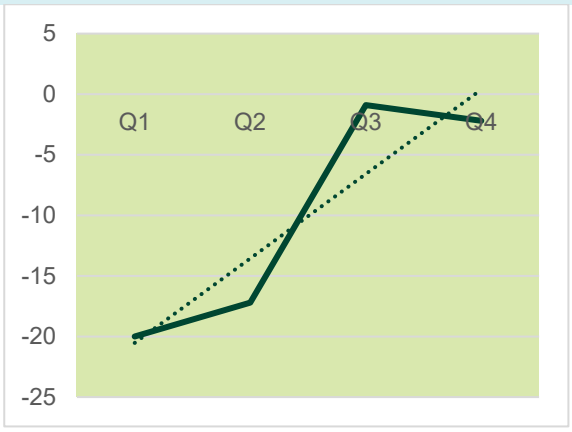
38. I recommend that this committee report and appendix are published in full.

39. The attached papers are due to be published in line with our normal practice once the Commissioner has commented on our performance: see "caseload dashboard reports" here. As a result, I consider that the attached papers are currently exempt from disclosure under section 27(1) (Information intended for future publication) of FOISA.

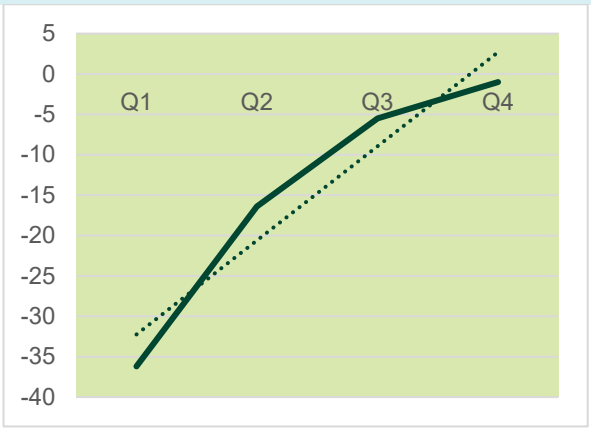
Appendix

Time taken to validate all applications (variance)

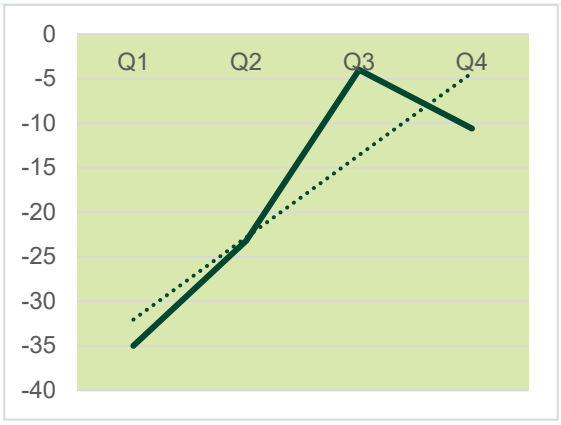
70% in 1 month or less



90% in 2 months or less

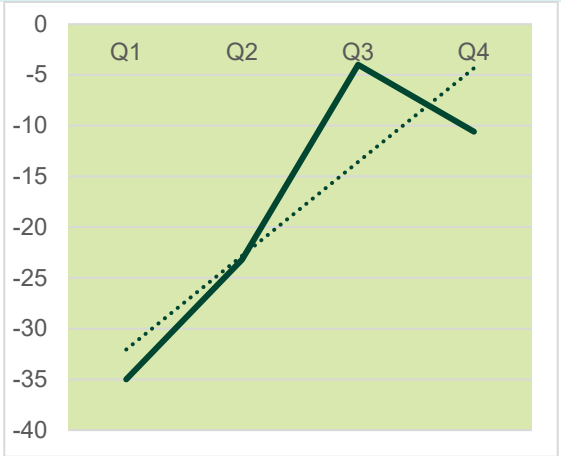


97% in 3 months or less

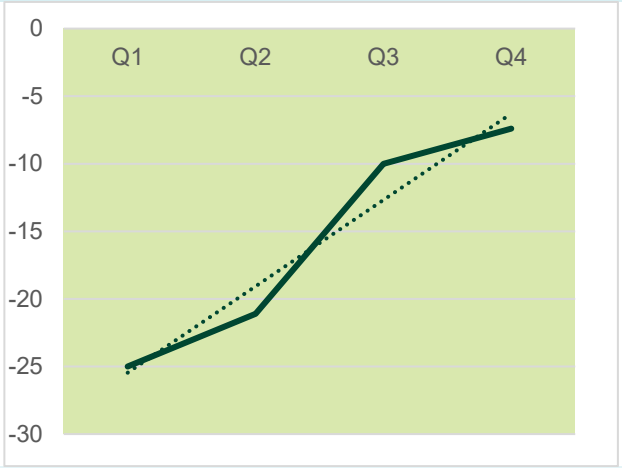


Time taken to decide valid FTR applications (variance)

60% in 1.5 months or less



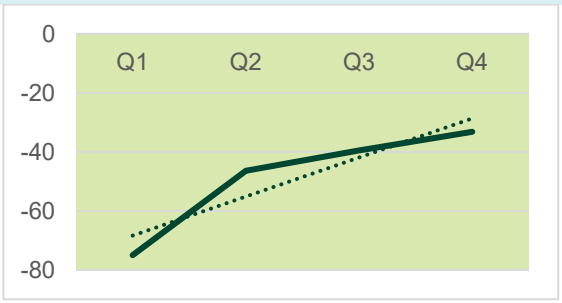
100% in 4 months or less



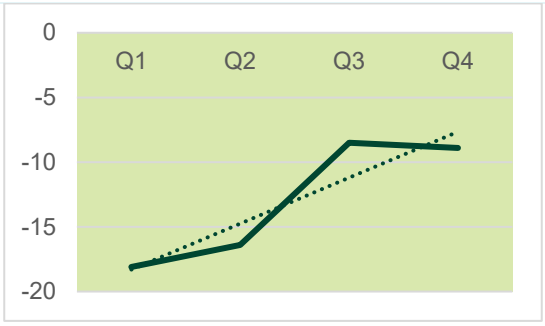
Time taken to decide valid substantive applications (variance)

50% in 4 months or less

75% in 6 months or less

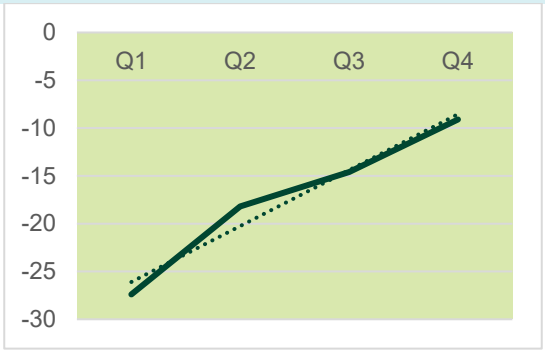


95% in 12 months or less

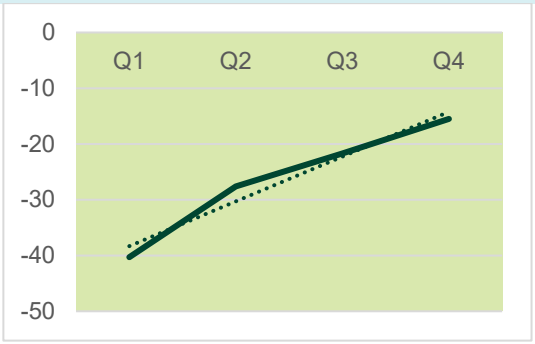
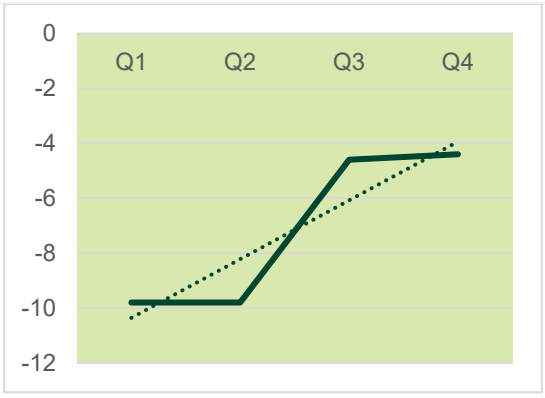


Time taken to decide all applications (variance)

70% in 4 months or less



85% in 6 months or less



97% in 12 months or less