

<b>Report to:</b>	QSMTM
<b>Report by:</b>	Margaret Keyse, Head of Enforcement
<b>Meeting Date:</b>	4 August 2021
<b>Subject/ Title:</b> (and VC no)	Quality Assurance Monitoring Report: Investigations VC153885
<b>Attached Papers</b> (title and VC no)	n/a

## Purpose of report

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1. To update the Senior Management Team (SMT) on the quality assurance work carried out in relation to cases closed in Q4 of 2020/21.

## Recommendation and actions

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2. I recommend that SMT:
  - (i) note the contents of this report
  - (ii) agree that this report (including the Appendix) is published in full (see the publication section at the end of the report).

## Executive summary

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3. In line with Appendix 8 of the [Investigations Handbook](#) (the Handbook), cases are reviewed to ensure that investigations comply with the procedures set out in the Handbook. The quality assessment work looks at all aspects of the investigation, from receipt through to approval and issue of the decision and compliance. The assessment looks at the part played by all members of the Enforcement Team and, where relevant, by the Commissioner.
4. In line with the Handbook, at the end of each quarter, 15 cases closed during that quarter will be selected to be assessed against a number of agreed criteria.
5. The Appendix to this report summarises the outcome of the assessment work. As can be seen, compliance with the Handbook remains exceptionally high. For example, in all relevant cases:
  - (i) applications were acknowledged within two working days
  - (ii) where the case was invalid, advice was given to the applicant on how to make a valid application
  - (iii) information resolution was considered/attempted appropriately throughout the case
  - (iv) the triage note was prepared/updated in line with procedures
  - (v) the letter seeking comments from the public authority (see section 49(3)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA)) was in line with the Handbook

- (vi) in line with natural justice, and taking account of section 45 of FOISA (which makes it a criminal offence to disclose information in certain circumstances), appropriate additional comments were sought from the applicant
  - (vii) there was evidence of submissions from public authorities being appropriately challenged
  - (viii) the applicant was kept up to date during the investigation
  - (ix) first and second level approval of decisions was carried out in a reasonable period
  - (x) where compliance was required, this was followed up by the Investigating Officer
  - (xi) communications with the parties were clear and courteous and
  - (xii) correspondence with the public authority, the decision, etc. commented appropriately on practice.
6. The assessment also highlighted good records management practice. In all relevant cases:
- (i) the non-compliance section in WorkPro was completed correctly
  - (ii) naming conventions were followed in the WorkPro file
  - (iii) the withheld information was clearly marked in the WorkPro file
  - (iv) the WorkPro form for the decisions database was accurately completed
  - (v) decision notices (anonymised and non-anonymised) were named properly in Virtual Cabinet.
7. There were some examples of very good practice highlighted in the cases assessed:
- (i) telephone contact with applicant helped resolve confusion
  - (ii) in a complex case which broke new ground, the Investigating Officer built a good relationship with the applicant in what could have been difficult circumstances
  - (iii) in a case where the information request was, in effect, a subject access request, a detailed explanation was given to the applicant on the exemption in section 38(1)(a) of FOISA and on the roles of the Commissioner and ICO – this led to a compliment from the applicant
  - (iv) in an application which was subsequently withdrawn, the Investigating Officer prepared a detailed email to the authority setting out their concerns with the investigation (14 non-compliance issues were noted in the file) and asking the authority to consider their comments. This letter will be used as an example of good practice in future training.
8. The assessments have raised a small number of areas where the procedures were not complied with in full. The assessors found one example of each of the following:
- (i) a case involving a registered social landlord should have been passed to an FOIO for validation. While the case was resolved, there was nothing on file to record consideration of whether the information requested was covered by the relevant section 5 Order (although it is likely that it was).

- (ii) the letter (“SL09”) to the applicant asked for their legitimate interests, but not did fully address the scope of the investigation
  - (iii) a draft decision was returned for additional work as it was not in line with what had been agreed at triage
9. Once this report has been approved, it will be shared with the Enforcement Team and the team will be asked to note, in particular, the comments in paragraph 8. I am due to add an Appendix to the Investigations Handbook on dealing with cases involving registered social landlords which should help clarify the procedures for the team.
10. Despite these (minor) issues, it is important to highlight the very high compliance with the Investigations Handbook.

## **Risk impact**

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11. The quality assurance procedures are designed to ensure that investigations are carried out in line with the Investigations Handbook and are carried out to a high standard. As such, the work has a positive impact on risks relating to case journey times and on making robust defensible decisions.

## **Equalities impact**

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12. I do not consider that the subject matter of this report affects any of the nine protected characteristics.
13. However, quality assurance work allows us to ensure that investigations are carried out professionally and objectively, regardless of the applicant. It also allows us to highlight and share good practice in our work with those who share protected characteristics.

## **Privacy impact**

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14. None arising from this report.

## **Resources impact**

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15. The quality assurance work has an impact on the work of the Enforcement Team (principally on the work of the HOE and DHOEs). However, the impact is low and, when weighed against:
- (i) the benefit of ensuring that investigations are carried out in line with the Handbook
  - (ii) ensuring that any issues (positive or negative) arising from the work are raised with investigators as part of the performance and development framework
  - (iii) ensuring that the Enforcement Team as a whole can learn from good practice,
- it is clear that the work is worth doing

## **Operational/strategic plan impact**

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16. This contributes to strategic objective 6: 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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17. Not directly applicable, although records management is one of the matters considered during the quality assurance reviews. If the assessment work highlighted any issues with records managements, these would be addressed appropriately.

## **Consultation and Communication**

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18. Once approved, the committee report – and key learning points – will be shared with the Enforcement Team.

## **Publication**

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19. I recommend that this committee report (and Appendix) is published in full

## Appendix

<b>Receipt and validation</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
1.1	Application acknowledged within two working days?	100%		
1.2	Was view of HOE/DHOE sought appropriately?	27%	7%	67%
1.3	Where view sought, was it given within one week?	13%	7%	80%
1.4	Where case invalid, was reasonable advice given to applicant on how to make a valid application?	33%		67%
1.5	Where case is valid, has the correct validation date been recorded in WP?	67%	7%	27%
<b>Weighting and allocation</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
2.1	Was case weighted and allocated to DHOE within one week of being passed to HOE (or DHOE in the absence of the HOE)? <sup>1</sup>	33%	33%	33%
<b>Resolution</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
3.1	Was informal resolution considered/attempted appropriately (throughout the case)?	67%		33%
<b>Seeking formal submissions</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
4.1	Was the SL08 in line with the requirements of the Handbook?	67%		33%
4.2	Did the SL09 accurately reflect the scope of the investigation?	60%	7%	33%
<b>Investigation</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
5.1	Was the triage note prepared/updated in line with procedures?	53%	7%	40%
5.2	In line with natural justice (and taking account of s45 of FOISA), were appropriate additional comments sought from the applicant during the investigation?	60%		40%
5.3	Is there evidence of submissions from public authorities being challenged, where appropriate?	60%		40%
5.4	Was the applicant kept up to date during the investigation?	73%		27%
<b>Approval</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
6.1	Did the draft decision have to be returned to the IO for further investigation/following significant alteration (not just to review changes)?	13%	27%	60%
6.2	Was the first level approval carried out in a reasonable period (taking account of other workload and KPIs)?	40%		60%
6.3	Was the second level approval carried out in a reasonable period (taking account of other workload and KPIs)?	33%		67%
<b>Good practice</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
7.1	Does the correspondence with the public authority, decision, etc. comment appropriately on practice?	33%		67%
7.2	Has the non-compliance section in WorkPro been appropriately completed?	47%		53%
<b>Compliance</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
8.1	Where compliance was required, was this followed up by the IO?	20%		80%
<b>Quality of communications</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
9.1	Were the communications with the parties clear and courteous?	100%		0%
<b>Records management</b>		<b>Yes</b>	<b>No</b>	<b>n/a</b>
10.1	Have naming conventions been followed in the WP file?	100%		
10.2	Was correspondence added to WorkPro as soon as possible?	93%	7%	
10.3	Is any withheld information in the file clearly marked in WP?	33%		67%
10.4	Was the WorkPro form for the decisions database accurately completed?	40%		60%
10.5	Are the decision notices (anonymised and non-anonymised) named properly in VC?	40%		60%

<sup>1</sup> It is continuing to prove difficult to evidence this. This to be reviewed once the review of cases closed in Q4 have been assessed.