

<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>	Investigations Performance (VC153881)
<b>Attached Papers</b>	2020/21 Report on applications as at 30 June 2021 2020/21 Report on investigations performance KPIs as at 30 June 2021

## Purpose of report

---

- To report to the Senior Management Team (SMT) on investigations performance in Q1 of 2021/22.

## Recommendation and actions

---

- It is recommended that SMT:
  - note this report and
  - agree with the recommendations regarding publication set out in the publication section at the end of this report.

## Executive summary

---

### Applications received

- We received 147 applications in Q1.

Applications received	Number
<b>Q1 2021/22</b>	<b>147</b>
Q4 2020/21	146
Q3 2020/21	171
Q2 2020/21	108

- The number of applications received is in line with the number of applications received in Q1 for previous years (excepting Q1 of 2020/21 when we initially went into lockdown, when numbers were very low).
- We continue to receive a high number of applications from a small number of individuals. 20 applicants made more than one application in Q1; two applicants made 31 of the applications received.

### Cases awaiting validation

- Despite the number of applications received, the number of applications awaiting a decision on validation remained low at the end of Q1.

Applications awaiting validation	Number
<b>Q1 2021/22</b>	<b>19</b>
Q4 2020/21	13
Q3 2020/21	52
Q2 2020/21	20

## Applications under investigation

7. Unfortunately, the number of applications under investigation remains high and is affecting the speed at which cases can be allocated and investigated: we continue to be unable to allocate cases to investigators as soon as they are validated and are continuing to take steps manage applicants' expectations regarding timescales.

Applications under investigation	Number
<b>Q1 2021/22</b>	201
Q4 2020/21	206
Q3 2020/21	149
Q2 2020/21	147

8. As noted previously, 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.
9. I have agreed with the Commissioner other approaches to streamlining the investigation process, for example by allowing more officers to approve straight forward decisions; removing the need for triage in certain cases and increasing the types of case where one level of approval is needed. I hope to be able to introduce these changes this quarter (Q2).

## Applications closed in 2020/21

10. In Q1, we received 147 applications and closed 146. The 146 cases were closed at the following stages:

	Validation	Investigation	Decision notice	Total
<b>Q1 2021/22</b>	<b>47</b>	<b>39</b>	<b>60</b>	<b>146</b>
Q4 2020/21	45	37	47	129
Q3 2020/21	35	47	55	137
Q2 2020/21	21	41	32	94

### Validation

11. The Commissioner may only investigate application which comply with section 47(2) of the Freedom of Information (Scotland) Act 2002 (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.
12. 10 of the cases closed at validation (21%) were invalid because the requester had not sought an internal review before making an application. (In half of those cases, the authority had notified the requester of the need to seek a review before contacting us.)

13. In 24 (51%) of cases, the application did not comply with section 47(2) of FOISA), mostly because the requester did not set out any grounds for dissatisfaction in the application or did not specify the information request which led to the application being made.
14. The Policy & Information Team plan to speak to the Validation Team to discuss whether we could improve the guidance we make available in order to help requesters make valid applications.

*Investigation*

15. Section 49(4) of FOISA gives the Commissioner the power to effect a settlement between the requester and public authority. 39 cases were closed during the investigation in Q1.
16. 12 (31%) of the applications closed at investigation were “failure to respond (FTR)” cases where our involvement led to the requesters receiving a response to their request for review.
17. A further 19 (49%) of the cases closed at investigation led to some or all of the information requested being disclosed without the need for a decision to be issued.
18. Additional (internal) training on informal resolution of cases is planned for Q3.

**Average age of cases**

19. Section 49(3)(a) of FOISA requires the Commissioner to issue a decision within four months of a valid application, or such other period as is reasonable in the circumstances.
20. The average age of closed (valid) cases (YTD) remains high, but continues to reduce, albeit slowly.

As at	Months
<b>Q1 2021/22</b>	5.9
Q4 2020/21	6.0
Q3 2020/21	6.3
Q2 2020/21	6.7

21. Similarly, the average age of open (valid) cases (YTD) continues to reduce slowly.

As at	Months
<b>Q1 2021/22</b>	5.1
Q4 2020/21	5.7
Q3 2020/21	5.9
Q2 2020/21	6.2

**KPIs**

22. As reported elsewhere, none of the Enforcement KPIs were met in 2020/201 although, in a number of cases, the variance was very small.
23. It is therefore good to report that, at the end of Q1, five of the KPIs were being met (all three of the “validation” KPIs and both of the “FTR” KPIs).
24. None of the “substantive application” KPIs or the “all application” KPIs are being met. However, the fact that we are now doing so well against the validation KPIs is a good sign – it is very difficult to meet the “substantive” or “all applications” KPIs if the validation ones are not being met.

25. The Appendix to this report includes a table for each of the 11 KPIs, looking at the progress against each KPI since Q1 of 2020/21.
26. As can be seen, good progress is being made against all of the KPIs, with the exception of the 4 month “substantive” and 4 month “all cases” KPI.
27. As noted above, we are looking to further streamline our procedures to try to move cases through more quickly. However, we are a small team and, as with other bodies, continue to feel the effects of last year on our caseload. Resources (see below) is also likely to be an issue in the near future.

## **Risk impact**

---

28. 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.

## **Equalities impact**

---

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

## **Privacy impact**

---

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

## **Resources impact**

---

31. 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 some of our KPIs.
32. 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. In Q2, we will be further impacted by the retirement of another member of the team. 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**

---

33. 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**

---

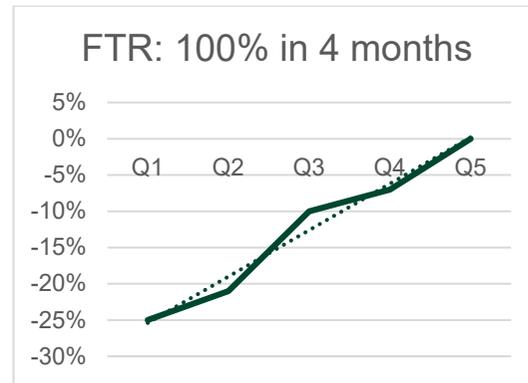
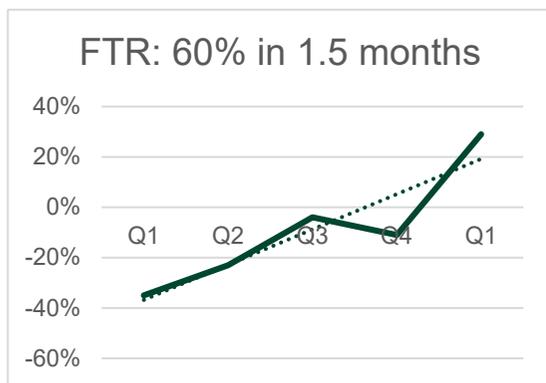
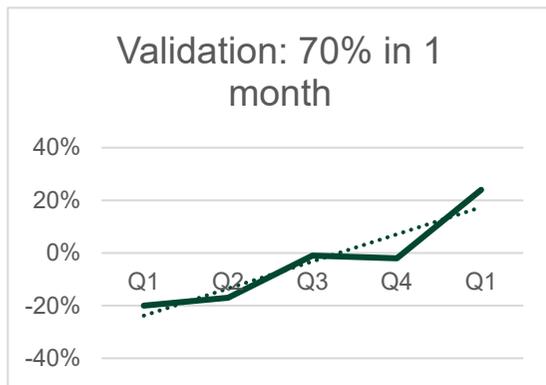
19. Both Deputy Heads of Enforcement were consulted in the preparation of the report.
20. The report will be published.

## Publication

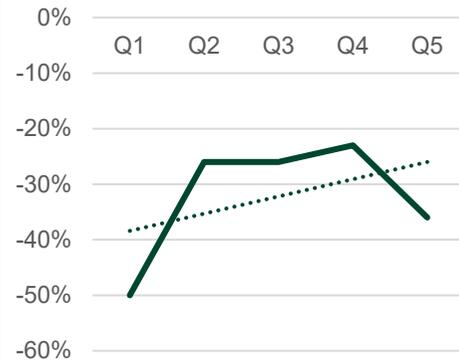
---

34. I recommend that this committee report and appendix are published in full.
35. 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.

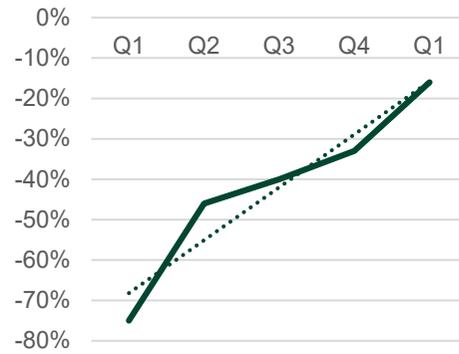
**Appendix: KPI trends from Q1 2020/21 to Q1 2021/22 inclusive**



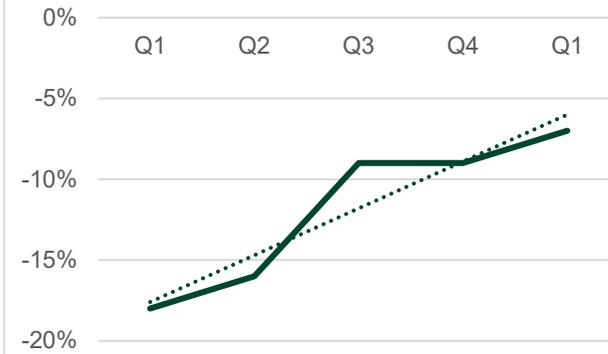
Substantive: 50% in 4 months



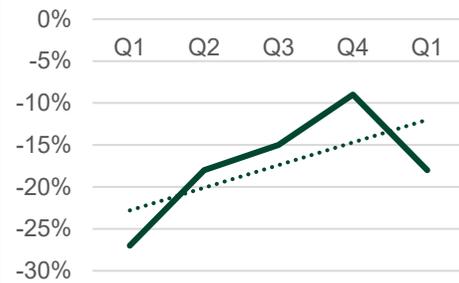
Substantive: 75% in 6 months



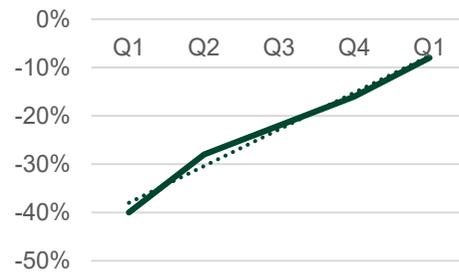
Substantive: 95% in 12 months



All: 70% in 4 months



All: 85% in 6 months



All: 97% in 12 months

