

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	3 November 2021
Subject/ Title:	Investigations Performance (VC158659)
Attached Papers	2021/22 Report on applications as at 30 September 2021 (VC158173) 2021/22 Report on investigations performance KPIs as at 30 September 2021

Purpose of report

- To report to the Senior Management Team (SMT) on investigations performance in Q2 of 2021/22.

Recommendation and actions

- It is recommended that SMT:
 - note this report and
 - agree the recommendations set out in paragraphs 18 and 19 and
 - agree with the recommendations regarding publication set out in the paragraphs 34 and 35.

Executive summary

Applications received

- We received 173 applications in Q1.

Applications received	Number
Q2 2021/22	173
Q1 2021/22	149 ¹
Q4 2020/21	146
Q3 2020/21	171
Q2 2020/21	108

- We received 322 applications in the first half of 2021/22, almost double the number received in the first half of 2021/22 (168), but also much higher than the average figure for the previous four years, where the average figure was 243.
- We continue to receive a high number of applications from a small number of individuals. In the first half of this year, 50 applicants have made more than one application. Eight applicants have made seven or more applications and four have made 11 or more.

¹ Figure previously reported as "147".

Cases awaiting validation

6. The Commissioner may only investigate applications 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.
7. The main reason for an application not being valid (38%) in the first half of the year is because the application did not comply with section 47(2) of FOISA, usually because the applicant 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.
8. In a further 25% of invalid applications, the applicant has not asked the public authority to carry out a review before applying to the Commissioner for a decision. (In half of those cases, the authority had notified the applicant of the need to seek a review before contacting us.)
9. We continue to look for ways to improve our guidance to applicants on making a valid application. Nevertheless, it should be noted that the percentage of invalid applications we have received in Q1 and Q2 is lower than previous years.
10. The large number of applications received has led to the highest number of cases awaiting validation since Q3 of 2020/21. (A small number of these (5) are complex validation cases involving registered social landlords, which are being dealt with by investigators rather than validation officers.)
11. As can be seen from the tables at the end, despite the number awaiting a decision on validation, performance against the validation KPIs remains high, with two of the three KPIs being met.

Applications awaiting validation	Number
Q2 2021/22	41
Q1 2021/22	19
Q4 2020/21	13
Q3 2020/21	52
Q2 2020/21	20

Applications under investigation

12. We define “applications under investigation” as any open validated application, rather than cases under active investigation. This number continues to increase.

Applications under investigation	Number
Q2 2021/22	238
Q1 2021/22	201
Q4 2020/21	206
Q3 2020/21	149
Q2 2020/21	147

13. In previous years, defining “applications under investigation” in this way this has not been an issue as, once cases were validated, there was little, if any, delay in them being allocated for active investigation.

14. However, as reported at the end of Q1, the number of valid applications received is affecting the speed at which these cases can be allocated to investigators: investigators are already dealing with a full caseload and we know from experience that allocating additional cases to investigators beyond a level that can reasonably be dealt with at the same time simply has the effect of slowing down the investigators' caseload as a whole.
15. From October 2021, the Head of Enforcement (HOE) will report monthly to the Commissioner on the number of cases which have been passed to her for allocation, but which have not yet been allocated within one month to an investigator for active investigation. The Q3 report to QSMTM will also report on these cases. Towards the end of 2021/22, HOE will consider whether it is appropriate to introduce a KPI specifically in relation to these cases.
16. It is worth noting that the number of invalid applications and "failure to respond" (FTR) applications remains low in comparison to previous years. This has led to an increase in the number of "substantive" applications to be allocated for investigation by FOIOs and has also affected the workload of the HOE and the Deputy Heads of Enforcement.
17. We continue to find ways to streamline our procedures wherever possible to allow us to deal with as many cases as possible as quickly as possible.
18. The delay in allocation of cases has led to an increase in the number of requests for updates. These are also affecting the speed at which we are able to deal with (and close) cases. As reported in Q1, we will be making more information available to applicants to highlight the progress of their cases – this should be available by the start of January 2021.
19. It has also been agreed that the Commissioner will write to all applicants to explain why cases are taking longer than expected and what we are doing about it – our website will also be updated to explain our current situation.

Applications closed

20. In Q2, we received 173 applications and closed 115. The 115 cases were closed at the following stages:

	Validation	Investigation	Decision notice	Total
Q2 2021/22	37	26	52	115
Q1 2021/22	47	39	60	146
Q4 2020/21	45	37	47	129
Q3 2020/21	35	47	55	137
Q2 2020/21	21	41	32	94

Average age of cases

21. 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.
22. The average age of closed (valid) cases (YTD) has increased since the end of Q1.

As at	Months
Q2 2021/22	6.1
Q1 2021/22	5.9
Q4 2020/21	6.0
Q3 2020/21	6.3

Q2 2020/21	6.7
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23. Similarly, the average age of open (valid) cases (YTD) has increased slightly since the end of Q1.

As at	Months
Q2 2021/22	5.3
Q1 2021/22	5.1
Q4 2020/21	5.7
Q3 2020/21	5.9
Q2 2020/21	6.2

24. It is worth noting that, following the closure of the office premises in March 2020, the team is working with purely electronic files. This slows down the investigation (and approval) process particularly where, for example, we are dealing with cases with a large number of documents.

KPIs

25. The Appendix shows performance against each of our KPIs from Q1 of 2020/21 onwards. It should be noted that performance against KPIs continues to be impacted by the effects of the pandemic, particularly in Q1 of 2020/21 when we had no access to our case management systems.
26. As at the end of Q2 2021/22:
- Two of the three “Validation” KPIs are being met. A decision is being made on the validity of 73% of cases within one month of receipt and a decision is being made on validity in all cases within three months.
 - One of the two “FTR” KPIs is being met. 60% of FTR cases are being closed in less than 1.5 months and 97% closed in less than four months.
 - FTR cases are, in most cases, dealt with by the Validation Officers. The real delays come with the more complex “substantive” cases where there is currently a 12-week delay in cases being allocated (following their validation and, where relevant, the withheld information being obtained from the public authority) to investigators.
 - For obvious reasons, this is having a real affect on the KPIs, as the KPIs are measured from the date of receipt of the application. Only 11% of substantive cases are being closed within 4 months. However, 47% are being closed within 6 months and 91% within 12 months.
 - The delays in allocation are also affecting the “all cases” KPIs, although not to the same extent: 43% of all cases are closed within 4 months, 70% within six months and 95% within one 12 months.

Risk impact

27. There is a risk that, given that case journey times are not in line with set KPIs, the Commissioner will come under closer scrutiny and criticism from stakeholders. This is likely to undermine confidence in the way applications are processed.

Equalities impact

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

Privacy impact

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

Resources impact

30. Resources are not impacted directly from the recommendations in this committee report.
31. However, the size of our caseload continues to place a lot of pressure on the resources of the team and to have a negative impact on performance.
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 were further impacted by the retirement of another member of the team. It is expected that we will be able to recruit to the team to bring it back up to 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)

34. None.

Consultation and Communication

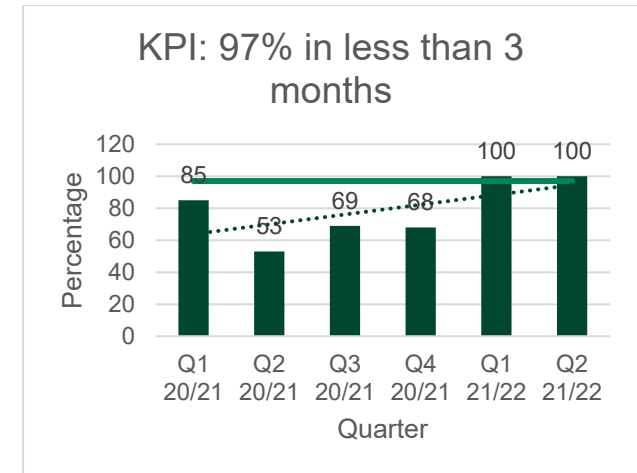
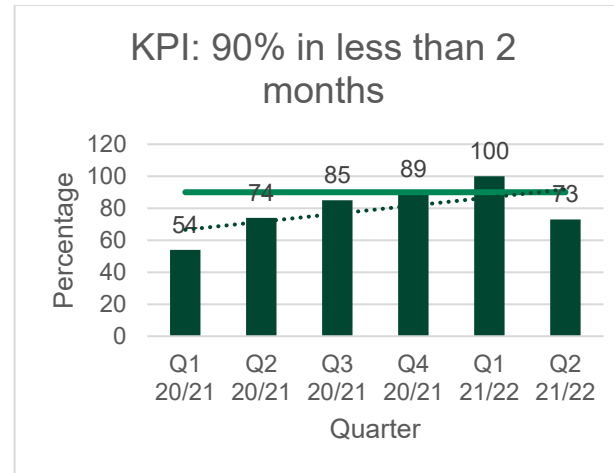
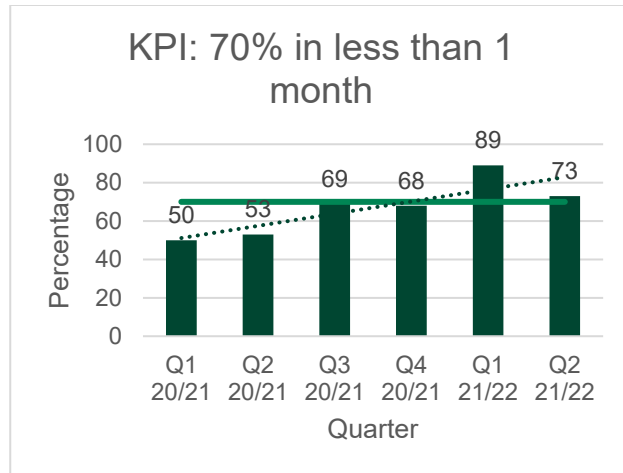
35. Both Deputy Heads of Enforcement were consulted in the preparation of the report.
36. The report will be published.

Publication

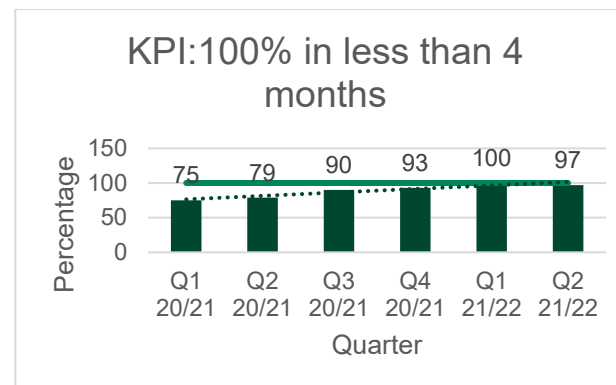
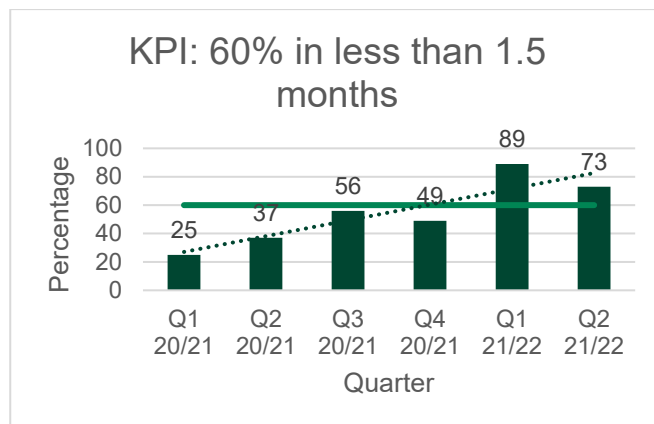
37. I recommend that this committee report and Appendix are published in full.
38. The attached papers are due to be published in line with our normal practice once the Commissioner has commented on our performance: see "caseload dashboard reports" here. As a result, I consider that the attached papers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

Appendix: KPI trends²

Validation

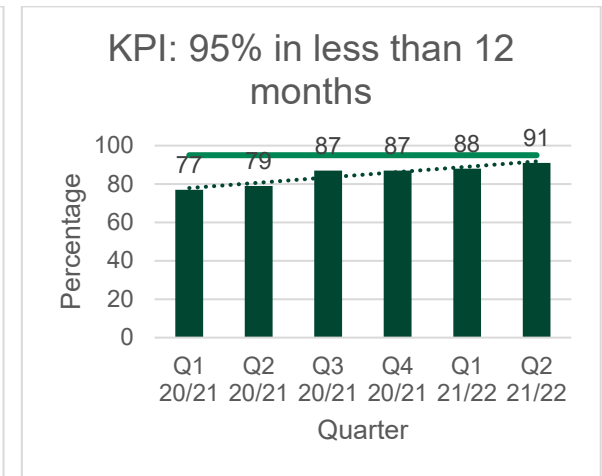
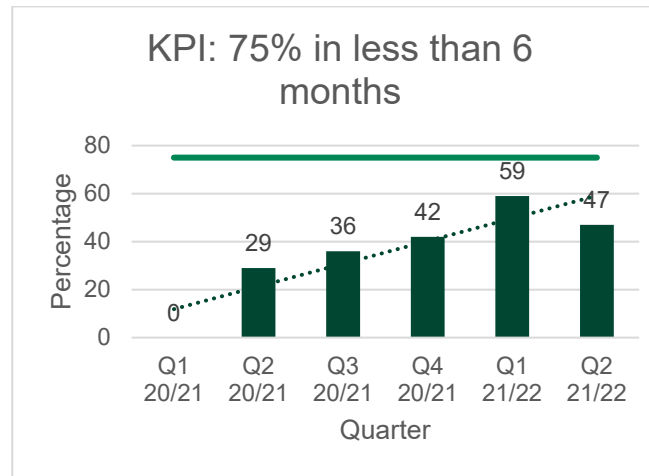
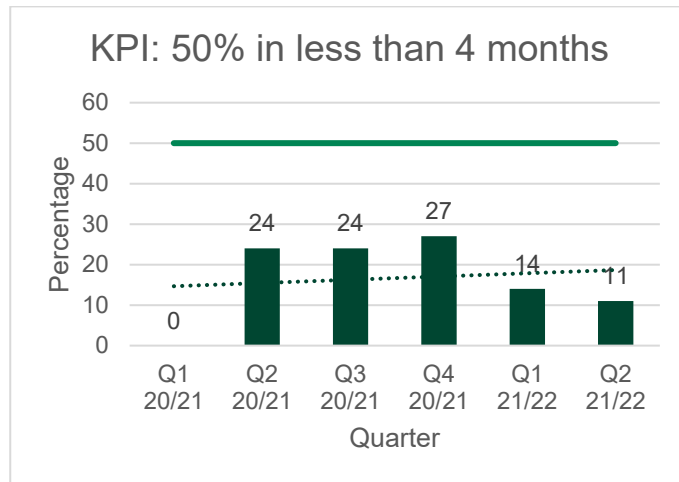


Failure to respond



² Nb percentage figures have been rounded up/down.

Substantive



All

