

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	3 November 2021
Subject/ Title: (and VC no)	Quality Assurance Monitoring Report: Investigations VC158655
Attached Papers (title and VC no)	n/a

Purpose of report

1. To update the Senior Management Team (SMT) on the quality assurance work carried out in relation to cases closed in Q2 of 2020/21.

Recommendation and actions

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

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 are 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) the view of the HOE/DHOE was sought appropriately at validation – and was given within one week
 - (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 letter seeking comments from the public authority (see section 49(3)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA)) (known internally as the “SL08”) was in line with the Handbook

- (v) 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
 - (vi) there was evidence of submissions from public authorities being appropriately challenged
 - (vii) draft decisions did not have to be returned to investigators for further investigation/following significant alterations
 - (viii) where compliance was required, this was followed up by the Investigating Officer
 - (ix) communications with the parties were clear and courteous and
 - (x) 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) naming conventions were followed in the WorkPro file
 - (ii) correspondence was added to WorkPro as soon as possible
 - (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) following a complex (and ultimately invalid) application, helpful advice was given on making a new application. The advice was followed and a valid application made.
 - (ii) in a letter asking an authority for submissions, the investigator cited a number of previous decisions by the Commissioner – this appears to have led to the case being resolved.
 - (iii) now that we work purely from electronic files, it is more important than ever that documents are named in a way which helps approvers locate the documents they need to access. In two of the cases assessed, there was exceptionally good practice on this so that, despite the large amount of correspondence with the parties, it was easy to follow what had happened when.
 - (iv) after a case had been withdrawn (and closed under section 49(2) of FOISA), the applicant asked to re-open the case. The investigator explained clearly why this was not possible and gave helpful advice to the applicant on how to frame a further information request for the information he specifically wanted from the public authority.
8. The assessments have raised a small number of areas where the procedures were not complied with in full. Some of these issues have come about because of the size of the workload of the team and the fact that the office premises remain closed.
- (i) in two cases, applications were not acknowledged within two working days. However, in one case this was because the application had been sent by post and, with access to the office only once a week, it was not possible to acknowledge on time. In another

case, an application was, unusually, sent direct to a validation officer while they were on holiday. This led to a (very short) delay in the case being acknowledged.

- (ii) the letter (“SL09”) to the applicant did not fully address the scope of the investigation
 - (iii) in one case seeking submissions from the authority, more than 15 questions on searches were posed by the investigator. The questions could have been cut back.
 - (iv) there were a couple of examples of triage notes not being updated to take account of additional submissions from the authority – again, particularly when we are working from with purely electronic files, it assists approvers if the triage note is up to date
 - (v) in one case where the delay in approving a decision (six months) case could be viewed as unreasonable. This was, however, a case with a complex background and which broke new ground.
 - (vi) in two of the cases assessed, the investigator had failed to keep the applicant up to date at one stage in the investigation (contact at points during the investigation was otherwise good).
9. Despite these (minor) issues, it is important to highlight the very high compliance with the Investigations Handbook.
10. 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 paragraphs 7 and 8.

Risk impact

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

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

14. None arising from this report.

Resources impact

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

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)

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

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

Publication

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

Appendix

Receipt and validation		Yes	No	n/a
1.1	Application acknowledged within two working days?	87%	13%	
1.2	Was view of HOE/DHOE sought appropriately?	67%		33%
1.3	Where view sought, was it given within one week?	40%		60%
1.4	Where case invalid, was reasonable advice given to applicant on how to make a valid application?			100%
1.5	Where case is valid, has the correct validation date been recorded in WP?	93%	7%	
Weighting and allocation		Yes	No	n/a
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)?	73%	27%	
Resolution		Yes	No	n/a
3.1	Was informal resolution considered/attempted appropriately (throughout the case)?	100%		
Seeking formal submissions		Yes	No	n/a
4.1	Was the SL08 in line with the requirements of the Handbook?	93%	7%	
4.2	Did the SL09 accurately reflect the scope of the investigation?	93%	7%	
Investigation		Yes	No	n/a
5.1	Was the triage note prepared/updated in line with procedures?	73%	20%	7%
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?	73%		27%
5.3	Is there evidence of submissions from public authorities being challenged, where appropriate?	67%		33%
5.4	Was the applicant kept up to date during the investigation?	87%	18%	
Approval		Yes	No	n/a
6.1	Did the draft decision have to be returned to the IO for further investigation/following significant alteration (not just to review changes)?		53%	47%
6.2	Was the first level approval carried out in a reasonable period (taking account of other workload and KPIs)?	47%	7%	47%
6.3	Was the second level approval carried out in a reasonable period (taking account of other workload and KPIs)?	47%	13%	47%
Good practice		Yes	No	n/a
7.1	Does the correspondence with the public authority, decision, etc. comment appropriately on practice?	47%		53%
7.2	Has the non-compliance section in WorkPro been appropriately completed?	67%	20%	13%
Compliance		Yes	No	n/a
8.1	Where compliance was required, was this followed up by the IO?	20%		80%
Quality of communications		Yes	No	n/a
9.1	Were the communications with the parties clear and courteous?	100%		
Records management		Yes	No	n/a
10.1	Have naming conventions been followed in the WP file?	100%		
10.2	Was correspondence added to WorkPro as soon as possible?	100%		
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?	53%		47%
10.5	Are the decision notices (anonymised and non-anonymised) named properly in VC?	53%		47%