

<b>Report to:</b>	QSMTM
<b>Report by:</b>	Margaret Keyse, Head of Enforcement
<b>Meeting Date:</b>	25 August 2022
<b>Subject/ Title:</b>	Investigations Performance (VC172782)
<b>Attached Papers</b>	None

## Purpose of report

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- To report to the Senior Management Team (SMT) on investigations performance in Q1 of 2022/23.

## Recommendation and actions

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- It is recommended that SMT:
  - note this report and
  - agree the recommendations regarding publication set out in “Publication” section below.

## Executive summary

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### The Commissioner’s duty under section 49(1)

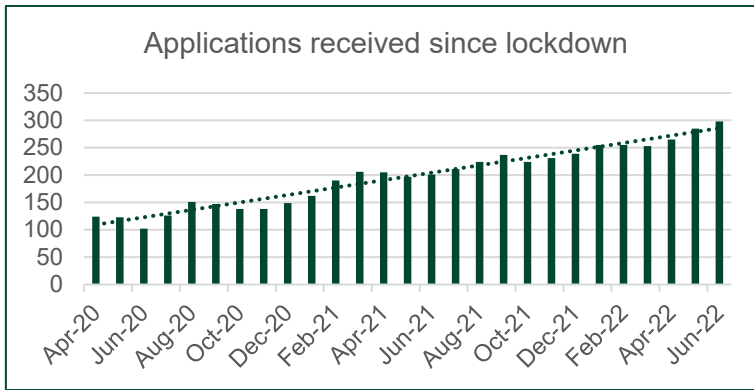
- Under section 49(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), the Commissioner is required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.
- The Commissioner has little control over the number of applications made to him.
- Decision notices issued by the Commissioner, including notices determining an application to be frivolous, etc., can be appealed to the Inner House of the Court of Session.

### Applications received

- We received 142 applications in Q1 2022/23.

Applications received	Number
<b>Q1 2022/23</b>	142
Q4 2021/22	158
Q3 2021/22	145
Q2 2021/22	173

- Although this was lower than the previous three quarters, the trend line in the table below shows that the number of applications we receive is generally continuing to climb.



**Cases awaiting validation**

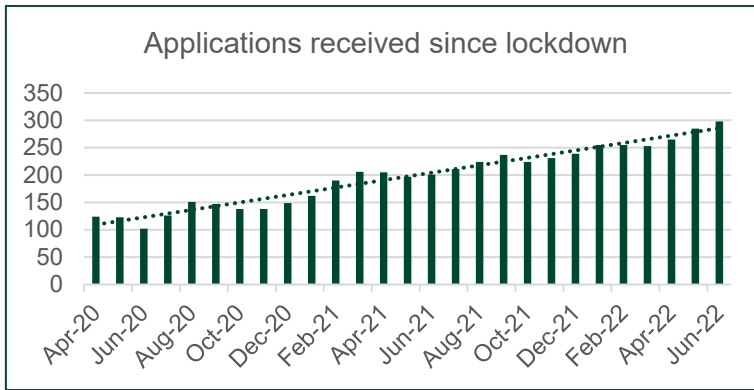
- 8. The Commissioner can only investigate applications which comply with section 47(2) of FOISA, where a review has been sought from the authority and where, for example, the relevant timescales set out in Part 1 of FOISA have been complied with. We refer to the checking process as “validation.”
- 9. Despite having received 142 applications in Q1, by the end of the quarter there were only 37 applications awaiting a decision on validation.

**Applications under investigation**

- 10. We define “applications under investigation” as any open, validated applications. The cases will not always be under active investigation.
- 11. At the end of Q1, we had 298 applications under investigation. Unfortunately, the number of applications under investigation continues to increase.

Applications under investigation	Number
<b>Q1 2022/23</b>	<b>298</b>
Q4 2021/22	253
Q3 2021/22	239
Q2 2021/22	237

- 12. As can be seen from the table below, the number of applications under investigation since April 2020 has continued to rise, despite continually trying to find ways to streamline our procedures.
- 13. On 1 September, we will be introducing new procedures for inviting comments from public authorities. These will reduce the time during which an application is “lying fallow” after validated and should speed up investigations once a case is allocated to an investigator.
- 14. As noted previously, we are recruiting for two new investigators. We hope to appoint following interviews taking place this month.



**Applications closed in Q1**

15. We closed 103 cases in Q1. Unfortunately, this is 39 cases fewer than we received. The table below shows the stages at which the cases were closed:

	Validation	Investigation	Decision notice	Total
<b>Q1 2022/23</b>	<b>42</b>	<b>26</b>	<b>35</b>	<b>103</b>
Q4 2021/22	52	44	45	141
Q3 2021/22	48	38	59	145
Q2 2021/22	37	26	53	116

**Average age of cases**

16. 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. While, realistically speaking, it is not possible to close *all* cases within four months, we would like to be able to close cases, *on average*, within four months. However, we have not been able to achieve this.

17. The average age of closed (valid) cases as at the end of Q1 has increased.

As at end	Months
<b>Q1 2022/23</b>	<b>7.3</b>
Q4 2021/22	6.3
Q3 2021/22	6.3
Q2 2021/22	6.1

18. The average age of open (valid) cases as at the end of Q1 has also increased.

As at end	Months
<b>Q1 2022/23</b>	<b>7.0</b>
Q4 2021/22	5.7
Q2 2021/22	5.6
Q2 2021/22	5.3

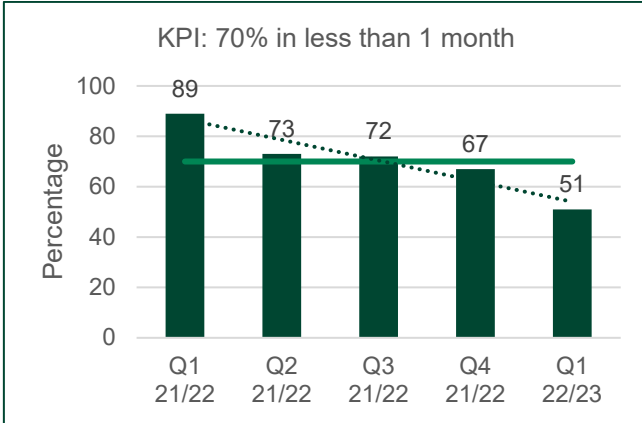
**KPIs**

19. Detailed below is our performance against each of our KPIs in Q1. The KPIs work on a rolling basis, which means that the performance in one year will affect the next.

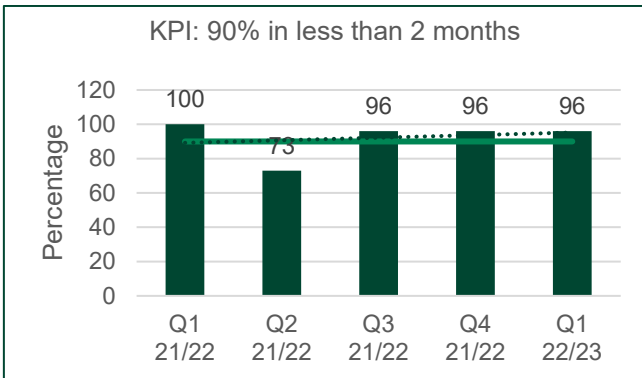
20. At the end of Q1, only two of the KPIs were being met. However, with four of the KPIs, we are less than 10 percentage points away from meeting the target.

*KPIs – validation*

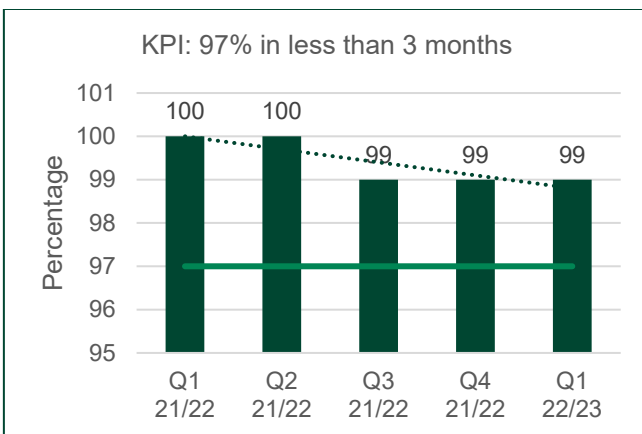
- 21. These KPIs focus on how long it takes for us to determine whether an application is valid. Despite the large number of applications received, two of the three validation KPIs are being met.
- 22. Determination on validity to be made in 70% of cases in less than 1 month (51% - **not met**)



- 23. Determination on validity to be made in 90% of cases in less than 2 months (96% - **met**)



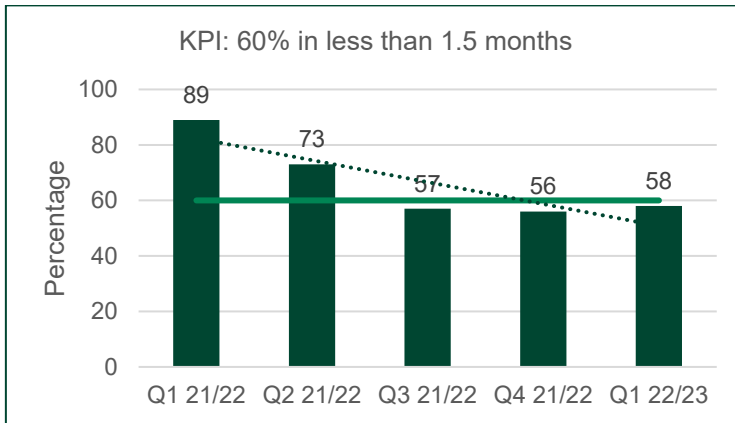
- 24. Determination on validity to be made in 97% of cases in less than 3 months (99% - **met**)



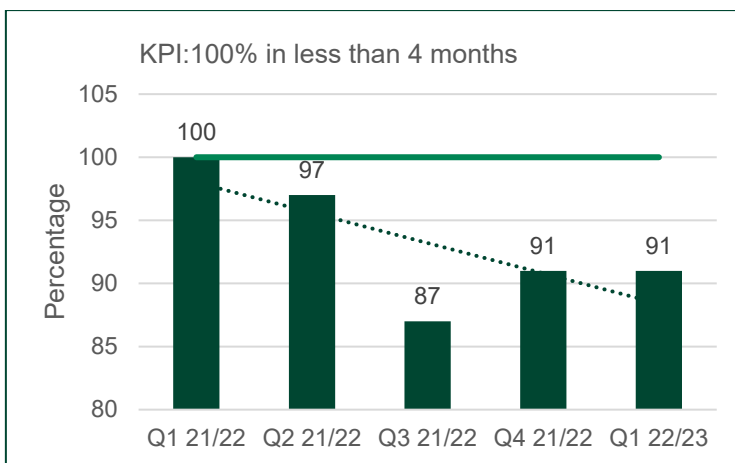
*KPIs – Failure to respond (FTR)*

- 25. These KPIs focus on how quickly we close cases where the sole reason for the application being made to us is that the public authority has failed to respond.
- 26. Although neither of these KPIs have been met, we are close to meeting them and, as can be seen from the tables, performance remains stable.

27. 60% of FTR cases to be closed in less than 1.5 months (58% - not met)



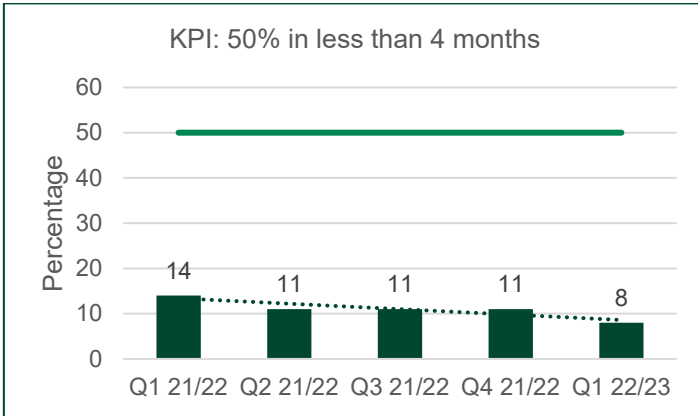
28. 100% of FTR cases to be closed in less than four months (91% - not met)



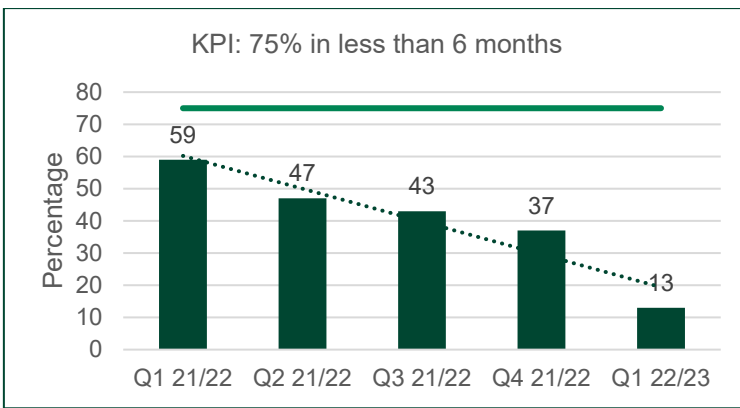
*KPIs - substantive cases*

- 29. These KPIs focus on how long it takes us to close “substantive” (i.e. non-FTR cases) from the date of receipt.
- 30. Performance against substantive KPIs remains the biggest concern, particularly in relation to the 4 month and 6 months KPIs, where performance falls well below the KPIs and continues to fall.
- 31. As noted previously, this is because the delay in being able to allocate substantive cases to FOIOs for investigation. As the FOIOs’ personal targets show (personal targets run from date of allocation), once cases are allocated they are generally deal with in line with quickly).
- 32. Clearly, the recruitment of additional FOIOs will have a positive impact on these KPIs as we will be able to allocate cases more quickly.

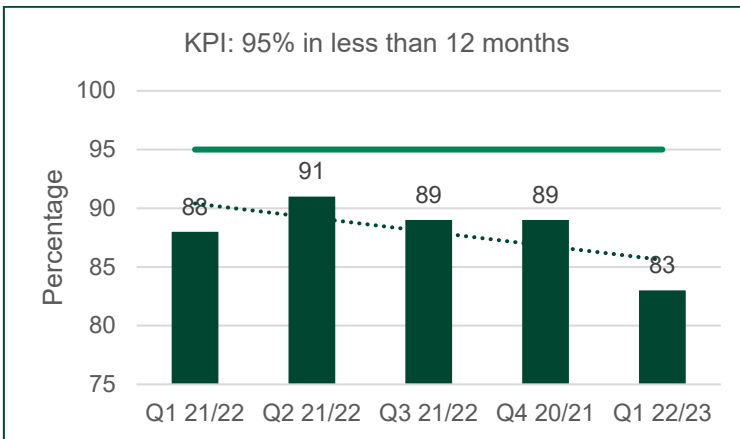
33. 50% of substantive cases to be closed in less than 4 months (8% - **not met**)



34. 75% of substantive cases to be closed in less than six months (13% - **not met**)



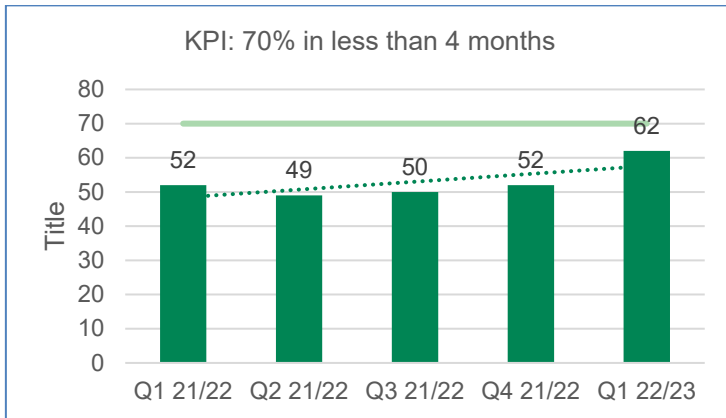
35. 95% of substantive cases to be closed in less than six months (83% - **not met**)



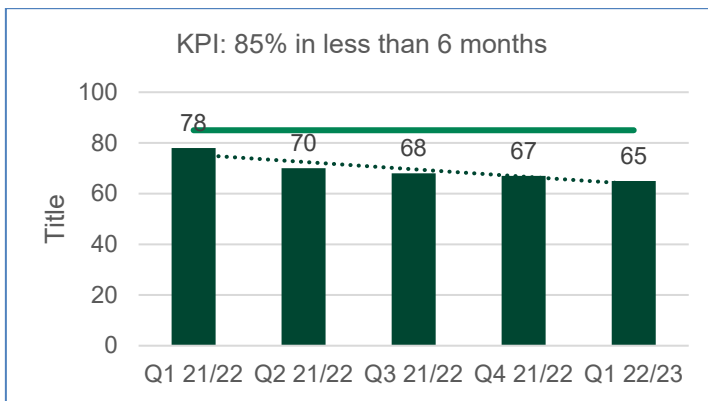
*KPIs: "All cases"*

36. This set of KPIs look at all of the applications made to us. Although none of the KPIs have been met, overall, performance is generally positive.

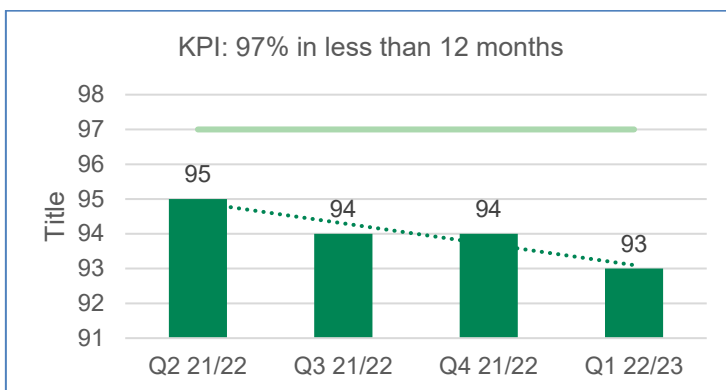
37. 70% of cases to be closed in less than 4 months (62% - not met)



38. 85% of cases to be closed in less than six months (65% - not met)



39. 97% of cases to be closed in less than 12 months (93% - not met)



## Risk impact

40. 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

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

## **Privacy impact**

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

## **Resources impact**

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43. The number of applications received, together with the fact that the team has not been at full capacity since before the start of the pandemic, is placing a lot of pressure on the team.
44. In addition, since January 2022, there have been a number of changes to the team and periods of absence which have affected performance.
45. However, as noted elsewhere, are recruiting two additional investigators and hope to be able to appoint following interviews this month.

## **Operational/strategic plan impact**

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46. 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)**

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47. None.

## **Consultation and Communication**

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48. An earlier version of this report was circulated to the SMT and the Deputy Heads of Enforcement in July 2022.

## **Publication**

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49. I recommend that this committee report is published in full.