

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	27 October 2022
Subject/ Title:	Investigations Performance (VC176040)
Attached Papers	None

Purpose of report

- To report to the Senior Management Team (SMT) on investigations performance in Q2 of 2022/23.

Recommendation and actions

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

Executive summary

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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.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, if any, 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 133 applications in Q2 of 2022/23.

Applications received	Number
Q2 2022/23	133
Q1 2022/23	142
Q4 2021/22	158
Q3 2021/22	145

- Given our current caseload, the slight reduction in the number of new applications in both Q1 and Q2 is to be welcomed.

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 133 applications in Q2, by the end of the quarter there were only 52 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 Q2, we had 344 applications under investigation. Unfortunately, the number of applications under investigation continues to increase despite constantly trying to find ways to streamline our procedures.

Applications under investigation	Number
Q2 2022/23	344
Q1 2022/23	298
Q4 2021/22	253
Q3 2021/22	239

12. On 1 September 2022, we introduced 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 some investigations once a case is allocated to an investigator.
13. However, given the resources available to the team, we will not be able to make real progress with reducing the caseload until we have additional resources in place.
14. During Q2, our investigative resources was further reduced when a member of staff changed teams. However, the move allowed us to recruit three new members of staff (interviews took place in August 2022) instead of two. We hope that the new investigators will be in place at the start of 2023.

Applications closed in Q2

15. We closed 73 cases in Q2. Unfortunately, this is 60 cases fewer than we received. The table below shows the stages at which the cases were closed:

	Validation	Investigation	Decision notice	Total
Q2 2022/23	30	20	23	73
Q1 2022/23	42	26	35	103
Q4 2021/22	52	44	45	141
Q3 2021/22	48	38	59	145

16. Q2 covers July to August, when case throughput was particularly affected by annual leave. The time case approvers were able to spend on decisions in Q2 was also affected by time spent on recruitment and on carrying out the necessary work and training to allow the

changes to procedures to be introduced on 1 September (which included changes to standard letters, the Investigations Handbook, guidance for both public authorities and applicants and internal training.)

Average age of cases

17. 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 for a number of years.

18. The average age of closed (valid) cases at the end of Q2 has reduced slightly from Q1.

As at end	Months
Q2 2022/23	7.2
Q1 2022/23	7.3
Q4 2021/22	6.3
Q3 2021/22	6.3

19. The average age of open (valid) cases at the end of Q2 has increased since the end of Q1.

As at end	Months
Q2 2022/23	7.4
Q1 2022/23	7.0
Q4 2021/22	5.7
Q2 2021/22	5.6

KPIs

20. Detailed below is our performance against each of our KPIs in Q2. The KPIs work on a rolling basis, which means that the performance in one year will affect the next.

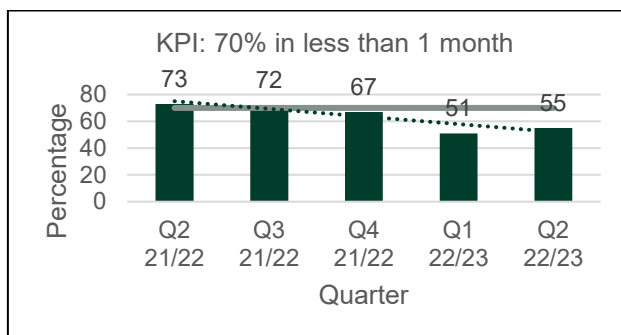
21. At the end of Q2, only one of the KPIs were being met. However:

- (i) with six of the KPIs, performance was better than or the same as Q1
- (ii) with three of the KPIs not being met, we are less than 10 percentage points away from meeting the target.

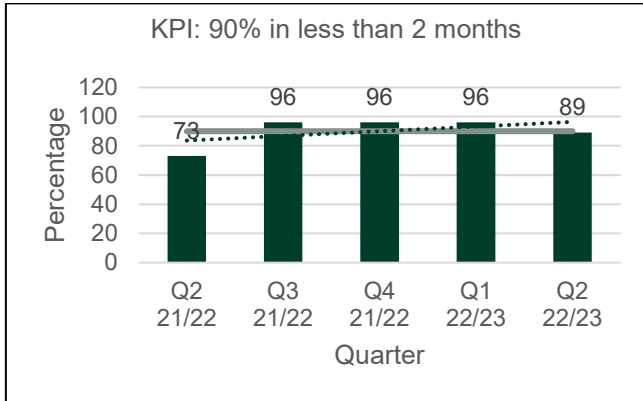
KPIs – validation

22. These KPIs focus on how long it takes us to determine whether an application is valid.

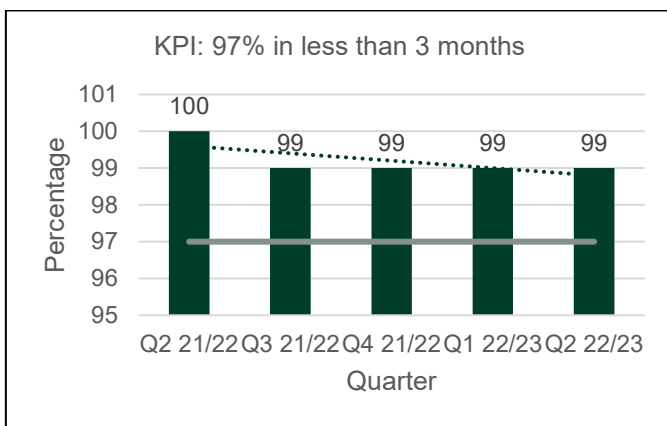
23. Determination on validity to be made in 70% of cases in less than 1 month (55% - not met)



24. Determination on validity to be made in 90% of cases in less than 2 months (89% - not met)

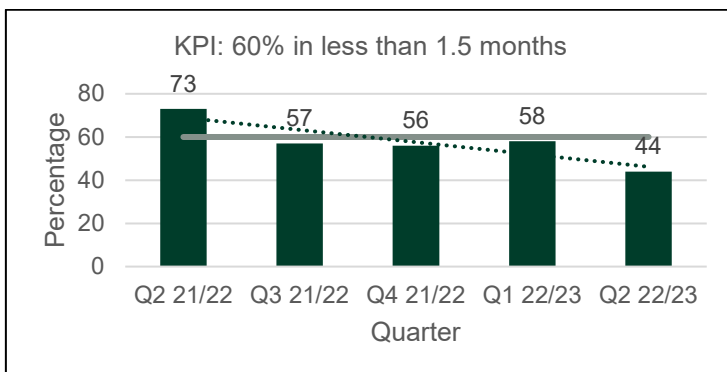


25. Determination on validity to be made in 97% of cases in less than 3 months (99% - met)

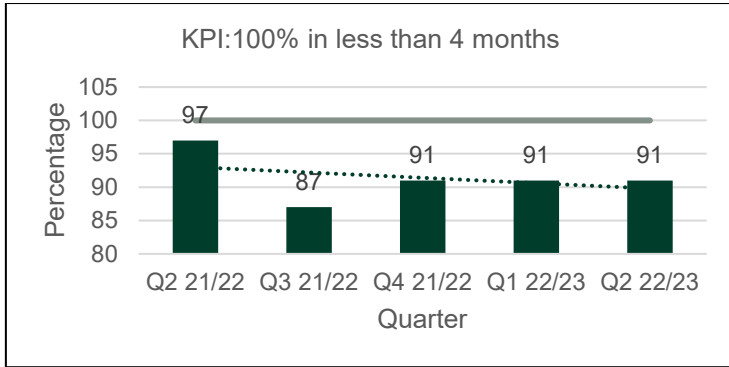


KPIs – Failure to respond (FTR)

26. 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.
27. Neither of these KPIs have been met, but we remain close to meeting one of them and performance remains stable.
28. It is worth noting that FTR cases are investigated by our Validation Team. Where we receive a high number of applications, this affects the time which they can spend on FTR cases.
29. 60% of FTR cases to be closed in less than 1.5 months (44% - not met)

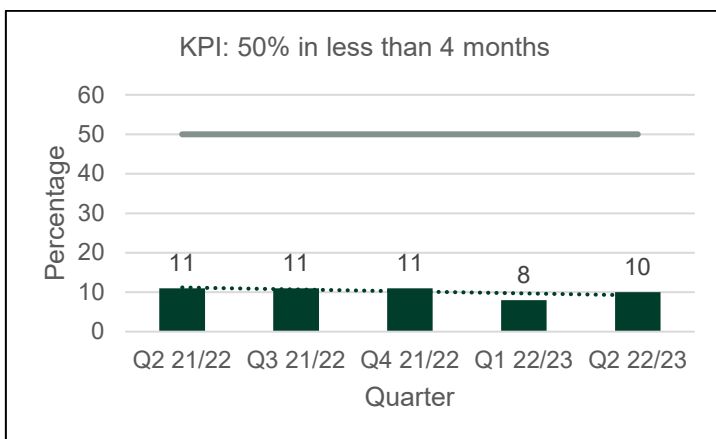


30. 100% of FTR cases to be closed in less than four months (91% - not met)

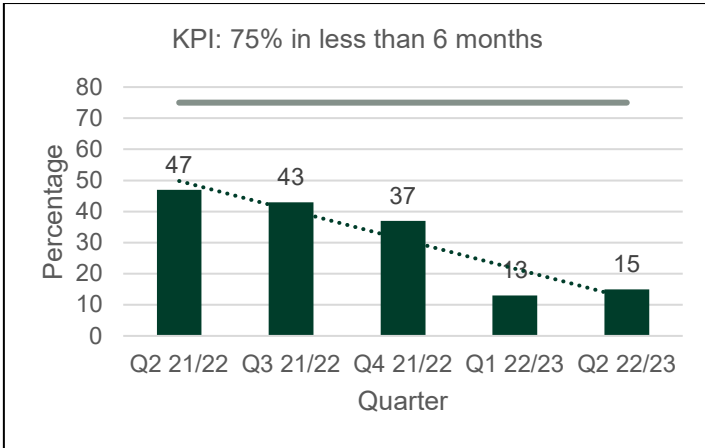


KPIs - substantive cases

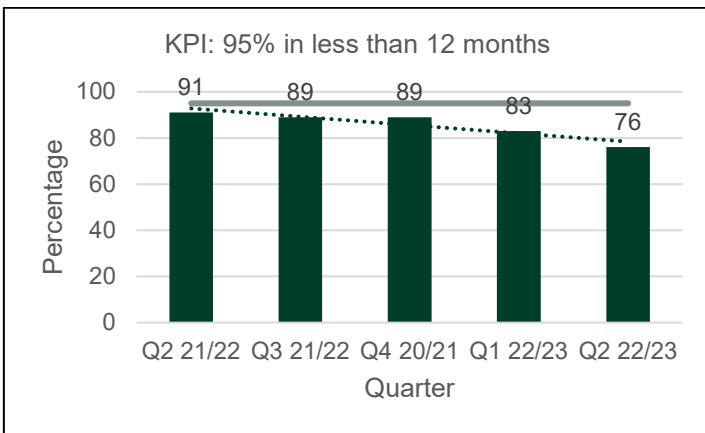
- 31. These KPIs focus on how long it takes us to close “substantive” (i.e. non-FTR cases) from the date of receipt.
- 32. Performance against substantive KPIs remains the biggest concern, particularly in relation to the 4 month and 6 months KPIs, where performance falls well below the KPIs, even if there has been a slight improvement since Q1.
- 33. As noted previously, because of the high caseload, there is a delay in allocating substantive cases to FOIOs for investigation. As the FOIOs’ personal targets show (personal targets run from date of allocation rather than date of receipt), once cases are allocated they are generally deal with quickly).
- 34. Allocation of new cases has also suffered because of a number of long-term absences and changes in role since the start of 2022. This has required us to reallocate cases initially allocated to IOs to other IOs.
- 35. Clearly, the recruitment of additional FOIOs will have a positive impact on these KPIs as we will be able to allocate cases much more quickly.
- 36. 50% of substantive cases to be closed in less than 4 months (10% - not met)



37. 75% of substantive cases to be closed in less than six months (15% - not met)



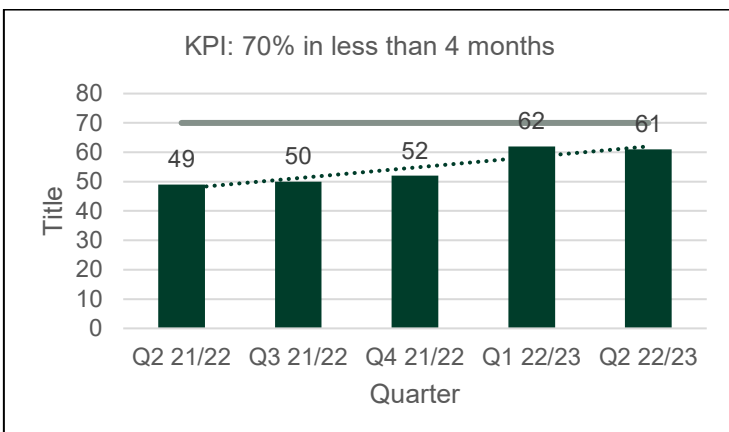
38. 95% of substantive cases to be closed in less than 12 months (76% - not met)



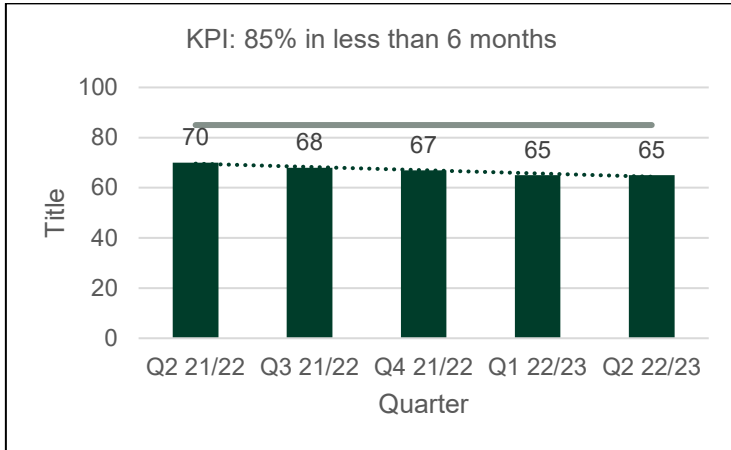
KPIs: "All cases"

39. 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.

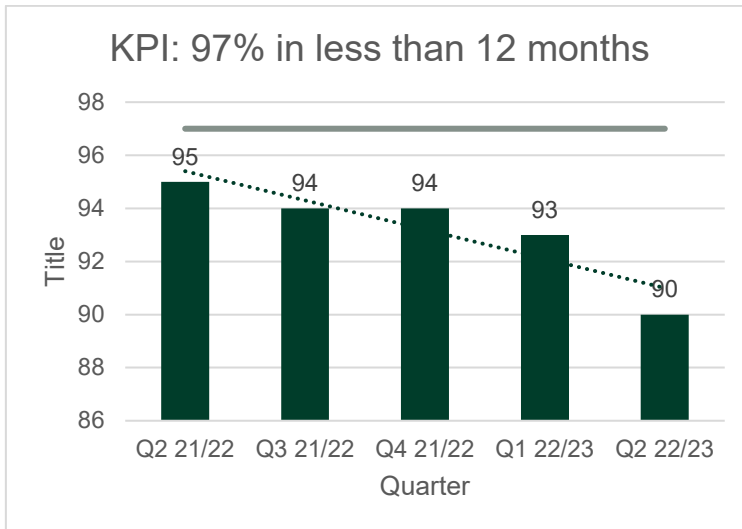
40. 70% of cases to be closed in less than 4 months (61% - not met)



41. 85% of cases to be closed in less than six months (65% - not met)



42. 97% of cases to be closed in less than 12 months (90% - not met)



Risk impact

43. We have procedures in place providing detailed guidance on the investigation of applications. We also have set KPIs for these investigations. Failure to comply with the KPIs is likely to undermine confidence in the way applications are processed. This committee report, in allowing SMT to keep track of investigations performance, mitigates against this risk.

Equalities impact

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

Privacy impact

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

Resources impact

46. 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, continues to place a lot of pressure on the team.
47. In addition, since January 2022, there have been a number of changes to the team and periods of absence which have affected performance.
48. However, as noted elsewhere, we are recruiting three additional investigators and hope that they will be in place at the start of 2023.

Operational/strategic plan impact

49. 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)

50. None.

Consultation and Communication

51. Both Deputy Heads of Enforcement commented on this draft report.

Publication

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