

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	26 May 2023
Subject/ Title:	Investigations Performance (VC187133)
Attached Papers	None

Purpose of report

- To report to the Senior Management Team (SMT) on investigations performance in Q4 of 2022/23.

Recommendation and actions

- It is recommended that SMT:
 - note this report and
 - agree the recommendations regarding publication set out in the “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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.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 139 applications in Q4 of 2022/23.

Applications received	Number
Q4 2022/23	139
Q3 2022/23	112
Q2 2022/23	133
Q1 2022/23	143

- We received 527 applications in total in 2022/23, 99 fewer than last year, but still higher than the number received in, for example, 2020/21 (486) and 2019/20 (494).

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 139 applications in Q4, by the end of the quarter there were only 14 applications awaiting a decision on validation. (A decision on the validity of all 14 of these cases was made by the end of last month.)
10. This compares very well with the numbers of cases awaiting a decision on validation at the start of 2022/23 (e.g., 41 in April and 43 in May).

Applications under investigation

11. We define “applications under investigation” as any open, validated applications. The cases will not always be under active investigation.
12. At the end of Q4, we had 392 applications under investigation. Although this is an increase on the number under investigation at the end of Q3, the rate of increase has slowed:

Applications under investigation	Number
Q4 2022/23	392
Q3 2022/23	385
Q2 2022/23	346
Q1 2022/23	299

13. As noted previously, on 1 September 2022, we introduced new procedures for inviting comments from public authorities. These are aimed at reducing the time during which an application is “lying fallow” after validation and should speed up straight forward investigations once a case is allocated to an investigator. However, given the lack of investigative resource over much of 2022, cases are taking a long time to be allocated (as at the end of Q4, we still have around 200 cases waiting to be allocated to investigators), so we will not know whether the new approach is successful until later this year.
14. Three new investigators started in Q4, bringing the team complement back up to normal levels.

Applications closed in Q4

15. We closed 132 cases in Q4, seven fewer than we received. The table below shows the stages at which the cases were closed.

	Validation	Investigation	Decision notice	Total
Q4 2022/23	54	46	32	132
Q3 2022/23	33	29	48	110
Q2 2022/23	30	20	23	73
Q1 2022/23	42	26	35	103

16. We closed 417 cases in 2022/23, 110 fewer than we received. However, as noted elsewhere, our investigative complement was much reduced in 2022 and this followed a year when we received an exceptionally high number of applications.

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, our aim is 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 increased slightly over the year (by 0.5 months).

As at end	Months
Q4 2022/23	7.8
Q3 2022/23	7.8
Q2 2022/23	7.2
Q1 2022/23	7.3

19. The average age of open (valid) cases also continue to increase throughout the year (by 1.2 months).

As at end	Months
Q4 2022/23	8.2
Q3 2022/23	7.8
Q2 2022/23	7.4
Q1 2022/23	7.0

20. Nevertheless, as noted below, despite the challenges, 62% of all cases closed were closed in less than six months.

KPIs – overview

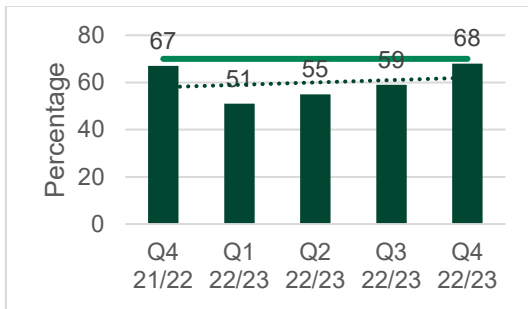
21. Detailed below is our performance against each of our KPIs in Q4. The KPIs work on a rolling basis, which means that the performance in one year affects the next. Information on performance in Q4 of 2021/22 has therefore been included for information.
22. At the end of Q4, only two of the KPIs were being met. Of the KPIs not met, there has been an improvement in performance in four over the year.

KPIs – validation

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

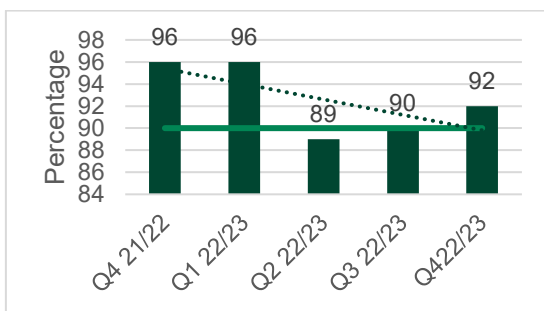
KPI: Determination on validity to be made in 70% of cases in less than one month

24. At 68%, the target is very close to being met. As the table shows, there has been steady improvement (17 percentage points) during 2022/23.



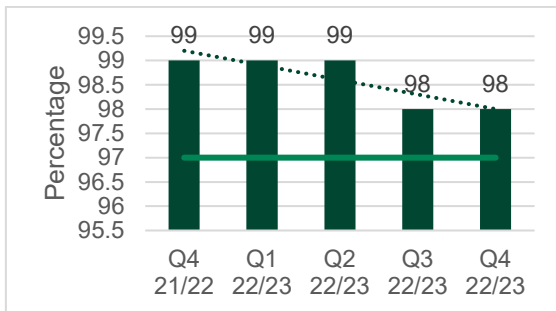
Determination on validity to be made in 90% of cases in less than two months

25. This KPI has been exceeded – 92%. Performance against this target has been good through the year.



Determination on validity to be made in 97% of cases in less than three months

26. This KPI has been exceeded – 98%.



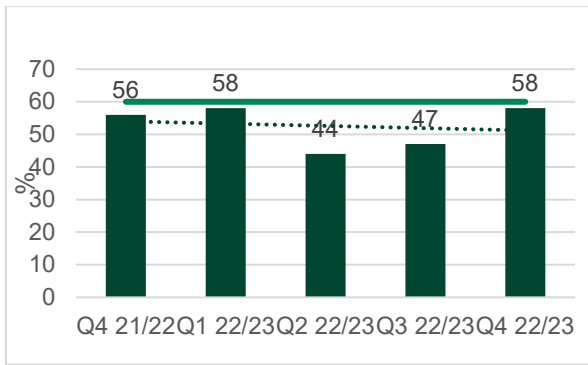
KPIs – Failure to respond (FTR)

27. 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.

28. FTR cases are, in the main, investigated by our Validation Officers. 23% of the valid applications received last year were FTR cases – 85 cases.

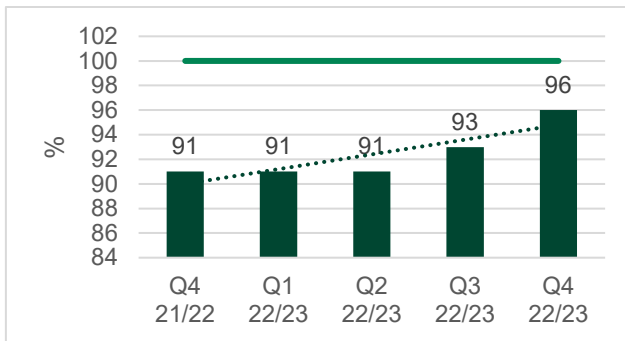
60% of FTR cases to be closed in less than 1.5 months

29. This KPI, at 58%, is very close to being met.



100% of FTR cases to be closed in less than four months

30. At 96%, this KPI is very close to being met. Again, there has been some improvement (five percentage points) throughout the year.

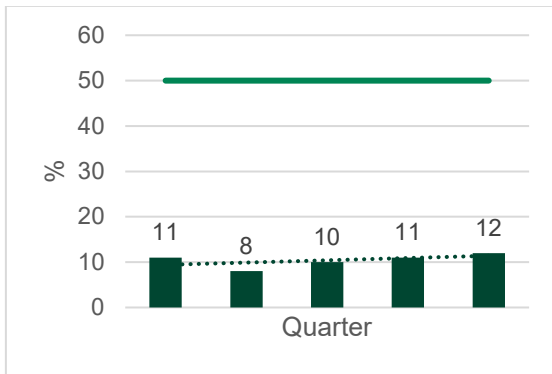


KPIs - substantive cases

- 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, given that performance falls well below the KPIs.
- 33. As noted previously, because of various issues including the high caseload, a number of long-term absences and changes to the team make-up since the start of 2022, there is a big delay in allocating substantive cases to FOIOs for investigation. As the FOIOs’ personal targets show (personal targets run from date a case is allocated to an FOIO for investigation rather than the date we received the application), once cases are allocated they are generally deal with quickly.
- 34. As noted elsewhere, with the appointment of three new investigators in Q4, the team is back up to complement, so, provided the number of new applications remains steady, we should start to see an improvement on these KPIs as we move through 2023/24 as we are able to allocate cases more quickly.

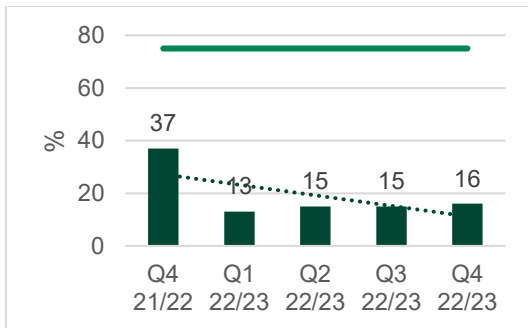
50% of substantive cases to be closed in less than four months

35. Not met – 12%, although there has been a small improvement (four percentage points) over the year.



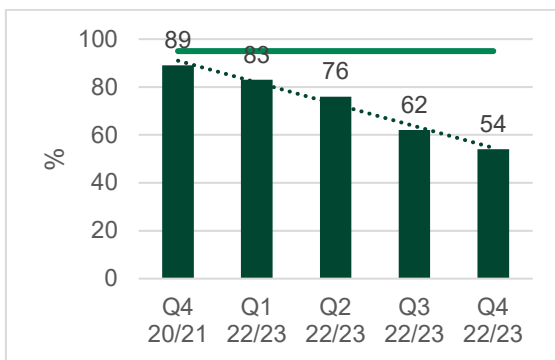
75% of substantive cases to be closed in less than six months

36. Not met – 16%. Again, there was a small improvement (three percentage points) over the year.



95% of substantive cases to be closed in less than 12 months

37. Not met – 54%. The decline in performance against this KPI over the year (29 percentage points) is very concerning. Again, it is as a result of a delay in cases being allocated for investigation and cases lying fallow for so long.

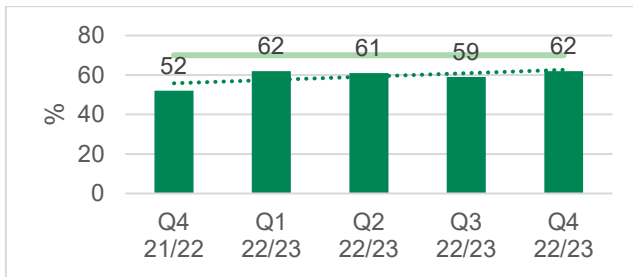


KPIs: “All cases”

38. This set of KPIs look at all of the applications made to us. Although none of the KPIs have been met, as noted above, 62% of applications made to us were closed in less than four months. This is an improvement on 2021/22, when 52% of all cases were closed in less than four months.

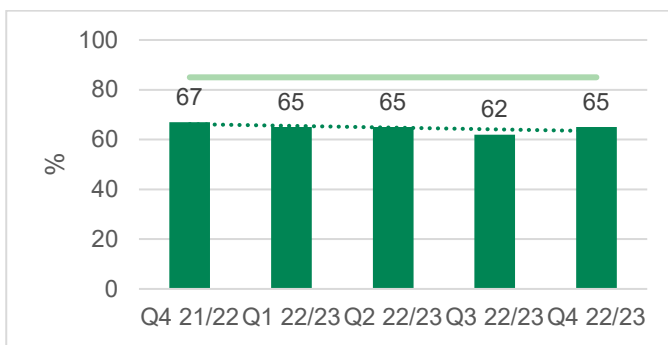
70% of cases to be closed in less than four months

39. 62% - not met – but performance has remained steady through the year.



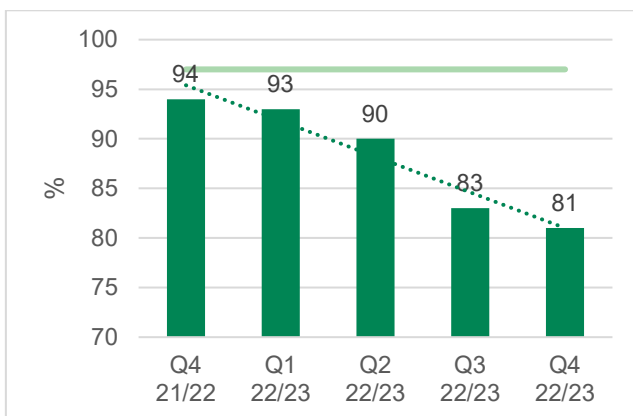
85% of cases to be closed in less than six months

40. Not met – 65%, but performance has remained steady.



97% of cases to be closed in less than 12 months

41. Not met – 81%. Again, it is concerning that performance has reduced (12 percentage points) over the year.



Risk impact

42. 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

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

Privacy impact

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

Resources impact

45. 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.
46. In addition, since January 2022, there have been a large number of changes to the team and periods of long-term absence which have affected overall performance.
47. With the number of new applications back to more normal figures and the team at full complement, we are starting to see the backlog and delays plateauing and I hope that we will see improvement in performance over the forthcoming year. The issues caused by delays in allocation of cases must not deflect from the high quality of work carried out by the team in 2022/23, particularly during a period of change.

Operational/strategic plan impact

48. 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)

49. None.

Consultation and Communication

50. The report will be discussed at the next Enforcement Team meeting.

Publication

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