

## Interventions Activity Quarterly Report: 2023-24 Q1 (April- June 2023)

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1. The Commissioner carries out interventions in cases where a Scottish public authority is failing to meet the requirements and standards set out in FOI legislation and Codes of Practice. For more information about our approach to interventions, visit [www.itspublicknowledge.info/interventions](http://www.itspublicknowledge.info/interventions).
2. Reporting on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#). This report provides a summary of intervention activity undertaken during April - June 2023-24. All status updates in this report relate to that period, rather than the date of publication of this report.

### Intervention caseload

3. New intervention activity throughout 2022-23 was reduced due to capacity restrictions. It was anticipated that new intervention activity would increase during 2023-24. However, capacity and resource remain an increasingly significant issue, with Enforcement so far unable to resume intervention activity and resources focussed on appeal work. We have no dedicated resource for intervention activity and therefore must be resources from existing capacity.

### Level 1 interventions

4. Used for: Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.
5. 152 non-compliance issues are recorded in our case handling system from 1 April 2023 to 30 June 2023. 68 of the issues recorded resulted in some action by our office to rectify the concern identified. Notable actions by the team are set out below:
  - (i) **Glasgow City Council** asked to amend wording in standard template letter to clarify review timescales
  - (ii) **Glasgow City Council** asked to remove reference to our Appeals portal in standard letters
  - (iii) **Glasgow West Housing Association Ltd** provided with advice on handling RFIs after treating one as a complaint
  - (iv) **Midlothian Council** advised that its review responses should be advising requesters of their right to appeal to the Commissioner
  - (v) **Renfrewshire Leisure Ltd** advised to update template response letter with details of the timescales within which an appeal can be made to the Commissioner and asked to remove details of Appeals portal.
  - (vi) **Scottish Ambulance Board** advised it was not necessary to seek the name of an individual when a request is made on behalf of an organisation.
  - (vii) **NHS Greater Glasgow and Clyde** contacted to determine reasons behind a dip in FOI performance. Contact also made with regard to content of MPS – broken links. Further intervention action may be required.
  - (viii) The **University of Glasgow** has been contacted in relation to a similar dip in FOI performance levels. Further intervention activity may be required.

6. We also contacted **South Lanarkshire College** seeking clarification arounds its its criteria for seeking identification following concerns that identification was being sought possibly without justification.
7. We opened a level 1 intervention with the **Scottish Courts and Tribunals Service** following concerns raised with us that access to FAI determinations were closed. This was resolved when it was discovered it was a temporary measure to check for data protection issues.
8. In addition, Q1 2023-24 saw an increase in the number of Level 1 interventions opened in relation to the failure to submit statistics within the required timeframes. 20 Level 1 interventions were opened on this basis. Authorities included: a number of small registered social landlords and subsidiaries, West Dunbartonshire Council, South Lanarkshire College, Sabhal Mor Ostaig, NHS Greater Glasgow and Clyde, NHS Grampian, Moray IJB, Mirren Park School, Inverclyde IJB, Heriot Watt University, HMP Addiewell, Capital Theatres (still open)

## Level 2 interventions

9. Used for: Practice failure. A member of the Commissioner’s staff raises the issue with the authority, initially at Chief Executive level or equivalent, and requires steps to be take to resolve the issue and achieve a target outcome.
10. No new Level 2 interventions were opened between 1 April 2023 and 30 June 2023, but our intervention with Midlothian Council was raised from Level 1 to Level 2 in October 2023. The list below provides details on those that remain open throughout this period.

<b>Public Authority</b>	<b>Issue</b>	<b>Date initiated</b>
Highland Council	Compliance with timescales	30 October 2019
Scottish Ambulance Service Board	Compliance with timescales	12 October 2020
Scottish Environment Protection Agency	Management of FOI function/culture	10 June 2021.
Midlothian Council (escalated from level 1 in Q2 2023-24)	Compliance with timescales	2 December 2021
NHS Western Isles (closed in Q2)	Compliance with timescales	9 December 2020
NHS Highland (closed in Q2)	Compliance with timescales	9 December 2020
Falkirk Council (closed in Q2)	Compliance with timescales	24 May 2022

## Compliance with timescales

11. These interventions were opened after analysis of the authorities' FOI statistics showed a long-term trend of high rates of late responses to requests. The interventions have involved:
  - (i) seeking an explanation of the factors that have led to the high late-response rates
  - (ii) requesting details of the actions to be taken by the authority to improve performance
  - (iii) monitoring and seeking evidence of their progress towards a target outcome.

12. Highland Council and Scottish Ambulance Service Board continue to submit concerning performance statistics. It was agreed at the last Quarterly Intervention Meeting (QIM) that further action is required to improve performance.
13. NHS Western Isles, NHS Highland and Falkirk Council submitted improved performance statistics, demonstrating a sustained improvement – these interventions were closed in Q2 2023-24.
14. Midlothian Council continues to submit disappointing performance statistics, despite a level 1 intervention. This intervention was escalated to Level 2 in October 2023.
15. Midlothian? Inverclyde? SPS? NHS Fife – check reports.

### **Management of FOI function/culture**

16. Work continues to support the Scottish Environment Protection Agency (SEPA) to rebuild its FOI performance following the cyber-attack in December 2020, prior to which the authority had recorded high rates of late responses to requests over a sustained period.
17. A significant issue in the implementation of this intervention was access to reliable and comprehensive performance/monitoring data. Significant work has now been undertaken by SEPA, not only to collect the most comprehensive datasets from which FOI performance can be measured, but also a wider project to rebuild its wider access to information regime with a focus on proactively publication. Formal action plan with key milestones was set to be agreed in December 2022, but with the appointment of a new Chief Executive, was delayed until late January 2023. Originally a target of responding to 90% of requests on time by December 2023, this was altered with the Commissioner's approval to 80% by December 2023 (with a view to increasing this target in 2024), in light of the wider improvements being put into place to ensure sustainability of its new ATI regime.
18. SEPA has some actions points arising from the actioning of its implementation plan with respect to its historical backlog.
19. SEPA has made significant inroads in improving its performance, with latest statistics showing that it is on track to reach the 80% target.

### **Level 3 interventions**

20. Used for: Serious systemic practice failure. A member of the Commissioner's Senior Management Team raises the issue with the authority's Chief Executive or equivalent, and require is a detailed action plan to be put in place to address the failure and achieve a required outcome.
21. Our long-running intervention with the Scottish Ministers regarding their FOI performance and practice continued. Our fourth progress report was published in **October 2023**.
22. Throughout Q1 2023-24, we continued to meet on a monthly basis with staff from the Scottish Government's FOI Unit to review progress in the areas covered by the intervention, and review monthly statistical submissions on FOI performance. In doing so, we were principally focussed on monitoring the Scottish Government's progress against its 2022-23 Improvement Plan. This plan was developed in response to the intervention recommendations contained in the Commissioner's May 2022 Intervention Progress Report, and is focussed on resolving the outstanding elements from those identified in the Commissioner's initial intervention report, namely those related to: clearance procedures, case file records management, case handling and the effective monitoring of FOI requests.

23. In May 2023, the Commissioner identified a historical backlog and was concerned about the monthly performance statistics. Following a meeting with the Permanent Secretary, additional measures were put into place to address these concerns. However, as a consequence, our further progress report was unable to appropriately conclude the monitoring phase of this intervention.

#### **Level 4 interventions**

24. Used for: Consistent, ongoing failure to comply with FOI law and guidance. The Commissioner uses their statutory powers to address the problem, which may include practice recommendations or enforcement action.
25. We have no Level 4 intervention activity to report on in Q1 2023-24.