

Interventions Activity Report 2020-21

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.

This report provides a summary of the intervention activity undertaken during 2020-21, with comparison data from the previous two years.

Reporting and communication on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#).

Intervention Caseload

As with interventions data provided in previous annual reports, the following figures reflect intervention activity in the year, rather than only those opened in the year. Therefore, it is possible for a single intervention case (Level 1-4) to be counted in more than one year. Each non-compliance notification is counted only once.

Intervention level	2018-19	2019-20	2020-21
Non-compliance	201	217	229
Level 1	38	16	24
Level 2	10	15	6
Level 3	3	3	1
Level 4	0	0	0
TOTAL	252	251	260

While broadly on par with previous years, the total number of interventions active in the year was slightly higher in 2020-21 than in previous years – however, the increase is largely accounted for by the rise in non-compliance notifications. A greater proportion of the other intervention cases were at Level 1, with fewer interventions at Levels 2 and 3 compared with the previous two years.

The fall in Level 2 case numbers is largely because statistics-related cases have been reclassified from Level 2 to Level 1 (see Level 2 section below). Also, for resource management reasons, the Commissioner opened a number of interventions at Level 1 which would ordinarily be raised at Level 2, allowing for authorities to resolve the issue swiftly while reserving the ability to escalate the intervention to a higher level if required.

The unusually high figure for Level 1 in 2018-19 was largely due to a batch of interventions arising from Model Publication Scheme monitoring.

NB: These figures represent the same data that was reported in previous Annual Reports, but the figures are presented differently, in line with the revised Intervention Procedures approved in February 2021.

Non-compliance notifications

Used for: Minor failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and recommends remedial action.

We have continued to raise more non-compliance notifications from year to year.

In 2020-21, the most common areas of concern about which notifications were raised are as follows:

Compliance with timescales – review	55
Review process	44
Compliance with timescales – request	35
Handling of initial request	25
Covid-19 related delay	16
Delay to authority submissions	16
Other	38
TOTAL	229

It is important to note that which authorities are the subject of most notifications is strongly influenced by how many of our investigations happen to involve those authorities. In terms of sectors, local government accounted for 49% of notifications, followed by Scottish Government bodies (15%), NHS boards (10%) and universities and colleges (7%).

In comparison, the most common areas of concern in 2019-20 were:

Review process	51
Compliance with timescales – review	38
Compliance with timescales – request	35
Handling of initial request	29
Management of FOI function/culture	12
Searches/records management issues	11
Other	41
TOTAL	217

Local government accounted for 53% of notifications, followed by Scottish Government bodies (12%), NHS boards (8%), then leisure & culture trusts and police (5% each).

Level 1 interventions

Used for: Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.

Of the 24 Level 1 interventions active in 2020-21, 12 were closed and 12 were ongoing, as follows:

Closed:

- **Publication of information** – Highlands and Islands Enterprise, Scottish Qualifications Authority.
- **Publication scheme** – City of Edinburgh Council, Fife Council, Police Scotland.

These interventions were opened after members of the public contacted us with concerns about published information not being kept up-to-date or information that appeared to be missing from an authority's publication scheme.

In each case, the authority uploaded the missing information to its website or updated its publication scheme.

- **Statistics submission** – Children’s Hearings Scotland, Dundee City Integration Joint Board, East Lothian Integration Joint Board, Inverclyde Licensing Board, Judicial Appointments Board for Scotland, Kilmarnock Leisure Centre, Scottish Borders Integration Joint Board.

These were opened with authorities which failed to submit FOI statistics on time via the Commissioner’s portal for at least 3 consecutive quarters. These cases are usually resolved fairly quickly by the authority submitting the relevant statistics.

Each quarter, we request statistics from all authorities that are listed in schedule 1 of FOISA or which have been made subject to FOISA by an Order under section 5.

Open:

- **Charging for requests** – East Lothian Council.

This intervention was made in response to analysis of statistics and evidence from our investigations regarding the authority’s use of the charging provisions in the Environmental Information (Scotland) Regulations (EIRs).

The intervention sought to understand any reasons for this trend ensure that training is available to staff on differentiating between environmental and non-environmental information and that any charges made are in accordance with the relevant legislation.

- **Compliance with timescales** – Aberdeen City Council, Creative Scotland, NHS Highland, NHS Western Isles, Scottish Environment Protection Agency, University of Dundee.

These Level 1 interventions were opened following analysis of authorities’ FOI statistics, which showed either a long-term trend of relatively high rates of late responses to requests, or particularly high late-response rates during the Covid-19 pandemic period (taking into account the disruption caused).

These interventions mostly seek information from the authority about the causes of these statistical trends, and details of actions they are taking to resolve them.

The Scottish Environment Protection Agency intervention was initiated in December 2020 but initially delayed following the criminal cyber-attack on the authority later that month – and has since been reactivated.

- **Statistics submission** – Aberdeen City Integration Joint Board, Argyll College, Eden Court, Perth and Kinross Sports Council, Regional Board for Glasgow Colleges.

See explanation of closed statistics submission interventions above.

Level 2 interventions

Used for: Practice failure. A member of the Commissioner’s staff raises the issue with the authority, initially at Chief Executive or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome.

One Level 2 intervention was closed during 2020-21; the other 5 remained open at the year end.

Closed:

- **Compliance with timescales** – City of Edinburgh Council.

See explanation of open timescales-related interventions below.

- **Statistics submission** – Netherlea School.

This case was opened at Level 2 in 2019-20 – following several consecutive quarters of non-submission – in accordance with the Intervention Procedures that were in place at that time. The Level 1 statistics-related interventions listed above are more recent and reflect the revised Procedures approved in 2020-21.

Open:

- **Compliance with timescales** – Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, University of Edinburgh.

These Level 2 interventions were opened following analysis of authorities' FOI statistics, which showed a significant long-term trend of high rates of late responses to requests (starting before the periods of disruption caused as a result of the Covid-19 pandemic).

These interventions have involved:

- seeking an explanation of the factors that have led to the high late-response rates
- advising the authority to complete Module 1 of the Commissioner's Self-Assessment Toolkit ("Responding on Time") and complete an action plan based on the findings
- requesting details of the actions to be taken by the authority to improve their FOI performance, such as any revised procedures and management reporting
- monitoring the authority's progress towards a target outcome by viewing monthly performance reports and other evidence such as staff training and communications

The five interventions are all at varying stages; progress is reported to the Commissioner's Quarterly Interventions Meeting, which may decide actions including escalation or closure.

Level 3 interventions

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 requires a detailed action plan to be put in place to address the failure and achieve a required outcome.

There was one Level 3 intervention active during 2020-21 – our ongoing intervention with the Scottish Government regarding their FOI performance and practice. A second Progress Report was published in September 2020, which considered the Government's actions and performance between 1 April 2019 and 31 May 2020.

The report found that significant progress had been made in 2019-20 but that resources were diverted in response to the Covid-19 pandemic, resulting in a dramatic fall in the proportion of requests being responded to within statutory timescales. In the report, the Commissioner urged the Scottish Government to restore resources to its FOI function. Since the report's publication, performance has recovered somewhat, despite the Scottish Government receiving unprecedented numbers of FOI and EIR requests.

Communication between the Commissioner and the Government's FOI Unit continues, including regular virtual meetings and monthly submission of FOI statistics. Full details of the Progress Report and the intervention overall can be found at www.itspublicknowledge.info/SGIntervention.

Level 4 interventions

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.

There were no Level 4 interventions during 2020-21.