

<b>Report to:</b>	QSMTM
<b>Report by:</b>	Margaret Keyse, Head of Enforcement
<b>Meeting Date:</b>	3 February 2022
<b>Subject/ Title:</b>	Investigations Performance (VC162785)
<b>Attached Papers</b>	2021/22 Report on investigations performance KPIs as at 31 December 2021

## Purpose of report

---

1. To report to the Senior Management Team (SMT) on investigations performance in Q3 of 2021/22.

## Recommendation and actions

---

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

## Executive summary

---

### Applications received

3. We received 145 applications in Q3. This is slightly lower than the number received in Q2, but around average for the remainder of 2021/22.

Applications received	Number
<b>Q3 2021/22</b>	<b>145</b>
Q2 2021/22	173
Q1 2021/22	149
Q4 2020/21	146

4. We have received 468 applications in the first three quarters of 2021/22, much higher than the average figure for the previous four years, where we received an average of 370 applications in the first three quarters.
5. We continue to receive a high number of applications from a small number of individuals. For example, five applicants have made more than 10 applications since the start of 2021/22, with one applicant having made 25 applications.

### Cases awaiting validation

6. The Commissioner may only investigate applications which comply with section 47(2) of the Freedom of Information (Scotland) Act 2002 (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.”

7. Of the applications received in the first three quarters of 2021/22 where a decision has been made on validation, 27% of applications have been found to be invalid.
8. The main reason for an application not being valid (32%) is because the application did not comply with section 47(2) of FOISA, usually because the applicant did not set out any grounds for dissatisfaction in the application or did not specify the information request which led to the application being made.
9. In a further 23% of invalid cases, the applicant has not asked the public authority to carry out a review before applying to the Commissioner for a decision.
10. At the end of Q3, we had 41 cases awaiting validation, one lower than at the end of Q2.

<b>Applications awaiting validation</b>	<b>Number</b>
<b>Q3 2021/22</b>	<b>41</b>
Q2 2021/22	42
Q1 2021/22	20
Q4 2020/21	13

11. As can be seen from the tables at the end of this committee report, despite the number awaiting a decision on validation, performance against the validation KPIs remains high, with all three of the KPIs being met.

**Applications under investigation**

12. We define “applications under investigation” as any open validated application, rather than cases under active investigation. This number continues to increase.

<b>Applications under investigation</b>	<b>Number</b>
<b>Q3 2021/22</b>	<b>239</b>
Q2 2021/22	238
Q1 2021/22	201
Q4 2020/21	206

13. In previous years, defining “applications under investigation” in this way this has not been an issue as, once cases were validated, there was little, if any, delay in them being allocated for active investigation.
14. However, as reported at the end of Q1 and Q2, the number of valid applications received is affecting the speed at which these cases can be allocated to investigators: investigators are already dealing with a full caseload and we know from experience that allocating additional cases to investigators beyond a level that can reasonably be dealt with at the same time simply has the effect of slowing down the investigators’ caseload as a whole.
15. The number of invalid applications and “failure to respond” (FTR) applications remains relatively low in comparison to previous years. This has led to an increase in the number of “substantive” applications to be allocated for investigation by FOIOs and has also affected the workload of the HOE and the Deputy Heads of Enforcement.

16. The Q2 report stated that this committee report would report on the number of cases which have been passed to the HOE for allocation, but which have not yet been allocated within one month to an investigator for active investigation. Unfortunately, it has not been possible to carry out this calculation in time for this report. Information on the delay in the allocation of cases this will be included in the report for Q4.
17. We continue to find ways to streamline our procedures wherever possible to allow us to deal with as many cases as possible as quickly as possible.
18. The delay in allocation of cases has led to an increase in the number of requests for updates. These are also affecting the speed at which we are able to deal with (and close) cases. From 1 December 2021, our website contains additional information about the status of cases, updated monthly, which now includes cases at validation and which can be searched to find out what stage the case is at.
19. The Commissioner is to write to all applicants to explain why cases are taking longer than expected and what we are doing about it – our website will also be updated to explain our current situation.
20. Other changes are being planned. A summary of the changes made throughout 2021/22 (and changes planned for 2022/23) will be included in the Q4 report.

### Applications closed

21. As noted above, we received 145 applications in Q3. We closed 144 – the table below shows the stages at which the cases were closed:

	Validation	Investigation	Decision notice	Total
<b>Q3 2021/22</b>	<b>47</b>	<b>38</b>	<b>59</b>	<b>144</b>
Q2 2021/22	37	26	52	115
Q1 2021/22	47	39	60	146
Q4 2020/21	45	37	47	129

### Average age of cases

22. 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.
23. The average age of closed (valid) cases (YTD) has increased since the end of Q1.

As at	Months
<b>Q3 2021/22</b>	<b>6.3</b>
Q2 2021/22	6.1
Q1 2021/22	5.9
Q4 2020/21	6.0

24. Similarly, the average age of open (valid) cases (YTD) has increased slightly since the end of Q1.

As at	Months
<b>Q2 2021/22</b>	<b>5.6</b>
Q2 2021/22	5.3
Q1 2021/22	5.1
Q4 2020/21	5.7

25. We have a number of old cases which are very close to being issued. While this is likely to increase significantly the average age of closed cases it will, in turn, reduce the average age of open cases.

## KPIs

26. The Appendix shows performance against each of our KPIs from Q1 of 2020/21 onwards.

27. As at the end of Q3 2021/22:

- All three of the “Validation” KPIs are being met.
- Neither of the two “FTR” KPIs is being met, although 57% of FTR cases are being closed in less than 1.5 months against a target of 60%.
- FTR cases are, in most cases, dealt with by the Validation Officers. The real delays come with the more complex “substantive” cases where there is around a 12-week delay in cases being allocated (following their validation and, where relevant, the withheld information being obtained from the public authority) to investigators.
- For obvious reasons, this is having a real affect on the KPIs, as the KPIs are measured from the date of receipt of the application. Only 11% of substantive cases are being closed within 4 months. However, 43% are being closed within 6 months and 89% within 12 months.
- The delays in allocation are also affecting the “all cases” KPIs, although not to the same extent: 50% of all cases are closed within 4 months, 68% within six months and 94% within one 12 months.

## Risk impact

---

28. 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

---

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

## Privacy impact

---

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

## Resources impact

---

31. Resources are not impacted directly from the recommendations in this committee report.
32. However, the size of our caseload continues to place a lot of pressure on the resources of the team and to have a negative impact on performance (i.e. the speed at which cases can be dealt with).

33. The team has not been at full capacity at any time over the past year due to previous staff turnover and staff reducing their hours.
34. It is expected that we will be able to recruit to the team in Q4.
35. Although this report focusses on the position as at the end of Q3, one of the two Deputy Heads of Enforcement was, at the start of February 2022, promoted to Acting Head of Policy and Information. While steps are being taken to reduce, as far as possible, the effect of this further loss to the team, team performance will be further impacted by this move.

### **Operational/strategic plan impact**

---

36. 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)**

---

37. None.

### **Consultation and Communication**

---

38. The report will be published.

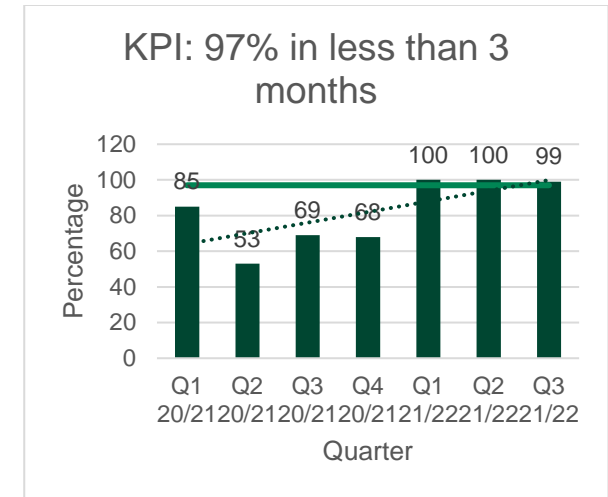
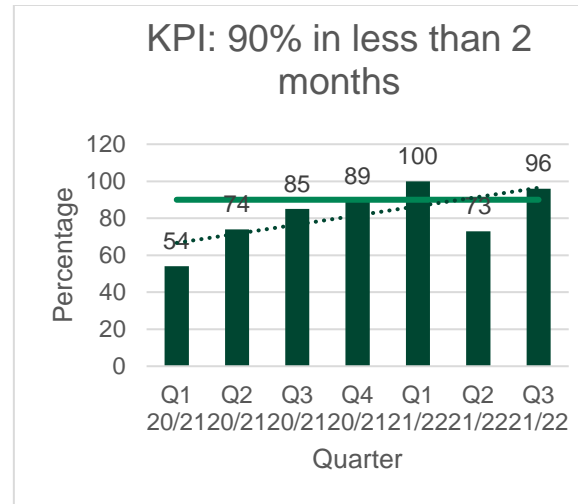
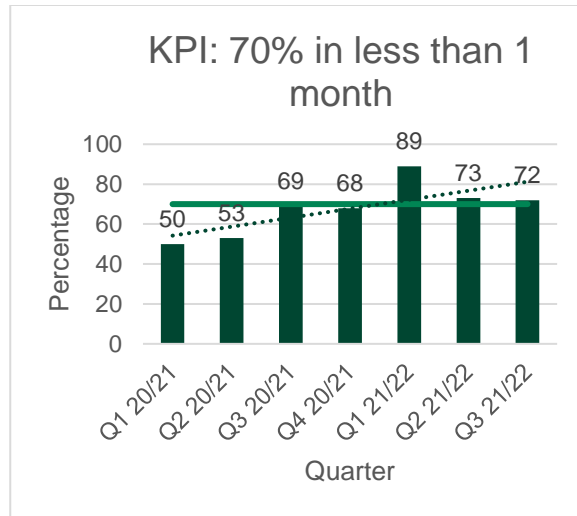
### **Publication**

---

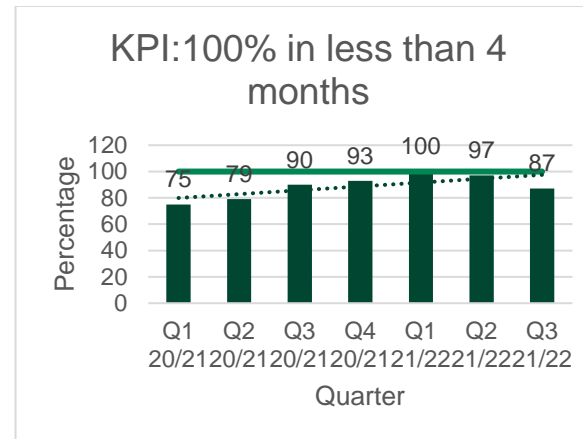
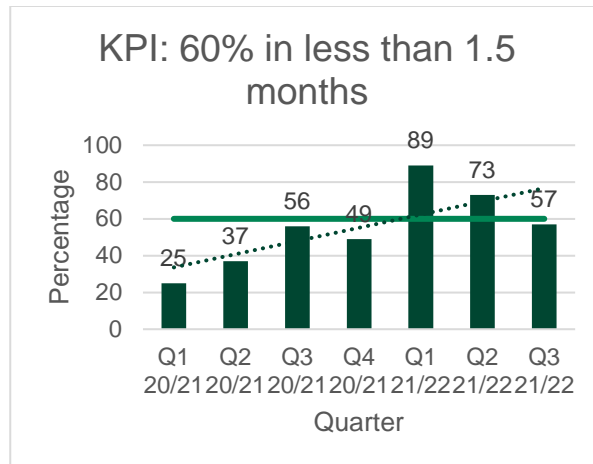
39. I recommend that this committee report and Appendix are published in full.
40. The attached papers are due to be published in line with our normal practice once the Commissioner has commented on our performance: see "caseload dashboard reports" [here](#). As a result, I consider that the attached papers are currently exempt from disclosure under section 27(1) (Information intended for future publication) of FOISA.

## Appendix: KPI trends

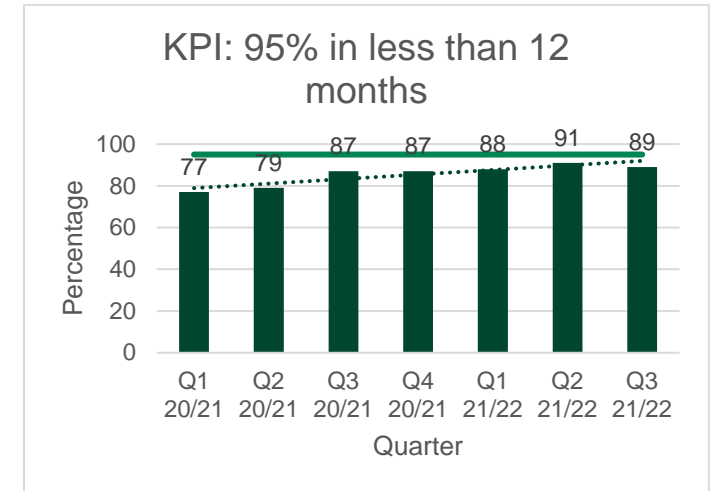
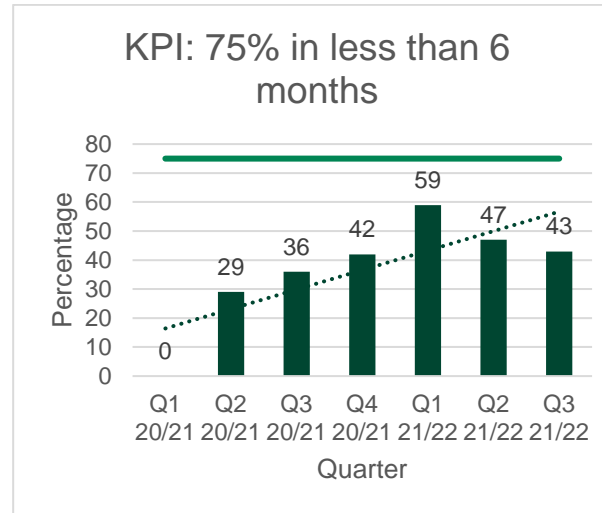
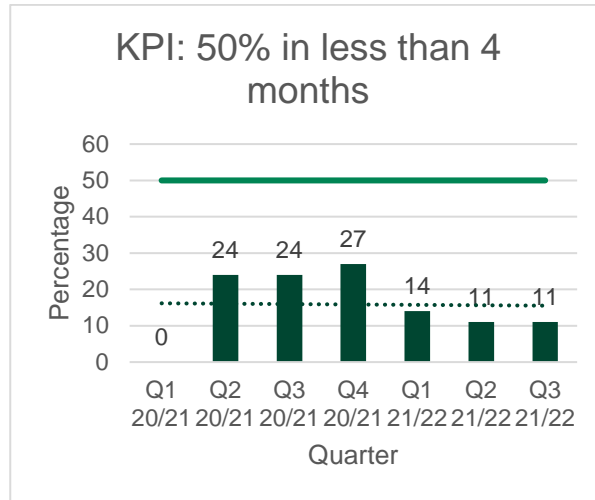
### Validation



### Failure to respond



**Substantive**



**All**

