

<b>Report to:</b>	Quarterly Senior Management Team Meeting
<b>Report by:</b>	Acting Head of Policy and Information
<b>Meeting Date:</b>	26 January 2023
<b>Subject/ Title:</b>	Interventions Activity Reporting Q1- Q3 2022-23 (VC 180270)
<b>Attached Papers</b>	Interventions Activity Report Q1- Q3 2022-23 (VC 180239)

## Purpose of report

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- To report on interventions activity by the Scottish Information Commissioner ('the Commissioner') across Q1- Q3 (April- December) 2022-23 to the Senior Management Team (SMT), as required by the Commissioner's Governance Reporting Requirements.

## Recommendation and actions

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- I recommend that the SMT:
  - Note the attached report and activity it sets out
  - Agree that this Committee Report and the attached paper can be published as set out in the publication section below.

## Executive summary

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### Interventions

- The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 both give the Scottish Information Commissioner ("the Commissioner") the power to act where a public authority is not complying with requirements they set out, or with the Scottish Ministers' Codes of Practice. These powers include:
  - promoting good practice
  - assessing whether an authority is following good practice
  - issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
  - issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
- An "intervention" is the term used to describe the action which the Commissioner will take proactively to improve the practice of individual authorities more generally, rather than in relation to the outcome of a specific information request via an application investigation. The Commissioner's [Intervention Procedures](#) set out the specific detail of how and when interventions will be conducted.

### Reporting on interventions activity

5. In 2020-21 the Commissioner began reporting on intervention activity via a report to the SMT. Initially the report was annual, and from 2021-22 reports will be made quarterly.
6. Due to staff changes and resource efficiencies, Q1-Q3 reports have been amalgamated. Quarterly Intervention meetings have not been possible due to resource restrictions, these will recommence 2023-24.
7. These reports are provided in line with policy set out in the Commissioner’s [Intervention Procedures](#) and [Enforcement Policy](#).

### Intervention caseload during Q1-Q3 2022-23

8. Intervention activity, although restricted, continued during Q1-Q3 2022. Although capacity has been limited to initiate new intervention activity at Level 2 or above, there remains consistent and effective activity at Level 1, with 132 cases recorded where we acted in response to practice concerns identified.
9. There were 10 Level 2 interventions which continue to be actively monitored during this period. All of these, bar one, relate to compliance with timescales. Due to significant improvements in many of these, it is anticipated that these will close in 2022-23.
10. The Scottish Ministers’ intervention remains open at Level 3. Level 4 intervention with Aberdeenshire Council remains open, but it is anticipated that this will close in 2022-23.
11. It is expected that normal levels of intervention activity will resume once newly recruited staff are in place.

Active interventions	Apr-Dec 2022
Level 1	132*
Level 2	10
Level 3	1
Level 4	1
<b>TOTAL</b>	<b>144</b>

\*Case files where “raised with PA” was marked as “yes”. 377 items were recorded at Level 1 in this period.

### Risk impact

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12. Timely and accurate reporting on enforcement activity is necessary to ensure the Commissioner demonstrates good practice and governance and mitigate strategic risk to the Commissioner’s reputation and public confidence in the role.
13. Reporting on interventions also contribute to mitigation of operational risks, including by supporting efforts to ensure the Commissioner demonstrates robust and defensible

decisions; ensuring the organisation engages properly with stakeholders; and ensuring we have appropriate and effective policies in place for every aspect of our business.

## **Equalities impact**

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14. There are no direct equalities impacts arising as a result of the recommendations in this report.

## **Privacy impact**

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15. There is no new direct privacy impact arising from this committee report or attached paper.

## **Resources impact**

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16. Interventions are delivered within planned operational resources (though no specific or dedicated resources are provided or allocated for this function). As they are provided within existing resource, then at a time of high applications (as we are currently experiencing) the resource which can be applied to interventions is necessarily more limited. Furthermore, fulfilling the intervention function will necessarily divert resource away from other workstreams, including applications casework.

## **Operational/ strategic plan impact**

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17. Reporting on intervention activity is required as set out in the current operational plan, and governance reporting arrangements.
18. Reporting on intervention activity contributes to the following strategic objectives as set out in the Strategic Plan 2020-2024:
- (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
  - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

## **Records management impact (including any key documents actions)**

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19. None identified – other than any updates required to the Commissioner’s Governance Reporting Arrangements.

## **Consultation and Communication**

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20. The report will be published on the Commissioner’s website and content highlighted in the Commissioner’s newsletter where appropriate.

## **Publication**

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21. I recommend that this committee report and attached report be published in full.