

Committee Report

Report to:	QSMTM
Report by:	Euan McCulloch, Head of Enforcement
Meeting Date:	May 2025
Subject/ Title:	Investigations Performance 2024/25 (VC227983)
Attached Papers	None

Purpose of report

1. To report to the Senior Management Team (SMT) on investigations performance in 2024/25.

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

The Commissioner’s duty under section 49(1)

3. 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required to issue a decision in all (valid) applications made to him, unless the application is frivolous or vexatious, withdrawn or abandoned.
4. Consequently, the Commissioner has little, if any, control over the number of applications made to him.
5. 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

6. We received 593 applications in 2024/25¹. While bearing in mind that, as indicated above, we have no real control over the number of applications received, this is reasonably consistent with the numbers received in previous years since the pandemic (626 in 2021/22, 527 in 2022/23 and 590 in 2023/24).

¹ The figures quoted throughout this report are based on figures available at the year end. The figures are still to go through a checking process. It is therefore possible that some of the figures in this report will differ from the final figures which will appear in the 2024/25 Annual Report.

“Project Blue”

7. We are progressing the arrangements for tackling our case backlog, introduced with effect from 1 January 2024. All remaining cases which were under active investigation at that point were closed during the year.
8. The “Blue” cases are those received but unallocated as at 31 December 2023. While cases received since then (“Green”) have been prioritised and allocated for investigation as they are received and validated, we continue to make significant progress with the “Blue” caseload. These have all been validated and are allocated to investigators as resources allow.
9. Of the original 384 “Blue” cases, 205 (53%) had been closed as at 30 April 2025, with another 33 under active investigation. As a result, we were 62% of the way through processing the backlog at that point and we continue to make effective progress on this.
10. We continue to engage with applicants and public authorities, with a view to identifying any scope for resolution or withdrawal of the remaining unallocated “Blue” cases (bearing in mind, amongst other things, the passage of time since these requests were made). We also continue to look for and identify ways of streamlining our procedures, to allow us to deal with the whole caseload more efficiently and effectively.
11. The effectiveness of the new arrangements is also borne out by progress in dealing with the “Green” cases “in real time”. This is reflected in our closure numbers for the year (see below): on average, we have taken 108 days to close “Green” cases over the year, with the year-end average for open cases sitting at 90 days. (It should be noted that, once allocated, “Blue” cases are progressed and managed to the same standards and expectations.)

Applications closed in 2024/25

12. As noted above, we received 593 applications in 2024/25. We closed a remarkable 784: we are not aware of having closed a higher number since FOISA came into force in 2005 – and we closed only 108 more cases in the previous two years combined.
13. The table below shows the stages at which the cases were closed:

	Validation	Investigation	Decision notice	Total
2024/25	257	184	343	784

14. The number of Decision Notices issued is also remarkable, and certainly the highest we have ever attained.

Applications closed without investigation

15. While a relatively small number of the cases closed at validation result from resolution or withdrawal at the instance of the requester, the majority (238) were closed because the applications were not valid. Whether seen as 40% of the applications received or 30% of the cases closed, this figure is clearly of concern: in addition to the overall desirability of ensuring as many requesters as possible can exercise their rights of appeal (where appropriate), the time spent on these invalid applications by a relatively small Validation Team can be considerable.

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We have, however, identified no issue with the cases being identified as invalid, in the sense that sound decisions appear to be being made on these cases. There is a range of reasons why we have been unable to validate, including

- a) the application being made too early, or too late, in terms of the relevant statutory timescales (21%)
 - b) the requester not having sought a review (25%)
16. 11% of the invalid applications are classified as “Format of application invalid”, which includes cases where the requester has not explained adequately why they are dissatisfied with the outcome of their request and also those where they have not included their full name in the request and request for review (as FOISA requires). We are moving towards a more relaxed approach to the latter issue, while satisfying ourselves that we are still complying with the legislation.
17. Overall, we (i.e. the whole organisation) continue to explore ways in which we can get the message as to what a valid request and application require over to requesters (and educate public authorities as to their proper handling) more effectively.

Average age of cases

18. 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, we aim to close cases, *on average*, within four months. We have not been able to manage that this year, for the caseload as a whole (although, as noted above, the average age of “Green” cases on closure has been just short of four months).
19. The average age of closed (valid) cases remained undesirably high as 31 March 2025 (12.39 months), although this represented a slight drop from the figure of 13.20 months as at 31 March 2024. It is also worth noting that the overall age profile of the caseload has become considerably more balanced over the past year, as the table below shows:

	0-4 months	4-6 months	6-12 months	12+ months	Total
2023/24	32%	3%	9%	56%	100%
2024/25	30%	12%	14%	43%	100%

20. Realistically, we cannot hope to reach fully desirable average ages and age profiles for the whole caseload until we have dealt effectively with the backlog. As indicated above, we are making effective progress with this.

KPIs

21. For a number of years now, we have not been meeting the KPIs set for the caseload as a whole. The comments in paragraph 20 apply in relation to these also. Undoubtedly the KPIs need to be reviewed, but there is little point in doing this until the caseload returns to a single management regime.

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22. That said, we have consistently met, or been very close to meeting, the KPIs relating to the time taken to determine whether an application is valid. This represents excellent performance by a small Validation Team, often in challenging circumstances.
23. The validation KPIs were all exceeded in 2024/25, all by an increased margin compared to 2023/24.

Summary

24. The Enforcement Team continues to work hard, keeping the “Green” caseload under effective control while dealing with “Blue” cases equally effectively, as resources allow. While we are in no position to meet all the KPIs yet, performance with both elements of the caseload has been impressive – and the overall number of cases closed particularly so. As long as we ensure the present attention to resources is maintained, we should be able to work towards a single, uniformly managed caseload over the coming year.

Risk impact

25. Potential risks have been identified in the past with regard to both failing to meet KPIs and the impact of “Project Blue” on requesters, with both raising the possibility of closer scrutiny and criticism from stakeholders (in turn, leading to reduced confidence in the way applications are processed). Neither concern has, however, been borne out in practice to a significant degree.

Equalities impact

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

Privacy impact

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

Resources impact

28. The attention paid to resourcing the Team since the present Commissioner took up post (both by taking it up to establishment and by recruiting an additional two temporary investigators) has certainly borne fruit in terms of both performance and easing pressure on staff. Ensuring vacancies are filled as a priority has also played an important part in this.
29. The absence of the Head of Enforcement in the early part of 2024 had the potential to impact adversely on performance, but the combined efforts of the whole organisation (but particularly the DHOEs and the Head of Policy and Information) ensured that it did not.

Operational/strategic plan impact

30. This committee report reflects objective 6 in the Commissioner’s strategic plan for 2024-28: 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)

31. None.

Consultation and Communication

32. The Commissioner, Head of Policy and Information and DHOEs were consulted in the preparation of this report.

Publication

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