

ET - for approval

Date: 3 October 2022

Prepared for: ET

Topic: FOI backlog and surge activity

Issue: Reducing the FOI backlog by March 2023

1. Discussion/Background

- 1.1 We have committed in ICO25 to '*ensure all our operational caseloads are within our published service standards by 31 March 2023*'. We are currently tracking well against our previous recovery plan to clear the backlog by September 2023 (our caseload on 29/09 is 2041 against a forecast caseload of 2044 by 30/09).
- 1.2 To reduce the caseload by March we need to deliver our service differently, including identifying cases that could be delivered through the surge support anticipated later in the financial year.

2. Summary of approach

- 2.1. We have identified casework that we can assign to the 'surge capacity' that should be more straightforward for staff less experienced in FOI. We estimate 400-500 of these cases in the caseload between now and March and that we will need 12 people to support us from Jan to March (clearing a case a day).
- 2.2. We have reprofiled the forecast assumptions from the original recovery plan and identified a new allocation strategy that we will implement from 10 October to help us manage our caseload down to pre-pandemic levels by 31 March based on current caseload and our projected intake. This will almost double the number of cases we allocate each week (from approx. 45 to 80 cases)
- 2.3. To support the new allocation approach, we have identified a number of operational changes that are designed to compress the time it takes us to progress a case to conclusion. These will buy us 'time' in case terms and enable caseworkers to increase their allocated caseload as there will be less work to do at each stage of the case. We do not track the time taken on cases in a way we can estimate what percentage of time this will take us, but the Management Team are confident based on their extensive experience that these changes will have a significant impact.

3. Proposal

Allocation & surge cases

- 3.1. At present caseworkers carry around 15 cases and self-allocate from their group queue. To deliver the reduction in our caseload we need to achieve and accounting for our anticipated intake we estimate that, excluding triage, we need to allocate 80 cases per week from 10 October until 31 March, up from approximately 45 per week. Managers will take direct control of allocation to deliver that volume, using their knowledge of their team to help smooth out capacity peaks for individuals. To offset the impact on their time, Group Managers will do less assurance of final decisions.
- 3.2. We have also identified two distinct case types that we will stop allocating now and allow to build up as a separate queue so that they can be allocated to the surge support when this is available.
 - Costs/Vexatious: around 10-15% of our anticipated caseload over the next 6 months will be cases of this type. They can involve tricky issues/individuals but the legal basis for handling them and our guidance is clear, so there is consistency in our approach. We will develop a short process document to support surge staff picking up these cases to guide them through how to complete the cases.
 - Personal Data: around 7-10% of our anticipated caseload are cases where s.40 FOIA (personal data) will have been used to withhold most of the material requested. These cases are often more straightforward to resolve and will be more familiar to staff more used to dealing with Data Protection issues rather than FOIA.
- 3.3. These cases are often completed by less experienced FOIA staff at lower grades, who we will now divert onto and train on other case types so we can increase allocation of this work.
- 3.4. We have recently met with colleagues who have done similar backlog clearance exercises to learn lessons from what has worked well in the past. Key lessons include ensuring the staff involved in any surge feel like they have 'opted in' rather than being 'co-opted in' and making sure that the potential impact on those areas staff come from is fully appreciated internally. Making sure those involved also have clear mentors to support them has also been a feature of successful plans previously.
- 3.5. HR are currently assessing who in the business has previous FOI experience and we await the outcome of the wider 'stop/start/continue' exercise which may identify short term capacity to support the FOI surge when it happens. We are also engaging with individual Directors to identify options for support

from specific teams where we don't have external service standards and can therefore mitigate the wider ICO25 impact of a surge. We estimate that 12 staff delivering a case a day from Jan-March would clear this work.

Operational changes

3.6. To offset the impact of staff being allocated more cases we have identified several operational changes to speed up case handling – we will seek to apply these wherever possible to the approximately 800 cases already allocated, as well as those yet to be. We will empower staff to deliver these changes over the next 6 months, retaining the most successful elements in our new operating model once we have cleared the queue. Changes include:

- Front-end: adapt our digital submission system to give clearer prompts for the information we need at the outset of a case to reduce the amount of follow up needed to scope a case. This will be delivered by end October.
- Triage/templates: we are updating all of our templates to match the digital system so requests for information at the outset of a case are as clear as possible so case officers don't then need to follow up with basic information requests.
- Contacting current complainants: reviewing our unallocated caseload and write out using the new templates, taking the opportunity to check if they want to continue with their case.
- Single case contacts: case officers will only make one contact with the public authority (and complainant) to request further arguments/clarification. We will then move to a decision/resolution, not offer multiple contacts.
- Deadlines: as part of the single contact, we will also as standard move to a 5 working day deadline for the provision of withheld information where we need access to this and 10 working days for any further arguments that a PA/complainant may wish to those already made on the case.
- Short Decision Notices (DNs): Expand our trial of short DNs beyond Parish Councils to wherever we think they are appropriate, particularly in the 50%+ cases we uphold the original decision. This means we won't repeat arguments already made to the complainant or explain how the Act works in detail, pointing instead to our online resources, unless we think there is wider educative value in a decision or we are overturning and need to explain our position in detail.
- Reduce quality assurance: we will empower caseworkers who already have delegated authority to send out decisions without Peer Review or Manager sign off on all short DNs.

- 3.7. In addition to the measures above we will create a distinct queue of National Security, Defence and International Relations cases (around 3-4% of current caseload). It is rare that we overturn the decisions made in these cases but are often required by previous Tribunal decisions to review the information as part of an investigation. Due to the sensitivity of the information, these sometimes require either site visits to a handful of PAs (usually the MoD, FCDO and the Met), or staff need to be in the office to use secure information transfer facilities. We plan to allocate these as a block to a small team with the relevant Security Clearance now so they can review all cases and arrange such activity in blocks. We will then conclude the cases with much shorter DNs in line with the changes outlined, except where ordering release.
- 3.8. We will support the changes outlined with an updated process map/guide for staff. We will review progress over the next 6 months and then look to embed the elements that have worked most successfully as a permanent feature of our case handling.

4. Risks

- 4.1. There is a risk that the public authorities that have a high number of complaints with us will struggle to cope themselves with an increased allocation of live investigations. We will mitigate this as far as we can through our regular engagement with such bodies so we can understand what leeway we can give while achieving the outcome we need. There is a risk that we will affect these organisations effective handling of new requests, which in turn leads to more complaints downstream. Ultimately once we are back on an even keel in 6 months this should balance out, however, affecting a relatively small number of cases overall.
- 4.2. Although we have made significant changes to our approach in recent years (for instance the introduction of early resolution processes) many of our processes have been in place for 17 years with little change. Some of the operational changes outlined will therefore mark a significant cultural shift for longer serving staff. We have already mitigated this by setting out the problems inherent with the current queue and the impact this has on the quality of service we are offering to those that need our help. We will also make clear when making these changes that we want the team's input over the next 6 months to highlight what is working and what is causing issues so we can co-create the long-term future operating model together. We will also point to the forthcoming Early Resolution Training as an example of how we are developing staff and their careers, while empowering them to do things differently.
- 4.3. There is a risk that shorter decisions will increase complaints to the Tribunal if they create less confidence in our conclusions.

Increasing the number of Tribunal appeals we receive will have an impact on both FOI casework and Legal resource. We will look to mitigate this through the ICO25 work we will be doing to review how the legal team can adapt their own processes and prioritise the appeals we spend most time on. Legal are also working on their own resourcing assumptions as part of ICO25 and will take the potential impact of this into account.

- 4.4. We do also remain vulnerable to any significant surges in intake over the next 6 months, although the data we can see doesn't indicate that this will be a factor at this point.

5. **Recommendation:** That you note and approve the steps outlined.

6. Next steps and comms activity

- 6.1. Subject to any views we aim to:

- October – complete work with HR to identify former FOI staff still in the business and engage with other business areas to identify how we can best staff the surge (tracking what impact this may have so we don't create backlogs in other areas affected by our ICO25 commitments) – this is being informed by the lessons learned from previous surge activity we have done to clear other operational backlogs in the past. We also plan to engage the unions in this period to explain our initial thinking and the changes we are making operationally.
- November – have in place a clear plan for which staff will take part in the FOI 'surge' and when they will be released to support its delivery.

- 6.2. We are already creating the process maps and templates indicated and plan to have these ready to go w/c 10 October, which is the point at which we need to start allocating 80 cases per week to ensure we are getting through our caseload.

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Publication decision: Internal only

