

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Cabinet Office 14 July 2025

Summary

The Commissioner is concerned about the Cabinet Office's (CO) level of performance in terms of the length of time taken to consider the public interest test (PIT) in requests attracting one or more qualified exemptions under FOIA. This has been highlighted by a detailed analysis of all 161 CO complaints which were closed by the Commissioner between February 2024 and January 2025. Following this analysis and consideration of intelligence provided by the CO on 10 December 2024 in response to enquiries from the Commissioner made on 25 September 2024, the Commissioner has reached the view that the CO's request handling practices do not conform to parts 4.5 to 4.7 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Between February 2024 and January 2025, the Commissioner closed 161 section 50 complaints. Of this total number of complaints, 85 cases had a PIT involvement, in that the CO had provided a request response relying on one or more qualified exemptions.

Of the 85 cases with PIT involvement only 25 were responded to on time. In 42 cases the CO formally extended the PIT time for response on at least one occasion. In 18 cases the CO provided a PIT response later than 20 working days and there was no evidence the CO had formally extended the time for response in those 18 cases.

Of the 42 cases where the CO formally extended the PIT time for response at least once, 34 cases exceeded the 40 working days to provide a response.

Of the 18 non-formally extended cases where the CO provided a PIT response later than 20 working days, 13 cases exceeded the 40 working days to provide a response.

Issues:

- Multiple extensions of, or delays to, the PIT, which in more than half of the 85 cases exceeded 40 working days.
- No explanation/reasons provided for such lengthy PIT extensions, either during update correspondence or subsequent substantive response to the requester.

- Requests in which the CO have extended the time for the PIT, only to switch position to (e.g.) a 'not held' or section 12 refusal, with no evidence that a PIT was ever conducted.
- No clear guidance from the CO on when they consider a PIT delay to no longer fall within the 'permitted extension' and become 'late'.

Summary of Recommendations:

- The CO should ensure that in all requests where they extend the time for response to consider the PIT, they have a legitimate basis/exemption for doing so.
- The CO must ensure that as far as possible, they accord with the best practice 20 working day benchmark for any extension required for the PIT.
- In all instances where the CO take a longer period than 20+20 working days to consider the PIT, they should ensure that the requester is provided with a clear explanation or reasons as to why the PIT consideration is subject to such delay.
- The CO should ensure sufficient resource is deployed to achieve best practice in PIT timescales.
- The CO should provide the Commissioner with more detailed information as to what factors they take into consideration, to determine whether it is still reasonable to extend the deadline for considering the PIT in those requests where there are repeated extensions or where the 40 additional working days have been exceeded.

Recommendations

Area of Code	Non-conformity	Recommendation of steps to be taken
<p>Part 4 – time limits for responding to requests</p> <p>Section 4.4 of the Code states that public authorities may exceed the 20 working day deadline if additional time is required to consider the public interest.</p> <p>Section 4.5 of the Code states that an extension is permitted “until such time as is reasonable in the circumstances”, taking account, for example, of where the information is especially complex or voluminous, or where a public authority needs to consult third parties.</p>	<p>The Commissioner’s analysis covered 85 cases with a PIT involvement, in that the CO had provided a request response relying on one or more qualified exemption. In 42 of these requests (half) the CO formally extended the time for response to consider the (PIT) under section 10(3) of FOIA.</p> <p>In 34 of these 42 cases, the time taken by the CO to respond to the request, after formally extending the PIT, exceeded 40 working days (please see Annex attached).</p> <p>In an additional 13 cases, the CO provided a response to the request relying on at least one qualified exemption, but without apparently formally extending the PIT, which exceeded 40</p>	<p>The CO must ensure that as far as possible, they accord with the best practice 20 working day benchmark for any extension required to complete the PIT. The Cabinet Office should also ensure that where the PIT balance can be determined within 20 days of receiving the request, they should do so.</p> <p>In all instances where the CO take a longer period than 20+20 working days to consider the PIT, they should ensure that the requester is provided with a clear explanation or reasons as to why the PIT consideration is subject to such delay. The CO should be aware that the Commissioner will have regard to this explanation or reasons when deciding whether the time taken to respond was reasonable or not.</p> <p>The CO should provide the Commissioner with more detailed information as to what factors they take into consideration, to determine whether it is still reasonable to extend the deadline for considering the PIT in those requests where there are repeated extensions and/or where 40 working days have been</p>

<p>Section 4.6 of the Code advises that it is best practice for an extension to be no more than a further 20 working days although a longer extension may be appropriate depending on the circumstances of the case, including the complexity and volume of the material.</p> <p>Section 4.7 of the Code makes clear that when a public interest test extension is required, the public authority must inform requestors which exemption or exemptions it is relying on.</p>	<p>working days (please see Annex attached). These were therefore in fact 'late' responses.</p> <p>By way of context, the CO statistics provided to the Commissioner in December 2024 covered the period 1 December 2023 to 30 November 2024. In that period the CO received 2,323 requests, of which 346 were subject to a PIT extension. 180 requests received a substantive response within 40 working days and 89 requests exceeded 40 working days. 27 responses were provided later than 3 months and 4 responses were provided later than 6 months.</p> <p>Although it does not automatically constitute non-conformity in all these cases, the volume of 40 days+ requests is sufficient to demonstrate a pattern/issue of nonconformity.</p>	<p>exceeded. This should include an explanation of where a delayed response is no longer considered to fall within the permitted extension and should be classified as a "late" response.</p> <p>The CO should take due and timely account of those decision notices where the Commissioner has found that the time taken to decide the PIT was unreasonable (i.e. breach of section 17(3)) and ensure that this intelligence is used to improve the timeliness of responses necessitating a PIT.</p> <p>The CO should ensure that in all requests where they extend the time for response to consider the PIT, they have a legitimate basis/exemption for doing so. In no case should the CO later switch positions in a substantive response provided after the initial 20 working days, e.g. a not held response or section 12 refusal, and categorise the request as having been responded to within the 'permitted extension'.</p> <p>This means that the CO must, within 20 days of receiving the request, have considered the actual withheld information and determined the qualified exemption(s) which is engaged by it.</p> <p>Also, the CO should ensure that any responses issued after 20 working days which do not provide a decision on a qualified exemption which was applied within 20 working days (and therefore relates to a decision in respect of an alternative provision of FOIA) should be classified as a 'late' response,</p>
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		<p>regardless of any earlier PIT extension issued in the request.</p> <p>The CO should ensure sufficient resource is deployed to achieve best practice in PIT timescales.</p> <p>The CO should provide the Commissioner with a quarterly update, beginning on 30 November 2025 detailing:</p> <ul style="list-style-type: none">• Any completed requests that were subject to the PIT extension under section 10(3) of FOIA that were answered more than 40 working days after the request was submitted, including how long was taken to issue each substantive response in working days; and• Any open requests subject to the PIT extension over 40 working days old, including the age of each request in working days.
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Reasons for issuing this Practice Recommendation

The Commissioner has issued a practice recommendation at this time because of concerns about the length of time taken by the CO to consider the public interest test (PIT). As noted above, in setting the recommendations the Commissioner has taken into account the findings of an analysis of CO requests subsequently referred to the ICO as section 50 complaints over a 12 month period, and information provided by the CO to the Commissioner in December 2024 in response to specific enquires made by the Commissioner. Those enquiries were made following the Commissioner becoming aware of the CO's

increasing use of the PIT extension. In 2019, 5% of requests made to the CO were subject to a PIT extension, whereas in the period October to December 2024, 14% of requests made to the CO were subject to a PIT extension (with a pattern of increasing usage of the extension over the intervening period)¹. The Commissioner has decided to issue this practice recommendation to help ensure transparency and accountability of the CO reliance on section 10(3) of FOIA to extend its PIT considerations, and to assist in achieving CO improvements in timeliness in this regard.

Specifically, the Commissioner is concerned by the amount of time some of these considerations take, and a lack of explanation or reasonable justification for multiple extensions in a high number of cases. The Commissioner fully recognises and appreciates the complex nature of many of the FOI requests which the CO receives, these often being sensitive, high profile and complex. Inevitably, many of these requests will require careful consideration of weighty and compelling public interest arguments. The Commissioner further recognises and appreciates that much of the CO's work involves relations with third parties, either other central government departments or external stakeholders or organisations. As such, the CO will often need to consult such parties when considering the balance of the public interest, which can require time and resource. The Commissioner acknowledges the profile of the requests that the CO receives. However, in his view, the profile of such requests only serves to emphasise the importance of having effective and efficient processes in place for processing requests, including those subject to PIT considerations, to ensure that the substance of responses to requests does not come at the expense of unreasonable delays.

This practice recommendation formalises the Commissioner's concerns, and builds upon the intelligence received by him from the CO in response to his recent enquiries, as well as his analysis of the 85 CO requests discussed above. This practice recommendation holds the CO accountable for improving its freedom of information request handling practices concerning the permitted extension for considering the PIT, and in turn, is intended to increase public confidence and trust in its information rights practices.

- 1) Section 10(3) FOIA enables a public authority to extend the statutory 20 working-day limit up to a 'reasonable' time if the public authority needs more time to determine whether or not the balance of the public interest lies in disclosing the information, or whether it requires more time to consider whether it would be in the public interest to confirm or deny whether it holds the information. FOIA does not define what a 'reasonable' extension of time might be.

¹ <https://www.gov.uk/government/collections/government-foi-statistics>

However, the Commissioner's well established view² is that a public authority should normally take no more than an additional 20 working days to consider the public interest. This means that the total time spent dealing with the request should not exceed 40 working days. An extension beyond this should be exceptional and one which the public authority should be able to justify. Indeed this is reflected in the CO Policy Guidance (the Guidance) to public authorities (March 2024) on Timeliness and Public Interest Tests. The Guidance states that the 20 working day extension to complete the PIT is an '*important benchmark*' but what is reasonable in any request can only be determined by reference to all of the circumstances. The Guidance provides a number of non-exhaustive examples of factors which might warrant a longer extension than an additional 20 working days but, importantly, notes that, '*the longer the extension, the more likely it is that it shall be considered unreasonable*'.

- 2) Given that the central statutory requirement of FOIA is to provide a response to a request within 20 working days under section 10(1), the Commissioner considers that any permitted extension to consider the PIT must be viewed and applied within the context and operation of that central requirement of FOIA. Whereas an extension of a further 20 working days (i.e. a doubling of the usual response time) might be reasonable and justifiable in a complex case, the Commissioner is of the view that – regardless of circumstances – it would be contrary to the purpose of FOIA if, in an exceptional case, a public authority were to take appreciably longer than this to provide a requester with a substantive response to their request. The Commissioner is also of the view that a public authority must be able to justify that any substantive response issued after more than 40 days was subject to exceptional circumstances, and should include consideration as to why that is the case. If a public authority is unable to do this, the response should be determined to be "late" rather than still issued within the "permitted extension".
- 3) Of the 42 requests considered by the Commissioner where the CO formally extended the time for response to consider the PIT, in only eight of these did they extend the response time by an additional 20 working days (40 working days in all). In 12 requests the CO applied two extensions to the response time, and in 15 requests they applied three extensions. In three requests the CO applied 4 extensions and in one request they applied 5 extensions. In two requests the CO extended the time period for considering the PIT six times. In 34 of the 42 requests where the CO

² [Time limits for compliance under the Freedom of Information Act \(Section 10\) | ICO](#)

formally extended the period for response to consider the PIT, the total time taken to provide a substantive response to the request exceeded 40 working days.

- 4) In submissions provided to the Commissioner in December 2024, the CO noted that they hold *'some of the most sensitive information in central Government, and decisions on whether or not information is releasable can involve discussions with many different stakeholders'*. The Commissioner recognises and appreciates that the nature of the information requested in some of the requests will have reasonably required or necessitated consultation or checks with external parties (e.g. recent examples have included WhatsApp messages provided to the Covid-19 Inquiry and guidance issued to sensitivity reviewers regarding Royal Matters). In such cases a modest extension of more than an additional 20 working days to consider the PIT might be considered reasonable and justified. However, in the requests concerning the WhatsApp messages and the guidance issued to sensitivity reviewers, the CO extended the time to consider the PIT on six occasions, over a five month period, a length of time which is unreasonable.
- 5) When questioned by the Commissioner how the CO consider a PIT delay to no longer fall within the 'permitted extension' and instead become 'late' (i.e. unreasonable),³ the CO responded that, *'all FOI requests are considered on a case by case basis, including whether it is still reasonable in the circumstances to extend the deadline to consider the public interest'*. The Commissioner is disappointed by the brevity of this response, since it suggests that the CO do not provide more specific guidance or advice to those handling FOI requests as to what length of delay is considered to be unreasonable, regardless of the subject of the information or need for consultation. The Commissioner also asked the CO whether they had reflected on those decision notices issued by the Commissioner over the last year, where the Commissioner had found that the time taken to respond to a request subject to the PIT extension was unreasonable. The CO responded that they do not have the resources to consider in detail each of the 101 CO decision notices issued by the Commissioner in the relevant 12 month period referred to for the purpose of responding to this enquiry. Again, this is disappointing and unsatisfactory. The Commissioner would reasonably expect the CO to review and consider the key findings of each decision notice *at the time of issue*. Where a decision notice has found a breach of section 17(3) because the time taken to consider the PIT was unreasonable, the Commissioner would expect the CO to note and action that important information, since it provides useful guidance and information as to what length of time the

³ [Freedom of Information statistics - GOV.UK](https://www.gov.uk/government/statistics/freedom-of-information-statistics)

Commissioner would consider to be unreasonable for considering the PIT. The CO should ensure that they have guidance/processes in place to ensure that any PIT extension cases which do not meet the legitimate circumstances set out in the Commissioner's PIT extension guidance are re-classified as "late", and that all open requests over 40 days old are frequently reviewed as per that.

- 6) The Commissioner is also concerned by how the CO communicate the permitted extensions to the requester. The CO Guidance states that departments are '*not required to give details as to why there has been a delay beyond the fact that it has been for the purposes of carrying out the public interest balancing test*'. The Guidance also states, however, that it is '*good practice to keep requesters updated with estimated timelines for a response and, where appropriate, the reasons for any delays that are longer than anticipated*'. In the cases seen by the Commissioner the CO partially conform to this good practice by writing to the requester each time they further extend the time period for consideration of the PIT. However, these letters are effectively 'holding letters', containing no explanation or reasons why the PIT consideration is taking so long. They simply change the date by which the CO hope to be able to provide a substantive response. The failure to provide reasons or explanation in the PIT letter updates means that the CO have not demonstrated any 'exceptional' circumstances for any extension beyond 40 working days and makes it more likely that a requester will submit a section 50 complaint to the ICO.
- 7) Similarly, in those section 50 cases which the Commissioner has seen whereby the CO have taken 60+ working days to provide the requester with a substantive response to the request, there is rarely any explanation or reasons provided by the CO for such lengthy delays. In this respect, the CO's practice does not accord with their Guidance.
- 8) The Guidance states that, '*departments will want to keep a note of the factors which they considered relevant to a decision to extend the time limit beyond the 20+20 working days benchmark*'. The Guidance further states that departments '*should consider carefully the arguments made and set out clearly why an extension beyond 20+20 days was reasonable in the circumstances by reference to the factors above and so that the Commissioner has an accurate and full set of facts before reaching his decision*'. However, in practice, in those requests where the CO has extended the time for response due to consider the PIT, whilst the eventual substantive response and later internal review will

usually clearly explain why the CO consider that the public interest arguments/factors favour disclosure or maintaining the exemption(s), they do not provide the reasons and explanation for the delays in carrying out the PIT.

- 9) Since the CO are capable of providing a substantive PIT response in some requests within 20 working days (or at least without formally extending the time for response under section 10(3)), e.g. IC-189627-L0G1 (Covid-19 risk assessments for Downing Street staff) and IC-291265-W4N9 (Covid-19 Strategy Committee meetings), it is not clear, in the absence of explanation and reasons, why the CO require considerably longer to provide a PIT response in other cases, e.g. IC-327814-W5N1 (emails sent by the Clinical Lead for China Sprint Team pertaining to FFP3 respirators) and IC-342568-F7CB (correspondence between Inclusive Practice Team and Sex Equality and Equality Network Limited), in both of which the CO extended the PIT on three occasions.
- 10) The Commissioner is also concerned that on a number of occasions the CO, as seen by the Commissioner in section 50 cases, has extended the time for response under section 10(3), under a stated qualified exemption, only to switch to a different position when providing the substantive response. In IC-209220-V1R7, the CO extended the PIT under section 35, but subsequently provided a not held response (the CO later reverted back to a section 35 position during the Commissioner's investigation). In IC-264707-L2W1, the CO extended the PIT for section 31, yet the substantive response made no mention of that exemption and instead applied sections 36, 41, 42 and 43. In IC-323830-M3P3, the CO extended the PIT for section 38, but provided a substantive response which refused the request under section 12 and made no mention of the original exemption. The Commissioner is concerned that these requests (and others) demonstrate that the CO do not always apply the requisite degree of care and attention when considering FOI requests received, which can lead to breaches of section 10(1) and a lack of trust and confidence in requesters.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

Reference: FPR0987692

The CO should write to the Commissioner by the end of November 2025 to confirm that it has complied with his recommendations and how it has achieved this.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the CO. Furthermore, the decision to issue this practice recommendation at this stage does not preclude the Commissioner from taking subsequent action in line with the steps set out in his FOI and Transparency Regulatory Manual⁴.

⁴ [foi-and-transparency-regulatory-manual-v1_0.pdf](#)

Other Matters

- 11) In April 2024, the Commissioner wrote to the CO regarding the collection of statistics⁵ about FOI performance across central government and the wider public sector. The Commissioner recognised that the CO collates and publishes a significant amount of request handling data from central government departments and agencies, which he welcomes. The Commissioner highlighted a key difference between the approach which he takes to FOI statistics and the approach taken by the CO, in relation to the collection of statistics about central government departments. The Commissioner noted that a failure to properly deal with requests that have gone past the statutory timeframe was the most common theme in the wider regulatory action which the Commissioner had taken over the previous 18 months. The Commissioner advised that, too often, he is seeing public authorities leaving requests that are 'out of time' to one side, prioritising new requests.
- 12) The Commissioner advised the CO that, in each case in respect of government departments, this statistical information had only come to light through asking additional questions about the government department's performance; it is not visible through the government's own data. This represents a significant omission from the quarterly and annual publications the CO produces, and has the effect of undermining both transparency for the public and the Commissioner's understanding of the full performance picture as the regulator. The Commissioner advised the CO that he would welcome a change to the approach which the CO currently take to the publication of FOI statistics, with the introduction of additional data points into the CO's collection of statistics from across central government, to align with the approach which the Commissioner has taken when obtaining performance data from the wider public sector⁶. These would capture the total number of overdue requests, with this then further broken down to capture the number over one, three, six, nine and 12 months old. These metrics would be defined as all requests that remain open, at the time of data collection, which have exceeded the statutory 20 working days and/or are subject to a PIT extension that has taken more than a further 20 working days.

⁵ [Freedom of Information statistics - GOV.UK](#)

⁶ [How to report on your performance on handling requests for information under FOIA 2000 | ICO](#)

- 13) The CO provided a formal written response to the Commissioner's suggestion in March 2025. The CO advised that they are actively considering how best the reporting of late responses could be incorporated for their 2025 annual statistics release next year. As a first step, the CO advised the Commissioner that they were engaging with their data suppliers '*to consider the burden and impacts of introducing the additional data requirements*' that would be needed to provide the additional information. However, introducing the additional data points would, as the Commissioner's letter made clear, have the positive impact of providing the Commissioner as regulator and the public as information rights users, with a more informed and clearer picture of a public authority's FOIA performance. The Commissioner does not consider that the collection of the additional data points would impose a significant burden on a public authority, and the benefits of obtaining such data would outweigh the time expenditure required.
- 14) The Commissioner therefore recommends that the CO actively improve how late responses to FOIA requests are recorded in the published FOIA statistics, to improve the transparency and accountability of each department's performance.
- 15) Finally, the Commissioner would highlight that in many of the section 50 cases which he has seen, the response provided by the CO to a request involving the PIT, fails to acknowledge or recognise the specific public interest factors attached to the specific information requested. Responses which provide only generic PIT arguments are not adequate or appropriate, and increase the likelihood of a request for an internal review and subsequent section 50 complaint to the Commissioner.

Annex – Commissioner’s detailed analysis and CO responses to enquiries

34 cases whereby the time taken by the CO to respond to the request *after formally extending the PIT*, exceeded 40 working days:

IC-257154-X8K2

IC-177893-X6K8

IC-192103-P2X8

IC-179612-N5V5

IC-255443-B4J5

IC-279756-H9S2

IC-277426-K2H9

IC-324480-G8V9

IC-195975-W8X4

IC-287691-Q7Y9

Reference: FPR0987692

IC-165811-X4Z8

IC-208110-X3C1

IC-287611-M3B1

IC-166569-W1X6

IC-209220-V1R7

IC-291263-J8P1

IC-290832-B2S6

IC-299764-H9P5

IC-300039-B0Q6

IC-309924-C1Z1

IC-291544-W4T0

IC-318796-T7R3

IC-300056-N7Y5

IC-264707-L2W1

IC-327814-W5N1

IC-290341-B7P9

IC-289635-G0L6

IC-289644-X2Z5

IC-336487-Z0B5

IC-309680-Q9V0

IC-342568-F7C8

Reference: FPR0987692

IC-340009-R7J0

IC-357812-F5D0

IC-355043-B3W3

13 cases in which the CO provided a response to the request relying on at least one qualified exemption but where there is no evidence that the CO formally extended the PIT and which exceeded 40 working days (i.e. 'late' responses):

IC-229622-T9H4

IC-266763-R4R2

IC-312934-F9K6

IC-286029-B8H9

IC-308924-F0T8

IC-302219-C6K0

IC-316277-K1B9

IC-288192-P1G1

IC-282364-T0J8

IC-304519-T1Y5

IC-314939-N4W3

IC-318491-G0D2

IC-302430-Q0Q4

Reference: FPR0987692

Copy of CO response (10 December 2024) to Commissioner's enquiries concerning the PIT:

Data is based on 1 December 2023 to 30 November 2024

Number of requests received over the last year.

2,323

Number of requests responded to over the last year.

1,969

Number of requests received over the last year which were subject to a PI extension.

346

Number of requests responded to over the last year which were subject to the PI extension where the time taken to respond (a) was 40 working days or less and (b) exceeded 40 working days. For (b), how many took over 3 months and how many took over 6 months to respond to.

a) 180

b) 89 (27 and 4)

Reference: FPR0987692

Number of current open requests.

265

Number of current open requests subject to the PI extension.

71

The age of each of the open requests subject to the PI extension.

29 < 40 days

9 < 60 days

3 < 80 days

5 < 100 days

4 < 120 days

7 < 140 days

2 < 160 days

3 < 180 days

1 < 200 days

3 < 220 days

3 < 240 days

2 < 260 days

It would also be helpful to be provided with explanation / evidence on the following:

Reference: FPR0987692

- Why the % of requests subject to the PI extension has increased over the past five years.

Having taken a look at our annual statistics, it does not seem to me as though there has been a particularly notable increase in the percentage of requests subject to PI extensions.

- Any current themes / patterns as to the subject matter in respect of PI extensions, and any specific themes where such requests routinely take longer than 40 working days for response.

The Cabinet Office holds some of the most sensitive information in central Government, and decisions on whether or not information is releasable can involve discussions with many different stakeholders.

- Any internal guidance the CO provides to staff on handling PI extension requests.

The Cabinet Office produced guidance about the use of PI extensions for the use of central Government in March 2024. I've attached it to this email.

- Any internal processes for ensuring responses on PI extension requests are provided in a timely manner.

All cases are monitored and tracked by our casework team to ensure they are responded to as quickly as possible.

- Anything on how the CO considers a PI delay to no longer fall within the 'permitted extension' and instead become 'late'.

Reference: FPR0987692

All FOI requests are considered on a case by case basis, including whether it is still reasonable in the circumstances to extend the deadline to consider the public interest.

- Reflections on Decision Notices issued by the Commissioner over the last year where we have found that the time taken to respond to a request subject to the PI extension was excessive.

While the Cabinet Office does not have the resources currently to consider each of the 101 decision notices issued in the relevant period in detail for the purpose of responding to this question.