

From: [Redacted]@gov.scot>
Sent: 31 October 2018 23:27
To: 'Roddy Dunlop' <[Redacted]@foa.cjsm.net>
Cc: 'christine.o'neill@[Redacted]' <[Redacted]@sgld.cjsm.net>;
'[Redacted]' <[Redacted]@scotland.gsi.gov.uk.cjsm.net>

Subject: RE: [CJSM] URGENT: FFM

Roddy,

I had a useful discussion with Christine late afternoon in which we discussed these issues that [Redacted] had raised with me at lunchtime. I spoke to key SG officials after discussing with [Redacted] to get my own sense of the purpose of paragraph 10 and what was done in fact at the time, in terms of ensuring a fair process.

I understand that there is a note of a discussion between the IO and complainer B, albeit I've not seen this yet (Christine read out to me the key parts). I had not understood that as being the first time the complaint was raised, but that can be checked.

As you note, a clear understanding of the facts and purpose of paragraph 10 is vital and I have earlier this evening commissioned a note (sought by close tomorrow) to inform the planned consultation on Friday, which I'm asking be arranged, per discussion with Christine.

Your concerns are noted and understood, but (as you state) we need more information before assessing the import of these developments. In accordance with SGLD protocols, that would of course involve advice from me to the Lord Advocate.

In advance of the note so commissioned, I enclose an email from one of those involved in development of the policy about the purpose of paragraph 10.

[Redacted]

From: Roddy Dunlop <[Redacted]@foa.cjsm.net>
Sent: 31 October 2018 22:50
To: [Redacted]@scotland.gsi.gov.uk.cjsm.net
Cc: christine.o'neill@[Redacted]; [Redacted]@scotland.gsi.gov.uk.cjsm.net
Subject: [CJSM] URGENT: FFM

[Redacted] / [Redacted]

I know Christine has raised a potential problem with you. I have just discussed this with the Lord Advocate, as i am very concerned indeed. He has suggested a short note setting out my concerns, and this is now attached. I am sorry to be sending this to you at all, let alone late at night on Halloween, but I'm afraid i see no other option.

At Christine's suggestion, distribution list is restricted for time being to [Redacted] and [Redacted]. You will doubtless have to disseminate this more widely: but i prefer to leave it to you as to who should see it hereafter.

Regrettably i am in court tomorrow, and consulting over lunch and after court. I will try and respond to any emails as and when i can.

Best

Roddy Dunlop QC

On 2018-10-30 15:22, [\[Redacted\]@scotland.gsi.gov.uk.cjcm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjcm.net) wrote: Christine

Thanks

Subject to the removal of the wording from Ans 29 (see earlier email) and there is an additional "the" in line 5 of Answer 9.

Clients are content. Could you send the final version and I will arrange for this to be intimated and lodged.

Thanks again for all your work on this.

[Redacted]

[Redacted]

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From: Christine O'Neill <[\[Redacted\]@sgld.cjsm.net](mailto:[Redacted]@sgld.cjsm.net)>
Sent: 30 October 2018 14:45
To: [\[Redacted\]@scotland.gsi.gov.uk.cjsm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjsm.net)
Cc: [Roddy Dunlop <\[Redacted\]@foa.cjsm.net>](mailto:Roddy.Dunlop@[Redacted]@foa.cjsm.net); [\[Redacted\]@scotland.gsi.gov.uk.cjsm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjsm.net); Paul Cackette
[\[Redacted\]@scotland.gsi.gov.uk.cjsm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjsm.net); [\[Redacted\]@scotland.gsi.gov.uk.cjsm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjsm.net)
Subject: Re:[CJSM] Adjusted Answers
Importance: High

[Redacted]

Attached are further revised adjustments, making such changes in response to client comments as I think are appropriate.

I have highlighted in yellow additional text about the conversations that the two complainers had with SG before they made their formal complaints.

The GDPR issue remains outstanding.

Christine

On 2018-10-30 13:18, [\[Redacted\]@scotland.gsi.gov.uk.cjsm.net](mailto:[Redacted]@scotland.gsi.gov.uk.cjsm.net) wrote:

Christine

Many thanks for your adjusted Answers and note.

Please see the attached document with comments received from clients and associated documentation attached.

I would be grateful if you could adjust the following answers accordingly:

Answer 6

Please remove wording, "It explains, inter alia, that the first respondent "asked Gillian Russell to act as a confidential sounding board for those who have experienced sexual harassment, whether current or in the past". Ms Russell is the second respondents' Director of Safer Communities. Complainer A spoke to Gillian Russell on 22 November 2017. Complainer B spoke to Judith Mackinnon, Deputy Director in the second respondent's People Directorate on 7 December 2017."

Please note that FM's private office confirmed FM's agreement to Procedure by email of 20 Dec 2017 as attached.

Answer 9

See proposed amended wording on note in respect of amended diaries (pg 2-3)

Please note the comments on mediation. I understand from the information and correspondence attached by [Redacted] that the complainers were offered mediation but this was declined. I understand that this is referred to in the correspondence. It is embedded in the document please let me know if this doesn't open.

Answer 10

No adjustment. We do not have the information requested to make positive averments.

Answer 11

Please consider and, if you agree, insert the proposed wording. "...The press statement and Freedom of Information release did not issue at that time and the First and Second respondents and interested party did not confirm the existence of the complaints until after the Petitioner did so himself in a media statement issued on 23rd August...".

Email with the detail of this attached.

Answer 14

Please see comments. And proposed adjustment by [Redacted].

Answer 21

Please see explanation

In addition please see the further comments from [Redacted].

"I looked at the Petn and draft answers para 21: ref to Acas Code.

In short I think the addition to the draft response (copied below) is fine. If you're timed out no need to consider further. I suggest a possible small change if time allows.

The main point is that the Acas Code is for employees - so it relates to fairness in the context of an employment relationship, which didn't exist here. And of course an employee subject to disciplinary process faces sanctions up to and including dismissal.

Whether the Acas Code is "mandatory" is an interesting point. Tribunals can have regard to it and employers are expected to comply with it in their disciplinary procedures, and can be penalised by the ET if they don't by way of an uplift in award.

I think the final sentence could probably be dispensed with as it *might* suggest that the Procedure is an alternative to the Acas Code, when in fact it is a completely different thing. But it is not wrong, in my view. The words [is not mandatory, and] could come out without altering the meaning of the sentence and would remove any question about whether or not it is mandatory either generally or in this case."

Answer 29

There is one notice for People Directorate but I don't think it covers the Procedure. It doesn't look as though a privacy notice was completed for the new Procedure. The Procedure will of course pre date GDPR.

Once you have revised could you please provide a copy of the adjusted Answers for intimating and lodging this afternoon. [Redacted] is hoping to leave for court at 3pm.

Happy to discuss.

[Redacted]

[Redacted]

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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