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Sent: 03 January 2019 16:35
To: Richards N (Nicola) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Subject: FW: Notes

From: [Redacted]
Sent: 28 December 2018 08:47
To: [Redacted] <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; [Redacted] <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; [Redacted - Lawyer 4] <[\[Redacted - Lawyer 4\]@gov.scot](mailto:[Redacted - Lawyer 4]@gov.scot)>; [Redacted] <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
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Subject: Notes

[Redacted]

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[Redacted - Private Secretary 1]

07 November 2017
11:09

1. The Fairness and Work and Disciplinary procedures will be reviewed by Christmas through the lens of sexual harassment to ensure they are appropriate, and then a more detailed review post-Christmas, as was already planned. (properly reviewed with union engagement etc)
2. In the meantime, sexual harassment as a form of misconduct, will be re-categorised to an example of Gross Misconduct
3. Any allegation of sexual harassment for the time being will be prioritised by [Redacted - Head of Branch, People Directorate 4] and [Redacted - Head of Branch, People Directorate 3], and overseen by myself – Nicky will be provided with daily updates if required.
4. Allegations against ministers, or former ministers, will be escalated to the Perm Sec, and we will seek to engage an independent party to investigate the issue if required (still to be identified) - you are also having discussions with [Redacted - Head of Branch, People Directorate 1] on the section of the FaW policy relating to ministers. We need to take some legal advice on the issue of complaints against former ministers.
5. There is on-going support for staff in the EAP and our Health and Wellbeing officer
6. We will communicate to staff these interim arrangements so there is clarity during the period of review.

[Redacted - Private Secretary 1]

Ministers - former ministers - get legal advice. [Redacted - Head of Branch, People Directorate 2] will action.

Perm Sec update

Accepted the short and longer term plan

If a complaint now, today - how would we deal with it?

Nicky - need to re-iterate where we are now - if people have an issue etc. Depending on that discussion - offers of support - then what process would we use - flow chart. Range of options - would we want an external support (EAP) - if someone would prefer to help them to decide what to do - fill gap in flow chart. Discrete and confidential support - give people more choice. Perm Sec - need to be careful focus just on victim - our role in making decisions. If someone comes forward with a serious allegation - we may have to act - if someone's claim could harm others - our duty of care.

Whistleblowing Process - Nicky not sure is appropriate. We also have an external complaints process.

Current process - set out.

1 Complaints dealt with under the Discipline and Conduct policy. Restatement of current process - support routes and gross misconduct. May want to explore an external body to support investigations.

2 Complaints against existing minister - should go to DG to resolve informally - would establish the facts and circumstances (if general harassment). If not resolved - goes to Perm Sec and FM. If sexual harassment - Director will help to support but will be dealt with by FM and Perm Sec. **How do we escalate to Perm Sec and FM - who will support both?** If ex minister no locus - but duty to staff and the party might want to do something. - ministerial code doesn't cover ex ministers.

Legal advice for FM?

Ethics advice and parliamentary ombudsmen? If complaint against a minister - would need to make them aware we are investigating - FM would need to consider if they could continue to be a minister during investigation, - set out parallel processes to internal.

Issue for FM for ministers to be investigated by staff - would need to ask the FM if she wants us to establish the facts and agree with Perm Sec how we would do that.

Risk assess - perm secs duty to staff and FM duty to ensure ministerial code. Agree an independent Arbiter if FM and Perm Sec don't agree.

Allegations against former ministers

[Redacted]

Could end up in public domain/media - can only offer support to member of staff - we cant support them to go to the press. What would our response be? Need to prepare lines.

What are we letting Perm Sec see and when?

- 1 Map and process - so if get a complaint today - able to say exactly what we are doing.
- 2 Former ministers
- 3 Longer term plan re processed and culture.