

From: Mackinnon J (Judith) <[Redacted]@gov.scot>
Sent: 25 May 2020 12:22
To: Mackinnon J (Judith) <[Redacted]@gov.scot>
Subject: 23 Nov - FaW Plus Annexes

23 Nov - FaW Plus Annexes

19 January 2018
08:52

Subject	FW: FAW plus annexes Nov 2017
From	[Head of Branch, People Directorate 2]
To	Mackinnon J (Judith)
Sent	23 November 2017 17:03
Attachments	<<FAW plus annexes Nov 2017.doc>>

[Redacted]

From: [Head of Branch, People Directorate 2]
Sent: 23 November 2017 16:50
To: [Redacted]; [Head of Branch, People Directorate 1]; [Head of Branch, People Directorate 3]; [Head of Branch, People Directorate 4]; [Redacted]; [Redacted]
Subject: FW: FAW plus annexes Nov 2017

All,

Thanks for time earlier. Latest position as follows:

FAW policy stage 1 – we agreed we'd keep this substantially as-is at present, with minor additions to reflect new process with Gillian and increased PA role at earlier stage for sexual harassment cases. I've attached the policy below – can someone ([Head of Branch, People Directorate 3] / [Head of Branch, People Directorate 4]) have a look at this and the comments and confirm where is best to place this info.

FAW stage 2 – intent will be to separate this out so we have a distinct grievance (formal) procedure and a bullying/harassment policy, both of which will sit alongside the conduct policy / process (which will also be reviewed in tandem) in the new year. Agreed that this will all be packaged in the new policy format.

Standards of Behaviour – we agreed that we could pull the existing info out of FAW and repackage it alongside the CS code info and create content for Saltire. [Head of Branch, People Directorate 2] to pull together working draft, [Head of Branch, People Directorate 3] to send on information about behaviours and we can work through this with support from [Head of Branch, People Directorate 4] and create clearer content.

Ministerial Complaints – [Head of Branch, People Directorate 1] picking up with James Hynd with a view to finalising this content asap. Once finalised it will expand the existing section in FAW. We can consider at a later stage whether this needs to be positioned differently

FOI – [Redacted] leading on this and we've pulled together some of the information. [Head of Branch, People Directorate 1] going to review and pick up with James Hynd given links to ministerial elements.

Route Map – [Head of Branch, People Directorate 3] making some minor tweaks. [Head of Branch, People Directorate 2] to look out copy which had union comments and incorporate – aim to finalise this by next week.

Update for Perm Sec – [Head of Branch, People Directorate 3] pulling this together next week– need to make sure it reflects everything to date (NB – is this different to the update [Redacted] is pulling together with [Redacted] for Perm Sec?)

Comms – [Redacted] blog on 4th December – opportunity to explain where we have got to? Next meeting – [Redacted] to look for slot in diary next week!

[Redacted]

[Head of Branch, People Directorate 2] | [Redacted]

From: [Head of Branch, People Directorate 2]

Sent: 17 November 2017 15:40

To: [Head of Branch, People Directorate 1]; [Redacted]; [Redacted]; [Head of Branch, People Directorate 3]; [Head of Branch, People Directorate 4]

Subject: FAW plus annexes Nov 2017

All

More questions than answers here but ...

I've attached the FAW / annexes as they stand at present

We need to repackage this in the new policy template style

We need to separate out standards of behaviour (and refresh these as discussed)

We need a decision (longer-term) as to whether we separate out grievance procedure (general) from bullying / harassment – [Redacted] has advised we used to have this and it caused some confusion.

We need to insert definitions for bullying / harassment and have a fast-tracked approach / triage role for PAs identified (particularly in relation to sexual harassment)

We need to include information about Ministerial complaints and routes.

We can use the route map (once finalised – working draft attached) – as a flow chart for different complaint routes etc

Anyway, I'll crack on next week with trying to think about how we repackage some of this in the refreshed policy template style, separating out policy principles from process and managers guide, and separating out standards of behaviour.

[Head of Branch, People Directorate 2]

Created with Microsoft OneNote 2016.

FAIRNESS AT WORK POLICY AND PROCEDURES

Commented [u1]: To reframe in new policy template style. To insert route map / flow chart for complaint routes and links over to conduct process. Roles and responsibilities of HR, line managers, perm sec and FM (for ministerial complaints) to be clearly defined.

1. **Our commitment**
2. **Behaviour Standards**
3. **Scope of Policy and Procedures**
 - 3.1 **Who it covers**
 - 3.2 **What it covers**
4. **How does it work?**
5. **What are the responsibilities of those involved?**
6. **How do I raise an issue through the Fairness at Work Procedure?**
 - 6.1 **Informal Resolution**
 - 6.2 **Mediation**
 - 6.3 **Formal Resolution**
 - 6.5 **Appeal**
 - 6.5 **Special Cases**
7. **What if a complaint is made against me?**
8. **HR Action**
 - 8.1 **Integration**
 - 8.2 **Review**

FAIRNESS AT WORK POLICY AND PROCEDURES

1. Our commitment

1.1 As an employer, we are committed to providing a workplace free from unfair discrimination and to ensuring the fair treatment of staff. But we also recognise that you may at some time have a problem or concern about your work, working conditions or your relationship with colleagues. You may feel that a certain management action or decision is unfair and has affected you adversely. In these circumstances, it is right that you are able to raise your concerns without feeling intimidated or concerned that the matter will not be given fair consideration. Or, that you may be treated less favourably or victimised in some way for making a complaint.

1.2 We are committed to dealing with staff grievances fairly, consistently, quickly and no-one will be penalised for raising a complaint in good faith. We aim to ensure that the outcome of any complaint will always be based on reasonable and balanced judgement following full consideration of the facts of the case.

1.3 We also recognise the potential value to all parties of being able to resolve a dispute in an alternative way. We have therefore, introduced the opportunity to resolve issues through [mediation](#).

1.4 We recognise that, if concerns are not dealt with in a way that is perceived as fair or are left unresolved, the working relationship may deteriorate and impact on the well-being of you, your team and the business.

1.5 This commitment to fair treatment at work is underpinned by the following procedures.

2. Behaviour Standards

2.1 For more information about the behaviour standards we expect, and the responsibilities of our managers, see **Annex A**.

Commented [u2]: Refresh in line with CS code and put more prominently on saltire.

3. Scope

3.1 Who is covered by this policy?

3.1.1 The policy applies to all Scottish Government staff, senior civil servants and associated bodies.

Commented [u3]: Not clear. Staff of associated bodies.

3.1.2 If you are an inward secondee, the conditions of your secondment appointment apply. This means you can raise matters informally with an appropriate line manager. However, if you wish to pursue a formal complaint, this must be done through your employer's grievance procedure.

3.1.3 If you are an employment agency worker, you are not covered by this policy. If you have a complaint, you must raise this through your agency, who may then liaise with us.

3.1.4 If the policy applies to you, you can raise a complaint about an agency worker or secondee (see **Complaints about an external third party(6.5.4)**).

3.2 What does the policy cover?

Commented [u4]: Do we need stand alone bullying / harassment vs catch all grievance policy?

3.2.1 Most types of problems or concerns are covered (including those previously covered by the Dignity at Work policy). These could include (but are not limited to):

- bullying and harassment;
- relations with colleagues;
- working methods, conditions and work-loads (including health and safety);
- re-organisation of work or other organisational change; and
- equality and diversity issues.

Commented [u5]: Need definitions?

3.2.2. The policy does not apply where:

- there are more appropriate policies and procedures, such as Attendance Management, Performance Management, or challenging a management decision on disciplinary action.
- you are disputing the terms of a collective agreement or Human Resources (HR) policy or specific terms of your employment. Separate arrangements have been put in place to resolve this through HR and the trade unions (**see Special Cases - 6.5**).
- there is a complaint raised about a management action by more than one employee. It will be normal to try to resolve such complaints informally first. If this fails then the process for resolution will be with the trade unions (**see Special Cases - 6.5**).

4. How does it work?

4.1 There are three steps in the process:

- informal;
- formal; and
- appeal.

4.2 It is in everyone's best interests to try to resolve problems before they develop into major issues. The first step is normally always to try to resolve matters locally and informally. This can mean agreeing to use a mediation service. The use of the service is voluntary and must be agreed to by both parties. This will not prevent you from raising a formal grievance but the process is suspended during mediation (**see Mediation - Annex B**).

5. What are the responsibilities of those involved?

5.1 Resolving your grievances is of key importance to us and we have put in place strict time limits for dealing with each step. **All parties** must stick to these time limits unless, exceptionally, an alternative is mutually agreed. Sometimes the complexity of a case will mean more time is needed and in such cases it is essential that all parties are advised of delays.

5.2 All parties must also recognise the importance of dealing with issues confidentially, especially those of a more sensitive nature.

5.3 You can only raise issues that we have the power to resolve. At the informal stage, managers must give complaints their proper and prompt attention and try to resolve matters taking into account the needs of the business and fair treatment of the individual. This is an opportunity to review what has been done, reflect on the impact and consider whether, in the circumstances, it is fair. By dealing with complaints in this manner, you should feel you have had a fair hearing and full consideration, even when the outcome is not what you had hoped.

Commented [u6]: Contradicts position re: ministers?

5.4 All parties are expected to approach the raising of a complaint or problem and its resolution in good faith. Where it becomes clear that an accusation is malicious, this will be regarded as a disciplinary issue. HR will follow up on the disciplinary issue and will also provide support to the individual who has been falsely accused.

5.5 When dealing with complaints, managers must consider the needs of disabled staff. This might include providing an interpreter or arranging meetings in ground floor rooms. For specific advice please contact the [HR Shared Service Centre](#) (HRSSC), who will seek further guidance if necessary.

5.6 The timescales set in the procedures are those which will be expected to be met. Exceptionally, where it is not possible to meet a particular timescale, all parties should be advised and provided with an alternative date/time-frame.

6. How do I raise a complaint?

6.1 Informal Resolution

6.1.1 All Fairness at Work issues should first be raised informally with your line manager. There may be exceptions to this depending on the nature of the complaint where you feel you cannot do this. This could include, for example, where the issue is with your line manager. In these circumstances, please contact the [HRSSC](#) for advice. Additionally, in exceptional and serious instances, you can contact the [Head HR Service Centre](#) on 0131 244 3353 direct.

Commented [u7]: Do we want to insert something re: sexual harassment automatically going to HR before it goes to Line manager? Or place a duty on the line manager to automatically let HR know to give advice on appropriate policy route for sexual harassment (or in due course, for all policies?)

Commented [u8]: Links to be updated

Day 1 (as soon as possible after the incident occurs, or issue arises)

6.1.2 Raise the complaint either verbally or in writing with your line manager (or other appropriate manager) and ask for a private meeting. By making your complaint as quickly as you can, you will ensure that it has the best chance of being handled effectively. You should explain what the problem is (with examples) and how you would like to see matters resolved. Your line manager has a responsibility to follow through on all complaints raised with them.

6.1.3 Once you raise the complaint, the line manager must agree which manager in the line management chain is most appropriate to deal with the issue ("the manager").

Commented [u9]: And, with advice from HR, the applicable policy route?

By Day 4 (within 3 working days of receiving your complaint)

6.1.4 The manager will meet with you, giving you the opportunity to explain fully what your complaint is and how you think it should be resolved. They will consider if, and how, the matter can be resolved, making further enquiries and investigation as necessary.

6.1.5 You can also seek other support and advice at this stage, including HR, the Employee Assistance Programme (EAP), the Welfare Officer or your trades union. Information and advice on dealing with complaints about another colleague's behaviour can be found at **Annex A**.

By Day 6 (within 2 working days of the initial meeting)

6.1.6 The manager will meet you again to explain their decision and any action being taken. The manager will confirm the decision in writing immediately thereafter.

One month after the line manager makes their decision

6.1.7 The manager will arrange to review the situation with you unless you have decided to take formal action. Guidance for managers in handling complaints is at **Annex D**.

6.2 Mediation

6.2.1 Depending on the outcome, you or your manager may find it useful to discuss the use of mediation in resolving matters before taking further action through formal stages. This can be put in place at any point and, if this happens during the formal process, it will be suspended while mediation takes place. Information on mediation is at **Annex B**.

6.3 Formal Resolution

Day 1 You cannot resolve the situation informally

6.3.1 If you have tried to resolve the situation informally but do not feel that your concerns have been properly addressed, you can make a formal complaint.

By Day 16 (within 15 working days of being given the informal decision)

6.3.2 You must submit your formal, written complaint. You can ask your trades union representative, or a colleague, to help you present your case and to support you through the process.

This should be in writing, to the [HRSSC](#), providing:

- what the problem or complaint is, giving specific instances and details of witnesses if appropriate;
- why you think the informal stage did not address your concerns;
- how you would like to see matters resolved.

6.3.3 You should inform the manager who dealt with the informal stage. You may also wish to seek support and advice through the Employee Assistance Programme, or from the Welfare Officer.

6.3.4 Where serious allegations are made against a colleague, it may be more appropriate to follow [disciplinary procedures](#). (Note: specific disciplinary procedures apply to staff on [probation](#)). This may be apparent when the complaint is made or following investigation. In such cases, the formal Fairness at Work action will be suspended pending the outcome of the disciplinary procedure and HR will provide advice and guidance. If necessary, the Fairness at Work process will resume following the conclusion of the disciplinary process.

Commented [u10]: HR PAs to take stronger role in this from outset, ascertaining appropriate route for allegation investigation?

6.3.5 The HRSSC will refer your case to an HR Professional Adviser (HRPA), who will acknowledge your complaint. For SG Main, HR will also appoint a Deciding Officer (DO) (selected from a pool of line managers from across the organisation) who will make a decision on your case where the facts are clear. The DO will be supported by an HR Professional Adviser (HRPA) throughout the process. Separate arrangements will apply for associated bodies - HR Help can advise.

Exceptionally, where the matter is particularly sensitive or complex, two DOs may decide the case. Information on the role of the DO is available at **Annex E**.

By Day 18 (within 2 working days of the formal complaint being received)

Commented [u11]: All time limits to be sense checked against ACAS principles.

6.3.6 Where fact-finding is required, and normally in cases of complaints about unacceptable behaviour (including bullying), an Investigating Officer (IO) will be appointed. This will enable the DO to consider, and decide on, more complex complaints. Information about the IO role is at **Annex F**.

Commented [u12]: To make it clearer within overall policy as to how complaints of bullying / harassment will be investigated?

By Day 28 (within 10 working days of you making a formal complaint)

6.3.7 The IO will produce a report for the DO.

Deciding Officer Action

By Day 33 (or Day 10, if there has not been a full investigation)

6.3.8 The DO will, along with an HRPAs:

- arrange to meet you to allow you to explain your case and how you think it should be resolved. If an IO has been appointed, you will be provided with a copy of the report and all related papers prior to the meeting. You have the right to be accompanied at the meeting by your trade union representative or a colleague. An HRPAs will attend the meeting to support the DO in terms of minute-taking and procedural and other advice.
- consider, particularly where an IO has not been appointed, whether anyone else needs to be interviewed, e.g. the line manager or, whether any further enquiries need to be made. Where resolution or other action is being recommended, the DO will discuss these with line management and HR to ensure they are workable.

By Day 35 (or Day 12, if there has not been a full investigation)

- advise you in writing of the decision by the DO and reasons for it. You will also be provided with a copy of the minutes of the meeting and the report prepared by the DO.
- in cases which involve bullying, harassment or discrimination, and where such allegations are founded, the DO will refer the matter to HR to be dealt with under [disciplinary procedures](#). The individual complained against will be advised of the result with reasons and, if founded, whether the matter has been referred to HR for consideration of disciplinary action.
- The HRPAs will be responsible for ensuring that any recommendations in the DO's report are actioned.

6.4 Appeal

By Day 22 (within 10 working days of receiving the DO's decision)

6.4.1 If you feel that your complaint has not been dealt with satisfactorily, you have a right of appeal against the formal stage decision. **Annex G** provides details of the Common Appeals process. This should include your grounds for appeal. This is the final stage of the internal process.

6.5 Special Cases

Terms of collective agreements, HR policies or specific terms of your employment

6.5.1 Most terms and conditions of employment are subject to a process of collective bargaining with recognised trade unions. For this reason, complaints about the terms of collective agreements cannot be resolved by line management. In such situations, at the informal stage, the manager may only be able, after seeking HR's advice, to confirm that the agreed terms have been applied correctly. Issues concerning the terms of collective agreements must be addressed through negotiations with trade unions. If you are not satisfied with the application or interpretation of an agreement, then you should raise this with HR or your union.

Group/Team complaints

6.5.2 It is usual where a number of staff wish to raise the same complaint that this is done via normal staff representation channels. However, the informal stage can work effectively in such situations and the group should first try to resolve the problem through the line management chain. An appropriate manager from the line will meet with the group where they will be given the opportunity to resolve the issue through open and reasoned discussion.

Where there are issues raised between two teams, two appropriate managers will meet first with their own teams to understand the complaint and possible resolution. The two managers will meet to assess how the matter can be resolved and then feedback to each team with the proposals. A joint meeting of both teams (or each team can select two representatives) along with the managers will follow to agree the final solution, where possible.

Where agreement cannot be reached through the informal stage and the parties wish to take the matter further, they should refer the matter to HR and their trade unions, who will discuss the lodging of a formal complaint.

Whistleblowing

6.5.3 The Public Interest Disclosure Act gives protection to workers who blow the whistle about a wrongdoing and who are dismissed or suffer another detriment for doing so. Alongside the provisions of the Act, you also have the protections set out in the Civil Service Code. [Specific procedures](#) apply in the Scottish Government. A separate whistleblowing policy applies to non-SG Main employees.

Complaints about an external third party

Commented [u13]: To check this wording in light of new whistleblowing approach. To consider breaches of CS code approach under whistleblowing as well.

6.5.4 As we will not necessarily have the ability to deal directly with an individual affiliated to or employed by another organisation, other arrangements apply to these situations. Please see **Annex C** for reporting incidents. Where you feel these special arrangements fail to protect you in going about your normal work, you can raise the matter under the formal stages of this policy.

Complaints about Ministers (for SG Main employees only)

Commented [u14]: Refreshed wording / approach as being developed by [Head of Branch, People Directorate 1]/ James Hynd to be included here.

6.5.5 Where local, informal handling cannot resolve differences, the following procedure will apply.

- You should approach the Head of HR direct by phone or e-mail to arrange a meeting to discuss and outline the problem. You can also ask your line manager or trade union representative to make the initial approach on your behalf. Your line manager or trade union representative can also accompany you during any discussion with the Head of HR to provide support.
- The Head of HR will gather background information and will discuss with you whether an informal resolution is possible and what you see as a satisfactory outcome of your complaint.

Informal resolution

- If you prefer to seek an informal resolution, the Head of HR will approach the Minister outlining the problem and suggesting a possible solution (the aim will be to achieve conciliation). Mediation can also be offered as a possible method of resolving the matter but we recognise that this may not always be appropriate and both parties would need to agree voluntarily to take this route.

Escalation

- If the situation needs to be escalated, the Permanent Secretary will be informed. You should put your complaint to the Head of HR in writing with details of incidents and witnesses and an indication of you wish to resolve the situation. The complaint will be passed to the Permanent Secretary and Deputy First Minister (or other Minister if the complaint is about the DFM). They will as a first step also consider what scope there might be for alternative resolution such as conciliation or mediation. As a last resort, a Deciding Committee (DC) will be set up to review the situation. The DC would comprise a Cabinet Secretary, DG (different portfolio to the Minister involved) and Director of HRCS. Where necessary an investigator will be appointed to provide a report for the DC.
- The DC will meet with you to enable you to state your case. You can be accompanied (in line with the arrangements in the policy). The DC will also see the Minister concerned. It is the responsibility of the DC to ensure that it is satisfied it has sufficient information on which to make a fair and balanced judgement. The DC

will complete a report stating why the complaint is or is not upheld with recommendations, if appropriate. It will also advise you and the Minister in writing, attaching a copy of the report. Recommendations might include conciliation, training or the Permanent Secretary and First Minister or Deputy First Minister considering what action should be taken.

In common with the emphasis on dealing with complaints as quickly as possible, the handling of a complaint that is referred to a DC should normally be completed within 4 weeks from the first report to the Head of HR. The agreement of both parties will be sought should any unavoidable changes to this timeframe be required.

7. What if a complaint is made against me?

7.1 You may find the guidance at **Annex H** useful if you find yourself in this situation

Commented [u15]: Support routes

8. HR Action – Integration and Review

Integration

8.1 Once the formal (or appeal) process is complete, an HRPAs will contact those involved and will work to assist them in moving on from the process. This may involve providing advice, support and coaching and will apply regardless of the outcome. You can also contact the Employee Assistance Programme (EAP) or the Welfare Officer at any time.

Review

8.2 An HRPAs will also review how each case progressed. This is not about questioning the outcome but about the process and learning from experience. All those involved, including trade union representatives, may be asked for their views on the way the case was handled. A member of the HR Employee Relations Team will also review individual cases with the HRPAs to feed into the policy review, to assess how the process has worked and how the recommendations have been implemented.

8.3 HR will also review the policy on a regular basis (but not less than every 3 years), taking into account legislation, feedback from those involved and best practice.

September 2010

FAIRNESS AT WORK - SUPPORTING DOCUMENTS

Annex A - Behaviour standards and responsibilities

- Our commitment
- Our expectations
- Our standards of behaviour
- Examples of unacceptable behaviour

Annex B - Mediation Guide

Annex C - Complaints about External Third Parties

Annex D - Conducting an Informal Meeting – Manager’s Guide

Annex E - The Deciding Officer Role

Annex F - The Investigating Officer Role

Annex G - Appeal Process

Annex H - What if a complaint is made against me?

Guide to standards of behaviour

Commented [u16]: To be put into new style policy guide, to be lifted out of FAW into overall CS code conduct, to have clearer definitions and frame in values. Process / guide of "what is unacceptable" useful for PAs in investigation.

Section 1 Our commitment**1. Our commitment as an employer**

1.1 We are an equal opportunities employer, committed to treating every employee with dignity and respect. It is our policy to ensure, as far as reasonably practicable, that all staff have equality of opportunity in their terms and conditions of employment and are able to work, and undertake work-related activities, in an environment free from harassment, victimisation, discrimination and/or bullying.

1.2 We believe that **all** of our employees should be treated with respect, regardless of sex, marital/civil partnership status, age, race, ethnic origin, sexual orientation, gender identity, disability, religion or any other irrelevant difference, e.g. social background, working pattern or trade union activity. This can only happen if every member of staff is aware of the standards of behaviour that we expect from them and behaves accordingly.

1.3 This policy statement is endorsed by the Permanent Secretary and applies to all staff including members of the Senior Civil Service and those in the agencies and associated Departments of the SG's Main Bargaining Unit. This policy also applies to associated bodies. We also expect Scottish Ministers to behave acceptably and to act in the spirit of this policy statement.

1.4 The Council of Scottish Government Unions (CSGU) has been fully involved in the creation of this policy statement and the standards it sets out.

2. The purpose of this policy statement

2.1 The purpose of this policy statement is to make clear that we, as an employer, observe a policy of zero tolerance in respect of incidents of behaviour that are found to be unacceptable.

2.2 It also sets out the standards of behaviour that we expect of our staff, managers and others, both in the workplace and when undertaking work-related activities, to ensure that we are free from harassment, victimisation, discrimination and bullying.

Section 2 Our expectations**1. What you can expect from us as an employer**

1.1 As an employer, we have a responsibility to take all reasonably practicable steps to ensure that staff are able to work in a safe and non-threatening working environment. This includes contact with Ministers, external stakeholders and other third parties.

1.2 We:

- will ensure that all line managers and other staff dealing directly with allegations of harassment, victimisation, discrimination and bullying in the workplace are equipped to identify and deal with these issues.
- give our commitment that all complaints will be dealt with sensitively, professionally, effectively and as quickly as practicable.
- will monitor incidents of alleged unacceptable behaviour as defined by this policy and address any issues arising from our monitoring quickly and appropriately.
- review this policy regularly, taking into account changes in best practice and legislation.

2. What we expect from members of staff

2.1 As a member of staff, you:

- have a responsibility to respect the dignity of others.
- must avoid behaving in a way that may cause offence or distress to your colleagues or others with whom you have contact as part of your duties, including service users and external contacts. (see [Appendix 1](#))

It does not matter whether the perceived harassment, victimisation, discrimination or bullying is unintentional.

- should be aware of, and adhere, to our policies on [equal opportunities and diversity](#).
- should also support any colleague who feels that they have been harassed, victimised, discriminated against or bullied and encourage them to seek help from an appropriate source.
- behave appropriately at all times towards the people you work with.
- remember that inappropriate behaviour is behaviour which is “viewed as demeaning and unacceptable to the recipient”.
- make sure you are familiar with our policy on Fairness at Work and undertake training as necessary.

- should raise issues informally in the first instance if you feel that you have been treated unacceptably, or report the matter in writing to [HR.Help](#) if you do not feel able or if this does not work.
- should try to support anyone that you feel is being treated unacceptably and encourage them to seek help. If they do not feel able to report the behaviour themselves, **you** should:
- alert your line manager, or, alternatively, [HR.Help](#).

Remember - unless you tell us about alleged unacceptable behaviour we may not be aware of it and will not be in a position to take steps to address it.

3. What we expect from our managers

3.1 As a line manager, you:

- have a responsibility to ensure that your staff work in an environment which is free from unacceptable behaviour and to encourage an atmosphere of tolerance and respect.
- should make sure that you have undertaken the appropriate level of training to carry out your duties effectively and try to lead by example through a fair and open management style.
- should make sure that all of your staff are aware of, and understand, our Fairness at Work, diversity and equal opportunities policies, including the support options available to them. Ideally, this should be done as part of the induction process.
- must act if you are made aware of alleged inappropriate behaviour. It is not acceptable for you to do nothing as you may later be held accountable for your lack of action under our performance appraisal or disciplinary procedures, or, in more serious cases, through the legal process.
- should apply this, and other policies, in a fair and consistent manner and staff should know who to contact if you are not available. This will normally be a more senior officer in the line management chain.

3.2 If any of your staff raise concerns about unacceptable behaviour, you:

- must take this seriously and act on their concerns quickly. In particular, you should make sure all of your staff are aware of their responsibilities and what action they should take if they become aware of unacceptable behaviour.

3.3 If approached informally, you should:

- investigate the circumstances of the complaint and take any action you feel is appropriate.

- keep a record of the incident and any action taken.

3.4 If the complaint is more serious, you should:

- assist the individual in making a formal complaint to HR.Help, or should do so yourself.
- make sure all parties to the complaint are aware of the support available to them.

4. What we expect from our countersigning officers

4.1 If any of your staff raise concerns about unacceptable behaviour, you must:

- take this seriously and act on their concerns quickly.

4.2 In particular, you should:

- take the actions outlined in “What we expect from our managers”.
- make sure all of your line managers are appropriately trained and that all staff are aware of what is expected of them.
- act as a role model in and ensure that your work area is free from all types of unacceptable behaviour.
- carry out these duties in a fair, reasonable and consistent manner.

4.3 If you do so, your actions and behaviour **cannot be viewed as unreasonable**. However, you must also ensure that you perform these duties whilst upholding the principles of this policy statement, treating all staff fairly and respecting their dignity.

5. What we expect if you are accused of unacceptable behaviour

You:

- should try not to get defensive and listen to any advice and information you are given.
- should work with colleagues to try and reach satisfactory outcome to any complaint and seek support if you need it.
- must implement any recommendations made to you as a result of the complaint.

6. What we expect if you are a witness to unacceptable behaviour

6.1 You should:

- take any appropriate action to try to end such behaviour.
- participate fully with any action that is required of you during any investigation or resolution process.

7. What you can expect from Human Resources (the HRSSC and HR Professional Advisers)

7.1 Human Resources will:

- ensure that you are provided with advice if you feel that you have been the subject of unacceptable behaviour.
- take action if you make a formal complaint under the *Fairness at Work* procedures and ensure each complaint is fully and properly investigated as quickly as possible.
- take forward any recommendations resulting from any complaint of unacceptable behaviour, including disciplinary action.

8. Support and Advice

Please remember that apart from your manager and HR, the advice and support of the Welfare Officer and Employee Assistance Programme is available to you. Also, if you are a member, you may wish to contact your trades union.

Section 3 Our standards of behaviour

1. Unacceptable behaviour

Commented [u17]: Definitions of bullying / harassment / victimisation to be included here.

1.1 There is no single definition of what constitutes unacceptable behaviour. The Advisory, Conciliation and Arbitration Service (ACAS) refers to “unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. **The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient**”. Other irrelevant characteristics covered by the Scottish Government equal opportunities policy statement include sexual orientation, marital/civil partnership status, gender identity, caring responsibilities, working pattern or trades union membership.

1.2 What is acceptable behaviour to one member of staff may not be acceptable to another and we should all be aware of the effect that our behaviour or language may have on others.

1.3. Unacceptable behaviours have a detrimental effect on both individuals and the organisation as a whole. They can significantly lower staff morale and motivation, cause increased absenteeism and turnover of staff and, in some cases, end in legal proceedings.

Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment.

It also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

Unlawful harassment may involve conduct of a sexual nature (sexual harassment), or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. Harassment is unacceptable even if it does not fall within any of these categories.

Harassment may include, for example:

- (a) unwanted physical conduct or "horseplay", including touching, pinching, pushing and grabbing;
- (b) continued suggestions for social activity after it has been made clear that such suggestions are unwelcome;
- (c) sending or displaying material that is pornographic or that some people may find offensive (including e-mails, text messages, video clips and images sent by mobile phone or posted on the internet);
- (d) unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless);
- (e) racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic or religious group or gender;
- (f) outing or threatening to out someone as gay or lesbian;
- (g) offensive e-mails, text messages or social media content; or
- (h) mocking, mimicking or belittling a person's disability.

A person may be harassed even if they were not the intended "target". For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation.

Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example:

- (a) physical or psychological threats;
- (b) overbearing and intimidating levels of supervision;
- (c) inappropriate derogatory remarks about someone's performance.

Legitimate, reasonable and constructive criticism of a worker's performance or behaviour, or reasonable instructions given to workers in the course of their employment, will not amount to bullying on their own.

Commented [u18]: Some of these examples could be included in a list such as the unacceptable behaviour list below but more clearly identified as harassment / bullying.

1.4 A list that illustrates examples of behaviours which *may* be considered unacceptable and which *may* amount to misconduct and, in some cases, serious misconduct, can be found in Appendix 1. This list is not exhaustive and conduct needs to be viewed in context.

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Appendix 1

Examples of unacceptable behaviour

Commented [u19]: This is more process / guidance for PAs than for staff in general. We can think about positioning when we refresh the standards of behaviour.

General

- Refusing to work with, ignoring or deliberately isolating or excluding colleagues, including from social events.
- Displaying or circulating offensive materials, including sectarian materials, homophobic or anti-gay or pornographic pictures/pin-ups.
- Discouraging someone from taking advantage of relevant and suitable training on grounds of irrelevant difference.
- Taking credit for others' work.
- Not taking the blame when things go wrong.
- Excessive, or inappropriate, detailed supervision.
- Lack of supervision which leaves the individual feeling unsupported or demoralised.
- Undermining an individual's authority.
- Reducing a job to tasks inconsistent with a person's grade, skills and abilities.
- Unjustifiably blocking promotion or training opportunities.
- Withholding information, ostracising, marginalising, spreading rumours etc.
- Unfair work allocation.
- Displaying tattoos that may be offensive in terms of fairness at work, equal opportunities or diversity.

Verbal

- Deriding an individual's religious or other beliefs or other personal circumstances, e.g. their trade union involvement.
- Unwelcome comments or jokes.
- Use of offensive language, name calling, taunts, jokes, mockery.
- Unwanted or derogatory comments about dress or appearance.
- Leering and suggestive gestures, comments or innuendo.

- Jokes, banter, insinuations, insults and taunts based on any irrelevant difference, including being Scottish, English or another UK nationality.
- Inappropriate questions about someone's personal life or questions about someone's sex-life.
- Aggression, bawling out, threats, shouting, swearing, abuse, physical or verbal intimidation.
- Humiliating, ridiculing or belittling efforts in front of others or in private.
- Gossip and speculation about an individual's personal life, e.g. their sexual orientation.

Physical

- Inappropriate physical contact, advances or propositions.
- Physical or verbal attacks, abuse or intimidation.

Making assumptions

- About an individual's personal or social life.
- About their physical or mental capability.
- About the existence of a non-visible impairment.
- Assuming that everyone is heterosexual.
- Assuming that all gay men are HIV positive.
- About age-related retirement.
- About ability or competence.

Guide to Using the Mediation Service

Commented [u20]: Need to understand more about this from [Redacted]

1. We are introducing a mediation pilot scheme for all staff covered by the new Fairness at Work policy who are on SG Main terms and conditions. The service may also be used by staff who are employed in Directorates and Agencies covered by SG Main but who have different terms and conditions, e.g. ex-Scottish Homes staff who opted to retain their existing terms and conditions. The pilot will use trained internal mediators provided by VisitScotland. Bodies who are not part of SG Main have separate arrangements in place.

2. Providing an alternative way of resolving conflict or disputes through mediation can help by offering a quicker resolution, causing less stress to individuals, preserving the working relationship and offering a better chance of reaching a mutually successful outcome.

What is mediation?

3. **Mediation** is a process by which an impartial third party helps people in a dispute work out an agreement. The parties to the dispute, not the mediator, decide the terms of the agreement. Mediation usually focuses on future rather than past behaviour.

4. It is an option you can explore if you are involved in a workplace conflict or dispute. Or, you are concerned about or confronted by a situation or behaviour that you find unacceptable and you wish to attempt to resolve without formal action.

5. Mediation provides a structured though informal way of resolving complaints, grievances and disputes. It can help rebuild relationships and restore broken communication and trust because it does not seek to apportion blame. It is a viable way to tackle disputes as it brings people together to talk about the situation and can foster a joint problem-solving attitude, both of which are essential if working relationships are to be maintained or improved. The key is that mediators provide a safe and confidential environment, enabling people to talk freely.

When might it be appropriate?

6. Mediation must be a voluntary process. Deciding what might be successfully resolved through mediation is very much a matter of personal choice. Decisions should be made on each case on its merits. If you feel the following situations apply to you then you might benefit from mediation:

- The conflict/dispute is at an early stage.
- You are being affected by a situation at work in some way. It could be affecting your work performance, working relationship, emotion/physical wellbeing, personal or home-life.
- You are willing to be honest and open and willing to attempt to resolve the situation.
- You think the other party would be prepared to be honest and open and willing to seek to resolve the situation.

- You are willing to look at your own role in the situation.
 - You are prepared to abide by a mediated agreement.
7. There will be maximum opportunity for resolution in cases that have the following characteristics:
- low levels of anger and physical or verbal intimidation.
 - no serious breaches of workplace guidelines.
 - no formal or other action being taken which would counter the mediation process.
 - allegation and counter allegation.
 - facts which are difficult to substantiate.
 - parties who are willing to contribute to resolution.
 - room for improvement in relationships.
 - parties who are not initially prepared to have face-to-face contact with their counterpart, but will with external help.
8. Mediation **may not be appropriate if:**
- there is a significant power imbalance between the parties which cannot be bridged.
 - behaviour is going on between the parties which makes one or the other or both feel unsafe to negotiate.
 - external rules need to be applied, for example if criminal activity is involved.
 - one or other side or both sides are unwilling or unable to mediate.
 - if a complaint involves behaviour which requires action against one of the parties e.g. serious misconduct, less than effective performance.
9. Mediation can be used to resolve disputes at all levels: peer, manager/subordinate, or team. It enables individuals or teams to improve their relationship and discuss the practicalities of working together.
10. Even if you do not choose to enter into mediation, you might wish to discuss your concerns in confidence with an HR Professional Adviser, your trades union representative or the Employee Assistance Programme (EAP) at their helpline.

The Process – Step 1

11. The mediator will spend up to two or three hours with each party. At this initial meeting, each party is asked to talk in detail about their perspective of what has been going on. They are asked to be open about how they feel and what they consider needs to happen to resolve the situation and to create effective structures for future communication.
12. The mediator provides each party with the reflective space to work through difficult issues and build commitment to agreements.
13. They do this by:

- using reflective listening, empathy and rapport-building to create a constructive atmosphere.
- working with each party to identify issues, needs, concerns, vulnerabilities, habits and limiting beliefs.
- exploring contributory factors on all sides, e.g. background issues, the general context
- highlighting with each party possible options, and ways forward.
- if it becomes apparent at the Step 1 meetings that the issues have changed then it may be necessary to change the agreed process.

The Process – Step 2

14. The mediator meets with the parties together, ideally in the same room, for up to three hours. The time will vary depending on numbers involved. There are ground rules to enable even those who may be feeling vulnerable to take part.

15. While it is preferable if the parties agree to talk face to face with the mediator as the intermediary, it is possible to use “shuttle” mediation where the mediator works with the parties in separate rooms. Shuttle mediation can be particularly helpful in the initial stages if emotions are running very high.

16. **At the face to face session the mediator works to enable the parties:**

- to have the same opportunity to speak about their feelings and concerns, without interruption.
- to look at the problems in turn, to move towards a mutual problem definition.
- to generate ideas for solutions.
- to plot potential hazards.
- to generate a time-frame for change.
- to create written agreements for future interaction where appropriate.

Feedback

17. **The mediation process is totally confidential.** The detail of what is discussed between the mediator and the parties cannot be provided to the referring client. However the mediator will ask for written feedback from the parties on their assessment of the mediation. He/she will also ask if the parties wish feedback to be given to line management or HR. Please note that records will be kept of the number of cases referred so that the use of the service can be monitored.

18. The following pages explain how mediation works and are provided so that, when mediation is organised, **each party is aware of the ground rules and stages before it takes place. You must apply for mediation using the relevant form.**

MEDIATION HANDOUT

How Does Mediation Work?

Mediation is when an impartial, trained person helps two or more people in a dispute to talk about their situation, exchange their concerns and come up with ideas about how to move forward. What is discussed in a mediation session is confidential and there are ground rules to help people feel confident and safe enough to communicate their needs, feelings and concerns.

Mediation Ground Rules

These apply to the parties involved and to the mediator. We ask you to:

1. Listen to what each person has to say and speak one at a time.
2. Speak and behave in a non-threatening way; think how you would like to be treated.
3. Be as open as you can about what your concerns are and what you need.
4. Be as specific as you can about what you want to happen, what you can do and what you'd like others to do.
5. Stay seated and discuss any problems and doubts with the mediator or request a private space with them if you feel you need to.
6. The mediator may pause the mediation or end it if he or she feels it necessary.
7. Keep the detail of what is discussed private; the mediation is confidential; notes will be destroyed; **things said in mediation cannot be used in court or in any later internal procedures.**

The mediator will:

- ensure that everyone has equal opportunities to communicate (speak and listen), negotiate and work out realistic and fair agreements.
- prevent name-calling, abuse or behaviour which stops people negotiating fairly.
- not take sides or make decisions for you.

The Stages of Mediation

A preliminary meeting with the mediator will be arranged so that you can:

- describe the situation from your point of view.
- think clearly about ways of moving the situation forward.
- get to know more about how mediation works and the benefits of using mediation to find a settlement.

A face to face meeting will be held which has five stages;

1. **Describing the problem** – Setting the scene – hearing both sides of the situation.
2. **Exploring the issues** – Being clear what the important issues are, checking facts, comparing views of the problem, agreeing what issues can realistically be settled by mediation, agreeing to continue.
3. **Building agreements** – Exploring what people want and what can be done about the situation, working through differences, managing conflict, problem solving, preparing for decisions.
4. **Making agreements** – Testing likely outcomes, describing in detail what will happen next, future arrangements, what if something goes wrong? The agreement can be made verbally or in writing.
5. **Closure and follow-up** – Evaluating the session and ending the session, agreeing plans for future contact between the mediator and the parties concerned, if needed. The parties decide if they agree to any feedback to line management or HR.

A number of important principles underpin the operation of mediation:

- It must operate in a way which eliminates any kind of bias.
- Mediators should not work on the site at which they are based.
- Mediators will not mediate with people with whom they have had substantial previous contact.
- Parties will not be able to choose their mediator.
- Mediations will be totally confidential and there will be no reporting back on issues, outcomes or the process itself without explicit consent from the parties involved: and
- Mediation will not be used while other formal measures (such as grievance or disciplinary procedures) are in operation.

For these reasons the provision of mediation is managed centrally (including SG Main agencies) via SGHR and requests for mediation should be forwarded to [HR.Help](#) following which an HR Professional Adviser will be allocated to your case. The HR Professional Adviser will discuss the use of mediation with you and the potential for its suitability to resolve your issue. Remember, both parties need to voluntarily agree to the use of mediation.

As well as the HR Professional Adviser, there are a few other options for you to discuss your issue and its suitability for mediation:

- Welfare Officer.
- Employee Assistance Programme .
- Your line manager, or if that individual is involved in the issue, another manager.
- Your trades union representative.

Once the decision to use mediation to resolve the issue has been made, you and SGHR should follow this process for requesting a mediator:

1. Confirm your intention to use mediation to the HR Professional Adviser.
2. Complete a standard referral form.
3. Forward the form to the HR Professional Adviser who has been dealing with your case.
4. The HR Professional Adviser will then arrange for a mediator to be allocated.
5. If you cancel the mediation, please let the HR Professional Adviser know.

Request for Mediation - Referral from Scottish Government Staff

Name of individual (s) requesting the mediation service:

Work Location and phone contact numbers

Circumstances relating to the mediation request:

Signed _____ Date _____

To Mediator

Endorsement by SGHR Professional Adviser:

SGHR PA Name and contact number

I have discussed this with the individuals concerned and the case is referred for mediation under the terms of our agreement. I will act as case manager throughout the process and will arrange meetings.

Signed _____ Date _____

COMPLAINTS ABOUT EXTERNAL THIRD PARTIES

1. **Note – Under discrimination legislation employers will be liable where they fail to take reasonable practicable steps to prevent repeated sexual harassment of an employee by third parties. They may also fall foul of Health & Safety legislation in failing to: carry out an effective risk assessment, design a safe system of work and provide related training and information.**

Commented [u21]: To be tackled through route map an dpresentation.

Commented [u22]: Not just sexual harassment?

2. The nature of our work means that many of us have working relationships with external partners, customers and other stakeholders who are employed or affiliated to other organisations. Our standards of conduct and how we will deal with these external contacts is the same as with colleagues. That is, we deal with them with appropriate courtesy meeting the published service standards. In return, all staff should expect the same treatment. There may be situations where a position has to be taken or advice given which the third party is unhappy with. While certain emotional reactions may be understandable, staff should not be expected to put up with bullying, harassment, intimidation or threats of, or actual, physical harm.

3. All such instances should be reported to your line manager immediately. The line manager will discuss with you and agree any possible course of action. Normally this will involve the line manager raising the matter with the other organisation; the expectation being that the organisation will investigate the complaint and if necessary, agree an interim course of action to deal with the working relationship. This, for example, could take the form of not dealing with the individual directly and instead going through another representative of the organisation. Or, it may mean that you would deal with the individual or situation only in the presence of others. (This does not preclude you raising a grievance or complaint through the Fairness at Work procedure.)

4. This is not only about the dignity of our staff at work but perhaps, more importantly, it may be a health and safety matter. Each Directorate, Agency and associated body is responsible for risk assessing the type of work carried out by their staff. Results of that assessment may indicate the need for a safe system of work to be designed. Staff can then be trained and provided with information on preventative measures and actions to be taken when certain situations arise. Advice on such matters can be sought from the Occupational Health and Safety team or your Agency local health and safety adviser. For non SG Main employees, advice should be sought locally.

5. Directorates and Agencies should also assess whether they have effectively set down the terms of engagement with these contacts. This, for example, may apply to those parts of the SG involved with inspection work.

ANNEX D

MANAGER GUIDANCE - CONDUCTING AN INFORMAL FAIRNESS AT WORK MEETING

Commented [u23]: Managers guidance – should be separate from main policy.

1. Members of staff who raise a complaint either orally or in writing with their manager are looking to have the matter addressed fairly and, if possible, resolved quickly. Therefore, it is important that the informal process is conducted in a professional manner and given appropriate attention within the timescale in the policy. It is crucial to try to resolve problems before they become major issues as resentment can build and impact on the work of the individual and possibly their colleagues. Managers are responsible for ensuring the work environment is one where staff feel comfortable about raising matters informally and discussing them face to face.

If you receive a complaint:

2. Consider whether or not you are the appropriate manager to hear the complaint, taking into account the following:
- the nature of the complaint;
 - whether you have the authority to make a decision regarding the complaint; and
 - whether you have a sufficient overview of the team/branch/division to assess whether or not there will be any impact on others or current working practices.

It may be more appropriate for your line manager or another manager within your division to hear the complaint. Choosing the most appropriate manager should ensure that the member of staff will attend a fair, open and meaningful meeting.

Preparing for the meeting:

3. Ensure that the meeting will be held in private, without interruption and allow plenty of time. Remember that particular needs of disabled employees should be considered.
4. Advice can be sought from the HR Shared Service Centre. HR can provide general guidance on dealing with complaints and may be able to provide information on how other similar complaints have been resolved to ensure consistency of treatment.

Conduct during the meeting:

5. Remember that a meeting to discuss a complaint is not the same as a disciplinary hearing; it is an occasion where the objective is that discussion and dialogue may lead to the matter being resolved.
6. Invite the member of staff to re-state their complaint and how they would like to see it resolved.
7. Complaints raised by staff can sometimes feel like a personal criticism against you as manager. Listen to what is being said in a calm and impartial manner. Be as fair to the

employee as possible, given the constraints of business operations and other staff considerations, in trying to resolve the problem.

8. Care and thought should go into resolving complaints. They are not normally issues calling for snap decisions. Consider if any serious precedent is being set that the business could not support. Take advice from HR if necessary.

9. Make allowances for the emotions that the individual displays including reasonable 'letting off steam' if he/she is under stress. Go through any points again with them to make sure you have understood what the problem really is. Consider too, that the problem they are presenting may, after careful questioning and discussion, may not be what is at the root of their discontent.

10. You should refer to the guide to standards of behaviour at [Annex A](#) when you have to deal with a complaint about another colleague's behaviour. In such cases, action you might consider could include:

- Encouraging the individual to resolve the matter directly with the other person.
- Offering to facilitate between the two individuals.
- Offering to represent the views of your member of staff with the other person; or
- Offering to take up the matter with the other person's manager.

11. Always remind the individual of the support the Employee Assistance Programme, Welfare Officer, their trades union and HR can provide.

12. After summing up, you may find it useful to adjourn before reaching a decision on how or if the complaint can be resolved – you may need to:

- investigate the complaint further.
- explore possibilities with other managers about the resolution of the grievance.
- give consideration to the impact any decision may have on the rest of your team and the business; and/or
- take advice on how to proceed further.

13. Tell the member of staff when they might reasonably expect a response if one cannot be made at the time, bearing in mind the time limit set out in the policy which is 2 days from the date of the meeting.

14. Respond to the member of staff's complaint within the 2 day time limit, confirming your response in writing. If a response is likely to take longer than the two days you may need to give an interim reply or agree another timescale with the individual. Review the case with him/her after a month unless he/she has decided to take formal action.

15. You should advise on the next step – raising the matter formally or the possibility of [mediation](#)¹ so that the individual knows what to do if unhappy with your decision.

¹ Does not apply to non SG Main employees.

THE ROLE OF THE DECIDING OFFICER

What is a Deciding Officer?

1. A Deciding Officer (DO) is someone who considers all the relevant information surrounding a complaint or issue raised through the formal Fairness at Work process and makes a decision as to whether the complaint is well founded. The Deciding Officer may also make recommendations following their decision. An HR Professional Adviser (PA) will arrange for a DO (or two DOs where the case is complex) to be appointed to each case.

Why do we need Deciding Officers?

2. The Fairness at Work policy encourages the resolution of complaints at a local level. However in some cases, local efforts are not successful or the complainant feels unable to follow such a course of action and therefore submits a formal written complaint to HR. Deciding Officers, who are capable of reaching reasonable and logical conclusions, are essential to the procedure to ensure a fair and unbiased hearing and a result based on reasonable and balanced judgement.

What does the role involve and what does the Deciding Officer do with my complaint?

3. The role of DO involves considering the facts of the case which will involve a meeting with you. The DO will liaise and work with the HR PA allocated to the case throughout the process to collect information relevant to the complaint. The HR PA will provide support and guidance and be responsible for the administration and management of the process including minute taking. The HR PA will also decide if an Investigating Officer (IO) needs to be appointed. This will depend on the complexity of the case. In cases of harassment or bullying or other allegation about a colleague's conduct, it will be normal to appoint an IO.

4. If more than one DO is appointed, they will arrange to meet in advance of the meeting with the individual making the complaint, to review the papers, including the IO's report. The DO can seek further clarification from the IO if necessary. You will also get a copy of the IO's report.

The Meeting

5. The DO will meet you and read and analyse information presented including, if appointed, the IO's report. You are entitled to be accompanied at the meeting by either a colleague or a trades union representative and must be told this in the invitation to the meeting. HR hold standard letters that can be used by the DO.

6. At the meeting the DO will listen carefully to what you have to say, ask questions and answer any questions you may have. If the case is a complaint about a colleague's behaviour, then the DO may wish to interview that individual before reaching a decision.

This is to ensure fair and full consideration of the case and allows that individual a final opportunity to put forward their position (they will have the right to be accompanied by a trades union representative or other colleague). Following the meeting, the DO will consider the full facts of the case before reaching a decision. They will then write a report which clearly demonstrates how the decision was reached and with recommendations that management or HR may want to take forward which may include disciplinary action. The DO will check with the HR PA and line management, as appropriate, that any recommendations are workable.

7. The report will be sent to the HR PA to take forward any recommendations. A copy of the report will also be sent to you. If the complaint involves allegations about a colleague's behaviour, the HR PA will arrange for the colleague to be informed of the DO's decision.

ANNEX F

THE ROLE OF THE INVESTIGATING OFFICER

1. The role of the Investigating Officer (IO) is to investigate impartially the facts and evidence of the matter, detailing the findings in a report. The report will be used by the Deciding Officer (DO). It is not the IO's role to make judgements or recommendations about their findings: that is the role of the DO.
2. The HR Professional Adviser (HR PA) will consider whether the case needs an IO – this will depend on the circumstances of the case. The HR PA will meet initially with the IO to go over the current known facts of the case.

Neutrality and Impartiality

3. The IO will approach the investigation in a fair and impartial manner. They will avoid making snap judgements and assumptions and will be expected to put their own values or personal views on the case to one side. All parties involved will be listened to and given a fair opportunity to put forward an explanation of the matters relating to the complaint.

Conducting Interviews

4. The IO will meet the parties to the complaint at a convenient office location. The IO will take into account any mobility or other special needs when arranging meetings. It is acceptable to verify the odd fact by phone or in writing subsequent to a meeting but the IO may also arrange follow-up meetings once others have been interviewed. To meet timescales, the meetings may be arranged by telephone. The individual raising the complaint will be interviewed first. This is to ensure the exact nature of the complaint is clear and to confirm any witnesses' details.
5. If the complaint or issue involves an individual being accused of unacceptable behaviour, then the individual will be given details of the complaint in advance of meeting the IO. They, and also all others interviewed, will be reminded of the support their trades union, the Welfare Officer and the EAP can give and that they have the right to be accompanied by a colleague or trades union representative at the interview.
6. During the process the IO will record all action taken and all contact with the parties involved. The IO may also be accompanied by a note-taker. The IO will ask questions and encourage comments that are pertinent to the matter being investigated. Interviewees will be given the opportunity to add anything they consider relevant to the case at the end of the interview. Interviewees will be given notes of the meeting to agree and sign. Internal witnesses are expected to attend an interview called by an IO but external parties are under no obligation to attend.

The Report

7. A full report, which will include statements, interview notes and other evidence, will be passed to the HR PA who will provide a copy to the DO and the individual raising the complaint. If the complaint is about another individual's behaviour, then that individual can be provided with a copy of the report.

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APPEALS²

Commented [u24]: Why is appeals process in separate annex – should be part of main policy?

Introduction

1. This common appeals process is used where all other review processes have been exhausted and is the **final** internal recourse to have a decision reconsidered.

Process

2. If you consider that the decision reached in your case is unsatisfactory (i.e. you consider the deciding authority's decision to be flawed, unfair or unreasonable) you may appeal against the decision.

3. You must make your appeal **within 10 working days** of receiving the relevant decision letter. All appeals should: be made in writing; set out clearly the grounds for the appeal; be sent to the HR Professional Adviser handling the case. As the appeal is by way of a review, the panel will not consider any new complaints but may consider new information relevant to your original case.

4. The appeal will be considered by an appeal panel consisting of 3 people: – the Chair who will be least one pay range above the previous Deciding Officer(s) or Panel/Board Chair; an HR Professional who will have had no previous involvement in your case; and another staff member from outside the HR area identified from a pool of trained SG staff. The membership of the panel will be confirmed to you in writing and no panel members will be from your line management chain.

Note – the HR Professional will be part of the panel as an independent member who will view the information presented to the panel objectively. They will not be representing HR but will bring their experience of good practice, precedent and employment legislation. Also, the aim will be to ensure the panel is of mixed gender.

5. The panel will be set up within 10 working days of receiving your written appeal and you will be advised in writing of a day, time and place for the hearing. You will be given 5 working days notice of the appeal Hearing date. You may be accompanied to the hearing by a trades union official or colleague.

The Role of the Panel

6. The panel will:

- give you the opportunity to present your case orally (and present any new relevant information);

² Separate arrangements apply for non-SG Main employees - HR Help can advise.

- consider your oral and written representations and all other papers relating to the case to determine whether:

- the procedures were correctly and fairly applied;
- there were reasonable grounds to justify the finding; and
- the final decision reached was fair and appropriate.

7. The Panel may also suspend the hearing pending further investigation and/or the provision of new evidence and reconvene when the investigation has been concluded with any resulting evidence provided to all appropriate parties.

8. If the Panel is hearing a complaint about a colleague's behaviour, it may refer the papers to HR to consider disciplinary action.

The Panel's Decision

9. In concluding its deliberations the Panel may:

- overturn the original decision*. It may also, as appropriate to the nature of the case, recommend action to be taken after necessary consultation with management and HR;
- uphold the original decision; or
- uphold the decision but determine that the penalty or solution imposed is inappropriate. In such circumstances the panel will look to the original policy and guidance to help them determine an appropriate alternative penalty/outcome.

*However, it will not substitute its own views for those of the original Deciding Officer(s).

10. You will be given the panel's decision normally within 5 working days of the panel hearing. If this is not possible, you will be given an explanation for the delay and told when you can expect a response.

11. The panel's decision is final and the last stage in the internal process. However, in line with the provisions of the [Civil Service Management Code](#) you may appeal to the Civil Service Appeal Board³ against:

- refusal to allow participation in political activities.
- forfeiture of superannuation.
- dismissal and early retirement.
- the level of compensation, including non payment of compensation, if you are dismissed on grounds of inefficiency because poor health has affected your attendance or performance (this does not apply to medical retirement).

³ This does not apply to non-civil servants.

What if a complaint has been made against me?

Commented [u25]: Support / assistance to be flagged more prominently in policy.

1. If you are accused of unacceptable behaviour it is natural that you may feel upset and defensive. Examples of unacceptable behaviour and the standards can be found at [Annex A](#). This may help you understand why the complaint has been raised. It is important that you remain calm and act in a fair and reasonable manner. You will be expected to work with colleagues to try to reach a satisfactory outcome to any complaint and seek support if you need it. Support and advice is available from Human Resources, your trades union, the Welfare Officer and the Employee Assistance Programme.
2. If a colleague approaches you on an informal basis to discuss their concern, you should try to understand the nature of their complaint, how your actions may have been perceived and consider ways in which you can work with him or her to resolve the matter.
3. The colleague may choose to report the matter to their manager on an informal basis. The manager may contact you or your manager to try to find ways of resolving the matter early. The manager may wish to speak to you in order to gain your view on the matter. The manager may suggest ways of resolving the matter and you can also put forward suggestions. It is in your own interests to be open to any such suggestions since they may lead to early resolution of the issue and help to preserve the working relationship. On reflection, even if you don't think you behaved inappropriately but understand that a different perception of your behaviour has caused upset, you might wish to consider apologising.
4. Mediation may be considered as an alternative to pursuing a formal resolution. This is entirely voluntary and both parties need to agree to do this. Information on mediation can be found at [Annex B](#).
5. If the alleged conduct is very serious, it may result in an investigation as a disciplinary matter rather than being dealt with under the Fairness at Work procedure. If a complaint is raised by someone from another organisation, it would also be investigated under the [disciplinary procedure](#).
6. Should it not be possible to resolve the matter informally the complainant may then raise the matter formally. If this happens, you will be interviewed to provide a statement. At the interview, you may be accompanied by your trades union representative or other colleague. This action is about considering the allegation and it does not necessarily follow that any formal action will be taken against you.
7. You will be kept informed of the progress of the grievance, its outcome and the reason for the particular outcome. You can have a copy of the investigation report if you wish.
8. At the formal stage, a Deciding Officer (DO) is appointed to review all the relevant information of a complaint and make a decision. This may include a meeting with you at

which you can be accompanied by your trades union representative or other colleague. They will provide a report which clearly demonstrates how that decision has been reached. HR will arrange for you to be advised of the decision. If the DO upholds the complaint, they may include recommendations which could include consideration of disciplinary action that HR would arrange to take forward. The disciplinary process includes a hearing at which you can be accompanied by your trade union or a colleague and has an avenue for appeal. You will be given a full opportunity to present your case. Other recommendations might include training, awareness raising, suggestions for development or reviewing local management arrangements and behaviours in the unit concerned. The DO might also recommend that a transfer of either party is the best option if it is detrimental for you to continue working together. Any such action will be considered by HR and line management in discussion with the individual raising the grievance.

9. Where it is clear that an allegation is malicious, this will be viewed seriously and dealt with under the disciplinary procedures. If you have been the subject of a malicious allegation, you will be given support by an HR Professional Adviser.

10. A record of the complaint will only be kept on your file if a penalty is imposed under any disciplinary action.