

## **FAIRNESS AT WORK POLICY AND PROCEDURES**

- 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**.

### 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.

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?

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.

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.

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.

#### **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”).

#### **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, your 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.

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)**

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**.

**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 HRP:

- 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 HRP 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 HRP 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 trades 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 trades 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



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)**

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

## **8. HR Action – Integration and Review**

### **Integration**

8.1 Once the formal (or appeal) process is complete, an HRP 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 HRP 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 HRP 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.

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