

From: [Redacted] <[Redacted]@gov.scot>
Sent: [Redacted]
To: [Redacted] <[Redacted]@gov.scot>
Subject: [Redacted]

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From: [Redacted - Head of Branch, People Directorate 1] <[Redacted - Head of Branch, People Directorate 1]@gov.scot>
Sent: 02 November 2018 11:40
To: Richards N (Nicola) <[Redacted]@gov.scot>
Subject: FW: Complaints against Ministers and Fairness at Work next steps

From: [Redacted - Head of Branch, People Directorate 2]
Sent: 31 January 2018 15:30
To: Richards N (Nicola) <[Redacted]@gov.scot>; Mackinnon J (Judith) <[Redacted]@gov.scot>
Cc: [Redacted - Head of Branch, People Directorate 1] <[Redacted - Head of Branch, People Directorate 1]@gov.scot>; [Redacted] <[Redacted]@gov.scot>
Subject: FW: Complaints against Ministers and Fairness at Work next steps

Nicky / Judith

Just for info. Correspondence with Unions. We've also highlighted that [Redacted] will be taking a bigger role in this process as I will be stepping away from some of the day to day on this to focus on social security matters.

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



From: [Redacted - Head of Branch, People Directorate 2]
Sent: 31 January 2018 15:29
To: [Redacted]
Cc: [Redacted]; [Redacted - Head of Branch, People Directorate 1]
Subject: Complaints against Ministers and Fairness at Work next steps

All,

Thank you all for your further contributions last week, which are captured in the below. As agreed, we intend to upload the refreshed content following stage one of the review, including the refreshed policy for raising complaints against Ministers. As agreed, we will refer to this in the existing Fairness at Work policy content at present, but the intention for stage 2 will be to expand upon this, and to separate the existing Fairness at Work policy into distinct grievance, bullying and harassment and ministerial complaints policies / process, which all complement one another.

I have updated the amended text for 6.1.1 of Fairness at Work and the Route Map, following discussion at your meeting last week to make it clear that serious and exceptional issues are not simply sexual harassment or cases involving line managers.

Nicky is briefing Directors and intention is for the content to be uploaded this week and a communication to Directors to go out on Thursday, directing them to the refreshed policy content and providing an update on stage 2 of the review.

We will be in touch to set up further meetings to continue the discussion. [Redacted] and I have been giving some thought to the next stage, and [Redacted] (copied) will be more heavily involved in this process going forward to boost our resource in dealing with this matter.

[Redacted - Head of Branch, People Directorate 2]

Updates for Saltire:

Fairness at Work Changes:

Ministerial Process – to be uploaded as Stand alone word document



Handling of
harassment co...

This is the final (clean) version which incorporates the above changes and which went to, and was signed off by FM and which we discussed last week. This will be uploaded onto Saltire as a separate word doc.

Amend Existing FAW Saltire Page (additions in red)

The Existing FAW saltire page will need to be updated to reflect the fact that a separate process is in place for cases relating to sexual harassment as follows:

Fairness at Work policy

We are committed to providing workplaces free from discrimination where all colleagues are treated fairly.

The Fairness at Work (FAW) policy applies to all Scottish Government staff, senior civil servants and associated bodies.

The policy aims to prevent colleagues suffering because of:

- bullying, harassment or victimisation
- equality and diversity issues
- relations with colleagues
- unfair working methods, conditions and workloads (including health and safety)
- reorganisation of work or other organisational change

Everyone has a part to play in reporting incidents and supporting colleagues, regardless of whether or not the perceived harassment, victimisation, discrimination or bullying is unintentional.

Anyone who witnesses unacceptable behaviour, as well as anyone who experiences it directly, has a responsibility to raise concerns.

The policy doesn't apply where there are more appropriate policies or procedures in place, such as attendance management or performance management.

A separate process applies in relation to harassment complaints against current and former Ministers [\[link\]](#)

Download the [Fairness at Work policy](#).

You can also read our guide to [standards of behaviour](#).

Amend Existing Fairness at Work Policy and link to new process:

Finally, the Fairness at Work Policy itself (word doc on saltire) will be amended to incorporate the minor changes to process, and to refer back to the new ministerial process which has been agreed (see changes in red below)

Section 6.1 of FAW will be amended as follows to reflect the new fast-track process:

- 6.1.1 **Most** 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 (such as **serious instances**, for example complaints relating to sexual harassment), and/or **exceptional cases** where you feel you cannot do this, for example if the subject of the complaint is your line manager **where this should be raised with a more senior manager**. In these circumstances, please contact the HR Help for advice for general fairness at work issues, and [Redacted - Head of Branch, People Directorate 3] or [Redacted - Head of Branch, People Directorate 4] for complaints related to sexual harassment.

A specific **Route Map (link)** is available to assist if you wish to make a complaint relating to sexual harassment.

Route Map will be uploaded as below:



Section 6.5.5 will be amended to refer to the new Ministerial process for harassment cases:

Complaints about Ministers (for SG Main employees only) **Note: For complaints relating to harassment, a separate process applies and can be found [link]**

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.

Summary of Conduct and Behaviours / Civil Service Code – to be uploaded onto Saltire – NB – we need to consider where this is best positioned but think we should just replace the existing standards of behaviour doc with this doc, and also reference this in the civil service code pages.



Summary of
conduct and la...



[Redacted - Head of Branch, People Directorate 2]

SP SGTHC

First Minister

HANDLING OF HARASSMENT COMPLAINTS

You wrote to me on 22 November regarding the review of the Scottish Government's policies and processes on sexual harassment. As we have discussed, we have a shared commitment to ensure that the arrangements that are in place are effective and contribute to the work already in hand to promote an inclusive and respectful culture across the Scottish Government.

Your letter, in particular, asked me to consider as part of the review ways in which any concerns raised by staff about the conduct of current or former Ministers could be addressed. I have developed, for your agreement, a process for how complaints of harassment, including sexual harassment, might be taken forward. This is set out in the annex.

This new process aims to ensure that I am able to fulfil my duty of care to staff by taking the necessary steps to support the member of staff and to put in train any further action that might be required within the civil service as a result of the issues raised. As far as current Ministers are concerned, the process will also assist you in taking forward your responsibilities under the Scottish Ministerial Code. It also sets out how complaints against former Ministers will be handled. Given that the process engages the responsibility of the First Minister for the application of the Ministerial Code, we will seek approval for the ongoing application of the process on each occasion the Ministerial Code is updated.

I should be grateful to learn if you are content to adopt the process set out in the annex. As you have requested, I am happy to update Cabinet about the outcome of review whenever you wish.

LE

December 2017

Handling of Harassment Complaints Involving Current or Former Ministers

Initial contact

1. An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative. If the approach is made through these routes it should be escalated to the Director of People for consideration and so that sources of support can be offered to the individual.

2. At this early point it will be important to support the individual to consider how best to resolve the issue. At this point options available to the staff member include:

2.1 Asking that their concern is acknowledged but without further action being taken, in order to recognise their experience and to assist our organisational commitment to help prevent the circumstances arising again (although, as set out at note (ii) below, the SG may require to take follow up action where deemed necessary in light of the concern being raised). The details of the concern, along with the staff member's decision not to proceed with a formal complaint, will be held on file within People Directorate; or

2.2 Indicating that they wish to make a formal complaint.

NOTE: At all times the staff member is free to make a complaint directly to the police – see Para 19 onwards for further information.

Formal complaints against current Scottish Government Ministers

3. The Scottish Ministerial Code¹ sets out the general principle that Scottish Ministers are expected to behave in a way that upholds the highest standards of propriety, including in their interactions with Civil Servants. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions to Parliament and the public. The First Minister, however, has ultimate responsibility to judge the standards of behaviour expected of a Minister, including in their interactions with civil servants, and of the appropriate consequences of a breach of those standards. Ministers can only remain in office for so long as they retain the First Minister's confidence.

Role of Permanent Secretary

4. Alongside Ministerial responsibilities under the Code, the Scottish Government as an employer has a duty of care to staff. The Permanent Secretary exercises day to day responsibility for civil servants working for the Scottish Administration. Where a formal complaint of harassment is raised about the conduct of a current Minister, the Permanent Secretary will inform the First Minister. In line with her responsibilities under the Ministerial Code, the First Minister has instructed the Permanent Secretary that complaints of this nature should be investigated using the process set out at paragraphs 6-8, and to provide a report of the facts as

¹ <https://beta.gov.scot/publications/scottish-ministerial-code-2016-edition/>

provided by those concerned, or to establish if it is possible to seek a mutually agreed resolution between the parties involved.

5. In situations relating to complaints against a current Minister, the Permanent Secretary will also take appropriate steps to (1) ensure that the staff member making such a complaint receives the necessary support throughout the process (including support after conclusion), and (2) put in train any further action that might be required within the civil service as a result of the issues raised by any complaint.

6. In the event that a formal complaint of harassment is received against a current Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the issue. That person will have had no prior involvement with any aspect of the matter being raised. The role of the senior officer will be to undertake an impartial collection of facts from the parties involved, including the Minister, the member of staff and any witnesses, and prepare a report for the Permanent Secretary. The report will also be shared with the staff member and the Minister.

7. The Permanent Secretary will inform the First Minister of the outcome. It will be for the First Minister to decide the appropriate response to any complaint about a Minister in light of the report produced following the investigation. The Permanent Secretary will also consider the report and take any actions required within the civil service to protect staff, including staff wellbeing, and ensure a positive working environment.

8. Current Ministers will be expected to cooperate fully with such an investigation. If the Minister declines to co-operate with the process the matter will be investigated as far as possible without their involvement. They will be advised of the complaint against them and the outcome of the investigation undertaken. This will be recorded within the SG. The First Minister will be advised where a current Minister has declined to cooperate and will be responsible for any further action.

9. Where a formal complaint of harassment is raised against the First Minister, the Permanent Secretary will instigate an investigation as set out above in line with the employer's duty of care to its staff and to assist the First Minister in discharging their responsibilities under the Code. The Permanent Secretary may draw upon the Independent Advisers on the Ministerial Code (the Rt. Hon. Dame Elish Angiolini QC DBE or James Hamilton) to reach a view on whether the First Minister has been in breach of the Code. The Permanent Secretary will take any action necessary to protect staff.

Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member.

11. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.

12. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in their capacity as Party Leader, of the outcome when the investigation is complete. In their capacity as First Minister, they will wish to take steps to review practice to ensure the highest standards of behaviour within their current Administration.

13. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party leader of the outcome of the investigation and any action taken.

14. The final report will be provided to the staff member and the former Minister.

15. If the former Minister **declines to co-operate** with the process the matter will be investigated as far as possible without their involvement. They will be advised of the complaint against them and the outcome of any investigation undertaken. This will be recorded within the SG.

16. The First Minister will be advised where a current or former Minister who is a member of the Party of the current Administration has declined to cooperate and will be responsible for any further action.

17. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party Leader of the outcome of the investigation and that the former Minister has declined to cooperate. It will be the responsibility of the Party to consider any further action.

COMPLAINTS AND ENGAGEMENT WITH POLICE

18. At all times the staff member is free to make a complaint directly to the Police. SG will co-operate fully with any Police investigation or criminal proceedings and may continue to investigate the complaint without awaiting the outcome of criminal proceedings. We will continue to offer support throughout to the staff member.

19. Throughout the process, all available steps will be taken to support the staff member and ensure they are protected from any harmful behaviour. However, if at

any point it becomes apparent to the SG that criminal behaviour might have occurred the SG may bring the matter directly to the attention of the Police. Also, if it becomes apparent that the matter being raised is part of a wider pattern of behaviour it may be necessary for the SG to consider involving the Police in light of the information provided. Should either of these steps be necessary the staff member will be advised and supported throughout.

Scottish Government
December 2017

Sexual Harassment: Routemap

A complaint may be raised by staff in a variety of ways, including but not limited to:

Your line manager or senior manager

Directly to HR

To a Trade Union

To a nominated officer if whistleblowing

For ministerial issues – to senior manager, HR or TUs

To First Minister or Permanent Secretary

External routes:

Directly to police

To external party (EAP, for example)

HR triage / advise on appropriate policy

Subject of complaint:

If complaint is about a current employee

If complaint is about a contractor/temp member of staff

If complaint is about a former employee

If complaint is about a current Minister (NB sep procedure for FM – contact HR)

If complaint is about a former Minister

Roles / responsibilities:

HR will formally investigate any allegations of sexual harassment as a matter of serious misconduct under the conduct and discipline policy, irrespective of how it is raised

HR will support member of staff and alert contractor/temp employer to investigate through their procedures.

HR will support member of staff and fact-find with a view to discharging duty of care towards employee.

Permanent secretary will notify FM. Director of People will designate Senior Civil Servant to investigate and prepare report for Perm Sec. Permanent Secretary provides report to FM for action. FM to take decision as to sanction and Perm Sec to consider how to support staff

Permanent Secretary will notify FM. Director of People will designate Senior Civil Servant to investigate and prepare report for Perm Sec. Perm Sec will consider report and make recommendations.

Potential Outcomes if founded:

Action through conduct and discipline policy up to and including dismissal

Removal of contractor/temporary member of staff

Member of staff supported; duty of care discharged and wider organisational issues flagged.

Sanctions under ministerial code up to removal from office.

FM to take action if former minister within party, if not in party, relevant Party leader to be informed of outcome and take action.

Before raising a complaint, you may wish to discuss your situation with the above people to help you decide what you want to do next and what you what to happen. All complaints raised will be taken seriously and investigated appropriately, ensuring that duty of care towards staff is fulfilled but that **both parties are supported**. Where allegations are made by external parties (former employees or other) investigation will be carried out so far as is practicable in line with general approach above. If you witness inappropriate conduct, but are not affected personally you can raise your concerns through the individuals mentioned above.

Summary of conduct and behaviour standards

1. Standards of conduct
2. Good practice
3. Advice on reporting and support available

Page 1 – Summary of conduct and behaviour standards

Standards of conduct for SG employees are set out in:

- [Civil Service Code](#): our values and expectations as civil servants
- [Fairness at Work](#): how we treat other other with dignity and respect
- [SG terms of appointment](#): what the organisation can expect of us, and us of it

Expectations

The Scottish Government's [People Strategy](#) sets out the expectations everyone should have of each other and the organisation.

It asks us to take responsibility for own behaviours and help colleagues to see the impact of theirs.

- This can only happen if everyone is aware of the standards of behaviour expected of them, and can discuss what we expect from each other in our teams.
- You should be treated fairly and with respect at all times and be recognised for your contribution – and do the same to others
- You'll be given appropriate support to help you do your job well in an environment where mistakes are treated fairly and as opportunities for learning – and you'll support others and learn from experience and feedback
- You work in an environment which ensures the health and well-being of staff – and develop a work environment that supports that of others
- Everyone has a duty to support colleagues who feel they have been harassed, victimised, discriminated against or bullied and encourage them to seek help.

Everyone has a duty to report any incidents of unacceptable behaviour, [fraud](#), [security breaches](#) or perceived [wrongdoing and conflict with the Civil Service Code](#).

There is no single definition of unacceptable behaviour. The key is that actions or comments are viewed as unacceptable to the recipient. How someone behaves online is considered to be equivalent to face-to-face behaviour.

Addressing unacceptable behaviour

The potential for mediation to resolve issues before formal action becomes necessary are set out in the [Fairness at Work procedures](#).

The actions and potential sanctions that apply when standards aren't met are set out in the [Disciplinary policy and procedures](#).

Our work related performance is dealt with under [less than effective performance](#).

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Page 2 - Good practice

These lists are for illustrative purposes only: they are not exhaustive.

Upholding the Civil Service Code

We are all expected to act in line with the [Civil Service Code](#) values of honesty, impartiality, integrity and objectivity in fulfilling our official duties.

Examples of unacceptable behaviour include:

- misuse of official position, for example by using information acquired in the course of one's official duties to further one's private interests or those of others;
- deceiving or knowingly misleading Ministers, Parliament, or others;
- being influenced by improper pressure from others or the prospect of personal gain;
- ignoring inconvenient facts or relevant considerations when providing advice or making decisions;
- frustrating the implementation of policies once decisions are taken, by declining to take, or abstaining from, actions which flow from those decisions;
- acting in a way that unjustifiably favours or discriminates against particular individuals or interests;
- acting in a way that is determined by party political considerations, or using official resources for party political purposes;
- allowing one's personal political views to determine any advice you give or your actions.

Treating each other with dignity and respect

Every individual should feel confident in bringing their whole self to work, working in a productive environment that shows respect for, and is comfortable with, our differences in thought or background or experience.

Our ways of working and work spaces should be fair and inclusive and ensure equal opportunity for all – as set out in our [Fairness at Work](#) policy.

Examples of unacceptable behaviour include:

General:

- refusing to work with, ignoring or deliberately isolating or excluding colleagues, including from social events
- excessive, or inappropriate, detailed supervision
- lack of supervision which leaves the individual feeling unsupported or demoralised
- discouraging someone from taking advantage of relevant and suitable training on grounds of irrelevant difference
- undermining an individual's authority
- taking credit for others' work
- reducing a job to tasks inconsistent with a person's grade, skills and abilities

- not taking the blame when things go wrong
- unfair work allocation
- unjustifiably blocking promotion or training opportunities
- withholding information, ostracising, marginalising, spreading rumours, etc

Verbal:

- inappropriate comments about an individual's religious or other beliefs, or other personal circumstances, for example their trade union involvement
- leering and suggestive gestures, comments or innuendo
- unwelcome comments or jokes
- use of offensive language, name-calling, taunts, jokes, mockery
- inappropriate questions about someone's personal or sex life
- unwanted or derogatory comments about dress or appearance
- aggression, threats, shouting, swearing, abuse
- humiliating, ridiculing or belittling efforts in front of others or in private
- gossip and speculation about an individual's personal life, for example their sexual orientation

Physical:

- inappropriate physical contact, advances or propositions
- attacks, abuse or intimidation

Making assumptions:

- about an individual's personal or social life
- about their physical or mental capability
- about age-related retirement
- about the existence of a non-visible impairment
- about ability or competence

Meeting our conditions of appointment

We are all expected to comply with the policies and procedures that underpin our [SG terms of appointment](#) – from our attendance, to our performance and our conduct.

Example of unacceptable behaviour include:

- late for work
- failure to report an absence by 10am
- misuse of the flexi system
- antisocial behaviour, for example smoking in a non-smoking area, being rude to a member of the public
- refusing to obey a legitimate instruction
- incapacity under the influence of alcohol, or use/possession of illegal drugs while at work or acting in an official capacity
- deliberate damage to our property
- insubordination
- negligence that causes financial loss, damage to property or injury to people

- [misuse of our computer equipment/systems](#)
- [breaches of security](#)
- theft
- fraud
- deliberate falsification of records

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Page 3 – Advice on reporting and support available

Everyone has a duty to report any incidents of unacceptable behaviour.

It is best to raise any issues as early as possible to minimise the potential for negative personal impact and reputational harm.

You should raise issues with your manager in the first instance, or more senior management in your business area if you can't discuss it with your manager.

There are points of contact and supporting guidance to ensure there is an escalation and reporting route available to everyone.

Civil Service Code

- Contact a Nominated Officer, or HR Help who can direct you to an HR Professional Adviser
- Read the raising a concern under the [Civil Service Code & whistleblowing guidance](#)

Fairness at Work

- Contact HR Help who can direct you to our Diversity & Inclusion and Professional Advisers
- Read the [Fairness at Work](#) guidance

Terms and Conditions of Appointment

- Contact HR Help who can direct you to our HR Policy and Professional Advisers
- Read the raising a concern under [Fairness at Work](#) guidance

Sexual harassment

- Contact our HR Professional Adviser Team Leaders, [Redacted - Head of Branch, People Directorate 4] or [Redacted - Head of Branch, People Directorate 3]

Support

The [Employee Assistance Programme](#) is open 24 hours a day, 365 days a year. Contact the in-house Counselling and Wellbeing Officer [Redacted]

Trade union members can seek support from their union representative.