

---

[Redacted]

---

**From:** [Head of Branch, People Directorate 1] <[Redacted]@gov.scot>  
**Sent:** 02 November 2018 11:42  
**To:** Richards N (Nicola) <[Redacted]@gov.scot>  
**Subject:** FW: Ministerial complaints / Fairness at Work - next steps

---

**From:** [Head of Branch, People Directorate 2]  
**Sent:** 19 January 2018 15:08  
**To:** [Redacted] <[Redacted]@gov.scot>  
**Cc:** [Head of Branch, People Directorate 1] <[Redacted]@gov.scot>; Mackinnon J (Judith) <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>; [Redacted] <[Redacted]@gov.scot>  
**Subject:** Ministerial complaints / Fairness at Work - next steps

[Redacted]

---

Cc [Redacted] / [Redacted] / [Redacted]

---

Hope you are well. Further to our discussion earlier today I agreed to send on an update on Fairness at Work ahead of our meeting next Wednesday to discuss.

As discussed our intent next Wednesday is to take you through how the changes you proposed to the new ministerial process prior to Christmas were incorporated, sign off on the minor changes to fairness at work and agree next steps in relation to the work to separate out Fairness at Work into distinct Grievance and Bullying / Harassment policies, and take forward the next stage of engagement on the ministerial process (to consider how complaints other than complaints in relation to harassment would be picked up and make further recommendations to FM)

As discussed, we also have a meeting with national union reps next Tuesday (Strategic Forum) so we intend to also update them on direction of travel and that we will be coming to unions regarding changes to Ministerial Code also in due course.

On the basis that FM is now content with the interim approach, following our discussion we can arrange to brief senior management here with a view to getting this up on to Saltire, along with the route map (attached) we had developed and the minor changes to Fairness at Work we had identified below to finalise the first stage of the review process.

I've set out the different elements below in the hope this is helpful in preparing for the meeting next week but happy as ever to discuss.

Thanks,

[Head of Branch, People Directorate 2]

### **Next Steps:**

### **Fairness at work – Sexual Harassment minor changes - awaiting union comments and will get uploaded to Saltire once finalised**

- We proposed slight amends to existing FAW to reflect the new fast-track procedure for allegations of sexual harassment, include the route map and provide refreshed saltire content on behaviours

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

#### **Amended Section**

- 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 complaints relating to sexual harassment), and/or where you feel you cannot do this, if the subject of the complaint is your line manager, for example. In these circumstances, please contact the [HR Help](#) for advice for general fairness at work issues, and [Head of Branch, People Directorate 3] x [Redacted] or [Head of Branch, People Directorate 4] x [Redacted] ([Redacted]) 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.

#### **Previous Section:**

- 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 [Redacted] direct.

## Route Map To finalise

A final draft route map was provided – this will be embedded in the Fairness at Work policy and referred to in the amended section above. I've updated this to reflect new ministerial process and removed refs to Gillian. NB – further to comments received today (19<sup>th</sup>) I need to make a final minor change to this to remove refs to the parliamentary ombudsman – I'll do this ahead of Wednesday.



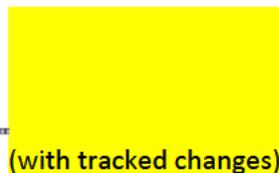
Attachment 1 below

## Ministerial Process – interim approach and next steps

To discuss version signed off by FM with unions at meeting following our meeting on 24<sup>th</sup>. The Version attached reflects union comments and the approach we took before Christmas to incorporate them. As discussed, I note you are keen to build on this and extend it to concerns other than harassment concerns, but this will form stage 2 of review so we can discuss this on 24<sup>th</sup>.



2018 01 08  
Complaints App...



Attachment 2 below



Handling of  
harassment co...

Attachment 3 below

This is the final (clean) version which incorporates the above changes and which went to, and was signed off by FM

## Standards of Behaviour / Civil Service Code refresh To remove refs to Gillian and get uploaded to Saltire. To discuss potential for training around behaviours.

As indicated at previous meeting, we've created new saltire content to make the standards of behaviour more prominent, and put this alongside the civil service code content. A draft of this is attached. We'll be liaising with the Saltire team to get this uploaded on to saltire once we are content.



Summary of  
conduct and the...

Attachment 4 below

**Wider review of FAW (and links to Conduct)**

To separate FAW into distinct Grievance and Bullying / Harrassment policy and separate ministerial process as well as links to need for conduct review also. To discuss timeline for this at our meeting next week.



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

[Redacted]

SP SGTHC

# 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. Referral to Parliamentary ombudsman

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

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.

**Handling of Harassment Complaints Involving Current or Former Ministers**

**Commented [u1]:** Preserved refs to harassment

**Initial contact**

1. An individual may choose to raise ~~an issue~~ ~~an issue~~ involving a current or former Minister through a number of mechanisms. These may include ~~a trusted~~ ~~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.

**Commented [u2]:** Can we be consistent with the language of fairness at work i.e raise a grievance

**Commented [u3]:** [Head of Branch, People Directorate 2] - Reject change to complaint Reference to "Issue maintained"

**Commented [u4]:** I think we are all trusted!

**Commented [u5]:** [Head of Branch, People Directorate 2] - Accept change to delete trusted

**Commented [u6]:** [Head of Branch, People Directorate 2] - Accept change to insert "of your choosing"

2. ~~At this early point it will be important to support the individual to consider the outcome they are seeking how best to resolve their grievance issue.~~ At this point ~~the options available to the staff member might want to consider possible resolutions such as:~~ ~~s choices~~ include:

**Commented [u7]:** [Head of Branch, People Directorate 2] - Textual change for reading consistency.

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~~

**Commented [u8]:** Who's file, how do we ensure that patterns are monitored (and confidentiality is respected)?

**Commented [u9]:** [Head of Branch, People Directorate 2] - These are valid points. It will be held on the HR file and normal process around data protection / handling will be respected. Reference to "people directorate" included here.

**Commented [u10]:** This feels awfully vague. There must be a process for review. Is it held by HR professionals (DD People Advice)?

**Commented [u11]:** [Head of Branch, People Directorate 2] - As above - reference to people directorate included

**Commented [u12]:** under the Fairness at Work policy.

**Commented [u13]:** [Head of Branch, People Directorate 2] - No -- formal complaint will follow process set out below.

**Formatted:** Normal, Indent: Left: 0 cm, First line: 0 cm

**Commented [u14]:** [Head of Branch, People Directorate 2] - Included this text to pick up on comments later in document to make sure route to police is clearly noted at outset.

**Commented [u15]:** Expand upon what this means

**Commented [u16]:** [Head of Branch, People Directorate 2] - Have inserted a footnote / link to Ministerial code

**Commented [u17]:** [Head of Branch, People Directorate 2] - Included this wording to reflect on discussion at meeting.

**Commented [u18]:** [Head of Branch, People Directorate 2] - Reflected on union changes to wording wording and noted FM's responsibility to judge

**Commented [u19]:** Drop sentence? Not necessary, and as we see at Westminster just now, not always the case!

**Commented [u20]:** [Head of Branch, People Directorate 2] - have maintained this as it Sets our expectation so have maintained this.

**Formatted:** No underline

**Formatted:** Font: Bold

**Commented [u21]:** As discussed, include something here confirming Perm Sec's role?

**Commented [u22]:** [Head of Branch, People Directorate 2] - Inserted heading and some further explanatory wording

2.2 Indicating that they wish to make a formal complaint.

2.2 **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 Code<sup>1</sup> 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 is, however, ~~the ultimate~~ has ultimate responsibility to judge ~~of~~ 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

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

Administration. Where a formal complaint of harassment 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 provided by those concerned, or to establish if it is possible to seek a mutually agreed resolution between the parties involved.

Commented [u23]: [Head of Branch, People Directorate 2] - Preserved refs to harassment

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) ~~including consideration of aftercare~~, 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.

Commented [u24]: [Head of Branch, People Directorate 2] - Included this wording to reflect union comments.

6. In the event that a formal complaint of harassment of harassment is received against a current Minister, the Director of People will designate a senior civil servant as the ~~senior officer~~ 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.

Commented [u25]: [Head of Branch, People Directorate 2] - Preserved refs to harassment.

Commented [u26]: Isn't this the role of the senior officer in this case? If so, then why not imbed it in existing procedures and language?

Commented [u27]: [Head of Branch, People Directorate 2] - This sits apart from the ordinary Fairness at Work processes however the role of an

"Investigating Officer" is commonly understood so accept change here.

Commented [u28]: Is this just collecting facts or is it aligning/ relating facts to the code of conduct? Need to clarify further, including the likely engagement with the complainant.

Commented [u29]: [Head of Branch, People Directorate 2] - No, it is collecting facts – this is consistent with the role of an IO under the separate fairness at work process.

7. The Permanent Secretary will inform the First Minister of the outcome of the investigation. 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, wellbeing and ensure a positive working environment.

Commented [u30]: Included reference to member of staff for clarity

Commented [u31]: [Head of Branch, People Directorate 2] - it isn't just wellbeing, it is to protect staff in exercising the legal duty of care the FM has

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. The Permanent Secretary will take any action necessary to protect staff.

Commented [u32]: As we discussed, helpful to see potential response of Perm Sec bolstered here to better reassure staff.

Commented [u33]: [Head of Branch, People Directorate 2] - As discussed, we don't want to specify actions which might be taken – better to leave this broad as it enables perm sec to take all and any action required.

9. Where a formal complaint of harassment of harassment s 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.

Commented [u34]: [Head of Branch, People Directorate 2] - Need to keep this language in – it is making it clear that our expectation is that they will cooperate.

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm+ Indent at: 0 cm

Commented [u35]: Preserved reference to harassment

### Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the senior Investigating Officer to deal with the issue/complaint/grievance. That person will have had no prior involvement with any aspect of the matter being raised. The role of the senior Investigating Officer will be to undertake an impartial collection of facts, from including written statements from the complainant 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.

**Commented [u36]:** [Head of Branch, People Directorate 2] Again, referred to Investigating officer role as commonly understood.

**Commented [u37]:** [Head of Branch, People Directorate 2] Complaint rather than grievance

**Commented [u38]:** [Head of Branch, People Directorate 2]

- As above. Investigating Officer role. **Commented [u39]:** Conduct interviews?

**Commented [u40]:** [Head of Branch, People Directorate 2] Amended to make process the same as above

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 may wish 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.

**Commented [u41]:** "should/will be invited to"?

**Commented [u42]:** [Head of Branch, People Directorate 2] - changed to will

**Commented [u43]:** Should refer back to the process in 6-7

**Commented [u44]:** [Head of Branch, People Directorate 2] - I've compared and made sure this is comparable

**Commented [u45]:** Should the complainant be informed at this stage? Right of reply recourse especially if new "facts" emerge.

**Commented [u46]:** JM - noted to share with the staff member

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.

**Commented [u47]:** Parties have their own processes so next steps will vary, but this feels very loose.

**Commented [u48]:** Is there scope for referral to parliamentary ombudsman / commissioner for ethical standards here?

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

**Commented [u49]:** As above

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.

**Commented [u50]:** [Head of Branch, People Directorate 2] - to consider ombudsman points at later date with input from cab secretariat.

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.

**NOTE: 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 including aftercare 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. SG as employer will not refer specific cases to the police without the knowledge / consent of the employee. Should either of these steps be necessary the staff member will be advised and supported throughout.

Scottish Government  
December 2017

**Commented [u51]:** Rather than notes at the end, shouldn't the legal points on potentially more serious matters be in their own section, or at least advice provided at the outset advising staff to contact the police if merited.

**Commented [u52]:** I've left this here for the moment but put a reference at the top so staff know where it is

**Formatted:** Justified

**Commented [u53]:** Picking up on Judith's comments re: engagement with Police Scotland. Need to pick up specifically with James H etc and include.

**Commented [u54]:** What is HR's role?

**Commented [u55]:** Actually, we cannot notify the police if the victim/staff member doesn't want us to. The best we could do is pass on some intelligence to the police, especially if there is a pattern of behaviour becoming apparent and SG thinks others could be at risk.

**Commented [u56]:** See baove.

**Commented [u57]:** Do we include link to whistleblowing too?

**Commented [u58]:** Not in this context as whistleblowing isn't appropriate for an individual HR matter, unless there are concerns of a wider nature. The whistleblowing policy refers.

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 Code<sup>1</sup> 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

---

<sup>1</sup> <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

## 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](#).

**Commented [1]:** Assume this is an amalgamation of the key points on the People Strategy?

**Commented [u2]:** You'll want to read this against the people strategy and make sure there isn't anything missing or out of alignment

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](#).

SP  
SGHTC

## 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

SP

SGHTC

### 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 raising a concern under [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, [Head of Branch, People Directorate 4] [Redacted] or [Head of Branch, People Directorate 3] (ext. [Redacted])
- Text Gillian Russell, Director, Safer Communities, confidentially on [Redacted]

#### 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.