

ANNEX A

Core Directorates of the Scottish Government:

- Director-General Communities
- Director-General Constitution and External Affairs
- Director-General Economy
- Director-General Education and Justice
- Director-General Health and Social Care
- Director-General Corporate
- Director-General Scottish Exchequer



Grievance Guidance Handout for Investigating Officer's

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Your role

1.1 When issues arise in the workplace it's important to ensure that they are dealt with quickly, fairly and consistently. It is therefore sometimes necessary to establish more information about the issues through investigation. Your role as IO, when a formal grievance has been raised, is to look for and gather evidence that supports what is raised in a grievance and evidence that contradicts it. Given the impact on everyone involved when an investigation is required it is essential that this is treated as a priority, blocking out time to conduct and write up your investigation is therefore a must.

1.2 Your task is to establish insofar as is possible the facts of the grievance and report them to the People Advice and Wellbeing Case Officer (PAWCO). You must therefore:

- Create your investigation plan (**annex A**).

Establish the facts in relation to the grievance. You need to initially interview the person who has raised the grievance.

- **Gather as much detail as possible** about what the grievance is about and what is alleged to have happened that has led to the grievance being raised, when, where, who was involved, whether there were any witnesses, what the circumstances were etc; Ascertain what evidence there is to support whether what is detailed in the grievance has taken place . **Do not make any judgements or assumptions or draw conclusions.** The information may not always be clear-cut. For instance, if there are two opposing statements, you may have to provide two conflicting versions of events. In these circumstances the decision maker(s) may have to reach a conclusion on the balance of probabilities and it is not part of your role to get involved with that. It is therefore crucial that the investigation and the report are sufficiently thorough to aid the decision maker to come to an informed decision.
- Submit your written report to the PAWCO.

All of these stages are set out in more detail in the following guidance, along with templates for you to use.

Planning the investigation

2.1 An appropriate manager will meet with you to commission your investigation by discussing with you what the investigation is required to examine. This meeting will discuss the issue and the grievance policy.

2.2 Once you have all the preliminary information from the appropriate manager you should develop your investigation plan. (example template **annex A**). At this stage a provisional timescale will need to be established, this will be informed by the complexity of the case including for example how many witnesses will need to be interviewed – and this may change as the investigation progresses. You are expected to share your provisional plan with the appropriate manager so they are aware of the timescales.

2.3 Should it not be possible to complete the investigation within the agreed timescale, you should keep the appropriate manager the individual who has raised the grievance and any individual against whom the grievance is raised advised and provide an alternative completion date. Any delay and the reasons for this should be recorded (a timeline is useful to refer to). Always plan the next step of the investigation and put arrangements in place (such as deadlines for agreeing minutes of meetings and invites to meetings) to ensure there are no unnecessary delays.

2.4 We suggest that you draft the report and prepare the facts for submission throughout the period of the investigation and do not leave it all to the end.

Take care when booking meetings using the electronic calendar. Others can read the content of the email invitation! Remember to use sensitivity markings (use Private) on emails and meeting requests.

2.5 Where a grievance has been raised against an individual the appropriate line manager will write to the individual and confirm that you are conducting the investigation.

Gather information before meeting with the individual or witnesses

3.1 You must attempt to gather all relevant facts and include it in your report. If any information is not available you should explain in the report why it has not been included. Facts can include witness statements but may also include other relevant information such as emails, internet and social media activity etc. The investigation, and the report produced, must be sufficient, fair, even handed and factual.

The following steps need to happen:

- The first person you should meet in a grievance investigation is the person who has raised the grievance.
- You need to write to the person in advance of the interview to give them notice – usually 5 working days. **Annex B** provides a template letter which should be used when setting up a meeting. Note that all staff to be interviewed may opt to be accompanied by a colleague or trade union representative (if a member). Where an individual elects to submit a written response before the meeting you should familiarise yourself with the contents prior to the meeting.
- You should prepare key questions in advance of the interview, ensuring the questions remain within the scope of your investigation.
- When you meet you will need to take a note of their statement, you might find it helpful to make arrangements to have a note-taker present at the meeting.

Conducting the investigation meeting

4.1 An investigation meeting is simply an opportunity for an investigator to interview someone who is involved in, or has information on, the matter under investigation. If

you are interviewing the employee who has raised the grievance, this is an opportunity for them to explain the grievance from their perspective.

4.2 At the start of the meeting either :

- Confirm that the individual is aware that they can be accompanied and it is their choice to attend alone **OR**
- Explain that the companion is welcome to contribute to the meeting but if you ask a direct question the companion should not answer on the party's behalf.

4.3 Inform them::

- Of the purpose of the investigation
- Your role is to gather facts relating to the issue and pull together a report. Confirm you are impartial and not here to make any judgement.
- You will take a note of the meeting and send it to them and that they are required to review the note and return a copy (agree a date for issuing the note and a date for returning the signed copy). Inform them that they have the opportunity to add any comments or suggested amendments (if you don't agree the amendments they should be held alongside the original version)
- While individuals will not be forced to answer any question, as employees involved in an internal grievance matter, then their co-operation with the employer is expected. However, if they refuse to answer a question then their response will be noted for the record along with any reasons given.
- The meeting is being held in confidence and the content of the interview must be kept confidential.
- Witnesses are protected from being victimised for providing evidence (witness statements will be shared with the employee with whom the complaint is against.) Audio recordings are not permitted unless it considered a reasonable adjustment. You should ensure that the employee understands the rules and confirm that he/she is not making any recordings. This should be included in the note.

4.4 When interviewing you should, as often as possible, use open questions. We would **strongly** advise that you draw up a list of questions in advance of the meeting to ensure that you gather all the relevant facts. Potential open questions include:

- Please take me through these events in your own words giving as much detail as possible
- Why did you do/say that?
- Did you speak to your manager about that? How did they respond?
- When you say she was aggressive what exactly do you mean by aggressive?
- Who were the witnesses to the occurrence that you are aware of, including anyone who may have heard but not seen what happened?
- What else do I need to know about what happened?

Closed questions can be useful to establish a point of fact e.g. time, date, names of witnesses

4.5 Ask follow up questions to focus in on or clarify the point you are attempting to understand. Challenge evidence/statements made to ensure you understand correctly what is being said and query inconsistencies. You may need to use closed questions at this stage (e.g. Was this the normal procedure? Did you see this clearly?)

If you have to ask a difficult question, for example the details of a verbal or physical harassment incident – tell the complainant, that you are to ask a difficult question. Explain the reason the detail is required and ask carefully and sensitively.

4.6 You should avoid leading questions. Listen carefully to what is said, you should:

- remain focused on the witness and the reasons for the meeting
- concentrate on exactly what the witness says
- be open minded to anything the witness may say
- acknowledge the witness' viewpoint
- listen for points that the interviewee avoids covering or giving details on
- allow the witness to finish their point before moving the interview on or asking a further question
- use silence where appropriate to encourage the interviewee to elaborate on point

4.7 It may be useful to use diagrams to enable the interviewee to demonstrate statements more clearly or other documents such as emails or print outs to support statements.

4.8 Finally, you should read back to the individual your understanding of their statement to ensure you have accurately noted their version of events. **Annex C** provides a template for writing up a note of the meeting.

Final statement

4.9 Remind the witness that you will write up a note of the meeting and email it to them within an agreed timeline of the meeting. They will have the opportunity to add any comments or suggest amendments (if you don't agree you may have to append the amendments beside the original version) to the copy he/she returns . The note of the meeting should make clear whether these amendments are (1) something additional which was not mentioned at the meeting, (2) something not recorded accurately from the meeting (3) something recorded accurately from the meeting but on reflection that he/she wishes to change in the document. In the cases of 1 and 2 it should be clear that these changes were made following the meeting. Any additional note should be appended to the main notes.

4.10 They then need to email you back with the statement with any **tracked changes** or to confirm they are content with the statement.

Anonymous witness statements

4.11 If a witness has a justifiable/valid reason for not wanting to be named then it may be possible for them to provide an anonymous statement. This should be avoided whenever possible and you should speak to your PAWCO if someone requests

anonymity. If agreed to, an anonymous witness statement should be taken in the normal way but the name of the witness removed from the copy of the statement which is forwarded to the individual under investigation. If the information from this witness is likely to be significant you will wish to explain to the witness why their evidence is important. When taking a statement from someone who wishes to remain anonymous you should remind the witness that while their evidence may be redacted and anonymised it will form part of the evidence under consideration and, despite best efforts, it may still be possible to ascertain their identity from the statement.

4.12 If taking a witness statement from someone who wishes to remain anonymous always try to seek further corroborative evidence to support the statement.

External witnesses

4.13 If a witness is someone from outside the organisation who is not prepared or is unable to attend the meeting try and get a written statement from him or her and consider sending them written questions to respond to.

When to seek further guidance from HR

5.1 If there is any information to suggest that the individual is being unfairly singled out/victimised.

5.2 If there is no real evidence to support the grievance.

5.3 It is important that you are sufficiently independent to carry out the investigation. If at any stage you are in any doubt consult HR.

5.4 Consider if you need to do further research – for example, do you need to look into a legal issue raised? Do you need some guidance on the nature of the complaint? Liaise with your PAWCO on these. For example if you consider that a complaint may be more serious than you initially thought, or has been framed, check with other policies; ACAS; advisory bodies. Your PAWCO will be able to advise.

Ill health

5.5 Contact the PAWCO if the employee is not well and unable to meet or if there is any suggestion that anything that is the subject of the grievance could be explained by a medical condition or illness. The PAWCO will consider referring the individual to Occupational Health for advice which will be taken into consideration before deciding how to proceed.

Draft Report (Annex D)

6.1 You should write the report in the third party tense – avoid “I” as this suggests it’s a personal view – use “the Investigating officer interviewed....”. 1. Be aware that you may be required in the future to speak to your report at an employment tribunal, so write it with that in mind.

6.2 Your report should be structured as follows:

- Introduction – including the issue that has been investigated, the timing and nature of grievance raised and the investigation methods used.
- Which SG policy the investigation has been considered under
- Index of parties involved and relationships between parties.
- Summary of allegations.
- For each point of the allegation, a summary of the factual evidence/witness statement. You should not include any personal opinion you have formed.
- How the investigation was conducted
- What evidence was collected including who you interviewed and why. You may wish to comment on the credibility of the witness but must explain why you have reached that conclusion. Also record potential witnesses and why they were not recorded.
- Whether any pieces of evidence could not be collected and why
- Summary of findings . Cross reference evidence to illustrate if is supported by other evidence e.g. witness statements or not
- What facts have been established
- Mitigating factors considered
- Annexes –
 - full copies of allegation and statements taken in the course of the investigation, any comments/amendments submitted and any response you have made to these
 - copies of any other evidence gathered (e.g. copies of e-mails, notes, letters, video or audio tapes)

6.3 Ensure you do not make any statements that are assumptions or judgements—your report must be purely factual and must not have a conclusion or any recommendation as to whether there is a case to answer.

6.4 Prepare a timeline.

ANNEX A

Investigation Plan	
Investigator	
Terms of reference	
Provisional time-frame	
Policies and procedures to review and follow	
Issues that need to be explored/clarified	
Sources of evidence to be collected	
Persons to be interviewed	
Investigation meetings further arrangements (When/where/notes to be taken by)	
Persons to supply own statement	
Collection to have been completed by _____	
Further considerations	

**ANNEX B INVITATION TO WITNESS/INDIVIDUAL TO ATTEND MEETING WITH
IO**

Dear

**INVESTIGATION INTO POSSIBLE GRIEVANCE– SPECIFY NATURE OF
ALLEGATION**

I have been appointed as the Investigating Officer into the «nature of grievance» [against «Name ».]

I am writing to confirm our meeting on «date» at «time» to take place in «room and location».

The purpose of this meeting is to allow me to establish the facts of this matter and I will be questioning you about the grievance raised. You may, if you wish, prepare a written statement in advance of this meeting for my consideration.

As this is a formal investigatory meeting in accordance with the SG Grievance procedures you have the right to be accompanied at this meeting by a colleague (i.e. a SG employee) or, if you are a member, a trade union representative. If you will be accompanied at this meeting, can you please confirm the name and position of your companion by «date». Can I also ask that any written statement and/or other documentary evidence is submitted to me for consideration by «date»

Add for witnesses: Please note that a copy of any statement you give will be provided to the individual under investigation and possibly their union representative.

I would like to remind you that our People Advice and Wellbeing Officer and our Employee Assistance Programme are available to offer you support during this process. You can contact your People Advice and Wellbeing Counsellor,

0131 244 XXXX or the EAP on XXXX. If you are a trade union member, your trade union representative may also be able to offer advice and assistance.

In the meantime, if I can be of any assistance, please do not hesitate to contact me directly.

Yours sincerely

NAME

ANNEX C TEMPLATE FOR STATEMENT TAKEN BY
INVESTIGATING OFFICER

Meeting with *name of /witness/individual, date*

location

Investigation into grievance specify allegation

PRESENT:

Name, (Investigating Officer)

Name, (Individual under investigation/Witness)

Name (Companion if appropriate)Name, (Note Taker)

INTRODUCTION:

1. I introduced myself and my role as the Investigating Officer (IO) into the grievance *specify allegation*.
2. I advised *name* that there were a number of formal issues of which I was required to advise *her/him* before I proceeded to take *her/his* statement:
 - I noted *she/he* has been accompanied by *name*. The role of the companion is to support *her/him* and seek clarification of any points. Their role is not to answer questions on *her/his* behalf. OR
I noted *she/he* has chosen not to be accompanied.
 - I said that the matter is being handled as a formal grievance in accordance with the SG Grievance procedures and that my role is to investigate the grievance.
 - I said that for the purposes of an grievance investigation the term employee is the term applied to the person the complaint has been raised against.
 - I said that my role was to gather the facts relating to the grievance raised and pull together a report which fairly and objectively accounts for all relevant evidence. My role would be impartial and I would not draw any conclusions or express any opinion in my report. My report would be passed to *name of People Advice and Wellbeing Case Officer (PAWCO)*, who will appoint a Deciding Officer.
 - I said I hoped to complete my investigation at the earliest opportunity but this depended on the number of interviews to be undertaken and also how quickly the parties return the agreed statements to me.
 - I advised *name* that I might need to speak to *her/him* again, depending on the outcome of my other interviews. In addition, when my report is submitted, the PAWCO may ask for further clarification and this might also require me to meet *her/him* again.
 - **(For the person against whom grievance is raised)** I said that he/she could identify witnesses and that I would decide whether they were relevant witnesses if so I would arrange to meet with them to take statements.

- I advised that I would produce a note of this meeting and I would ask *name* to sign and return a copy. The signed version would constitute *her/his* "statement". *Name* would have the opportunity to add any comments or make amendments to the copy *she/he* returns. If I did not agree with any of these comments then I would record this and all of this documentation would be submitted with my report, including my original notes of the meeting.
- **Add if taking statement from witness:** I advised *name* that copies of all interview statements would be copied to *name of the employee*-The employee would have the opportunity to comment on them and would be advised to retain them in confidence subject to taking advice about their content.
- I said that the interview would be structured around the grievance that has been raised.
- At the end of the interview I explained that *name* would have the opportunity to add anything else *she/he* considers relevant to the case.
- I said that I am looking for the facts – what happened, when, what was said, was anyone else present. The purpose is to allow me to record the facts as fully as possible for the PAWCO.]
- Employee: I explained that if *she/he* did not wish to answer any questions then *she/he* would not be forced to do so. *Her/his* response will, however, be noted for the record along with any reasons given for it. **Witnesses:** I explained that witnesses are expected to co-operate with the investigation (though they would not be forced to answer questions). They are expected to reply truthfully and not knowingly withhold information that is relevant to the investigation.
- I advised that this meeting was being held in confidence and the information gathered would be used only for the purposes of the investigation or any legal process that follows. It was important that the content of this interview must be kept confidential and that *she/he* must not discuss or otherwise pass on any information relating to the investigation that *she/he* has gained during the interview. The investigation itself must not be discussed with any other party, other than one from whom advice is being taken.
- 3. I asked *name* if there were any further points about the procedure *she/he* would like clarified. *She/he* confirmed there were none or comment as appropriate.

BACKGROUND

4. Before I turned attention to the actual incidents I confirmed the following details:
5. *Name of witness/employee, grade in the location. Document relationship with respondent/witnesses.*

COMPLAINT

6. I then addressed each allegation in turn:

Summarise each allegation and record response of witness/employee.

SUMMARY

7. I asked *name* if *she/he* wished to raise any further matters in connection with the grievance as any issues *she/he* raises at a later date cannot be considered as part of this investigation and will have to be raised separately

CLOSE

8. I confirmed I would produce a note of the interview and ask *her/him* to sign it. *She/he* would have the opportunity to make any comments or additions if *she/he* did not feel that my record was a true and accurate reflection of the meeting. If this did occur and I disagreed with any of the comments/amendments I would note this in the file and *she/he* would be informed of this. In this case I would retain my notes of the original meeting. Any additional notes would be appended to the original notes. I hoped to issue the note on *date* and asked *name* to return the note with any comments by *date*.

9. I thanked *name* for *her/his* time

Name

Title

date

Signed:

NAME

Date:

ANNEX D TEMPLATE FOR INVESTIGATING OFFICER'S REPORT

RESTRICTED STAFF AND MANAGEMENT

INVESTIGATING OFFICER'S REPORT GRIEVANCE

« Nature of allegation »

Respondent Employee: « name, grade, job title/branch/division »

Investigating Officer: « name, grade, job title/branch/division »

Witness(es): « name, grade, job title/branch/division »

Potential witnesses: « name, grade, job title/branch/division » and why they were not interviewed.

1. Background

Provide a brief summary of grievance, including when the grievance was raised, when you, as Investigating Officer, were appointed,. If appropriate refer to the reporting relationships between the employee and any witnesses.

Confirm the investigation is being conducted under grievance policy

Make reference to relevant documents, e.g. original grievance submitted

2. Allegations

Provide a clear list of the allegations, extracted from the relevant documents and statements.

3. Evidence gathered against each allegation

Reproduce the allegations listed above and under each one, provide a summary of the evidence gathered in the following format:

Allegation

Statements (summary of relevant evidence gathered)

- relevant witnesses
- employee
- any additional factual evidence collected e.g. documents, CCTV video, records.

Repeat this format until you have covered all of the allegations. Cross reference to draw out where there is supporting evidence or no evidence to support. Remember - no conclusions or further summaries should be made.

4. Annexes

Attach documentary evidence of statements and any additional evidence gathered in the course of your investigation e.g. copies of emails, t&s claims etc. Show as appendices to the report i.e.

- Appendix A
- Appendix B
- Appendix C

« Name»

« Job title»

« Date»

Scenario

Grievance

About Mary

- Mary is a C1 who has recently returned to work from maternity leave. Prior to her maternity leave she was on TRS to C2 and the TRS stopped a month before she commenced her maternity leave. At the time she wasn't entirely happy about the TRS ending but she didn't say anything because she didn't want to be upset. On her return to work she reduced her hours and now works 3 days per week.
- Mary is friends with Yvonne who is also a C1 and works in the same division. Yvonne is full time.
- Mary has found out that during her maternity leave Yvonne was given TRS to C2 covering the same role as she had covered.
- It is a small division with good team spirit. Mary does not wish to make a fuss but is upset that her friend had been given TRS and did not tell her nor did Ron, her line manager. She decided to speak to Ron to find out the reasons why she was not given the opportunity to continue on TRS.
- At the meeting her line manager told her that it was not the same role as she had been covering. He explained that the business priorities had changed and the role was different. Mary was disappointed with this response because she knew that was not true and that Yvonne was doing the exact same role. Ron was short with Mary and made it clear to her the matter was not up for discussion. Mary decided to speak to Yvonne to find out more.
- Yvonne was very apologetic to Mary and said she didn't tell her she was on TRS because she was embarrassed and felt bad about it. However, she also said it was an opportunity that she didn't want to refuse. Mary asked Yvonne whether the role had changed and she explained that a couple of the business priorities had changed but overall it was the same role. Yvonne told her that the post was to be advertised in the next couple of weeks.
- Mary was angry and felt that Ron had ended her TRS because she was pregnant and that otherwise it would have continued. She now feels that she has been put in a really difficult position. She doesn't want to jeopardise her friendship with Yvonne but is annoyed with her because she was not honest. Should the post be advertised Mary feels that she would now be disadvantaged if she were to apply.
- Mary sought advice from her People Advice and Wellbeing Manager who referred her to the Grievance policy. The policy encourages staff to resolve grievances on an informal basis by raising their complaint with the individual in the first instance. Mary considers that she has tried to resolve the matter informally without success. She was asked to consider mediation. Mary felt that there would be no point in mediation because she felt that Ron would not engage. She felt as a point of principal that the matter should be dealt with formally because potentially she may miss the chance of a promotion and this had a financial implication at a time when she needed it most. She also didn't want this to happen to someone else. Mary decided to submit a formal grievance to HR.

In your groups

Discuss the scenario and decide what you need to do to prepare and carry out the investigation.

Some things to consider

- What witnesses do you consider are relevant and should be interviewed?
- In what order will you speak to witnesses?
- What evidence do you need to obtain?
- Who should you seek advice from?
- What policy/legislation should you refer to?
- What challenges do you anticipate?

Investigating Officer Training

SGLD
Employment Law Branch

August 2019

Our role in the Scottish Government

We advise the Scottish Government and its agencies on:

- Employment law
- Industrial relations
- Public appointments

We represent the Scottish Ministers at the Employment Tribunal.

The Employment Law Team

The names of the team have been removed due to the Data Protection Act 2018.

Acas Code of Practice on Disciplinary and Grievance Procedures

- Statutory [Code](#), supplemented by non-statutory [Guide](#).
- Employers should always deal with issues promptly, **fairly** and consistently. This includes investigations.
- Employment Tribunal must take the Code into account when considering relevant cases. Compensation can be increased by up to 25% for unreasonable failure to comply with the Code.
- Key principles are incorporated into SG's Disciplinary procedure and Fairness at Work.

Independence

The Investigating Officer must be:

- independent from the matter being investigated
- wholly impartial.

Conflict of interest?

Impartiality

- The employee being investigated must be dealt with in a fair and reasonable manner.
- Acas Guide: It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against.
- Keep language of report neutral: avoid adversarial terms such as 'respondent' or 'accused'.

Confidentiality

- Respect confidentiality of all witnesses
- Data Protection Policy applies
- Store documents appropriately
- Carefully plan interviews
- Inform witnesses not to discuss investigation with other employees or third parties.

Conducting the Investigation: why this matters

- Investigation should stand up to scrutiny by the Employment Tribunal.
- **Test:** Was there a reasonable investigation?
- PAW team's role to direct and advise IO to ensure the 'reasonable investigation' standard is met
- What is reasonable will depend on the circumstances
- Delay = unfairness.

Conducting the Investigation: how much detail?

- Career changing or very serious cases: increased level of thoroughness required to meet standard of reasonable investigation.
- Allegations of criminal conduct: very careful investigation needed. Should police be informed?

Conducting the Investigation: dealing with concerns and resistance

- Witness concerns
- Requests for anonymity
- Refusal to participate
- Evasion and untruthfulness
- External witnesses

Conducting the Investigation: health and disability

Take into account the individual's needs and circumstances:

- is witness well enough to participate?
- are adjustments needed?
- is Occupational Health advice needed?

Conducting the Investigation: interaction with other processes

- Investigation may be temporarily suspended to deal with a grievance but it will be a case specific decision.
- If disciplinary and grievance matters are related, it may be appropriate to deal with both issues concurrently.

The Investigation Report



Report must be:

- completed without delay
- impartial
- wholly fact based
- neutral

Report should present all the relevant evidence and facts clearly. It should enable the PAW team and the Deciding Officer to make informed decisions.

The Investigation Report: Dos and Don'ts



Do:

- cover, as far as possible, everything in scope of investigation remit.
- set out a summary of main points
- draw attention to important evidence, anomalies or concerns about evidence from relevant witnesses
- Include relevant documents and witness statements as annexes.

Don't:

- reach conclusions on misconduct/grievance
- make any recommendations
- include obviously irrelevant material

After the Investigation Report

Further investigation may be needed to assist decision taker.

The Employment Tribunal:

- the Report as evidence
- the IO as witness
- SGLD support
- criminal cases

Sexual Harassment

- SG's obligations under Equality Act
- New procedures in place since 2018
- Support for all witnesses
- 3rd parties and ministers
- Respondent's rights
- Reputational damage
- Evidence and witnesses
- Risks of legal challenge.