

Scottish Government

Guidance to support the procedure for making a formal complaint about a Minister or former Minister

Introduction

This guidance is to support all parties involved in the process of a formal complaint being made about a Minister's or former Minister's behaviour towards civil servants in the course of their duties. The complaint may also encompass other issues alongside the issues raised about a Minister or former Minister, for example related actions of civil servants, or other colleagues.

When a complaint is made under this procedure, it is likely that all parties including the complainer(s) and the subject(s) of the complaint will feel deeply affected. Our aim is to make the process human, by adhering to our values of integrity and kindness. Issues raised as part of this procedure will be handled sensitively, and with empathy and understanding, and the process will be inclusive, transparent and fair.

All employees of the Scottish Government are expected to act in accordance with our [standards of behaviour, our organisational values](#), and the Civil Service Code. All employees involved in the implementation of this procedure will therefore adhere to these standards in their interactions with all parties. All parties involved can expect to experience regular, timely and clear communication on the progress of the complaint at each stage.

Guidance for the complainer

1. Resolving a complaint informally

Concerns within the working relationship between civil servants and Ministers can sometime arise and it is important that staff feel able to raise these in confidence and that they will be dealt with fairly and sensitively. Some of these issues will be relatively minor and can be dealt with through discussion, without the need for any further action. Other issues will require support to resolve informally and in some cases formal investigation and resolution will be required, either because the parties are unable to agree or because of the severity of the issue.

The emphasis should always be on [using early intervention to address concerns](#) wherever possible. Practical guidance and support to line managers, staff and their Trades Union representatives is available when looking to resolve issues that arise. Many complaints and disagreements at work can be resolved through discussion and with support of line managers, and ensuring issues are handled sensitively, with

empathy and understanding. This may involve contacting the Minister on behalf of the member of staff, outlining the problem and suggesting a possible solution (the aim will be to achieve conciliation). Mediation or facilitated conversations can also be offered as possible methods of resolving the matter but we recognise that this may not always be appropriate and both parties would need to agree voluntarily to take this route.

There will be occasions where an informal resolution is not possible or appropriate, and on those occasions it is important to recognise that parties (including the complainer and the subject of complaint) are likely to feel deeply affected and to ensure that interventions support all parties involved in resolving issues promptly, transparently, fairly and consistently.

All concerns, regardless of whether they are raised formally or informally, will be treated seriously. You can contact the [Propriety and Ethics team](#) for a discussion in confidence, to talk through the options. If informal resolution has been unsuccessful, or if you believe it is not possible for resolving the issue with a Minister's or former Minister's behaviour, you have the option of raising the issue formally for external investigation and decision.

At this point, if the member of staff has requested to remain anonymous, they should be made aware of how their concern will be handled. There may be limitations about what action can be taken because there may not be enough information to carry out a full and fair investigation. Where possible, staff requesting to remain anonymous should be provided with appropriate support to raise a named complaint under the formal procedure.

2. Supporting your wellbeing

You may find it helpful to talk to someone in confidence at any time during this process. It can be extremely stressful and worrying, and talking to someone can help you to understand your thoughts and feelings, provide objective feedback, and help you prepare for and participate fully in any meetings or exchanges relating to your complaint.

There is a range of support in place for you to use, which we can tailor to your individual needs. If at any time you wish to discuss your wellbeing or welfare needs, please contact your line manager or the Propriety and Ethics team, who will be able to advise you, signposting you to internal or external people or services as appropriate.

Other sources of support include:

- [HR People Advice and Wellbeing Counsellors](#) is an internal service offering free confidential support, advice and counselling to colleagues on a variety of personal and work related issues

- [HR People Advice and Wellbeing team](#) provide confidential support and signposting around personal and work-related concerns. They also provide advice and guidance to colleagues and managers on all areas of health and wellbeing
- [Employee Assistance Service](#) is available 24 hours a day, 365 days a year online and on free phone 0800 032 9849. It provides professional support and guidance to colleagues employed by the Scottish Government who are experiencing emotional, practical, health and social problems from trained welfare and counselling practitioners
- [Council for Scottish Government Unions \(CSGU\)](#) provides support to their union members
- Specialist support: There may be occasions where specialist support is required from an external service, for example trauma support services or specialist psychological services. The Keil Centre offer specialist counselling services provided by a team of clinical psychologists. Please speak to the support contact to discuss how to access this or other specialist services.

3. Making a formal complaint

If you decide to make a formal complaint, you can do so using the formal complaints procedure. We are aware that this might be stressful given what you have experienced. There are a number of people you can talk with to discuss the process and test whether or not you want to proceed with making a formal complaint, depending on who you feel most comfortable with. This could be a trusted colleague, your line manager, a Trades Union representative, or a member of the People Directorate team.

The complaint will be considered formal when it is submitted in writing to the Propriety and Ethics mailbox [P and E Formal Complaints](#).

You should include the following information;

- what the complaint is, giving specific instances and details of any witnesses to the behaviour;
- what, if anything, has been done to informally resolve the issue if appropriate
- how you would like to see matters resolved.

You will receive an acknowledgment of receipt from the Scottish Government nominated contact (hereafter referred to as 'the contact') for the complaint. This will normally be a member of the Propriety and Ethics Team, but could also be a staff member from another team, for example People Directorate. The contact will have had no prior involvement with any aspect of the matter being raised, and no close association with any of the parties.

This person will be a point of contact for you throughout the process and will be able to help you to access a range of support services as required. They can liaise with the People Directorate team to put you in contact with a wellbeing support person, if this is in line with your wishes.

The contact will manage the initial assessment of your complaint and will ensure that the appropriate elements of the complaint are taken forward under this procedure. Their focus will be to assist and advise you, whilst handling the issues raised sensitively, with empathy and understanding.

If the contact assesses that the complaint cannot be investigated under this procedure, you will be notified of this and the reasons behind the decision, and a meeting will be arranged to discuss this with you. The contact will answer any questions you may have about the decision, and will explore suggestions for alternative forms of resolution with you. This may include increased support from your line manager, arranging coaching or mentoring, or other ideas for appropriate courses of action.

Where the complaint is assessed as being in scope of the procedure and is capable of being investigated, the contact will inform you of this and will also let you know when they have informed the Minister or former Minister (or anyone else who is the subject of your complaint). They will tell you the name of the external decision maker to whom your case has been assigned. The decision maker will then make contact with you directly to confirm that they have received your complaint. They may wish to have an initial discussion with you to hear from you first-hand how you would wish for the case to be resolved, although they may consider they have enough information at this point. They will then commission an external investigator to establish the facts of the case and compile a report for their review.

4. What to expect: Investigation stage

The external investigator will contact you to invite you to an initial meeting to discuss the facts of your complaint. You have the right to be accompanied by a colleague or a Trades Union representative at the meeting for support. Please discuss this with the contact and agree this before the meeting takes place.

The investigator will ask you questions and a note-taker will be present to ensure that there is an accurate record of the conversation. They might also ask you to provide any relevant records or documents which help to establish the facts of the case, for example e-mails, diary records or any notes you may have taken at the time. For more information on the investigation process, please see the guidance for the investigator on page 9 of this document.

You might be asked by the investigator to provide details of any witnesses to the issues within your complaint. The investigator may then decide to approach any witnesses as appropriate and ask them to provide a statement.

The investigator will also meet with the subject(s) of the complaint to gather evidence in a similar way, as well as deciding whether to talk to any witnesses they suggest, as the investigator deems appropriate. You will not have to meet with the subject of the complaint and there will be no opportunity for the subject of the complaint to question you directly about the content of your complaint.

The investigation will be carried out as set out in the procedure. The investigation report will then be submitted to the decision maker within 30 working days of being commissioned. If this timescale cannot be met, the contact will ensure that you are kept informed of this, and will discuss with you the actions that can be taken to meet the target for completion.

5. What to expect: Decision making stage

The decision maker's role is to review the facts that have been established, make findings where possible on any contested facts, decide whether the complaint is upheld and make recommendations as to how the issue could be improved or resolved, for example how the duty of care to you as an employee can continue to be met. Their role is not to make a judgement on the conduct of the Minister or former Minister, or to decide how the issues identified should be taken forward.

The decision maker will have had no prior involvement in the case and no close association with any of the parties involved. They will have declared that they have no conflict of interest related to the complaint.

The external decision maker will review the investigation report and ensure that a satisfactory investigation has been concluded. You will receive a copy of the report, and the decision maker will meet with you to discuss the content. A note taker will be present at the meeting to record the discussion. You will have at least five working days' notice of this meeting, and you have the right to bring a colleague or Trades Union representative for support if you wish. You will have the opportunity to comment and give your views on the investigation report, and your views will be captured and recorded.

Following the meeting with you, the decision maker will decide whether to uphold your complaint and will make recommendations on what action, if any, should be taken. The decision maker will notify you of their decision in writing, and include a copy of the notes of the meeting held. They will also notify the subject of the complaint and the contact of the decision and the recommendations.

6. What to expect: Appeal stage

If you are unsatisfied with the decision, you can appeal within 10 working days of being notified of the decision. You should submit the written appeal to the Propriety

and Ethics team using this address: [P and E Formal Complaints](#). The written appeal will clearly set out the grounds for appeal, the outcome sought, and provide any supporting information and evidence.

The subject of the complaint may also appeal the decision.

A new decision maker will be assigned to review the case by the Propriety and Ethics team. The new decision maker will have had no prior involvement with any aspect of the matter being raised, and no close association with any of the parties, including the investigator and original decision-maker. They will have declared no conflict of interest relating to the complaint.

The new decision maker will keep you informed throughout the period of review of their progress and likely timescale for completion. They may decide to meet with the original decision maker and investigator to clarify how the process was conducted. They may also invite you to attend a further meeting or to provide further evidence to enable them to conclude their review. On conclusion of the review, the new decision-maker will provide a response to you in writing.

There may be some circumstances where new information or evidence comes to light which could have an impact on the recommendations and findings of the initial investigation. In this case it may be necessary to conduct a re-hearing of the case. In these circumstances, the contact will co-ordinate the process and keep you informed throughout.

7. Confidentiality

All parties involved in the process are required to maintain confidentiality at all times—including when the process has concluded. Any breaches in confidentiality by any of the parties involved will be treated seriously and where appropriate, considered under the Discipline Policy and Procedure.

If you are unsure of what information you can share and who you can talk to, please ask the contact to advise you on this. You can talk to your Trades Union representative or anyone directly involved in the process as they will already be party to the information relating to the complaint.

8. Where parties involved may be the victim of a crime

If the decision maker believes that you have raised matters which should be notified to the police, they will inform the contact, who will discuss with you whether you want to report it to the police. They will also ensure that appropriate support and access to specialist advice is provided. No pressure will be put on you to make any particular decision; if you do not want to tell the police yourself, then you do not have to.

The SG will, wherever possible, respect your wishes, however there may be occasions where the SG may bring the matter directly to the attention of the police.

Before taking this step, the SG will discuss this with you and provide appropriate support. The SG will continue to offer you support throughout.

At all times during this procedure you are free to make a complaint directly to the police. The contact will support you to do this.

9. Workplace Adjustments

If you wish to request any workplace adjustments to allow you to engage fully with the process, you should raise this with the contact who will liaise with the appropriate teams to facilitate this.

10. Record of meetings

A draft note of each meeting will be provided to you for comments and a note of any meetings you attend will be provided to you. Records will be protectively marked, kept securely, and handled in line with the SG record management policy in compliance with the requirements of data protection legislation. Where agreement cannot be reached on suggested changes, your changes will be left in the note of the meeting in the form of tracked changes.

Usually there will be no audio or video recordings made at any stage by any party in the process. However should you require any workplace adjustments during any part of the procedure, including during meetings, please discuss this with the contact.

Guidance for Witnesses

If you are identified as a witness during the course of an investigation under this procedure, you will receive an invitation to submit a statement which responds to the terms of reference. This will typically be to confirm your recollection of facts surrounding issues raised by the complainant. If you feel you have been wrongly identified and have no relevant information to offer, you may make a statement to this effect and submit this to the investigator.

You may be called to a meeting with the external investigator, with a note taker present, to answer any supplementary questions about events you have witnessed, dates, times, or other relevant evidence. You will have an opportunity to review the notes taken during the discussion to ensure that the content is accurate. If you are asked to submit a statement, you can contact the investigator or the contact to discuss what information is required or clarify any issues relating to the statement before submitting it.

If you are an employee who has been asked to attend a meeting as a witness, you have the right to be accompanied by a colleague or a Trades Union representative.

Please speak to the contact to arrange this. If you are a witness and not an employee, please ask the contact for advice if you would like to be accompanied.

We recognise that providing evidence in an investigation into a formal complaint about a Minister or former Minister has the potential to be a stressful experience. A range of support services are available to you as outlined earlier in this guidance. Please ask the contact if you would like further support to access help if you need it.

Guidance for the Scottish Government nominated contact (the contact)

The Scottish Government nominated contact (referred to in this guidance as ‘the contact’) is the person in the Scottish Government who is responsible for the overall co-ordination of the handling of the complaint. This will include receiving the complaint, appointing the external decision maker and investigator, co-ordinating support for any of the parties as required, retaining a record of the complaint, and ensuring that the procedure is followed in taking forward any further actions as appropriate.

The contact will normally be a member of the Propriety and Ethics team, unless the circumstances of the complaint mean that an alternative person is identified from another directorate. The contact who will have had no prior involvement with any aspect of the matter being raised, and no close association with any of the parties.

The contact will make the initial assessment of the scope of the complaint, and in partnership with People Directorate colleagues, will ensure that the appropriate elements of the complaint are taken forward under this procedure. The focus will be to assist and advise the complainer, whilst handling the issues raised sensitively, with empathy and understanding.

If the contact assesses that the complaint cannot be investigated under this procedure, they will notify the complainer of the reasons behind the decision, and arrange a meeting to discuss it. The contact will answer any questions from the complainer, and will explore suggestions for alternative forms of resolution. This may include increased support from a line manager, arranging coaching or mentoring, or other ideas for appropriate courses of action.

Where the complaint is assessed as being in scope of the procedure and is capable of being investigated, the contact will inform the complainer of this decision. The accompanying flow chart shows the process for making a formal complaint. The contact has a role throughout in the co-ordination of the case, but has no role or locus in the investigation or decision-making elements of the process.

The contact will;

- acknowledge receipt of the complaint, assign it to an external decision maker, and inform the complainer that this has been done
- establish the need for support for all parties involved in the process, in line with their wishes, and be the central point of contact for any practical issues which arise during the investigation
- ensure that access to administrative and all other necessary support and appropriate advice is provided for the investigator and decision maker
- liaise with witnesses as appropriate during the investigation stage
- oversee the administration of the process to agreed timescales, liaising with the external investigator and decision-maker to help ensure that the investigation is completed within 30 working days
- co-ordinate notification to the Permanent Secretary or a nominated delegate of the decision report and recommendations.
- co-ordinate any appeal process as required.

In the event that a complaint is not upheld, the contact will meet with the complainer to discuss the next steps. This could include actions to resolve remaining issues informally or other management actions as agreed.

Guidance for the Investigator

1. Setting up the investigation

The investigator is the external person(s) appointed by the Scottish Government to undertake an impartial collection of facts and evidence and produce a report. You will receive the request to investigate the complaint from the contact.

When the case is assigned to you as the investigator, you will ensure that you have the time to complete the investigation in a reasonable timeframe, giving due consideration to your availability, such as unavoidable deadlines, leave etc. You should only accept the assignment if you are confident of having the time and capacity to complete it within the 30 working days timeframe set out in the procedure.

The contact will liaise with you to ensure that you have not had any prior involvement with or close association with any of the parties or issues involved in the complaint. You will be asked to confirm that you have no conflict of interest pertaining to the investigation at the outset. Once the assignment has been confirmed, the external decision maker will co-produce the terms of reference with you, and once they have signed them off, commission you to undertake an impartial collection of facts and evidence from the relevant parties. The contact will act as a co-ordinator for administrative support and all necessary advice you require to complete the investigation.

You will manage the investigation, including planning, implementing and concluding the investigation report within the target of 30 working days from receipt of the terms of reference. You must remain fair, impartial and objective, keep an open mind, and establish both the facts that support the allegation and any evidence that contradicts it. Maintaining confidentiality throughout the investigation process is of paramount importance. You should remind all of the parties involved that they must also maintain confidentiality throughout and after the matter has concluded.

You should seek to reassure the complainer and the subject of the complaint that the investigation will be neutral, that they will be given the opportunity to provide evidence, and that confidentiality will be observed at all times. You should also draw their attention to the range of support available to all the parties involved prior to commencing any meeting, and direct any queries or requests for support to the contact, who will advise accordingly.

2. Carrying out the investigation

It is recommended that you complete an investigation plan before commencing the investigation, based on the terms of reference set by the decision maker and focussing on what facts need to be established and what evidence needs to be collected. A suggested investigation plan template is available from ACAS ([see link](#)).

The investigation plan should include:

- what the investigation is required to examine and to whom it will be submitted
- the estimated timescales you are working to
- likely witnesses and how they will be interviewed or contacted (particularly where they are no longer working for the organisation)
- the potential for further witnesses coming forward or being identified during the investigation process
- the involvement of other employees

Where any significant delay is likely to occur, you should discuss this with the decision maker who may consult with the contact for advice and support. The decision maker will be responsible for ensuring all parties are made aware of any delays and the reasons explained to those affected.

A full written record of the investigation and any meetings must be kept. A note taker will be in attendance at any meetings to take a full record of the discussion. This will be co-ordinated by the Propriety and Ethics team. The meeting itself should be in a private room with no interruptions, or via a secure video link. All notes made by you during the course of the investigation (e.g. interview notes) will be kept in line with Scottish Government records management policy in case required for evidence in an appeal.

Where an employee is absent from work, you should discuss with the decision maker the best way to progress and resolve the case as quickly as practical. If there is going to be a significant delay due to absence (e.g. long term sick absence), the decision maker should seek advice from the contact as to the best way to progress the case. Being unfit to attend work does not necessarily mean that the employee is unfit to attend an investigation interview. This will depend on the nature of the employee's illness.

You should act in line with the Scottish Government values throughout the process, being sensitive to the feelings of the complainer/witness, providing reassurance and seeking to resolve any concerns they have. The process is likely to be stressful and emotional, so planning, empathy and sensitivity will help keep the meeting on track and avoid any undue stress. If those involved ask, or exhibit signs of distress, you should offer the participants the opportunity for the meeting to be paused, or rescheduled. If it is thought necessary to signpost the individual to support services available, this will be co-ordinated by the contact.

You will advise the complainer/witness that a record of the meeting will be kept and that this will be shared with them. You should share a copy of the record with the employee to check that it is accurate, and allow them to propose amendments within 5 working days unless there are extenuating circumstances (e.g. a period of annual leave). Any agreed amendments will be noted on the record. If there is disagreement about the content of the record, this will be noted and presented alongside the investigation record.

Witness statements can be obtained without a meeting, for instance where a witness is ill or otherwise unable to attend a meeting, or is not an employee of the organisation. You should be clear in these cases what information you are seeking, providing clear questions to be answered, and give a suitable timescale for return of the statement.

3. Compiling an investigation report

Once you believe that you have established the essential facts of the matter as far as reasonably possible and appropriate, you will need to report your findings. This report should cover all the facts that were (and were not) established, any mitigating factors (these should only be noted for further consideration by the decision maker with no assessment from you on their merits or relevance). There should be a clear record of any evidence that has been excluded together with the reasons why this has been done.

You must ensure that any confidential information in the report (such as names of third parties who have not been interviewed as part of the process, and information such as dates of birth and addresses) is redacted prior to sharing the report with the decision maker. It is not necessary to redact the name of the individual giving the statement, unless an exception to give a witness anonymity has been made.

The investigation report should record the following:

- the original terms of reference for the investigation (and any additions/amendments to these)
- a summary of all relevant information obtained from the subject of the investigation, the complainer and any witnesses
- any information that could not be obtained or was discounted
- any suggested witnesses who were not interviewed and the reasons for this
- any contested facts
- the reasons for any redactions that have been made in submitted evidence
- a full summary of the findings based on the evidence obtained

Annexed to the main report should be:

- signed copies of all statements
- copies of all other evidence, for instance relevant documents such as emails, redacted as required

Once the investigation report is completed, you should submit this to the decision maker for consideration. The decision maker may wish to discuss any points of clarification with you before the final report is issued. There will normally be no further involvement in the case for the investigator.

On conclusion of the investigation, you should pass all related documentation to the contact for safe retention or disposal.

Guidance for the Decision-maker

The decision maker is the external person appointed by the Scottish Government to commission and review an investigation report in response to a formal complaint about a Minister of former Minister. The requirement is to consider all the relevant evidence and make decisions as to whether the complaint is upheld, and recommend a course of action to the Scottish Government which is appropriate and commensurate with the findings.

In the event of a formal written complaint being received, the contact will inform you and ask you to perform the decision maker role for the case. When the case is assigned to you, you will ensure that you have the time to complete the investigation in a reasonable timeframe, giving due consideration to your availability, such as unavoidable deadlines, leave etc. You will need to confirm that you have had no prior involvement with any aspect of the matter being raised, and no close association

with the complainer or the subject of complaint. Furthermore you will be asked to confirm that you know of no conflict of interest relating to the complaint.

Once you have accepted the case, you will inform the complainer and the subject of complaint that the complaint has been received and will notify the contact when this has been done. In parallel, the contact will appoint an investigator to the case, and confirm their details to you. You will confirm that there are no conflicts of interest arising from working with the appointed investigator.

You will work with the investigator to review the content of the complaint and set the terms of reference for the investigation. If you decide that for any reason the complaint cannot be investigated, you should liaise with the contact to clarify any issues and discuss the appropriate course of action.

Normally it is expected that the complainer will be the party who experiences inappropriate behaviour towards them, however this may not always be the case, for example if a manager has put forward a complaint on behalf of another employee or employees. It is important to consider at the outset, which other parties should be informed of the outcome on conclusion of the process. This must be clearly defined in the terms of reference.

The terms of reference should set out:

- what the investigation is required to examine
- how the findings should be presented in an investigation report.
- to whom the findings should be reported and
- whom to contact for further direction if unexpected issues arise or advice is needed.

Once you have agreed the terms of reference, you will issue them to the contact. Once the investigation commences, the contact will arrange regular check-in points with you, to monitor progress and arrange administrative and all other necessary support for the investigation. You will need to check in regularly with the investigator to assess their progress and any further support needs.

If the investigation is not completed after 30 working days, there will be an administrative review of the case conducted by the contact. The purpose of the review is to ensure that everything possible is being done to progress the investigation, that the correct process is being followed and that all reasonable steps are being taken to bring it to its conclusion. You should actively monitor the progress of the case throughout to ensure that the investigation is concluded as quickly as possible and to minimise any delays.

You will ensure that a satisfactory investigation has concluded, and on completion, notify the relevant parties of the report and share copies as appropriate. This will usually also include any witness statements to ensure openness and transparency in the investigation process. The contact and the subject of complaint should also receive a copy of the investigation report.

Following receipt of the investigation report, you will invite the complainer to a meeting. The meeting should be scheduled without unreasonable delay. The complainer has the right to be accompanied by a colleague or Trades Union representative. The purpose of the meeting is for you to establish the facts and decide whether to uphold the complaint or not.

The meeting itself should be in a private room with no interruptions, or via a secure video link. A full written record of the meeting should be kept.

The meeting should follow the following format:

- Introduce those present and state the purpose of the meeting
- Invite the complainer to summarise their complaint and how they would like it to be resolved
- The complainer's companion can ask questions, address the hearing and confer with the complainer, but is not entitled to answer questions on the complainer's behalf
- Consider the evidence and sum up the main points
- If new facts arise, the meeting can be adjourned for further investigations so that all evidence is considered before making a decision
- Where there is contradictory evidence, you as the decision maker decide on the balance of probabilities which version is true
- You inform the complainer when they might reasonably expect a response

After the meeting, you will assess the evidence put forward, make findings where possible on any contested facts and decide whether to uphold the complaint or not. This may include partially upholding the complaint (if some allegations are found to be justified, and others are not). You will notify the complainer of the decision by letter, including the written notes of the meeting. You will also notify the outcome to the contact and the subject of the complaint.

You will also make recommendations for further action. Recommendations could include steps to support and protect staff wellbeing, to ensure a positive working environment, and to ensure lessons are learnt for the future. For complaints which are not upheld, this could include actions to resolve remaining issues informally or other management actions.

It is the responsibility of the contact to ensure that the procedure is followed in respect of any recommendations made in the decision report being considered and implemented as appropriate. You will not be expected or required to follow up the implementation progress of any recommendations directly.

On conclusion of the decision making process, you should pass all related documentation to the contact for safe retention or disposal.

Guidance for the Appeal Decision Maker

In the event that the complainer or the subject of complaint is unsatisfied with the decision, they can appeal within 10 working days of being notified of the decision.

The complainer or subject of complaint will make their written appeal to the contact. The written appeal will clearly set out the grounds for appeal, the outcome sought, and provide any supporting information and evidence.

Grounds for appeal could include (but are not limited to):

- where new evidence has come to light that may change the outcome of the decision;
- procedural errors where there is evidence the process was incorrectly followed.

The contact will invite you to conduct the appeal. When the case is assigned to you, you will ensure that you have the time to complete the investigation in a reasonable timeframe, giving due consideration to your availability, such as unavoidable deadlines, leave etc. You will need to confirm that you have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint. You will need to declare that there is no conflict of interest relating to the appeal.

The contact will provide you with a copy of the decision report and all supporting information. Your review should be conducted in line with Stage 5 of the procedure.

It may be possible to carry out the review from the documentation without conducting further meetings. However you may wish to meet with the original decision maker and/or the investigator to discuss aspects of the report or the process followed. The contact can support you in setting up these meetings as required and will arrange for a note taker to be present as necessary. They can also provide access to any other necessary support required to complete the review.

The contact will keep in contact with the complainer and the subject of the complaint on your behalf throughout the appeal stage to inform them of progress and let them know of any potential delays.

A full re-hearing of the case may be appropriate, for example where there are serious concerns over the way the decision-making process was conducted. If you decide that a re-hearing is required, you will inform the contact, who will inform the complainer and the subject of the complaint accordingly. The contact will co-ordinate the process for initiating a re-hearing.

You will offer a meeting to the complainer or to the subject of the complaint to present their case for appeal, giving at least five working days' notice of the meeting. Where the appeal is brought by the complainer, they will be informed that they have the right to be accompanied at the meeting by a Trades Union representative or a

colleague. The contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

You will offer the other party not appealing the opportunity to comment on the grounds for appeal.

When you have concluded your review, you will notify the complainer and the subject of the complaint of your decision by letter, including the written notes of any meetings which have taken place. You will also notify the outcome to the contact.

Should any further action need to be taken following the appeal, the contact will ensure that appropriate steps are taken.

On conclusion of the appeal process, you should pass all related documentation to the contact for safe retention or disposal.

Glossary of terms - different types of behaviour

This page explains some of the terms we refer to when talking about standards of behaviour.

Bullying

Bullying in the workplace does not have a legal definition. It can however be viewed as any offensive, intimidating, malicious, isolating or insulting behaviour. It can also cover abuse or misuse of authority to undermine or humiliate somebody. This behaviour can relate to the actions of a single person or a group.

Discrimination

Discrimination can take a number of forms which include:

- **direct discrimination** when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see perception discrimination), or because they associate with someone who has a protected characteristic (see discrimination by association)
- **discrimination by association** is discrimination against someone because they are associated with another person who possesses a protected characteristic
- **perception discrimination** is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic

- **indirect discrimination** can occur when an organisation has a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages individuals who share a protected characteristic and there is no objective justification for it

Harassment

Harassment includes unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. It affects the dignity of people in the workplace and can relate to somebody's age, disability, sex, race, gender reassignment, pregnancy and maternity, religion or belief or sexual orientation. This behaviour can take place as an isolated incident or over a period of time.

The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient. Anyone is able to complain of behaviour that they find offensive even if it is not directed at them.

Victimisation

Victimisation can occur when a person is put at a disadvantage or treated in a less favourable way because they have, or intend to, make a complaint about an incident of discrimination or harassment or other form of unacceptable behaviour. It includes situations where a complaint hasn't yet been made but someone is victimised because it is suspected they might make one.

An individual is protected from victimisation even if the allegation turns out to be wrong and is not upheld, providing that it was made in good faith.

Vexatious or malicious complaints

The presumption is that a complaint is genuine and made in good faith but if a complaint is considered to be vexatious or malicious, this will be handled in accordance with the Disciplinary policy and procedure.

A vexatious complaint is one that is unreasonable, without foundation and is pursued, regardless of its merits, solely to harass, undermine, annoy or subdue a colleague.

A malicious complaint is one that is made with the intention of causing harm, for example, deliberately seeking to defame a colleague or manager and raising a complaint with this intent. This could be through lying about an issue or incident in the knowledge that this will cause harm, or knowingly basing a complaint on rumour and gossip with the intention of causing harm.

Glossary of terms used in policy/procedure

- **Complainer:** the person(s)complainer making a complaint. The complaint might come from the person who experienced the behaviour, someone who witnessed it or a trade union representative supporting a member of staff.
- **Subject of complaint:** the subject(s) of the complaint which will be the person or persons complained about. This will be a Minister or former Minister under this procedure.
- **Companion:** a person who may accompany a member of staff to informal meetings; the companion may be either a recognised trade union representative or a colleague (not a family member) supporting in a non-professional capacity
- **Decision maker:** The external person(s) appointed by the Scottish Government to consider the complaint and decide on appropriate action.
- **Investigator:** The external person(s) appointed to undertake an impartial collection of facts and evidence and produce a report.
- **Scottish Government nominated contact (the contact):** a named contact, normally from the Propriety and Ethics team, who will provide advice and support to all parties in the event of a formal complaint
- **Support contact:** The person(s) in the Scottish Government responsible for provision of relevant pastoral support.
- **Trades Union representative:** If parties are a member of a trade union, they may wish to discuss with their representative who can offer appropriate advice and support.
- **Witness:** Anyone who witnessed the alleged inappropriate behaviour, who can provide corroborating evidence to support either the complainer's or subjects of complaint's account of events or who has other information relevant to the complaint.
- **Appeal decision maker:** the external person (s) appointed by the Scottish Government to consider the appeal.

Resolving grievances at work

1. Resolving grievances at work

2. Concerns at work
 3. Our values and expected behaviour
 4. Grievance resolution
 5. Grievance process - roles and responsibilities
 6. Support and advice
-

1. Resolving grievances at work

A new [grievance policy](#) and [procedure](#) was introduced in 2022.

If you're currently involved in a case under the previous Fairness At Work policy, this will continue under that policy.

Download the [Fairness At Work policy](#) which applies to grievances raised before 21 April 2022 when the current policy and procedure came into place.

If you need support and advice you can contact:

- the [HR PAW team](#) or your local HR team
- [propriety and ethics](#)

2. Concerns at work

Despite everyone's best efforts, sometimes concerns, problems or complaints arise at work, which require to be resolved. These concerns might be about a colleague, manager, senior leader, stakeholder or minister or about someone – or something – else. Grievance policy and procedures are designed to help us raise concerns, get support and resolve issues.

Where concerns arise everyone's aim must be to ensure:

- colleagues can speak out and know their concerns will be handled sensitively
- everyone is treated with respect and dignity
- outcomes are acted upon

Some issues may be relatively minor and can be dealt with through discussion, without any need for further action. Other issues need support to resolve informally and, in some cases, formal investigation and resolution are needed.

Trying to resolve difficulties in an early and informal way is an important part of grievance resolution. This can stop concerns escalating and help to preserve relationships.

Informal channels play an important part in resolving issues at the earliest opportunity, whenever possible. Managers in particular play a key role in creating a culture where colleagues feel safe to raise concerns they have experienced or witnessed, and know they will be heard and those concerns acted upon. Where managers witness inappropriate behaviours or incidents directly, they play a critical role in addressing those concerns at the earliest opportunity. This might involve, for example, a conversation with a colleague whose behaviours are of concern to make them aware of their impact or seeking advice on how to deal with a matter.

Guidance on [early resolution](#) has been written to support managers to address concerns at the earliest opportunity and to inform colleagues where to get support and advice, particularly where there are many or complex issues involved. It explains the different options for resolution and reminds us of the importance of flexibility given the range of ways to resolve an issue. Colleagues must feel informed and know where to get support and advice. This is particularly true where there are many or complex issues.

3. Our values and expected behaviour

Our [organisational values](#) represent who we are, who we aspire to be, and what we believe in. Those values help foster a supportive culture, where work is a positive place to be. Our values are:

- we act with integrity
- we are inclusive
- we are collaborative
- we are innovative
- we are kind
-

The [Civil Service Code](#) sets out the core values of the Civil Service. The code outlines four core values which must be upheld at all times:

1. Integrity - putting the obligations of public service above your own personal interests.
2. Honesty - being truthful and open.
3. Objectivity - basing your advice on rigorous analysis of evidence.
4. Impartiality - acting according to the merits of the case and serving governments of different political persuasions.

Read the code alongside our refreshed draft [standards of behaviour](#) - these set out what is, and isn't, acceptable behaviour, link to our organisational vision and values and provide important definitions and explanation of our equality obligations. These rules apply to everyone working for the Scottish Government - even if you are not a civil servant. Together we all have a responsibility to create an inclusive culture where we treat colleagues with dignity and respect.

4. Grievance resolution

Our organisational aims for resolving grievances are to:

- promote positive standards of behaviour, trying to prevent unacceptable behaviours
- create a safe and supportive environment to speak up - reinforcing our vision and values
- aim for a positive outcome for everyone
- be clear what early intervention to resolve conflicts at work involves
- signpost routes to informal early intervention
- handle all concerns sensitively, fairly and in a timely manner and at the right level
- recognise that low level impacts can build up over time
- resolve issues informally (where possible/appropriate)
- base our approach on the lived experiences of our staff
- colleagues have confidence in our processes for accessing advice and raising concerns
- processes meet our legal requirements
- learning and feedback inform our ongoing improvement and provide us with assurance

5. Grievance process - roles and responsibilities

Tackling problems in the workplace can involve a range of people - from managers and HR professionals, to trade union representatives and counsellors.

Here are the roles and responsibilities of people who may be involved in grievance resolution:

Managers and senior managers

Managers are the first point of contact for listening to, and addressing, concerns - where it's possible to do this informally.

Managers are critical to creating a positive and inclusive local culture where issues are raised and resolved promptly. They also have a critical role in addressing concerns they spot at the earliest opportunity. If in doubt, managers can get advice from the HR People Advice and Wellbeing team.

HR People Advice and Wellbeing (PAW) team

HR's PAW team give managers and colleagues professional support on complex and sensitive issues. This includes grievance handling and resolution.

The team can help managers co-ordinate facilitated conversations and mediation.

The team also manage the formal grievance process for staff, providing expert HR advice and support to all affected parties

Council of Scottish Government Unions (CSGU)

We recognise five trade unions for collective bargaining and employee relations. Together, they make up the Council of Scottish Government Unions:

- The Public Commercial Services Union (PCS)
- Prospect
- FDA
- Nautilus
- Unite the Union

The trade union will support and advise members to resolve grievances. CSGU support informal and early resolution. In formal procedures, the trade union will accompany members, providing advice and guidance.

Propriety and ethics team

The propriety and ethics team provide corporate oversight of and co-ordination on sensitive issues affecting our organisation. Colleagues in this team work closely with People Directorate, amongst others. They are also a contact point for concerns relating to ministers (informal or formal).

Counselling and Wellbeing Service

Our counselling and wellbeing team are part of the People Advice and Wellbeing team, but focus on confidential staff support.

They can provide a listening ear, and pastoral and counselling support to those involved in a grievance procedure. They are separate to the informal and formal grievance handling process.

Employee Assistance Service (EAS)

The EAS provides external 24/7 confidential support to all our staff and their immediate family members. This includes counselling services.

There's also a helpline for managers who want advice for how to handle a situation. The EAS is independent of Scottish Government HR. A wide range of counsellors are available and colleagues, should they have a preference, can request to be contacted by someone from a particular background or with particular experience.

Support and advice

If you need further support, you can speak to your manager, countersigning officer or another senior manager.

You can access professional support by contacting the HR People Advice and Wellbeing team. If you are a senior civil servant, you may wish to speak to your HR Business Partner in the first instance.

You can get wellbeing support through our internal counsellors or via the Employee Assistance Service (EAS). It also provides advice to managers about the approach they are taking.

You should have undertaken mandatory learning on inclusive cultures on Pathways:

- Inclusive Culture - for colleagues without management responsibilities
- Inclusive Leadership and Culture - for managers
- Championing an Inclusive Culture - for deputy directors

You can access the following support materials:

- mediation guide
- facilitated conversation guide
- grievance policy and procedure
- giving difficult feedback - on Pathways
- handling difficult conversations

Using early intervention to address concerns

1. How early intervention can resolve concerns

2. Reducing risk of workplace disagreement
 3. Using early intervention to handle complaints raised with you
 4. Dealing with a complaint against you
 5. Early intervention - support, advice and tools
 6. Repairing workplace relationships
 7. When to use formal grievance procedures
-

1. How early intervention can resolve concerns

We spend a lot of time at work and can expect to work in an inclusive environment that respects diversity of thought, experience and background. This diversity enhances us in our role as civil servants supporting ministers to deliver the best outcomes for the people of Scotland.

We all see things differently, depending on our personal values, experiences and beliefs. This means we may react to the same situation differently to our colleagues.

This is healthy and can encourage creativity and challenge our thinking – but there may be times when, in the workplace, this causes misunderstanding or conflict arises. There may also be times when particular behaviour falls short of our expected standards of behaviour.

It's important when concerns or disagreements arise, that they can be resolved as soon as they arise consistent with our organisational aim to support early resolution of concerns where possible/appropriate. As a manager you have an important role to play to support this aim. This guidance will help managers address concerns as soon as they arise. It will also highlight the professional support available to you.

What is early intervention

Early intervention is when concerns are resolved:

- informally
- locally
- at the earliest opportunity with mutual agreement
- without using formal processes
- and helps repair relationships

Discussing issues early can stop them escalating and help restore relationships. Resolving issues locally helps you understand and address them quickly. It also allows you to work with your staff member(s) to agree how best to handle the situation to a mutual resolution.

Many workplace disagreements can be resolved through discussion and with the support of managers. Managers play a key role in ensuring concerns are handled sensitively, with empathy and understanding. Staff should feel able to raise issues with you confidentially. They need to know they will be dealt with fairly and sensitively.

As a manager, you may find a range of concerns are raised with you including:

- unacceptable behaviours in the workplace
- dissatisfaction about a management action or work situation

Some concerns might be relatively minor and can be resolved through discussion, without further action. Other concerns need support to allow them to be resolved informally. In some cases formal investigation and resolution are needed, for example because the parties can't reach a satisfactory outcome during the informal stages or because of the severity of the issue.

Early intervention treats concerns seriously and sensitively. It gives the person raising concerns a key role in finding the best solution. It is almost always worth exploring informal routes.

Why it is important that we nurture and care for our relationships in the workplace

- support for colleagues and our own wellbeing should be at the forefront of all our relationships in the workplace founded on inclusivity and kindness
- effective relationships are central to successful outcomes and optimal performance
- relationships are complex, requiring an awareness of 'self', personal boundaries and communication to mitigate conflict and promote resolution

Using early intervention in different working relationships

Through our work, as civil servants we will work and engage with different people – internal colleagues and external stakeholders. We may be engaging in situations with individuals not employed by the Scottish Government (SG) and/or where a power

imbalance may exist. This includes for example:

- more senior managers internal to SG
- an external stakeholder or group of stakeholders
- non exec directors or board members of a public body
- a minister or MSP

In all working situations colleagues can expect to be treated fairly and with respect and not be subject to bullying, harassment, discrimination or victimisation. The Scottish Government has a duty of care as employer to ensure where such situations arise, that colleagues are supported, and appropriate action is taken.

Where a concern or disagreement does arise, as a manager, you are expected to support colleagues. You can contact the HR People Advice and Wellbeing team if you require advice and they will work with you to understand the concerns and explore what support and resolution options are available.

There are some instances where it is important as a manager that you seek advice before proceeding to informal resolution. Our [grievance policy](#) and [procedure](#) sets this out in more detail, but you should be aware that:

If the concern raised relate to a minister, you can contact the [propriety and ethics team](#) for guidance and support. They will stand up a partnership approach to assist and advise those affected, working closely with HR. The focus will be on handling issues sensitively, with empathy and understanding.

If concerns relate to harassment (including sexual harassment) you should contact the HR People Advice and Wellbeing team.

2. Reducing risk of workplace disagreement

As well as addressing issues when they arise, it's important to pay attention to local culture and behaviours.

Workplace incivility can increase the likelihood of workplace disputes. Sensitively drawing attention to incivilities – such as inconsiderate behaviour or a lack of respect - can stop issues escalating. This can put a stop to the impact these 'low level' behaviours can have over time. These behaviours might include, for example:

- eye rolling
- exclusionary behaviour
- gossiping
- ignoring someone's input at meetings
- speaking over someone

Working remotely can make these things more difficult to spot - our hybrid meetings guidance sets out best practice that you should follow to ensure your meetings are inclusive to all.

As a manager, you play a unique role in spotting issues or external factors that may affect people in your team. You can help create an inclusive culture, setting expectations about professionalism and role modelling what those behaviours should look like.

Through monthly conversations and regular check-ins you are more likely to spot any personal pressures. It's important to help your team members and be open to them raising issues at the earliest opportunity. This is increasingly the case as we work in a hybrid environment.

3. Using early intervention to handle complaints raised with you

Most concerns can be dealt with informally and locally but [contact the HR People Advice and Wellbeing team](#) if you need support. You must seek advice about any grievance relating to harassment, you may also wish to seek advice from your trade union if you are a member in that situation.

You should also be aware that depending on colleagues lived experience or background they may feel apprehensive about raising concerns and how they will be handled. You should seek advice as required.

Before deciding what actions you need to take you need to fully explore the issue with your staff member. You should:

- speak to your staff member as soon as you can, asking clarifying questions to fully understand the situation and any underlying causes of unhappiness or distress

- make sure that you actively listen and do so in a private space that is accessible for both parties and help your staff member to open up. If meeting remotely make sure that both you and your staff member are in a safe space and can't be overheard. You should not meet others in your or their homes or other similar properties.
- use comments that can set the scene for the conversation and provide reassurance such as: "I'm sorry to hear you feel like that"; "I want to reassure you that I'm listening to you" or "this sounds like a difficult situation, I'm here to support you as best I can"
- ask questions in a calm and measured way to put the other person at ease and let them speak freely - do not make any decisions or take any actions at this stage
- play back what you have heard - this helps to ensure you have understood the concerns and might also help the staff member see the problem in another light
- lead by example and set the right tone for the conversation
- understand what your staff member wants by way of resolution through active listening and avoiding jumping straight to solution mode too quickly – ask what do they want to happen?
- encourage them to express their opinions openly and recognise the impact the situation has had on them
- let them take their time to tell you what the issue is - it's ok to pause if they need a moment
- allow space for a break but ensure you agree checking back in arrangements and timescales
- seek support and advice as necessary

If it is clear that the person doesn't want any action to be taken, it's important not to ignore the situation. You should speak to them to reassure and understand their reasons for not wanting the issue to be addressed. You may be able to support them to address the situation directly, but for more serious issues where the person doesn't want to take further action you should take advice from the HR People Advice and Wellbeing team.

Helping to address concerns informally

When someone raises a concern with you, there are various interventions you might want to consider. These include:

Listening and signposting

Simply listening to the person and helping them decide what they want to happen next can be helpful. This might include signposting to other forms of support.

Helping your staff member raise their concerns

Where the grievance relates to another person's behaviour, one action might be to help the staff member raise their concerns directly with the other person - this could be an informal chat or meeting. Sometimes making the other person aware of their behaviour and the impact this is having is enough to address and resolve the issue.

Writing to the other party

The staff member may choose to write to the other party to outline their concerns and impact, why this is the case, and to ask them to stop. You can help coach and advise them.

Facilitated conversations

Facilitating a discussion with the parties involved can help to explore the situation and agree a way forward. You can be supported to hold this discussion, it doesn't require professional mediation skills and training. Support and advice can be provided by contacting the HR People Advice and Wellbeing team or referring to the tools and training in this guide.

There may be exceptional circumstances where it would be beneficial if the facilitated conversation is led by a third party, and the HR People Advice and Wellbeing team can help with this.

This intervention requires the agreement of the individuals involved that the early resolution of the matters through conversation can be achieved. A record of the agreement outcomes will be provided to all participants for their personal records but no central record is kept.

More information can be found about this approach in the facilitating conversations guidance.

Taking action on behalf of your staff member

Where the staff member feels unable to raise their concerns with the other party, with their consent, you might do so on their behalf as their manager. You can either do this directly or by raising the issues to their manager (with express agreement in advance) to help find a solution to address the concerns.

Mediation

Mediation is open to all staff covered by the grievance policy who are part of SG Main and Marine. The mediation service has been in place for a number of years and is delivered by a pool of trained, external mediators.

Mediation is a very effective way of resolving ongoing disputes between two people where the relationship has been impacted. It is a non-adversarial way to resolve difficult situations. The mediators are neutral. They help two or more parties have an open and honest discussion to identify a mutually acceptable outcome - a win/win outcome.

Any agreement in mediation comes directly from the parties, not from the mediator. The mediator is not there to judge, or to tell those involved in the mediation what they should do. Mediation is both voluntary, requiring both parties agreeing to participate (or all parties in the event of a group mediation) and confidential. The mediators do not report back to your manager or the HR People Advice and Wellbeing Team.

There may be circumstances where mediation is not appropriate, for example where concerns relate to physical or verbal intimidation or harassment. Our mediators will decide what cases are appropriate for mediation. Where it is decided that mediation is not appropriate the HR People Advice and Wellbeing team can advise.

Mediation can be used to resolve disputes at all levels: peer, manager/team member, or team. It enables individuals or teams to improve their relationship and discuss the practicalities of working together.

Read more about mediation.

4. Dealing with a complaint against you

If you're accused of unacceptable behaviour, it is natural to feel upset and defensive. It's important you remain calm and act in a fair and reasonable manner.

You are expected to work with the staff member to try to reach a satisfactory outcome to any complaint. Your countersigning officer might play a key role here to support both parties. You can also seek professional support if you need it.

If a colleague approaches you on an informal basis to discuss their concern, you should try to understand the nature of their complaint. Try to concentrate on the

actions that have impacted and not to take it as a personal attack, also to understand how your actions may have been perceived, their impact on the individual and consider ways in which you can work with them to resolve the matter.

Even if you don't think you behaved inappropriately, try to understand that someone else's perception of your behaviour has caused upset, you might want to rectify the misunderstanding and apologise for any upset. Other interventions that may be supportive include facilitated conversations and mediation.

In some circumstances, regardless of any informal resolution attempted, a formal grievance might be raised by the person who has concerns and formal procedures may start.

Colleagues who are identified as subjects of complaints should be reassured that no presumptions are made. They will be given every opportunity to respond and have their say on their account of what happened and resolution options. Confidentiality will be maintained at all times as appropriate, seeking advice where necessary.

5. Early intervention - support, advice and tools

Raising a concern can be a worrying time for all those involved - those raising a concern and those who are the subject of a concern. People may find it difficult to take an objective view of the situation. There are various sources of help that staff and managers can access to help support them as they consider the options available to resolve an issue.

If you wish to talk through options for appropriate early resolution, or would benefit from coaching to assist you, you should speak to your HR People Advice and Wellbeing team.

Talking to someone else can help gather your thoughts and decide what is the best course of action. For example, whilst respecting confidences of the individual and specifics about the situation you may find it helpful to speak to another manager who has dealt with similar sensitive concerns.

You might also want to discuss options with the Employee Assistance Service (there is a dedicated option for managers), which includes a list of support.

Most informal interventions are locally led but, for facilitated conversations, assistance can be provided, and mediation is run through a partnership arrangement we have with Visit Scotland.

You can access professional HR support by contacting the HR People Advice and Wellbeing team or, if you are a senior civil servant, you may wish to speak to your HR Business Partner in the first instance.

You can speak to your manager, countersigning officer or another senior manager in your directorate for advice and support.

Counselling and wellbeing can be accessed through our internal counsellors or externally through the Employee Assistance Service - the Employee Assistance Service also offers a managers' helpline.

You should ensure that you have undertaken mandatory learning on inclusive cultures on Pathways:

- Inclusive Culture - for colleagues without management responsibilities
- Inclusive Leadership and Culture - for managers
- Championing an Inclusive Culture - for deputy directors

Other support materials which you may find useful include:

- mediation guide
- facilitated conversation guide
- grievance policy and procedures
- giving difficult feedback - on Pathways
- handling difficult conversations

6. Repairing workplace relationships

Unless exceptional circumstances arise, we expect colleagues to continue to work with one another when grievances are raised and being addressed.

The process doesn't stop when the grievance is resolved. An important phase is to repair relationships and support everyone involved as we know it can be difficult for those involved to move on once informal or formal interventions have concluded.

Managers can arrange access to a range of support including:

- signposting colleagues to the Employee Assistance Service and the internal counselling and wellbeing service

- having individual meetings with both parties to discuss how they feel about the outcome and how they envisage working with each other going forward
- agreeing on a process for raising future concerns directly with each other, or with a manager where this is not possible, to ensure the employees feel safe
- further consideration of facilitated conversations or mediation to support ongoing working relationships
- a joint meeting to ease the first contact on return, where one of the parties has perhaps been working outwith the business area or has been absent due to ill health
- consider the impact on other work colleagues, particularly where they have given evidence. Offer them support and details of any return date of the people involved, if absent, agreeing messaging up front with affected parties. Speak to the HR People Advice and Wellbeing team if you want advice on messaging
- review any follow-up action to ensure this has been completed to ensure learning is embedded and any agreed actions completed to minimise the potential for further conflict
- access to one-to-one coaching or another training intervention
- agree on a timescale for check-ins to ensure employees feel supported

7. When to use formal grievance procedures

If despite all efforts a concern cannot be dealt with informally, or the matter is too serious for informal resolution, a formal grievance may be raised. A staff member can raise a formal grievance by contacting the HR People Advice and Wellbeing Team. Please refer to the grievance policy.

Where a concern is about a minister or former minister's behaviour, and where this cannot be resolved informally, the updated procedure for handling complaints against a minister will be used.

Facilitated conversations

A facilitated conversation is an informal process which can be used to resolve concerns/conflict at an early stage. A facilitated conversation can help all parties to understand the issues causing concern and provides a safe space for an open and respectful discussion about those concerns. The aim of the conversation is to help understanding and to identify acceptable solutions without the need for a formal process.

Facilitated conversations are just one of a number of options for resolving concerns informally.

How does a facilitated conversation work?

The process is voluntary and confidential. At the beginning of the process, the facilitator will ask each party to keep all discussions confidential. The facilitator will then meet individually with each party to help everyone understand the issues that are causing concern. Each person will be asked to:

- identify the situation that is causing concern, providing examples to illustrate this
- explain how this has affected each party
- what an ideal solution would look like
- clarify what's at stake if the issue can't be resolved
- prepare to have a conversation with the other person/parties by considering how concerns can be communicated in a respectful way

The facilitator will clarify that both parties are content to continue with the joint meeting. They will then bring all parties together to discuss the situation with a view to identifying ways that the conflict might be resolved.

When do facilitated conversations work best?

For a facilitated conversation to be successful, all parties must enter the process voluntarily and:

- be prepared to listen with a view to understanding the other participant's views
- respect and value everyone's contribution to the discussion
- create an environment of mutual trust by being open, honest and constructive

- recognise that the conversation is not about point scoring. There is no right or wrong and no good or bad
- be willing to amend their viewpoint in the light of others' suggestions
- be positive and willing to build on ideas
- aim to identify areas of common ground from which to build good relationships and rapport

When can a facilitated conversation take place?

A facilitated conversation is often the start of an improvement journey. They can be used at a very early stage when signs of tension between colleagues are first beginning to emerge. Holding a facilitated conversation early can often prevent conflict from escalating.

Is a facilitated conversation different to mediation?

Facilitated conversations and mediation are very similar in that they both seek to help individuals find solutions that are acceptable to all involved. They also both provide an informal, non-adversarial, safe and confidential space for discussion.

Those involved in informal dispute resolution must have trust in the person facilitating or mediating. A facilitated conversation can be led by someone from the business area, or where required through HR. In contrast, mediation is provided by an external Mediation Partnership Team in Visit Scotland.

How do I arrange a facilitated conversation?

If you would like to arrange a facilitated conversation, or want to discuss whether a facilitated conversation would be appropriate, please [contact the HR People Advice and Wellbeing team](#).

Mediation

Mediation is a confidential, voluntary process where an impartial third party helps colleagues resolve issues of concern/conflict. It is an informal process which can be used at any stage of a disagreement or dispute. Mediation seeks to provide win-win solutions that address the underlying causes of the conflict.

How does a mediation work?

Every mediation is different but in general, the mediation process involves different meetings, normally over the course of the same day. The first meeting takes place with the mediator and each party individually to:

- explain the process and roles
- consider the various elements of the dispute and the impact on the individuals involved
- identify the individual's expectations and goals
- agree a terms of reference for the mediation process

The mediator then has a second meeting with each party individually to:

- explore in detail the issues raised during the first meeting and any other issues raised from their discussion with the other party
- facilitate the sharing of information, ideas and potential ways forward
- agree a way forward
- prepare for a joint meeting by allowing each party to 'test' what they want to say

A joint meeting then usually takes place in the afternoon of the mediation day. The purpose of the joint meeting is to allow both parties to get together in a safe and structured environment where the issue of concern can be discussed in an open, honest and respectful way.

The joint meeting allows both parties to:

- evaluate the options available to help resolve the conflict
- develop an action plan and agreement about how best to work together
- consider the longer term requirements and follow up arrangements

At the end of the joint meeting the mediation team will draw up a written agreement that reflects the agreed solutions.

When does mediation work best?

For mediation to be successful, all parties must:

- be prepared to listen and be interested in other participant's views
- respect and value everyone's contribution and point of view
- create an environment of mutual trust by being open, honest and constructive
- recognise that the mediation process is not about point scoring. There is no right or wrong and no good or bad
- be willing to move away from what has happened in the past to focus on what happens now and in the future

When can mediation take place?

Mediation can take place at any stage of a dispute. If it is used in the early stages, it can often prevent conflict escalating. Mediation can also be used to rebuild relationships after a formal dispute has been resolved.

There are certain circumstances where mediation is not suitable, including where:

- a decision about right or wrong is needed (for example, in a disciplinary matter)
- an individual is bringing a complaint about discrimination or harassment or where there is an allegation of a serious nature
- an individual's health or wellbeing means they can't participate fully in a joint meeting
- the parties don't have authority to settle the issue of disagreement

If you are unsure whether mediation is an appropriate intervention, you should [contact the HR People Advice and Wellbeing team](#) for advice.

How do I arrange mediation?

There is a mediation partnership team that operates across a number of public bodies, and is co-ordinated by staff from Visit Scotland. If you wish to use mediation, you should contact the People Advice and Wellbeing team using [HR Online on iFix](#), who will arrange for a mediator to be allocated.