

Handling of Harassment Complaints Involving Current or Former Ministers

Initial contact

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

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

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

2.2 Indicating that they wish to make a formal complaint.

NOTE: At all times the staff member is free to make a complaint directly to the police – see Para 18 onwards for further information.

Formal complaints against current Scottish Government Ministers

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

Role of Permanent Secretary

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

¹ <https://beta.gov.scot/publications/scottish-ministerial-code-2018-edition/>

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

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

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

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

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

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

Formal complaints against former Scottish Government Ministers

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

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

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

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

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

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

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

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

COMPLAINTS AND ENGAGEMENT WITH POLICE

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

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

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

Scottish Government
December 2017

Scottish Government Grievance Policy

1. The purpose

The Scottish Government (SG) is committed to promoting and modelling organisational values. All staff are required to meet the obligations set out in the [Civil Service Code](#) and our [standards of behaviour](#), treating everyone with dignity and respect.

Staff should expect equality of opportunity and to work in an environment free from bullying, harassment, discrimination and victimisation, where work related concerns, problems or issues can be raised and responded to.

This policy and [accompanying procedure](#) was developed in consultation with the Council of Scottish Government Unions (CSGU). They set out the framework for staff to raise work-related grievances and how the Scottish Government will respond and support all parties involved, in line with [statutory guidance](#).

Whilst this policy does not form part of terms and conditions of appointment, staff are required to follow the provisions of the policy and procedure. Both the policy and procedure may be amended in agreement with CSGU from time to time.

Cases currently ongoing under the Fairness at Work policy will continue to be progressed under that policy. Any grievances raised from 21 April 2022 will be progressed under this revised grievance policy and procedure.

2. The scope

This policy applies, regardless of length of service, to all SG Main and Marine staff ('staff') including senior civil servants (SCS) and special advisers (SPADs). This also includes staff working in SG core, as well as executive agencies and non-ministerial offices (NMOs) who are part of the [SG Main pay bargaining unit](#).

While this policy applies across the SG Main bargaining unit, executive agencies and non-ministerial offices may have local procedures in place to reflect local contact points and, for NMOs, their status as a direct employer. References to Scottish Government and HR People Advice and Wellbeing team (HR PAW team) in this policy should be read as references to individual bodies and their local HR teams where appropriate.

Staff should use this policy to raise a grievance about issues or behaviour they experience at work. This may include situations where concerns, problems or complaints are raised about working relations or about other issues which affect staff in work.

In most cases, the [procedure for handling grievance cases](#) will be followed. Depending on the [specific nature of the grievance](#) however, the procedure may be applied flexibly in a way that's appropriate to the nature of the case. In the case of a



formal complaint about a minister's or former minister's behaviour the [updated procedure for handing complaints about ministers](#) will be used.

Individuals not employed by, but working in or providing services to Scottish Government, should adhere to [Scottish Government standards of behaviour](#). They cannot raise a formal grievance under this policy and should follow their employer's own policy for raising a formal grievance. However, they are encouraged to seek to resolve concerns informally in the first instance.

Individuals not employed by, but working in or providing services to SG, should adhere to the [SG standards of behaviour](#). They cannot raise a formal grievance under this policy and should follow their employer's own policy for raising a formal grievance albeit they are encouraged to seek to resolve concerns informally in the first instance.

2.1 What our grievance policy covers

A grievance is a concern, problem or complaint that a member of staff wishes to address and, if possible, resolve with their employer.

Potential areas of grievance include (but are not limited to):

- [bullying and harassment](#)
- [discrimination](#)
- organisational change
- terms and conditions as they affect individuals - read more about [specific cases](#)
- [victimisation](#)
- working environment, including health and safety
- working practices
- working relationships

It's important to recognise that managers are required to make decisions that affect staff and sometimes decisions may not meet the expectations of every individual concerned. However, you should be aware such decisions will usually be considered legitimate as long as decisions are:

- reasonable
- meet the requirements of our specific policies
- are objectively justifiable
- do not discriminate unlawfully

2.2 What is not covered under the grievance policy

This policy shouldn't be used where staff:

- **are subject to, and wish to challenge the outcome of a policy process** such as attendance management, performance management, disciplinary action or dismissal - in this situation, the appeals process set out in the relevant policy should be followed



- **believe they are being asked to act in a way that conflicts with the Civil Service Code** - in this case, staff should use the raising a concern under the [Civil Service Code and whistleblowing policy](#), which includes guidance on how to report illegal or other unlawful activity

3. Grievance policy principles

The grievance policy and procedure must be progressed fairly with all parties without unreasonable delay to resolve issues raised in line with these principles:

- grievances should be raised informally, normally with the manager in the first instance, except where it's inappropriate to do so. Where a grievance is of a specific nature, such as those set out in [specific cases](#), guidance should also be sought from the HR People Advice and Wellbeing team (PAW team)
- formal grievances should be progressed in line with the grievance policy and raised without undue delay. This should be within six months of the alleged concern, problem or complaint arising, or of any informal dispute resolution processes concluding (including mediation). Exceptionally, there may be instances where formal grievances raised outwith this timescale may be considered. A decision will be taken as to whether or not it would be reasonable to take forward such cases
- formal grievances will be assessed initially by the [HR PAW team](#), to give advice on handling the grievance, except for cases involving a minister or former minister which will be considered by propriety and ethics in the first instance
- staff can seek advice from the [HR PAW team](#) and trade unions if they are a member at any stage
- any member of staff who raises a grievance formally will be entitled to be accompanied at formal meetings by a companion who may be either a recognised trade union representative or a colleague (not a family member) supporting in a non-professional capacity; the right to be accompanied does not apply to meetings as part of an informal process, however, any such requests will be considered by the appropriate manager. Legal representation is not permitted at any meeting
- all staff have a right to request consideration of workplace adjustments in the grievance process
- there is a right of appeal against the outcome of the formal grievance decision
- all parties must respect confidentiality throughout and after the process seeking advice where necessary. It's important to note that certain matters may need to be discussed with HR/trade unions or, where individuals may be at risk of harm, with other relevant persons. Where this is the case staff should be kept informed. Any breaches in confidentiality will be treated



seriously and where appropriate, considered under the Scottish Government discipline policy and procedure

- HR PAW team/propriety and ethics, deciding officers (DO), investigating officers (IO) and appeals managers (AM) should declare any actual or potential conflict of interest ideally at the outset or during the grievance if they're not aware/conscious of this at the outset and subsequently become aware of this. They should have no prior involvement with any aspect of the matter being raised and no close association with the member of staff raising the grievance or the subject of the complaint. Read more about the [roles and responsibilities](#) in the grievance process
- staff should act in good faith when raising or responding to a grievance and should represent the facts truthfully in line with our [standards of behaviour](#); the presumption is that a complaint is genuine but if a complaint is considered to be [vexatious or malicious](#), this will be handled in accordance with the disciplinary policy and procedure

4. Raising a grievance

In most cases, staff should look to raise their grievance [informally](#), where possible, normally with their manager in the first instance, except where it's inappropriate to do so. [Informal resolution](#) and discussion is often the best way to resolve any concerns or issues which arise in the workplace. This includes where the grievance is about a minister or former minister. Where a grievance is of a specific nature, such as those set out in specific cases, guidance should also be sought from the HR People Advice and Wellbeing team (HR PAW team).

Staff are therefore encouraged, if they feel comfortable, to [seek resolution to their grievance informally](#), speaking to the other person and seeking support from their manager or more senior manager if needed and/or the HR PAW team. Where the grievance relates to a decision taken by the manager or the manager's behaviour, staff should discuss this with them. If they feel unable to do so, they should speak informally with another appropriate manager for example, the countersigning manager or a more senior manager in the directorate.

If staff are aware of or observe another colleague experiencing unacceptable behaviour, they should encourage them to seek support. Alternatively, staff may wish to raise with their manager any unacceptable behaviour they witness or feel impacted by.

4.1 Raising a formal grievance

There are however, some situations where informal resolution may not be the right option, and advice on handling, as set in specific cases, should be sought before proceeding. Staff therefore also have the ability to [raise their grievance formally](#), using the formal [grievance notification form](#).



4.2 Specific cases

There may be grievances of a specific nature, such as those described in this section, where the handling of the grievance may require the grievance procedure to be applied flexibly in a way that's appropriate to the nature of the case.

About a minister's or former minister's behaviour

Where the concern, problem or issue relates to a minister's or former minister's behaviour, staff are encouraged, if they feel comfortable, to seek resolution informally, with support from their manager or more senior manager. They may also if needed seek advice from propriety and ethics who may draw on support from the HR People Advice and Wellbeing team (HR PAW team). Further guidance about [raising a grievance about a minister](#) is available.

Where the concern cannot be resolved informally, a formal complaint will be handled under the updated [procedure for handling complaints against a minister](#). A [flowchart detailing the procedure](#) is also available.

About a third party

Where staff wish to raise a grievance about a third party for example, about a contractor, agency worker, or other stakeholder, they should contact the HR PAW team for specific advice. Staff should be aware that as the Scottish Government is not the employer of third parties, there may be limits as to how far the Scottish Government is able to investigate the grievance. Staff will be advised as to how the grievance will be taken forward under the procedure and how they will be supported.

About a trade union representative

Trade union representatives are subject to the same standards of conduct as other Scottish Government staff. However, there may be occasions where depending on the circumstances, this may need to be discussed with a senior full time official of the relevant union. If staff have concerns or wish to discuss trade union representation, please get in touch with the Head of Employee Relations, Reward and Expenses.

Collective grievance

Where two members of staff, or a group of staff, wish to raise a collective grievance or multiple grievances about the same concern, problem or complaint, the informal process should be followed in the first instance to try to resolve the problem through the line management chain. In circumstances where there are several line management chains advice should be sought from the [HR PAW team](#). Where agreement cannot be reached and the parties wish to raise formally, advice should be sought from the [HR PAW team](#) on how to handle the case collectively under the procedure.

Counter grievances and disciplinary proceedings

Staff who wish to raise a grievance where a grievance has already been raised about an individual and/or they are subject to disciplinary proceedings as a result of a grievance, should contact the [HR PAW team](#) for advice on how the grievance will be taken forward.



The HR team will consider the circumstances and will determine if the grievance/disciplinary action will be considered first or if those processes can run concurrently with the grievance. The HR team can decide to temporarily suspend either a disciplinary or grievance process if it's determined one should take precedence. Decisions will be made on a case by case basis.

Disputing the terms of a collective agreement

The Scottish Government recognises [trade unions](#) for the purposes of collective bargaining which is the route that variations to terms and conditions, including some HR policies are introduced. The outcome of collective bargaining applies to all staff, whether or not they are members of a trade union.

Where staff wish to dispute the terms of a collective agreement which has been agreed with recognised trade unions - for example relating to the substance of terms and conditions or an HR policy - this should be raised with the HR (Employee Relations and Reward team in first instance) and/or, with the recognised trade union (where they are a member) who will give advice on how it will be handled under the procedure.

Harassment, including sexual harassment

Advice on handling a grievance about harassment under the procedure should be sought from the HR PAW team unless the concern relates to a minister or former minister in which case advice should be sought from propriety and ethics. Whilst cases should ideally be raised within six months of the instance of alleged harassment, staff may come forward about harassment beyond this time period and a decision will be taken as to whether or not, this is capable of being progressed.

Every case is different, and it may not be possible, or advisable, to seek to resolve the concern, problem or issue informally.

5.0 Responsibilities

Everyone has a responsibility to report any incidents of unacceptable behaviour they experience.

Responsibility as a member of staff

Staff are expected to:

- ensure they are aware of the [standards of behaviour](#) expected of them
- make themselves aware of and adhere to the grievance policy and procedure, working with their manager and being open to options to resolve the grievance
- make all reasonable efforts to resolve grievances informally in the first instance where appropriate through discussion with relevant parties, action and/or [workplace mediation](#)
- submit any formal grievance in writing using the [grievance notification form](#) and without delay, keeping to the timescales set out in the grievance process

Policy reference [1]

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- be truthful, objective and co-operative, participating fully in any investigation which may include being called as a witness
- maintain confidentiality throughout the grievance process and not divulge any information to a third party, except those providing support or professional guidance, ensuring sensitive information is protected appropriately
- maintain cordial, respectful and professional relationships with others in the workplace in line with expected standards of behaviour throughout the grievance process, remaining calm and acting in a fair and reasonable manner

Manager responsibilities

Managers are expected to:

- ensure that they and their team are familiar with this policy and procedure
- make every attempt to resolve staff grievances [informally](#) and within the timeframes detailed in the procedure, where possible, keeping all parties advised if this is not the case and maintain records of informal grievances
- discuss issues in an approachable and non-judgemental way with staff who are party to a grievance providing support and signposting to other support available
- engage as appropriate with trade unions
- create an environment of openness and trust in their team and maintain objectivity, impartiality and confidentiality
- recognise that if a member of staff raises a concern relating to them, they can do so informally with another appropriate manager for example, the countersigning manager or a more senior manager in the directorate
- seek advice from the HR People Advice and Wellbeing team when necessary and take steps to implement agreed actions – advice must always be taken immediately on the handling of [grievances of a specific nature](#)

People Directorate responsibility

HR People Advice and Wellbeing team (HR PAW team) have a responsibility to:

- assist managers to identify and implement appropriate management action to resolve informal issues where required
- provide advice and guidance on the application of the policy and the process signposting all parties to the support available
- declare any actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff raising the grievance or the subject of the complaint
- facilitate access to a workplace mediation service (where appropriate)
- liaise with HR policy teams, propriety and ethics and trade unions where appropriate
- assess formal grievance cases as they arise, giving advice on appropriate route to handling and any interventions required
- organise formal grievance investigations where required
- maintain appropriate confidentiality and objectivity throughout the grievance process
- maintain records of formal grievances received

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- liaise with the HR policy team on application of the policy, ongoing monitoring and effectiveness
- provide specialist advice and support in [specific cases](#)

Recognised trade unions (CSGU)

Trade union colleagues will:

- provide initial support should staff wish to discuss a potential grievance
- engage with the HR PAW team at an early stage and seek to support early informal resolution for all parties as well as offering assistance in identifying appropriate action to resolve issues
- provide professional support, advice and representation during the grievance process to members and, following the outcome of the grievance, continued support where appropriate
- declare any actual or potential conflict of interest; have no close association with the member of staff raising the grievance or the subject of the complaint
- provide support to members where appropriate through the appeals process
- provide feedback to the employer on lessons learnt to continually improve the process and outcomes

Investigating officers (IO)

Investigating officers will:

- be B1 member of staff or above
- be sufficiently independent and able to conduct an objective and unbiased fact finding investigation, determining only the facts of the case
- declare any actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff raising the grievance or the subject of the complaint
- engage with the deciding officer and adhere to the terms of reference
- identify all relevant evidence, engage with relevant parties and produce an investigation report that fairly and objectively accounts for all relevant evidence timeously
- treat all disclosures of sensitive information with respect and maintain confidentiality

Deciding officers (DO)

Deciding officers will:

- be at least one grade above the person raising the grievance
- declare any actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff raising the grievance or the subject of the complaint
- produce terms of reference for the investigation, and engage with the investigating officer, as required
- meet with the individual raising the grievance and any other relevant parties as appropriate
- conduct the grievance hearing and consider all relevant evidence
- maintain confidentiality

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- make recommendations as appropriate
- produce an outcome letter that details their decision timeously taking advice from the HR People Advice and Wellbeing case manager as required

Appeal managers

Appeal managers will:

- be a C Band member of staff or above, at least two grades above the individual being investigated
- declare any actual or potential conflict of interest; have no prior involvement with any aspect of the matter being raised and no close association with the member of staff raising the grievance or the subject of the complaint
- engage with the HR team as required, facilitating good relationships with parties to the grievance
- conduct the appeal hearing and consider all relevant evidence
- maintain confidentiality
- make recommendations as appropriate
- produce an outcome letter which details their decision timeously, taking advice from the HR People Advice and Wellbeing case manager as required

Propriety and ethics

Propriety and ethics will:

- provide corporate oversight of and coordination on sensitive issues
- work closely with People Directorate, amongst others
- be the contact point for concerns relating to ministers (informal or formal)

6. Support

Cases currently ongoing under the Fairness at Work policy will continue to be progressed under that policy. Any grievances raised from 21 April 2022 will be progressed under this revised grievance policy and procedure.

If you need support and advice you can contact:

- the [HR PAW team](#) or your local HR team
- propriety and ethics
- the [Scottish Government Counselling and Wellbeing team \(CAW\)](#)
- your recognised [trade union](#) representative (if you're a member)
- the [Employee Assistance Service \(EAS\)](#)

7. Additional Information

[ACAS](#)

[Scottish Government whistleblowing policy and procedure](#)

[Civil Service Code](#)

Scottish Government standards of behaviour

Policy reference [1]

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Terms used in the grievance policy and procedure

Member of staff raising the grievance: the person(s) making a complaint

Subject of complaint: the subject(s) of the complaint will be the person who is alleged to have behaved inappropriately or the issue which is being raised, if this does not relate to an individual

The manager: the line manager or an appropriate manager best placed to consider an informal grievance and provide appropriate support during any informal or formal grievance. A member of staff may have to raise their concern with another appropriate manager such as their countersigning manager if the grievance relates to the behaviour or a decision made by their line manager

Appeal manager (AM): the person appointed to consider an appeal

Companion: a person who may accompany a member of staff to formal meetings and, where agreed, by the manager to informal discussions; the companion may be either a recognised trade union representative or a colleague (not a family member) supporting in a non-professional capacity

Deciding officer (DO): the person appointed by the Scottish Government to consider the grievance and decide on appropriate action

Employee Assistance Service (EAS): external service available 24/7 to provide wellbeing support to staff and managers

HR team: can include the HR People Advice and Wellbeing team, local HR team (where applicable) and / or (for ministerial cases) Propriety and Ethics (P&E)

HR People Advice and Wellbeing (HR PAW) case manager: the Scottish Government HR PAW officer who will manage the grievance process

Counselling and Wellbeing (CAW): internal team who provide counselling and wellbeing support to those involved in the grievance process

Investigating officer (IO): the person appointed, to undertake an impartial collection of facts and evidence and produce a report

Parties: the individual raising the grievance, the individual/s about whom the grievance has been raised, or where the grievance relates to a corporate issue, the relevant team / individuals

Trade union representative: if parties are a member of a trade union, they may wish to discuss with their representative who can offer appropriate advice/support

Witness: anyone who may have witnessed the incident/s which are the subject of the grievance or who has other information relevant to the grievance



Scottish Government Grievance Procedure

1. Our grievance procedure

This grievance procedure explains:

- how to raise a grievance informally and formally
- how your grievance will be dealt with
- your right of appeal

The Scottish Government encourages open and honest communication between all staff where any concerns, problems or complaints are raised and settled as a matter of course. References to Scottish Government in this policy should be read as references to individual bodies and their local HR teams where appropriate.

[Informal resolution](#) is often the quickest and most efficient way to deal with issues and reach an appropriate outcome with many concerns or problems resolved quickly through discussion whilst also preserving working relationships. Informal resolution should always be considered and, where appropriate, used to resolve concerns, problems or complaints.

1.1 Formal grievances

You can raise your grievance formally if:

- following informal resolution there are outstanding issues that have not been resolved
- in circumstances where the informal process is not the right option

Formal grievances should be raised without undue delay. This should be within six months of:

- the alleged concern, problem or complaint arising
- any informal grievance resolution processes concluding (including mediation) and progressed in line with the grievance policy

Exceptionally, there may be instances where formal grievances raised outwith this timescale may be considered. A decision will be taken as to whether or not it would be reasonable to take forward such cases.

This procedure should be read in conjunction with the [grievance policy](#). Where raising formal concerns, problems or complaints relating to the behaviour of a minister or former minister, refer to the [updated procedure for handing complaints about ministers](#).

1.2 Workplace adjustments during a grievance procedure

If you wish to request any reasonable or other workplace adjustment to allow you to engage fully with the grievance process, raise this with your manager and/or the HR

Policy reference [1]

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team as soon as possible. Ensure you provide sufficient notice for your proposed adjustment to be considered.

2. Raising concerns, problems or complaints informally

You should [raise your concern, problem or complaint informally](#) with your manager, as soon as possible. This includes where the concern, problem or complaint is about a minister or former minister. Read more about [specific cases](#).

You should advise your manager you would like your complaint to be considered as part of the informal grievance process. If you feel comfortable you should seek resolution to your grievance informally, by speaking to the other person directly.

If your grievance relates to a decision taken by your manager or is about your manager's behaviour, you should discuss this with them. If you feel unable to do this you should speak informally with another appropriate manager - for example, your countersigning manager or a more senior manager in your directorate.

Your manager or, if applicable, another appropriate manager ['the manager'] has a responsibility to support you in resolving your concerns so far as is possible. They should do this in line with the grievance policy, taking advice as necessary.

If the manager doesn't think your grievance can be dealt with informally, they should discuss with the HR People and Wellbeing team (HR PAW team) and/or their local HR team who will provide further advice. This may include taking advice from the propriety and ethics team depending on the subject matter of the grievance.

2.1 Arrange a meeting with your manager

After you have advised the manager of your concerns, they should meet with you as soon as possible and, where practicable, within three days. During this discussion, the manager will:

- give you the opportunity to explain the subject of your grievance, and ask you for examples
- check that they understand the issues that are being raised
- establish with you any proposed actions that you believe would help to resolve the situation
- confirm that the concern, problem or issue can be dealt informally or if unsure take advice from HR or propriety and ethics, as appropriate
- consider if further fact finding may be required which may include taking advice from the HR team and/or referring to the formal procedure for investigation

Depending on the matters raised, the manager may need to discuss the matter confidentially with other parties involved to support you in seeking a resolution. This approach will be discussed with you first. You should note that it may not be possible to resolve your grievance if you're not willing (or if it's not appropriate) for details to



be shared with the other parties. In such circumstances, advice should be sought from the HR team.

The manager may also ask to meet with anyone who may have observed or been a witness to the grievance and be able to assist with confirming and/or establishing the facts.

2.2 Accessing available support

It's expected that the manager will take all reasonable steps to support the informal resolution process as quickly as possible. This includes where possible, situations involving people who may not be employed by Scottish Government but who work with or liaise with staff. The manager may consider, with advice from the HR team, options around informal resolution including [potential mediation](#). The aim will be to work together to address the problems, concerns or issues that have resulted in the grievance being raised and to find a way forward that is acceptable to all parties.

The manager will write to you, summarising the discussion and confirming their decision, including what, if any, actions will be taken. Depending on the nature of the grievance, the manager will also advise the subject of the complaint and, where required, their line manager, to inform them of the issue raised, their decision and any actions to be taken.

If you're a member of a trade union, you may wish to discuss this with your representative who can offer advice and broader welfare support. The [Scottish Government counselling and wellbeing \(CAW\) team](#) can offer counselling and wellbeing support where necessary as well as the [Employee Assistance Service](#).

2.3 Where matters remain unresolved after informal resolution

If you've not yet taken advantage of the [mediation process](#), this should be considered as an option to resolve matters, prior to progressing to the formal grievance procedure.

If mediation is not appropriate or doesn't resolve the problem, concern or issue and/or you're dissatisfied with the outcome of the informal grievance procedure, you may wish to raise your grievance formally and follow the [formal procedure](#). However, depending on the nature of the grievance, the procedure may be applied in a way that is appropriate to the [specifics of the case](#). Or in the case of a formal complaint about a minister or former minister's behaviour the [updated procedure for handling complaints about ministers](#) will be used.

Mediation can also be used during the formal stage of the process.



3. Formal procedure

If, following informal consideration or resolution, you consider your concern, problem or complaint hasn't been addressed. Or in circumstances where the informal process is not the right option, you can raise your grievance formally using the [grievance notification form](#).

It's important to think about the potential resolution you're seeking when raising a formal grievance. You should also be aware it may not always be possible to reach your desired outcome.

The formal procedure consists of four stages.

Stage 1: Initial contact and assessment

Formal grievances must be submitted in writing using the formal [grievance notification form](#). The form is used to capture the desired resolution being sought and where appropriate, any informal steps taken to resolve the grievance informally.

The HR team will conduct an initial assessment and advise on next steps for handling. This initial assessment will:

- confirm if your grievance is in scope of the grievance policy and if not remit this to the appropriate policy route while keeping you advised
- check the formal grievance has been raised within appropriate time limits. If the grievance has been raised outwith the six month time limit, decide whether it's reasonable to progress this considering the reasons for the delay and whether based on the circumstances the grievance is capable of being taken forward
- establish that the [grievance notification form](#) includes all relevant information and clarify any outstanding issues
- notify the relevant parties as necessary that a grievance has been raised
- appoint a [deciding officer \(DO\)](#) and provide advice to them as necessary
- take a view as to whether further investigation may be required and, if instructed by the DO, appoint an [investigating officer \(IO\)](#)

Depending on the matter/s being raised, the HR team may seek specialist advice from others on handling such as propriety and ethics. Where it's evident the grievance would be more appropriately dealt with under another policy – for example the disciplinary policy and procedure, you'll be kept informed.

A deciding officer (DO) will be appointed who has no prior involvement with any aspect of the matter being raised. The DO will review the grievance notification form and consider next steps. This review will include arranging to meet with you to discuss your grievance. This meeting may not take place right away if the DO determines further investigation is required first. The DO will take advice from the HR team, as necessary.



The HR team will inform parties about whom the grievance has been raised (and their manager/s) of the formal grievance. They will be informed of the nature and detail of the grievance and the identity of the complainer. This will be confirmed in writing to the parties normally within five working days of receipt of the complaint.

Your grievance will be investigated as fully as possible, if required.

If you're a member of a trade union, you may wish to discuss with your representative who can offer advice on your grievance and broader welfare support. The [Scottish Government counselling and wellbeing team](#) can offer wellbeing support where necessary. The [Employee Assistance Service](#) can also be contacted or where appropriate, you may wish to seek support from a colleague.

Stage 2: Investigation

In cases where the DO has determined an investigation is appropriate to establish facts, they will instruct the HR team to appoint an [investigating officer \(IO\)](#), on their behalf to carry out the investigation. Investigating officers will normally be appointed from an internal pool of volunteers but there may be occasions (for example, where a complaint is complex and likely to require a longer period of time to investigate), the HR team may appoint an external provider such as the Civil Service Investigation Service.

If the DO feels that appointment of an IO is not necessary, they may still consider, as part of fact-finding, writing to parties directly to establish facts.

On appointment of an IO, the DO will share the [grievance notification form](#) and commission the IO to undertake an impartial collection of facts and evidence from relevant individuals. The IO will prepare a summary of the relevant facts, and submit an investigation report, including any witness statements, to the DO and the HR People Advice and Wellbeing (HR PAW) case manager.

The IO will be sufficiently independent with no prior involvement with any aspect of the matter being raised and able to conduct an objective and unbiased fact finding investigation.

Where an IO is appointed, you'll be invited to a formal investigatory meeting (which may include an HR representative and/or note taker). At the meeting you'll be given the opportunity to explain the grievance from your perspective, present any relevant additional information and answer any questions the IO may have. You'll also be advised by the IO of indicative timescales relating to the grievance investigation.

Stage 3: Decision

The DO will invite you to meet with them, giving at least five working days' notice to enable you to [arrange to be accompanied](#) as appropriate.

Where an investigation has taken place, the DO will:

- consider the IO report

Policy reference [1]

Published on [21 April 2022]

Scheduled for review in [April 2025]

5



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- confirm they're satisfied there has been a reasonable investigation
- notify the relevant parties of the report
- share copies of the final report as appropriate

The DO will arrive at a decision taking into account all evidence presented. This will be communicated in writing to you, and where applicable the subject of any grievance, setting out whether the grievance is to be upheld, partially upheld or not upheld along with any recommendations where possible. This might include [mediation](#) which may help rebuild relationships once the issue is resolved.

You'll also be informed of your right to appeal and how to lodge an appeal.

Stage 4: Appeal

If you feel your grievance hasn't been resolved to your satisfaction, you may appeal in writing within 10 working days of receipt of the outcome letter using the [appeal notification form](#). Your written appeal statement should clearly set out your grounds for appeal, the potential outcome you're seeking and provide any supporting information and evidence.

Any appeal must relate to the original decision made in relation to the grievance raised and cannot raise further grievances linked to the initial concern, problem or complaint. 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

An [appeal manager \(AM\)](#) who has no prior involvement with the matters raised will be appointed. They will consider how the appeal will be handled, taking advice from the HR team. The AM will notify the subject of the grievance, if relevant, of the fact an appeal has been received. They should also keep in contact with you throughout the appeal stage to let you know of any delays.

Based on the grounds for appeal, the AM will conduct a review of the original decision to consider whether:

- the procedure was applied correctly and fairly
- there were reasonable grounds for the decision
- the decision was fair and appropriate

Where an appeal is raised because of new evidence that has come to light, the AM role will be to assess the impact this new evidence may have on the original decision. They will consider whether there are elements which, had they been available to the DO, would have, in the AM's view materially changed the decision.

An appeal hearing will normally be arranged within 10 working days, where possible, and you will be invited to present your case. The AM will be accompanied by a member of the HR team (who has not previously been involved and does not have a



decision making role) to support and give them advice. A record will be taken of the meeting.

Following the appeal hearing, the AM will take into consideration all of the circumstances and make a decision either to:

- uphold the decision in full
- uphold parts of the decision
- overturn the original decision and confirm any further action required

Their decision should be confirmed in writing within 10 working days of the hearing, where possible and you will be kept informed should there be any delay to this. The decision following the appeal will be final and there will be no further internal right of appeal.

4. Right to be accompanied

The right to be accompanied at formal meetings applies equally regardless if you are raising a grievance or are the subject of a grievance.

4.1 Informal proceedings

Although you're not entitled to be accompanied in informal procedures, you may, subject to agreement with the appropriate manager bring a companion 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.

To support staff who may find the meeting difficult, managers should, where possible be supportive of such requests so long as this does not unduly delay the process. Trade union members can also seek advice and support from their trade union representative in preparing for an informal meeting.

You are not entitled to bring your own legal representation to any informal meeting.

4.2 Formal proceedings

You have the right to be accompanied to any formal grievance and appeal hearings, including formal investigatory meetings, by a colleague (not a family member), trade union official or trade union representative. You are not entitled to bring your own legal representation to any formal meeting.

If you wish to be accompanied in formal proceedings, you must inform the deciding officer or appeal manager who your chosen companion is in good time before the meeting.

The individual accompanying you may make representations and ask questions, but shouldn't answer questions on your behalf. You may talk privately to them and seek an adjournment at any time during the meeting.



If you wish to bring a colleague to accompany you rather than a trade union representative, you should be aware that your colleague is under no obligation to carry out this role. If they agree to do so, they will be allowed reasonable time off from duties without loss of pay to accompany you.

If you or the individual accompanying you can't attend the hearing, the hearing will normally be adjourned. It will then be reconvened within five working days of the original hearing date unless another date is mutually agreed. If the individual accompanying you is unable to make the rescheduled date, Scottish Government may request you choose an alternative individual to ensure there are no unreasonable delays in the process.

If you're unable to attend the rearranged hearing, a decision may be taken to hold the hearing in your absence and a decision may be reached based on the available

5. Confidentiality

All those involved in the grievance process are required to maintain confidentiality at all times – including when the process has concluded.

It's important to note that matters may need to be discussed with HR or trade unions or (where individuals may be at risk of harm) with other relevant persons. For example a recognised trade union member sharing information with a national trade union official. Where this is the case colleagues should be kept informed.

All those involved can seek support and advice relating to a grievance from the HR team and their trade unions (where they are a member).

Any breaches in confidentiality will be treated seriously and where appropriate, considered under the [disciplinary policy and procedure](#). Sharing official information with recognised trade union representatives including identified national representatives (a list of which will be maintained and agreed with Scottish Government HR) when it's directly related to your grievance or where you're a party to a grievance will not be regarded as a breach of the disciplinary policy or procedure or the [Civil Service Code](#).

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

Where you feel you are the victim of a crime, you are free to make a complaint directly to the police. You can seek advice and support from the HR team at any point, irrespective of whether you have raised a grievance in relation to treatment or not.

There may be occasions, at any stage in the grievance process, where, based on the information provided, the HR team and/or the deciding officer consider that a criminal offence may have been committed. The HR team will discuss with you whether you want to report matters to the police and ensure support and access to specialist advice is provided. No pressure will be put on you to make any particular decision. If you don't want to tell the police, you don't have to. However, while the HR



team will, wherever possible, respect your wishes, there may be circumstances where, in exercising our employer duty of care, Scottish Government may be obligated to bring the matter directly to the attention of the police. Before taking this step, the HR team will discuss with you, explain the reasons, and provide appropriate support.

As employer, the Scottish Government will co-operate fully with any police investigation or criminal proceedings. Where this occurs during a live grievance case, HR may decide to pause the grievance proceedings whilst awaiting the outcome of the police investigation or criminal proceedings. While HR are not obligated to do this, they may choose to do so. Including in situations where, for example, it is considered that actions under this procedure could prejudice criminal proceedings. You will be informed where this applies to you.

The HR team will continue to offer support throughout to you.

7. Record of meetings during a grievance procedure

Written and/or typed notes will be captured at formal grievance meetings and a draft note of the meeting provided to you to agree and/or comment on. 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.

Records will be protectively marked, kept securely, and handled in line with the [Scottish Government record management policy](#) which complies with the requirements of data protection legislation.

7.1 Audio/video recordings

You're not permitted to make audio and/or video recordings at any stage of the informal or formal grievance procedures. Making covert recordings, for example of meetings or calls, is a disciplinary offence which will be considered under the [disciplinary policy and procedure](#) and could result in dismissal.

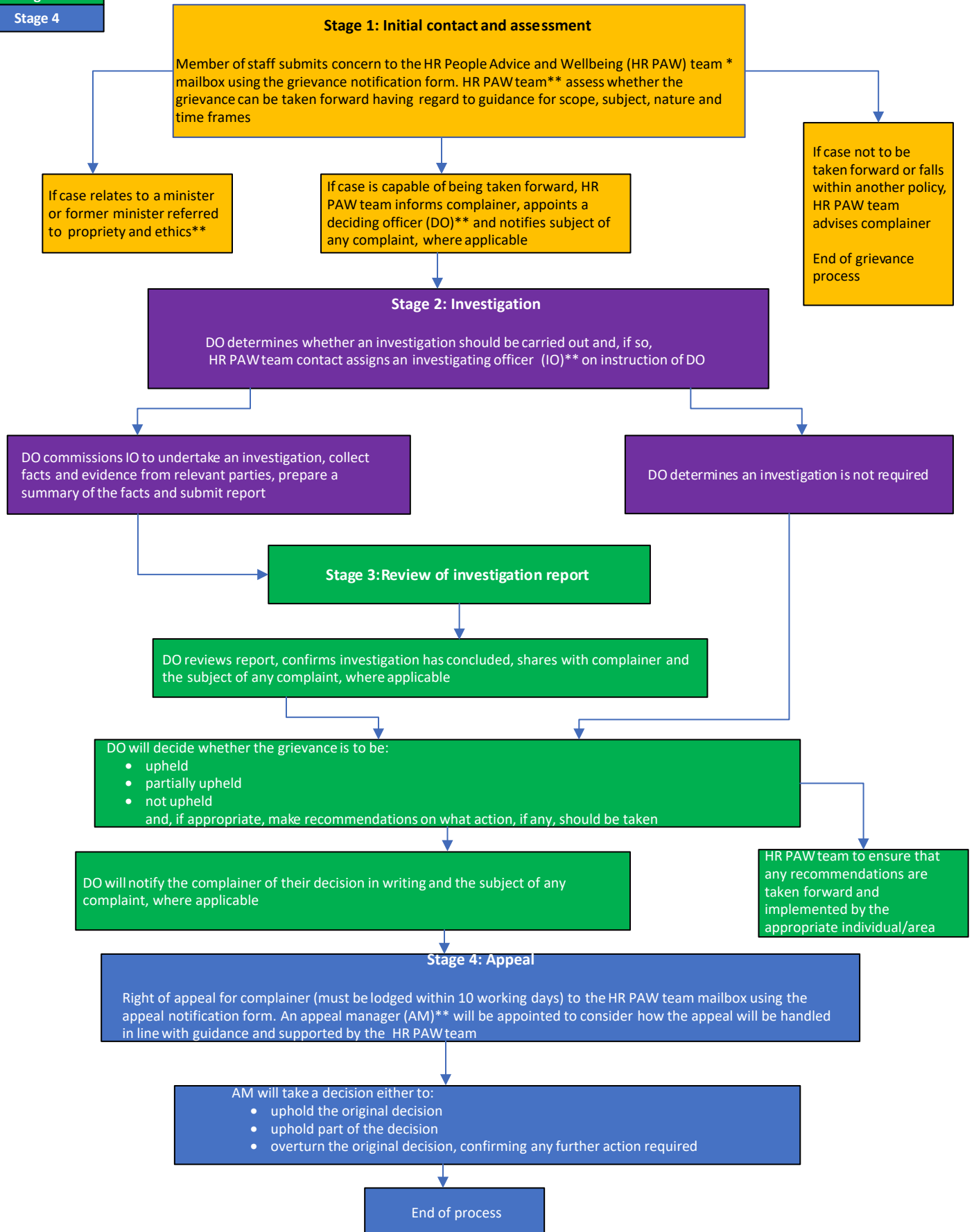
However should you require any workplace adjustments during any part of the grievance process, including during meetings please discuss immediately with the HR People Advice and Wellbeing Manager allocated to manage your grievance.



Stage 1
Stage 2
Stage 3
Stage 4

Procedure for formal grievance

This flowchart is a visual representation of the relevant text within the procedure



A grievance is a concern, problem or complaint and potential areas include but are not limited to bullying and harassment, discrimination, organisational change, terms and conditions as they affect individuals, victimisation, working environment (including health and safety), working practices and working relationships

*HR People Advice and Wellbeing (HR PAW) team or local HR team, as appropriate

**Must confirm no known conflict of interest on appointment (no prior involvement with the matter being raised and no close association with the member of staff raising the grievance and/or the subject of complaint, where applicable)

Raising concerns about behaviour: Route map

including bullying and harassment, discrimination and victimisation

Concerns may be raised by staff with a variety of people, including but not limited to:

To a line manager or more senior manager

Directly with HR teams (including HR People Advice and Wellbeing or local HR team)

To their trade union

To propriety and ethics team (including where about a minister / former ministers behaviour)

Other routes in which concerns about behaviour may be raised:

To a nominated officer (whistleblowing / raising a concern under CS code – separate policy applies)

Directly to police (if potentially criminal matter)

To EAS with safeguarding route to HR PAW or local HR team

Subject of concern:

Role / Responsibilities

Potential policy route and outcomes

Corporate teams (HR including local HR teams as appropriate P&E, provide advice and support.

If about a current staff member

HR / manager to support staff member with concern following relevant policy including informal resolution / formal process as appropriate.

Support handling of grievance and where appropriate remit to conduct /disciplinary policy

If about a contractor/temp member of staff

HR / manager will support member of staff following relevant policy and HR to alert contractor/temp employer to investigate through their procedures as appropriate and/or support informal resolution.

Support staff member in handling of grievance informally / formally. Potential removal of contractor/temporary member of staff

If about a former member of staff

HR / manager to support member of staff and HR to advise as to how case may be taken forward in line with policy

Support member of staff, with wider organisational issues flagged – action taken where appropriate

If about a minister or former minister's behaviour

Propriety and ethics to advise, and where appropriate take forward support to manager / staff to resolve concerns and/or advise on process for procedure for handling complaints about a minister or former minister

Staff and minister supported. Outcome of procedure taken forward

If about another third party (e.g board members, NXDs, member of public)

HR / manager to support member of staff and HR / propriety and ethics to advise on appropriate policy route and how case may be taken forward in line with policy

Support member of staff (and other parties as appropriate). Case handled in line with appropriate policy (grievance / disciplinary) so far as practicable

Staff should be encouraged to raise concerns and be assured that these will be treated sensitively, taken seriously and investigated as appropriate. Concerns may be raised about a variety of situations, so it is important that staff / managers seek advice from corporate teams to ensure that the appropriate policy route to follow is identified, that provision of support to those involved is put in place (including HR and trade union support) and that Scottish Government's duty of care is fulfilled.

PROCEDURE FOR MAKING A FORMAL COMPLAINT ABOUT A MINISTER'S OR FORMER MINISTER'S BEHAVIOUR, DECEMBER 2022

Procedure aims

The policy aim of this procedure, in line with our general commitment to staff to creating a workplace free from bullying, harassment and discrimination, is to ensure that formal complaints raised about current or former ministers in respect of unacceptable behaviour towards civil servants are handled sensitively, fairly and timeously and in doing so all parties are treated with respect and dignity.

The procedure provides for the handling of formal complaints made by civil servants about the behaviour (including bullying, harassment, discrimination, or any other unwanted conduct affecting the dignity of staff – for definitions see Standards of Behaviour) of a Minister or former Minister, in the course of discharging their duties as civil servants in their employment by the Scottish Government ('SG'). This includes addressing related issues within such complaints, such as the action of the SG in preventing or addressing the alleged behaviour.

The procedure does not provide for any decision on the conduct of a Minister or former Minister. The First Minister has responsibility to judge the standards of behaviour expected of a Minister, including in their interactions with civil servants, and of the appropriate consequences of a breach of those standards.

Procedure principles

A complaint of this nature is a grievance. The procedure provides for grievances within scope to be addressed and, where possible, resolved, in line with [statutory guidance](#).

The procedure will not be used to deal with issues arising from the application of other SG policies or procedures, for example informal resolution and mediation, without the express consent of the complainer. Similarly, the procedure will not be used to deal with complaints made under the Civil Service Code which relate or refer to the behaviour of a Minister or former Minister without the express consent of the complainer.

The expectation is that a formal complaint will be raised without unreasonable delay. There is no time limit for making a complaint of harassment. There is a time limit of six months for making a complaint of bullying or other unwanted conduct. Such complaints will normally only be taken forward using this procedure if made within six months of the alleged behaviour or within six months of any informal dispute resolution processes concluding (including mediation).

If a complaint of bullying or other unwanted conduct is made outwith the time limit, there will be a consideration of available information before a decision is made on whether it would be equitable to take forward the complaint using this procedure notwithstanding that a complaint is made outwith the time limit. It may be the case that a complaint made may not be taken forward under this procedure if it is no longer possible to investigate it fairly and effectively because of the passage of time.

All parties involved in the process are expected to be respectful and engage positively with the process to resolve the complaint, and to maintain confidentiality at all times – including when the process has concluded.

The need to maintain confidentiality does not affect the right of any member of staff to be protected from detriment because they have made a qualifying disclosure (sometimes called whistleblowing) within the meaning of the Public Interest Disclosure Act 1998 (PIDA). Details of SG's policy on raising a concern under the Civil Service Code and whistleblowing can be found [here](#).

Staff should act in good faith when raising a complaint under this procedure and should represent the facts truthfully, and in line with our [Standards of Behaviour](#).

Scope of procedure

The procedure applies to all SG staff who wish to make a formal complaint about a Minister's or former Minister's behaviour towards a civil servant (this may include bullying, harassment, or any other unwanted conduct affecting the dignity of staff).

The following are outwith the scope of the procedure:

- informal concerns, or concerns raised before they become a formal complaint – further advice can be found [here](#). There are a range of alternative resolutions which may be more appropriate for resolving concerns, but it is up to the member of staff which route they wish to pursue.
- complaints about a Minister or former Minister relating to matters other than behaviour towards civil servants.
- complaints where a Minister or former Minister may be involved but is not the subject of complaint.
- complaints solely about other civil servants or third parties.
- complaints made by third parties.

The procedure applies to all Scottish Government staff, including senior civil servants and civil servants working in the Scottish Government's executive agencies.

For inward secondees, the conditions of their secondment apply. This means they can raise matters informally with an appropriate manager. However, if they wish to pursue a formal complaint, this must be done through their employer's grievance procedure.

Employment agency workers are not covered by this procedure. If an agency worker has a complaint, this must be raised through the agency, who may then liaise with the Scottish Government.

Procedure (summary)

The procedure will consist of five stages:

1. Initial contact and assessment. The complainer will set out their complaint in writing to [Propriety & Ethics](#). The SG will carry out initial checks, confirm whether the complaint can be taken forward under this procedure, and notify the relevant parties.

2. Investigation. Where a complaint is to be investigated, the SG will assign an external decision maker and an external investigator to the case. The decision maker will commission the investigator to undertake an impartial collection of facts and evidence from the relevant parties including the complainer and the subject of complaint, prepare a summary of the relevant facts, and submit a report for the decision maker.

3. Decision. The decision maker will ensure that a reasonable investigation has been carried out, notify the relevant parties of the report and share copies as appropriate. The decision maker will meet with the complainer and may also meet with the subject of complaint. The decision maker will decide whether to uphold the complaint or not and if appropriate make recommendations on what action, if any, should be taken. The decision maker will notify the complainer of their decision in writing and will also notify the subject of complaint. The decision maker will also notify the SG for the purposes of consideration by SG as the employer in line with Stage 4 of this procedure.

4. Employer Action. The SG will be responsible for ensuring that any recommendations are considered and implemented as appropriate. Where the complaint is about a current or former Minister, the SG will notify the First Minister and the appropriate Special Adviser(s). Where a complaint is about the First Minister, the SG will notify the Deputy First Minister and the appropriate Special Adviser(s).

5. Appeal. Where either the complainer or the subject of complaint are unsatisfied with the decision, they can appeal. Appeals will be considered by an external appeal decision maker.

Where parties involved may be the victim of a crime

There may be occasions where it is the decision maker's opinion – at any stage in the process – that a criminal offence may have been committed.

At all times the complainer is free to make a complaint directly to the police.

The decision maker will alert the SG to this opinion as soon as is practical so that SG is aware of this and may take appropriate steps in line with its duties as an employer. The SG will discuss with the complainer whether they want to report it to the police and ensure that support and access to specialist advice is provided. No pressure will be put on a complainer to make any particular decision; if they do not want to tell the police, they do not have to.

The SG will, wherever possible, respect the wishes of the complainer, however there may be circumstances where the SG may have an obligation to bring the matter directly to the attention of the police. Before taking this step, the SG will discuss with the complainer, explain the reasons, and provide appropriate support.

The SG as the employer will co-operate fully with any police investigation or criminal proceedings. The SG will pause the procedure whilst awaiting the outcome of police investigation or criminal proceedings. This is to ensure that actions under this procedure do not prejudice criminal proceedings. When the procedure is resumed, a new decision maker will be assigned by the SG nominated contact.

The SG will continue to offer support throughout to the complainer.

Record keeping

A written record will be kept at all stages of the procedure. Following conclusion, the decision maker should send copies of the documents to [Propriety & Ethics](#).

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.

Procedure (full)

For the purposes of this procedure and associated guidance, the following terms will be used to describe the parties involved:

- **Complainer:** the person(s) 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. This will be the Minister or former Minister who is alleged to have behaved inappropriately during their term of office, but may include others, for example civil servants.
- **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.
- **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 by the Scottish Government to undertake an impartial collection of facts and evidence and produce a report.
- **SG nominated contact:** The person(s) in Scottish Government responsible for appointing the external decision maker and investigator, retaining a record of the complaint, and taking forward any further actions as appropriate.
- **Support contact:** The person(s) in Scottish Government responsible for provision of relevant pastoral support.
- **Trade 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.
- **Appeal decision maker:** the external person(s) appointed by the Scottish Government to consider an appeal.

Stage 1 Initial contact and assessment

The complainer will set out their complaint in writing to [Propriety & Ethics](#), providing:

- details of the complaint, giving specific instances and details of witnesses if appropriate;
- what has been done to informally resolve the issue if appropriate, and if nothing has been done, explaining why this could not address the concerns;
- how they would like to see matters resolved.

The SG nominated contact, who will 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, will acknowledge receipt of the complaint.

The SG nominated contact will carry out initial checks in relation to whether the complaint is in scope of this procedure. Where a complaint of bullying or other unwanted conduct is made outwith the time limit this stage will include an assessment of any relevant information and whether it would be equitable to take forward the complaint using this procedure notwithstanding that a complaint is made outwith the time limit.

Where the complaint is in scope of the procedure and is capable of being investigated, the decision will be to investigate further. Once the SG nominated contact has confirmed this decision, they will inform the complainer of this.

Where the decision at stage 1 is not to investigate and not to proceed under this procedure, the SG nominated contact will arrange for a meeting with the complainer to inform them. The meeting will be arranged without unreasonable delay, giving at least five working days' notice to the complainer and informing them that they may be accompanied by a trade union representative or work colleague. The SG nominated contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

After the meeting, the SG nominated contact will notify the complainer by letter that the complaint will not be considered further under this procedure, and include the written notes of the meeting.

A support contact will be offered to the complainer who may offer support to consider alternative resolution to their issues.

Where an investigation is to be carried out, the SG nominated contact will notify the subject of complaint that a complaint has been received which will be investigated (letting the complainer know when the subject of complaint has been notified). The SG nominated contact will notify the Permanent Secretary or a delegate by providing a summary of the complaint, the initial checks carried out, and any other information relevant to the decision that the complaint will be investigated.

The SG nominated contact will establish a support contact for all parties involved in the process.

Where a complaint that will be investigated is about a current Minister, the Permanent Secretary or delegate will inform the First Minister of the name of the subject of the complaint and that a complaint has been received, providing a summary of the issues considered in the decision taken to investigate further.

Where a complaint that will be investigated is about a former Minister, the Permanent Secretary or delegate will inform the First Minister that a complaint has been received, but the name of the subject of the complaint will not be disclosed.

Where a complaint that will be investigated is about the current First Minister, the Permanent Secretary or a delegate will inform the Deputy First Minister.

Stage 2 Investigation

The SG nominated contact will assign the complaint to an external decision maker and share the complaint, the initial checks carried out and any other information relevant to the decision that the complaint will be investigated.

The decision maker will 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.

The decision maker will commission an external investigator, appointed by the SG nominated contact, who will 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.

The decision maker will set the terms of reference for the investigation, for example the alleged incident(s), potential witnesses, and the format of the final report. This may include establishing if there are other staff within the SG who may have a legitimate interest in the outcome of the complaint, for example where the complainer is someone who witnessed the alleged behaviour and the investigation and decision may be relevant to staff who directly experienced the alleged behaviour.

The decision maker will share a copy of the terms of reference with the complainer, the subject of complaint, and the SG nominated contact. The decision maker will keep the SG nominated contact informed of expected time scales, and provide updates on progress against those timescales. The decision maker will actively monitor the case to ensure that the investigation is concluded as quickly as possible and to minimise any delays.

The investigator will, in accordance with the terms of reference, undertake an impartial and objective collection of facts and evidence from the complainer, the subject of complaint and other relevant witnesses.

The investigator will establish the facts of the matter as far as is reasonably possible and appropriate. The decision maker will inform the complainer of any delays.

If the investigation is not completed after 30 working days, the case should be reviewed by the SG nominated 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 avoid delays. Following review, the SG nominated contact may direct the decision maker or investigator to complete the investigation as far as is reasonably practicable.

The support contact will signpost or arrange support services to all parties involved in the investigation, including any witnesses.

The investigator will prepare a report presenting the facts and evidence ingathered, whether there are any mitigating factors to consider, and any other relevant information, and submit this to the decision maker.

Stage 3 Decision

The decision maker will ensure that a reasonable investigation has been carried out in accordance with the terms of reference. The decision maker may require the investigator to clarify points and update the report. Once satisfied, the decision maker will notify the complainer of the report and provide a copy. The SG nominated contact and the subject of complaint should also receive a copy of the report. This will usually also include any witness statements to ensure openness and transparency in the investigation process.

The decision maker will invite the complainer to a meeting without unreasonable delay, giving at least five working days' notice and informing them that they may be accompanied by a trade union representative or work colleague.

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

At the meeting, the decision maker will allow the complainer to explain their complaint and how they think it should be resolved and clarify any points which are not clear. The decision

maker will also offer a meeting to the subject of complaint to allow them to set out their position.

The decision maker should consider adjourning the meeting(s) if it is necessary to investigate any statements made or new facts which arise.

After the meeting(s), the decision maker 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 (for example, if some allegations are found to be justified, and others are not).

The decision maker will have access to appropriate advice through the SG nominated contact, where they may need further guidance or support.

The decision maker will notify the complainer of their decision by letter, including the written notes of the meeting and any recommendations for action. They will also notify the outcome to the subject of complaint.

The decision maker will consider whether it would be appropriate to share the outcome with other staff within the SG who have a legitimate interest in the outcomes. This will be limited to sharing the outcome only where strictly necessary, and all parties will be expected to maintain confidentiality at all times. The decision maker will inform the complainer and the subject of complaint of who else within the SG will be told about the decision and the information they will be given.

The decision maker will share any other recommendations with the SG nominated contact, for the SG to consider with the letter and the investigation report at stage 4.

Stage 4 Employer Action

The SG nominated contact will share the final report, the decision letter and any other recommendations with the Permanent Secretary or delegate, provided that no appeal has been lodged by either of the parties within ten working days. The process for appeal is set out in Stage 5.

The SG nominated contact will consider the report and ensure that any recommendations are considered and implemented as appropriate. This may include arrangements to engage with the complainer on further action. Further action 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.

Where there is evidence that staff have not acted in good faith when raising a complaint or not represented the facts truthfully and in line with SG's Standards of Behaviour, this may be regarded as a disciplinary issue and taken forward using the SG disciplinary procedure.

Where the complaint is about a current Minister, the Permanent Secretary or delegate will inform the First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The First Minister will be informed where a current Minister has declined to co-operate with the procedure. Where the complaint is about the current First Minister, the Permanent Secretary or delegate will inform the Deputy First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The Deputy First Minister will be informed where a current First Minister has declined to co-operate with the procedure.

Where a complaint about a current Minister is upheld or partially upheld, it will be for the First Minister to consider whether a relevant provision of the Ministerial Code has been breached by the Minister and to decide on the appropriate response.

Where the complaint is about a former Minister, *[Deleted: a complaint about a former Minister is upheld]*, the Permanent Secretary or delegate will inform the First Minister and the appropriate Special Adviser(s) and provide a copy of the decision letter. The Permanent Secretary or delegate will consider steps to review practice within the Scottish Government to ensure the working environment is free from unacceptable behaviour. This may include sharing structural lessons with the First Minister in a format that ensures that confidentiality of the complainer and any witnesses is maintained. *[Deleted: within the procedure is maintained (including that no information is shared that would reveal the identity of the complainer or the subject of the complaint).]* The First Minister may wish to consider any lessons relevant to ensuring awareness and adherence to the Ministerial Code.

Stage 5 – Appeal

Where either the complainer or the subject of complaint are unsatisfied with the decision, they can appeal within 10 working days of being notified of the decision.

The complainer or subject of complaint should make their written appeal to [Propriety & Ethics](#). The written appeal should 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 SG nominated contact will assign the appeal to an external appeal decision maker who has had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint. The SG nominated contact will notify the complainer and the subject of complaint when this has been done.

The complainer or the subject of complaint bringing the appeal will be offered a meeting with the appeal decision maker to present their case. This will be offered without unreasonable delay, giving at least five working days' notice of the meeting. Where the appeal is brought by the complainer, they will be informed that they may be accompanied at the meeting by a trade union representative or work colleague. The SG nominated contact will arrange for a note taker to be present at the meeting to keep a factual record of the discussions that take place.

The appeal decision maker will offer the other party not appealing the opportunity to comment on the grounds for appeal.

Appeals should be dealt with without unreasonable delay. The complainer and subject of complaint will be informed of any delays.

Following the appeal meeting, the appeal decision maker will take into account all the information and evidence provided at the appeal stage and review the original decision. They will consider whether the procedure was applied correctly and fairly, whether there were reasonable grounds for the decision, and whether the decision was fair and appropriate.

There may be circumstances where it would be appropriate for the appeal to be conducted as a re-hearing.

If an appeal is to be conducted as a re-hearing, the appeal decision maker will inform the SG nominated contact, the complainer and the subject of the complaint.

If an appeal is to be conducted as a re-hearing, the appeal stage may be paused for further investigation and reconvene when the investigation has been carried out with any resulting evidence provided to all appropriate parties. The further investigation will be carried out following the process described at stage 2.

Following the review or re-hearing, the appeal decision maker will notify the complainer and the subject of complaint of their decision by letter. They will also notify the outcome to the SG nominated contact.

Should any action need to be taken following the appeal, the SG nominated contact will ensure appropriate steps are taken. This may include revisiting the actions as set out at stage 4 and steps to evaluate the application of this procedure.

Reporting the outcome of concluded complaints

The Ministerial Code provides that the Scottish Government will publish information about concluded formal complaints about a Minister's or Former Minister's behaviour, other than where for legal reasons it is not possible to do so without prejudicing the rights of confidentiality owed to a complainer or others involved.

For complaints which are upheld or partially upheld, the following information will be published within 20 working days:

- The name of the Minister
- The outcome of the complaint (upheld or partially upheld)
- A redacted version of the decision report

For complaints which are not upheld, the following information will be published within 20 working days:

- The name of the Minister
- The outcome of the complaint (not upheld)

In the case of complaints not upheld, the information will be published for a fixed period of six months.

The identity of the complainer(s) and any witnesses will remain confidential and any information which could lead to identification of the complainer or witnesses will be redacted.

END