

### Schedule of documents

**FOI Case Number: Fol/17/02841**

Beyond redaction of names and unrelated content no documents are being withheld or exemptions applied.

		<b>Inventory</b>
1.	24/12/08	Email from officials to trade unions including discussion points on the draft Fairness at Work Policy
1.a	attachment	List of discussion points
2.	26/3/09	Email from official to trade unions containing changes to Fairness at Work policy re:role of the deciding officer
2.a	attachment	Addition to Fairness at Work – new sentences in bold – 29/3/09
3.	27/10/09	Extract from Central Committee Meeting minutes re Fairness at Work
4.	17/11/09	Email from official to Trade union and their response re:process for Ministers
5.	23/11/09	Extract from Partnership Board minutes
6.	22/02/10	Email from official to Trade Union with update on policy section regarding Ministers
6.a	attachment	Updated section on complaints against ministers
7.	5/3/10	Email from union to official giving feedback on revised procedure on complaints against ministers
7 a	attachment	Policy on complaints against ministers with tracked comments from Unions
8.	9/3/10	Email from official to trade union with a response to the feedback raised on 5/3/10
9.	5/5/10	Update from Trade Union to their representatives copying in officials
10.	21/6/10	Email from official to trade unions with final version of policy for comment
10a	Attachment	FAIRNESS AT WORK POLICY AND PROCEDURES doc
10b	Attachment	Annex A – standards of behaviour
11.	1/7/10	Email chain between official and trade unions chasing up trade unions views on the draft policy
12.	23/8/10	Email chain regarding comments from various Trade Union representatives then copied to the official
13.	16/7/10	Email from official chasing up a response to the draft policy
14.	20/7/10	Email between officials cc Trade Unions re implementation of the policy
15.	23/8/10	Email chain between Trade Union representatives then copied to the official about comments on the policy
16.	24/8/10	Email from official to trade union with final version of the policy following a discussion
16.a	Attachment	FAIRNESS AT WORK POLICY AND PROCEDURES doc
16.b	Attachment	Annex A – standards of behaviour
17.	9/9/10	Email from official to trade union with templates that will be used to create reports
17a	attachment	Template – DO report
17b	attachment	Template – IO report

1.	24/12/08	Email from officials to trade unions including discussion points on the draft Fairness at Work Policy
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**From:** [REDACTED]  
**Sent:** 24 December 2008 13:13  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** HR Policy Development - Managing Attendance and Fairness at Work  
**Importance:** High

[REDACTED]

Dear All

[REDACTED]

I also attach a "table" setting out the discussion points on the draft Fairness at Work Policy and Procedure. [REDACTED] complete amendments to the policy/procedure on her return on 29 December and will forward the revised version to you. Many thanks. [REDACTED]

[REDACTED]  
[REDACTED]

**Fairness at Work Policy/Procedure  
Points Raised by CSGU**

Para 3.1.1 Scope	CSGU asked for a fuller explanation of which procedure applies for inward and outward secondees. Action [REDACTED] send on fresh wording.
Para 5.5	Provision of interpreter – include contact in Diversity Team. This will be added.
Para 6.1.1 Raising an Issue	In very serious cases include provision for by passing line management chain and directly contacting Head of Professional Advisers' Unit [REDACTED] This will be added.
Para 6.1.2	CSGU as that the words "...Line Managers have a responsibility to "follow through" on all complaints raised with them." be included. This will be added.
Para 6.3 Special Cases - Collective Agreements	HR should determine whether agreed terms have been applied correctly. There should be no further appeal provision on this – raises false expectation. Wording similar to: "Issues concerning collective agreements must be addressed through negotiations with trade unions. If you are not satisfied with the application/interpretation contact HR." will be added.
Para 6.3.5 Complaints about Ministers	CSGU requested that a more robust process should be agreed. HR will consider this point and get back to CSGU. Timescale "within 5 working days" is too long – provision for immediate action (example given of Bill Team with daily interaction with the Minister). Agreed to provide Scottish Parliament guidance on this to be passed to Trades Unions (this was sent to CSGU on 19/12.)
Para 6.4.2	CSGU agreed form useful - may provide some focus as complaint letter often 20-30 pages long. Form should contain 4 boxes - as stated plus any other relevant information could be attached.
Para 6.4.7 Serious allegations – disciplinary procedures	CSGU concerned that outcome of discipline procedure (in relation to D@W type complaints) affected by seniority of individual under investigation – lack of consistency across grades. Request message as regards consistency from Perm Sec as part of discipline/fairness at work policy launch.
Para 6.4.8 Deciding Officer Action	CSGU propose: 1) letter of thanks to witnesses advising of outcome; 2) victim (and others affected) advised in writing of recommendations (where this impacts on their work situation); and 3) perpetrator advised of the outcome recommendations and any referral for disciplinary action. R confirmed that 1) and 3) included in the draft policy. R will consider the letters to witnesses.

Annex A Behaviour Standards	Scotland Expects delete. Para 4 – Performance Management delete.
Annex B Mediation	R agreed to consider mediation training to be provided for SG staff during period of pilot. Advertise as a skills development opportunity.
Annex C Complaints about External Third Parties	Should be facility to report incident immediately (not just on return to the office). This will be added.
Annex D	Para 3 – substitute the word “particular” for “ special”
Annex E Deciding Officer	“The DO will liaise and work with the HR PA allocated to the case throughout the process to <i>collect information relevant to the complaint.</i> ” Will add words in italics. Decision on whether IO is necessary – illustrative examples i.e. definitely required in complex or bullying/harassment cases R is querying the necessity for this as the draft states, “In cases of harassment or bullying or other allegation about a fellow colleagues conduct, it will be normal to appoint an IO.”
As above	Delete “ he/she may also want to interview or include others in the meeting if it will encourage open discussion, challenges to and questioning of information.” All available information should be gathered / investigated prior to hearing rather than have witnesses on the day.
Annex F Investigating Officer	Neutrality/Impartiality – the following words will be added, “..put his her own values <i>or personal views on the case</i> to one side.”
Annex G Appeals	CSGU suggested that a Business Partner good alternative to Professional Adviser on Panel/Board. R will check with (REDACTED) (REDACTED) CSGU suggest wording that, “ In all cases the panel will be of mixed gender.” R is still of the view that the wording should be, “The aim is to ensure panel is of mixed gender.” The words “whenever possible” being deleted. This form of serious appeal level may be used for all types of appeal F@W, Discipline, Dismissal etc.
As above	Discussion about disciplinary action following an appeal. If the appeal being heard is about a F@W (complaint about a colleagues behaviour), it is not for the appeal panel to decide level of disciplinary charge or to decide any suitable penalty level – it can only put forward its decision and recommendations. The panel may refer to HR to consider disciplinary action. There is no further appeal against the appeal findings.
Annex H	Para 8:- “Other recommendations might include compulsory training, awareness raising....”

	<p>Para 8:- The DO might recommend that a transfer of either party...any such action will be considered by HR and the line manager <u>in discussion with the individual raising the grievance.</u>" These words will be added.</p>
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2.	26/3/09	Email from official to trade unions containing changes to Fairness at Work policy re: role of Deciding Officer
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**From:** [REDACTED]  
**Sent:** 26 March 2009 12:05  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Policy review - Fairness at Work

Dear All

Following our meeting on Tuesday I am reporting back on the following points. I briefly mentioned a change I had made to the DO the following:

I attach wording of new sentences I have added to the DO and respondent's guide. This is to emphasize the need for a fair hearing for both the complainant and respondent and hopefully would help to resolve counter complaints by respondents.

In addition, I met with a Legal colleague yesterday. She was content generally with the draft. She thought it over long but once we strip out the guides the formal procedures it just under two pages. She had a couple of concerns about timescales which she thought were ambitious. In our meetings we did agree that we would say both for discipline and F@W, that when timescales could not be met, then all parties had to be informed. To avoid any confusion over this, I have added a sentence at 5.6 which states:

5.6 The timescales set in the procedures are those which are normally expected to be met. In instances where it is not possible to meet a specific timescale, all parties should be advised and provided with an alternative date.

I have also added a reminder of the support and advice of Welfare, EAP and union (if a member) to the end of Annex A – Standards of Behaviour. Also, in the example of behaviour given at Annex A I have made it clear that these are examples and *may* (I've italicised the word 'may') be viewed as misconduct. It is not automatic that they will be, as of course, these will be viewed in the context of the particular situation.

This only leaves the issue of complaints about ministers' conduct.

I would appreciate any comments by 10 April – thanks.

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

**Addition to Fairness at Work – new sentences in bold – 29/3/09**

Annex E – the role of the DO

6. At the meeting the DO will listen carefully to what you have to say, ask questions and answer any questions you may have. If the case is a complaint about a colleague's behaviour, then the DO may wish to interview that individual before reaching a decision. ***He/she will have the right to be accompanied by a trade union representative or other colleague. This is to ensure fair and full consideration of the case and allows that individual a final opportunity to put forward their position.*** Following the meeting, the DO will consider the full facts of the case before reaching a decision. He/she will then write a report which clearly demonstrates how the decision was reached and with recommendations that management or HR may want to take forward which may include disciplinary action.

Also added this to Annex H – what if a complaint has been made about me (just the sentence bold and italics is new).

At the formal stage, a Deciding Officer (DO) is appointed to review all the relevant information of a complaint and make a decision. ***This may include a meeting with you at which you can be accompanied by your trade union representative or other colleague.*** He/she will provide a report which clearly demonstrates how that decision has been reached. HR will arrange for you to be advised of the decision. If the DO upholds the complaint, he/she may include recommendations which could include consideration of disciplinary action which HR would arrange to take forward. The disciplinary process includes a hearing at which you can be accompanied by your trade union or a colleague and has an avenue for appeal. You will be given a full opportunity to present your case.

3.	27/10/09	Extract from Central Committee Meeting minutes re Fairness at Work
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**CENTRAL COMMITTEE – 27 OCTOBER 2009**

**MINUTE OF MEETING**

**EXTRACT**

**Agenda item 7: Fairness at work – revised policy**

15. [REDACTED] referred to the unions' intensive work with the HR Policy Team from December 2008 to Spring 2009 on updating and renaming the 'Dignity at Work' (D@W) policy to 'Fairness at Work' (F@W). [REDACTED] asked for an update regarding the inclusion in this policy of a new policy/procedure should any alleged unfair treatment of staff by Ministers arise. She indicated that if the matter is not progressed soon, it is likely that the unions will table the matter for discussion at Partnership Board. [REDACTED] highlighted that the unions will not agree the final F@W policy until it includes Ministers.

**Action:**

- **HR to share draft proposals for First Minister with CSGU before Partnership Board meeting on 23 November 2009.**

[REDACTED]

18 November 2009



4.	17/11/09	Email from official to Trade union and their response re:process for Ministers
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**From:** [REDACTED]  
**Sent:** 17 November 2009 12:28  
**To:** [REDACTED]

**Subject:** Restricted - FaW process for Minister's  
**Importance:** High

[REDACTED]

As I indicated yesterday we cannot agree to what you have outlined as a process.

Whilst we appreciate the sensitivity around Minister's that does not and should not lessen the need to encourage staff to feel they can have confidence in the process and ensure that their concerns will be heard fairly. What's proposed here seems to omit the need for a proper investigation and leaves the responsibility for action with Minister's. The procedure in our view should be as close as possible to uou-ministerial cases and the employer needs to play a part to ensure that their staff are protected. On that basis if we cannot reach agreement across the negotiating table then we would suggest that we should involve ACAS on a without prejudice basis in order to facilitate an acceptable outcome.

We can pick this up again at the Partnership Board meeting next week.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 29 October 2009 14:32  
**To:** [REDACTED]  
**Subject:** Restricted

[REDACTED]

Following on from the discussion at Central Committee about the need to include a new procedure in Fairness at Work policy for dealing with complaints from employees regarding Scottish Ministers conduct the following is proposed to address the issue

- the procedure proposed that would be included in the Fairness at Work policy is that the individual wishing to raise a complaint against a Scottish Ministers will make it direct to the Permanent Secretary. The Permanent Secretary will then personally pass the complaint to the Deputy First Minister to act as arbiter. The Permanent Secretary will approach another Cabinet Minister to deal with if the complaint is about the Deputy First Minister. Conciliation will be the focus although the Permanent Secretary may wish to offer to support the DFM in appointing an investigator if that is thought necessary.

Would be grateful for your views on what is proposed.

[REDACTED]

SCOTTISH GOVERNMENT – PARTNERSHIP BOARD, 23 NOVEMBER 2009

NOTE OF MEETING

Agenda item 6: Fairness at Work (F@W)

[REDACTED] referred to a history of alleged bad behaviour by Ministers in the former Scottish Office/Scottish Executive and now Scottish Government. There had been recent communications about a proposed procedure under the new SG Main Fairness at Work (F@W) policy for handling complaints about alleged treatment of staff by Scottish Ministers. [R] confirmed the unions consider the first outline proposals provided by Human Resources (HR) as unacceptable. [R] explained that whilst the unions are aware of the sensitivity over this issue, they consider it inappropriate for Ministers to investigate Ministers and suggested that there is a role for the employer as there is in cases not involving Ministers. During the subsequent discussion it was noted:

- HR will consider a possible role for one or more official in the new procedure.
- The unions receive phone calls from their members about problems in Ministerial offices but no-one has submitted a formal report. The unions reported this is frustrating for them. Also, their members perceive the unions as not doing anything about the problem.
- The unions asked for a timeline in drawing up the new procedure and that it includes not only an informal stage but also a formal stage for investigation and decisions on cases that remain unresolved after the first informal stage.
- Ministers need to be comfortable with what is proposed and the end result sought from the process is that any unacceptable behaviour changes.
- If the CSGU does not receive HR's new proposals by end January 2010, the unions will approach ACAS for a resolution. If that occurs, control over the matter passes to an outside party which is potentially more difficult for Ministers. Also, it is then likely that the press will become aware of the issue and take an active interest in it.
- [R] had asked, and is waiting for a response from, Whitehall about their process for dealing with allegations by staff against Ministers.

**Action:**

- **HR Policy to consider and send redrafted proposals to CSGU by end January 2010.**
- **[R] to share any information she obtains from Whitehall colleagues.**

6.	22/02/10	Email from official to Trade Union with update on policy section regarding complaints against ministers
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[REDACTED]

Sent: 22 February 2010 14:08

To: [REDACTED]

Cc: [REDACTED]

Subject: Update to Fairness at Work -urgent

Importance: High

[REDACTED]  
[REDACTED]

I now attach a revised procedure where SG employees raise a complaint about a Minister. Following Partnership last November the Permanent Secretary was anxious to take account of the points you raised. The Permanent Secretary has discussed the procedure with the First Minister who is content with what is proposed.

The paragraph numbering is to indicate where it would sit in the main policy document.

I recognise it has taken some time to get to this point but what has emerged as the proposed procedure does address your concerns. If the CSGU is content with the attached this should allow us to proceed to introducing the new arrangements as I understand you had indicated to [REDACTED] that you were otherwise satisfied with the revised policy.

Grateful if you could respond to R with the CSGU views.

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

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6.a	attachment	Updated section on complaints against ministers	
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**Update to draft Fairness at Work policy.**

### **6.3 Special Cases**

#### **6.3.5 Complaints or issues about Ministers**

Where local handling (as per the informal process in the policy) cannot resolve differences, the following escalation procedure is proposed.

- The employee approaches the Head of HR direct by phone to arrange a meeting to discuss and outline the problem.

The Head of HR will gather background information and will discuss with the individual whether an informal resolution is possible and what the individual sees as a satisfactory outcome of their complaint. If an informal resolution is preferred, the Head of HR will approach the Minister outlining the problem and suggesting a possible solution - the aim being conciliation. Mediation can also be offered as a possible method of resolving the matter but it is recognised that this may not always be appropriate and both parties to the complaint would need to agree voluntarily to take this route.

- If the situation needs to be escalated, the Permanent Secretary will be informed. The employee should put their complaint to the Head of HR in writing with details of incidents and witnesses and an indication of how they are looking to resolve the situation. The complaint will be passed to the Permanent Secretary and Deputy First Minister (or other Minister if the complaint is about the DFM). They will as a first step also consider what scope there might be for alternative resolution such as conciliation or mediation. As a last resort, a Deciding Committee (DC) will be set up to review the situation. The DC would normally comprise a Minister, DG (different portfolio to the Minister involved) and Director of HRCS. Where necessary an investigator will be appointed to provide a report for the DC.
- The DC will meet with the employee who may be accompanied (in line with the arrangements in the policy) to enable the employee to state their case. The DC may also decide to see the Minister concerned. It is the responsibility of the DC to ensure that it is satisfied it has sufficient information on which to make a fair and balanced judgement. The DC will complete a report stating why the complaint is or is not upheld, with recommendations if appropriate. It will also advise the employee and Minister in writing attaching a copy of the report. Recommendations might include conciliation, training or requiring the Permanent Secretary to meet with the First Minister to consider what appropriate action should be taken.

7.	5/3/10	Email from union to official giving feedback on revised procedure on complaints against ministers
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**From:** [REDACTED]  
**Sent:** 05 March 2010 11:34  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]  
[REDACTED]

Many thanks for drafting this procedure. Our comments are set out in tracked changes in the attached document:-

[REDACTED]

**From:** [REDACTED]  
**Sent:** 22 February 2010 14:08  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Update to Fairness at Work -urgent  
**Importance:** High

[REDACTED]

I now attach a revised procedure where SG employees raise a complaint about a Minister. Following Partnership last November the Permanent Secretary was anxious to take account of the points you raised. The Permanent Secretary has discussed the procedure with the First Minister who is content with what is proposed.

The paragraph numbering is to indicate where it would sit in the main policy document.

I recognise it has taken some time to get to this point but what has emerged as the proposed procedure does address your concerns. If the CSGU is content with the attached this should allow us to proceed to introducing the new arrangements as I understand you had indicated to [REDACTED] that you were otherwise satisfied with the revised policy.

Grateful if you could respond to [REDACTED] with the CSGU views.

[REDACTED]

**Update to draft Fairness at Work policy.**  
What's the appeal process?

### 6.3 Special Cases

#### 6.3.5 Complaints or issues about Ministers

Where local handling (as per the informal process in the policy) cannot resolve differences, the following escalation procedure is proposed.

- The employee [this shows no understanding of how stressful an employee might find it to phone Head of HR – should say employee, their line manager or trade union representative?] approaches the Head of HR direct by phone to arrange a meeting to discuss and outline the problem. [I assume they are seeking to avoid use of email but if we were to agree that why couldn't we agree that written contact is also acceptable? ie old-fashioned hard copy]

The Head of HR will gather background information and will discuss with the individual whether an informal resolution is possible and what the individual sees as a satisfactory outcome of their complaint. If an informal resolution is preferred, the Head of HR will approach the Minister outlining the problem and suggesting a possible solution - the aim being conciliation. Mediation can also be offered as a possible method of resolving the matter but it is recognised that this may not always be appropriate and both parties to the complaint would need to agree voluntarily to take this route.

- If the situation needs to be escalated, the Permanent Secretary will be informed. The employee should put their complaint to the Head of HR in writing with details of incidents and witnesses and an indication of how they are looking to resolve the situation. The complaint will be passed to the Permanent Secretary and Deputy First Minister Is this the process that will be put in place if the complaint is against the FM?(or other Minister if the complaint is about the DFM). They will as a first step also consider what scope there might be for alternative resolution such as conciliation or mediation. As a last resort, a Deciding Committee (DC) will be set up to review the situation. The DC would normally ( we need reassurances on what circumstances would justify a departure from that normal) comprise a Minister, DG (different portfolio to the Minister involved) and Director of HRCS. Where necessary ( in what circumstances would an investigator not be appointed?) an investigator will be appointed to provide a report for the DC.
- The DC will meet with the employee who may be accompanied (in line with the arrangements in the policy) to enable the employee to state their case. The DC may (in what circumstances would they not meet the Minister? Can we say that the Minister is obliged to meet if necessary?) also decide to see the Minister concerned. It is the responsibility of the DC to ensure that it is satisfied it has sufficient information on which to make a fair and balanced judgement. The DC will complete a report stating why the complaint is or is not upheld, ( can we get some assurances that the solution recommended will have no detriment to the complainers and that the solution will ensure protection from any repeat of the specific or similar

| behaviour?) with recommendations if appropriate. It will also advise the employee  
| and Minister in writing attaching a copy of the report. Recommendations might  
| include conciliation, training or requiring the Permanent Secretary to meet with the  
| First Minister (what if the case is against the FM?) to consider what appropriate  
| action should be taken.

8.	9/3/10	Email from official to trade union with a response to the feedback raised on 5/3/10
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**From:** [REDACTED]  
**Sent:** 09 March 2010 18:14  
**To:** [REDACTED]  
**Subject:** Complaints about Minister part of F@W policy  
**Importance:** High

[REDACTED] (or CSGU)

Many thanks for CSGU's comments. HR's responses are as follow:

**Appeal** - As this has already reached the top of the organisation there is little scope for an appeal process. The stages are local informal level, Head of HR, Perm Sec/DFM and then to the Deciding Committee with broad representation from Ministers, DGs and HR Director. The DC is the last resort. This seems sufficient given that it is an internal process. We do not propose to add a further level of appeal. We appreciate the ACAS code does include an appeal but we think that the process outlined fulfils the intention of local, formal hearing and then appeal especially taking into account the adjustment suggested to Bullet point 1.

**On Bullet Point 1** - The intention was quick and immediate access to the Head of HR but we can add the following:

"...or can arrange for their line manager or trade union representative to make the initial approach on his/her behalf. In addition, the line manager or trade union representative can accompany him/her during discussion with the Head of HR to provide support."

**On Bullet Point 2** - Yes, this will be the approach if the complaint is about the FM. I will delete the word 'normally' on reference to the DC. I thought an IO might not be necessary where the case is clear cut from the Head of HR's initial enquiries. I think it is for the DC to decide what it needs to do to make a good, fair decision. We propose to leave the wording as it stands.

**On Bullet Point 3** - We propose to leave the wording "The DC may also decide to see the Minister." Considering the level of the DC, it is assumed they will, as above, ensure a fair and balanced enquiry into the complaint. The introduction to the F@W policy already makes it clear that, victimisation will not occur. It states:

"In these circumstances, it is fair that the employee has access to a procedure that enables him or her to raise those concerns without feeling intimidated or concerned that the matter will not be given fair consideration. Or, that they may be treated less favourably or victimised in some way for raising the matter. " We do not propose to add anything further.

In the last sentence starting 'Recommendations'; we propose that this now reads:



" Recommendations might include conciliation, training or the Permanent Secretary and FM or DFM considering what appropriate action should be taken." It's the FM if it is the DFM and the DFM is it's the FM or other Minister.

On reflection, we think there should also be a time limit on the handling of a case - as there is in the main policy.

I suggest the wording, "The handling of a complaint that is referred to a DC should normally completed within 8 weeks from the first report to Head of HR "

We thought 6 weeks might be suitable but taking into account the stages and availability of senior staff/minister have set this at 8 weeks but happy to discuss.

I'll call Thursday to discuss.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.	5/5/10	Update from Trade Union to their representatives copying in officials
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[REDACTED]  
**Sent:** 05 May 2010 10:59  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at work - outstanding issues

Colleagues

Just to let you know that I had a useful and productive meeting with [REDACTED] this morning on the draft Fairness at Work policy.

[REDACTED] and I mapped through the outstanding issues and she will now send me a final document for comments. As you know we have agreed and signed off most of the new policy but Unions will have the opportunity to look through this again and let me have any high level points that still require discussion particularly in terms of the section that imports a new policy on Ministers. I want to stress again that we are not re-opening what we have already agreed.

I will circulate the paper once I receive it [REDACTED] Unions will be asked to comment quite quickly in advance of a final sign off meeting. Can Unions notify [REDACTED] and I of their lead official on this matter please.

[REDACTED]

10.	21/6/10	Email from official to trade unions with final version of policy for comment
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**From:** [REDACTED]  
**Sent:** 21 June 2010 13:37  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at Work - Response - End June 2010  
**Importance:** High

Hi all

PSA the final version of the policy doc and the annexes. I have spoken [REDACTED] and, following this, also [REDACTED] about the paragraph on escalation. I have re-drafted that particular paragraph taking into account everyone's views and hopefully it will be acceptable and reflect the appropriate level of authority. [REDACTED] had mentioned again looking outside the SG to the UK Civil Service to handle any situation involving the FM. I know we had considered (and discounted) this but you may wish to confirm this with him, [REDACTED] is keen to reflect all of the process within the policy.

Grateful for final sign-off as soon as you are able but the end of June would be good.

Many thanks.

[REDACTED]  
[REDACTED]

## **FAIRNESS AT WORK POLICY AND PROCEDURES**

- 1. The Scottish Government commitment**
- 2. Behaviour Standards**
- 3. Scope of Policy and Procedures**
  - 3.1 Who it covers**
  - 3.2 What it covers**
- 4. How does it work?**
- 5. What are the responsibilities of those involved?**
- 6. How do I raise an issue through the Fairness at Work Procedure?**
  - 6.1 Informal Resolution**
  - 6.2 Mediation**
  - 6.3 Formal Resolution**
  - 6.5 Appeal**
  - 6.5 Special Cases**
- 7. What if a complaint is made against me?**
- 8. HR Action**
  - 8.1 Integration**
  - 8.2 Review**

## **FAIRNESS AT WORK POLICY AND PROCEDURES**

### **1. Our commitment**

1.1 As an employer, the Scottish Government (SG) is committed to providing a workplace free from unfair discrimination and to ensuring the fair treatment of staff. But we also recognise that you may at some time have a problem or concern about your work, working conditions or your relationship with colleagues. You may feel that a certain management action or decision is unfair and has affected you adversely. In these circumstances, it is right that you are able to raise your concerns without feeling intimidated or concerned that the matter will not be given fair consideration. Or, that you may be treated less favourably or victimised in some way for making a complaint.

1.2 The SG is committed to dealing with staff grievances fairly, consistently, quickly and no-one will be penalised for raising a complaint in good faith. We aim to ensure that the outcome of any complaint will always be based on reasonable and balanced judgement following full consideration of the facts of the case.

1.3 We also recognise the potential value to all parties of being able to resolve a dispute in an alternative way. We have therefore, introduced the opportunity to resolve issues through mediation.

1.4 We recognise that, if concerns are not dealt with in a way that is perceived as fair or are left unresolved, the working relationship may deteriorate and impact on the well-being of you, your team and the business.

1.5 This commitment to fair treatment at work is underpinned by the following procedures.

### **2. Behaviour Standards**

2.1 For more information about the behaviour standards we expect, and the responsibilities of our managers, see **Annex A**.

### 3. Scope

#### 3.1 Who is covered by this policy?

3.1.1 All employees of the Scottish Government, both permanent and fixed-term, are covered, including those in SG Main Agencies.

3.1.2 If you are an inward secondee, the conditions of your secondment appointment apply. This means you can raise matters informally with an appropriate line manager. However, if you wish to pursue a formal complaint, this must be done through your employer's grievance procedure.

3.1.3 If you are an employment agency worker, you are not covered by this policy. If you have a complaint, you must raise this through your agency, who may then liaise with the SG.

3.1.4 If you are a SG employee, you can use the policy to raise a complaint about an agency worker or secondee (see **Complaints about an external third party(6.5.4)**).

#### 3.2 What does the policy cover?

3.2.1 Most types of problems or concerns are covered (including those previously covered by the Dignity at Work policy). These could include (but are not limited to):

- bullying and harassment;
- relations with colleagues;
- working methods, conditions and work-loads (including health and safety);
- re-organisation of work or other organisational change; and
- equality and diversity issues.

3.2.2. The policy does not apply where:

- there are more appropriate policies and procedures, such as Attendance Management, Performance Management, or challenging a management decision on disciplinary action.
- you are disputing the terms of a collective agreement or Human Resources (HR) policy or specific terms of your employment. Separate arrangements have been put in place to resolve this through HR and the trade unions (see **Special Cases - 6.5**).
- there is a complaint raised about a management action by more than one employee. It will be normal to try to resolve such complaints informally first. If this fails then the process for resolution will be with the trade unions (see **Special Cases - 6.5**).

## 4. How does it work?

4.1 There are three steps in the process:

- informal;
- formal; and
- appeal.

4.2 It is in everyone's best interests to try to resolve problems before they develop into major issues. The first step is normally always to try to resolve matters locally and informally. This can mean agreeing to use a mediation service. The use of the service is voluntary and must be agreed to by both parties. This will not prevent you from raising a formal grievance but the process is suspended during mediation (see **Mediation - Annex B**).

## 5. What are the responsibilities of those involved?

5.1 Resolving your grievances is of key importance to us and we have put in place strict time limits for dealing with each step. **All parties** must stick to these time limits unless, exceptionally, an alternative is mutually agreed. Sometimes the complexity of a case will mean more time is needed and in such cases it is essential that all parties are advised of delays.

5.2 All parties must also recognise the importance of dealing with issues confidentially, especially those of a more sensitive nature.

5.3 You can only raise issues that the SG has the power to resolve. At the informal stage, managers must give complaints their proper and prompt attention and try to resolve matters taking into account the needs of the business and fair treatment of the individual. This is an opportunity to review what has been done, reflect on the impact and consider whether, in the circumstances, it is fair. By dealing with complaints in this manner, you should feel you have had a fair hearing and full consideration, even when the outcome is not what you had hoped.

5.4 All parties are expected to approach the raising of a complaint or problem and its resolution in good faith. Where it becomes clear that an accusation is malicious, this will be regarded as a disciplinary issue. HR will follow up on the disciplinary issue and will also provide support to the individual who has been falsely accused.

5.5 When dealing with complaints, managers must consider the needs of disabled staff. This might include providing an interpreter or arranging meetings in ground floor rooms. For specific advice please contact the HR Shared Service Centre (HRSSC), who will seek further guidance if necessary.

5.6 The timescales set in the procedures are those which will be expected to be met. Exceptionally, where it is not possible to meet a particular timescale, all parties should be advised and provided with an alternative date/time-frame.

## 6. How do I raise a complaint?

### 6.1 Informal Resolution

6.1.1 All Fairness at Work issues should first be raised informally with your line manager. There may be exceptions to this depending on the nature of the complaint where you feel you cannot do this. This could include, for example, where the issue is with your line manager. In these circumstances, please contact the HRSSC for advice. Additionally, in exceptional and serious instances, you can contact the Head of the Professional Advisers' Unit on [REDACTED] direct.

**Day 1** (as soon as possible after the incident occurs, or issue arises)

6.1.2 Raise the complaint either verbally or in writing with your line manager (or other appropriate manager) and ask for a private meeting. By making your complaint as quickly as you can, you will ensure that it has the best chance of being handled effectively. You should explain what the problem is (with examples) and how you would like to see matters resolved. Your line manager has a responsibility to follow through on all complaints raised with them.

6.1.3 Once you raise the complaint, the line manager must agree which manager in the line management chain is most appropriate to deal with the issue ("the manager").

**By Day 4** (within 3 working days of receiving your complaint)

6.1.4 The manager will meet with you, giving you the opportunity to explain fully what your complaint is and how you think it should be resolved. They will consider if, and how, the matter can be resolved, making further enquiries and investigation as necessary.

6.1.5 You can also seek other support and advice at this stage, including HR, the Employee Assistance Programme (EAP), the Welfare Officer or your trades union. Information and advice on dealing with complaints about another colleague's behaviour can be found at **Annex A**.

**By Day 6** (within 2 working days of the initial meeting)

6.1.6 The manager will meet you again to explain their decision and any action being taken. The manager will confirm the decision in writing immediately thereafter.

**One month after the line manager makes their decision**

6.1.7 The manager will arrange to review the situation with you unless you have decided to take formal action. Guidance for managers in handling complaints is at **Annex D**.

## **6.2 Mediation**

6.2.1 Depending on the outcome, you or your manager may find it useful to discuss the use of mediation in resolving matters before taking further action through formal stages. This can be put in place at any point and, if this happens during the formal process, it will be suspended while mediation takes place. Information on mediation is at **Annex B**.

## **6.3 Formal Resolution**

**Day 1** You cannot resolve the situation informally



6.3.1 If you have tried to resolve the situation informally but do not feel that your concerns have been properly addressed, you can make a formal complaint.

**By Day 16 (within 15 working days of being given the informal decision)**

6.3.2 You must submit your formal, written complaint. You can ask your trades union representative, or a colleague, to help you present your case and to support you through the process.

This should be in writing, to the HRSSC, providing:

- what the problem or complaint is, giving specific instances and details of witnesses if appropriate;
- why you think the informal stage did not address your concerns;
- how you would like to see matters resolved.

6.3.3 You should inform the manager who dealt with the informal stage. You may also wish to seek support and advice through the Employee Assistance Programme, or from the Welfare Officer.

6.3.4 Where serious allegations are made against a colleague, it may be more appropriate to follow disciplinary procedures. (Note: specific disciplinary procedures apply to staff on probation). This may be apparent when the complaint is made or following investigation. In such cases, the formal Fairness at Work action will be suspended pending the outcome of the disciplinary procedure and HR will provide advice and guidance. If necessary, the Fairness at Work process will resume following the conclusion of the disciplinary process.

6.3.5 The HRSSC will refer your case to an HR Professional Adviser (HRPA), who will acknowledge your complaint. HR will also appoint a Deciding Officer (DO) (selected from a pool of line managers from across the organisation) who will make a decision on your case where the facts are clear. The DO will be supported by an HR Professional Adviser (HRPA) throughout the process.

**Exceptionally**, where the matter is particularly sensitive or complex, two DOs may decide the case. Information on the role of the DO is available at **Annex E**.

**By Day 18 (within 2 working days of the formal complaint being received)**

6.3.6 Where fact-finding is required, and normally in cases of complaints about unacceptable behaviour (including bullying), an Investigating Officer (IO) will be appointed. This will enable the DO to consider, and decide on, more complex complaints. Information about the IO role is at **Annex F**.

**By Day 28 (within 10 working days of you making a formal complaint)**

6.3.7 The IO will produce a report for the DO.

**Deciding Officer Action**

**By Day 33 (or Day 10, if there has not been a full investigation)**

#### 6.3.8 The DO will, along with an HRP:

- arrange to meet you to allow you to explain your case and how you think it should be resolved. If an IO has been appointed, you will be provided with a copy of the report and all related papers prior to the meeting. You have the right to be accompanied at the meeting by your trade union representative or a colleague. An HRP will attend the meeting to support the DO in terms of minute-taking and procedural and other advice.
- consider, particularly where an IO has not been appointed, whether anyone else needs to be interviewed, e.g. the line manager or, whether any further enquiries need to be made. Where resolution or other action is being recommended, the DO will discuss these with line management and HR to ensure they are workable.

#### By Day 35 (or Day 12, if there has not been a full investigation)

- advise you in writing of the decision by the DO and reasons for it. You will also be provided with a copy of the minutes of the meeting and the report prepared by the DO.
- in cases which involve bullying, harassment or discrimination, and where such allegations are founded, the DO will refer the matter to HR to be dealt with under disciplinary procedures. The individual complained against will be advised of the result with reasons and, if founded, whether the matter has been referred to HR for consideration of disciplinary action.
- The HRP will be responsible for ensuring that any recommendations in the DO's report are actioned.

#### 6.4 Appeal

##### By Day 22 (within 10 working days of receiving the DO's decision)

6.4.1 If you feel that your complaint has not been dealt with satisfactorily, you have a right of appeal against the formal stage decision. **Annex G** provides details of the Common Appeals process. This should include your grounds for appeal. This is the final stage of the internal process.

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#### 6.5 Special Cases

##### Terms of collective agreements, HR policies or specific terms of your employment

6.5.1 Most terms and conditions of employment are subject to a process of collective bargaining with recognised trades unions. For this reason, complaints about the terms of collective agreements cannot be resolved by line management. In such situations, at the informal stage, the manager may only be able, after seeking HR's advice, to confirm that the agreed terms have been applied correctly. Issues concerning the terms of collective agreements must be addressed through negotiations with trades unions. If you are not satisfied with the application or interpretation of an agreement, then you should raise this with HR or your union.

##### Group/Team complaints

6.5.2 It is usual where a number of staff wish to raise the same complaint that this is done via normal staff representation channels. However, the informal stage can work effectively in such situations and the group should first try to resolve the problem through the line management chain. An appropriate manager from the line will meet with the group where they will be given the opportunity to resolve the issue through open and reasoned discussion.

Where there are issues raised between two teams, two appropriate managers will meet first with their own teams to understand the complaint and possible resolution. The two managers will meet to assess how the matter can be resolved and then feedback to each team with the proposals. A joint meeting of both teams (or each team can select two representatives) along with the managers will follow to agree the final solution, where possible.

Where agreement cannot be reached through the informal stage and the parties wish to take the matter further, they should refer the matter to HR and their trade unions, who will discuss the lodging of a formal complaint.

#### **Whistle-blowing**

6.5.3 The Public Interest Disclosure Act gives protection to workers who blow the whistle about a wrongdoing and who are dismissed or suffer another detriment for doing so. Alongside the provisions of the Act, you also have the protections set out in the Civil Service Code. Specific procedures apply in the Scottish Government.

#### **Complaints about an external third party**

6.5.4 As the SG will not necessarily have the ability to deal directly with an individual affiliated to or employed by another organisation, other arrangements apply to these situations. Please see **Annex C** for reporting incidents. Where you feel these special arrangements fail to protect you in going about your normal work, you can raise the matter under the formal stages of this policy.

#### **Complaints about Ministers**

6.5.5 Where local, informal handling cannot resolve differences, the following escalation procedure will apply.

- You should approach the Head of HR direct by phone or e-mail to arrange a meeting to discuss and outline the problem. You can also ask your line manager or trade union representative to make the initial approach on your behalf. Your line manager or trade union representative can also accompany you during any discussion with the Head of HR to provide support.
- The Head of HR will gather background information and will discuss with you whether an informal resolution is possible and what you see as a satisfactory outcome of your complaint.

#### **Informal resolution**

- If you prefer to seek an informal resolution, the Head of HR will approach the Minister outlining the problem and suggesting a possible solution (the aim will be to achieve conciliation). Mediation can also be offered as a possible method 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.

## Escalation

- If the situation needs to be escalated, the Permanent Secretary will be informed. You should put your complaint to the Head of HR in writing with details of incidents and witnesses and an indication of you wish to resolve the situation. The complaint will be passed to the Permanent Secretary and Deputy First Minister (or the First Minister if the complaint is about the DFM). They will as a first step also consider what scope there might be for alternative resolution such as conciliation or mediation. As a last resort, a Deciding Committee (DC) will be set up to review the situation. The DC would comprise a Cabinet Secretary, DG (different portfolio to the Minister involved) and Director of HRCS. Where necessary an investigator will be appointed to provide a report for the DC.
- The DC will meet with you to enable you to state your case. You can be accompanied (in line with the arrangements in the policy). The DC will also see the Minister concerned. It is the responsibility of the DC to ensure that it is satisfied it has sufficient information on which to make a fair and balanced judgement. The DC will complete a report stating why the complaint is or is not upheld with recommendations, if appropriate. It will also advise you and the Minister in writing, attaching a copy of the report. Recommendations might include conciliation, training or the Permanent Secretary and First Minister or Deputy First Minister considering what action should be taken.

The handling of a complaint that is referred to a DC should normally be completed within 4 weeks from the first report to the Head of HR. The agreement of both parties will be sought should any unavoidable changes to this timeframe be required.

## 7. What if a complaint is made against me?

7.1 You may find the guidance at **Annex H** useful if you find yourself in this situation

## 8. HR Action – Integration and Review

### Integration

8.1 Once the formal (or appeal) process is complete, an HRP will contact those involved and will work to assist them in moving on from the process. This may involve providing advice, support and coaching and will apply regardless of the outcome. You can also contact the Employee Assistance Programme (EAP) or the Welfare Officer at any time.

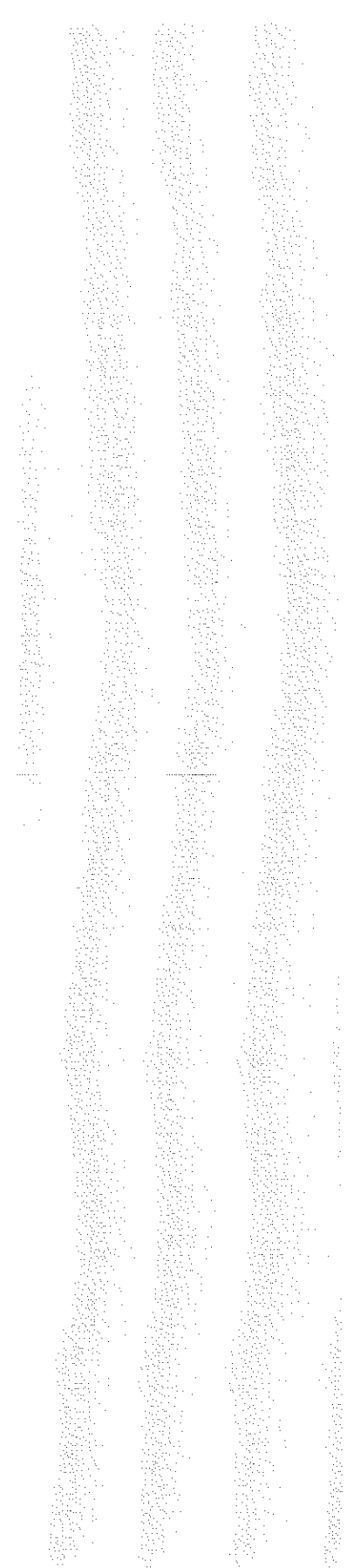
### Review

8.2 An HRP will also review how each case progressed. This is not about questioning the outcome but about the process and learning from experience. All those involved, including trade union representatives, may be asked for their views on the way the case was handled. A member

of the HR Employee Relations Team will also review individual cases with the HRPAs to feed into the policy review, to assess how the process has worked and how the recommendations have been implemented.

8.3 HR will also review the policy from time to time taking into account legislation, feedback from those involved and best practice.

**June 2010**



## **FAIRNESS AT WORK - SUPPORTING DOCUMENTS**

### **Annex A - Behaviour standards and responsibilities**

- Our commitment
- Our expectations
- Our standards of behaviour
- Examples of unacceptable behaviour

### **Annex B - Mediation Guide**

### **Annex C - Complaints about External Third Parties**

### **Annex D - Conducting an Informal Meeting – Manager's Guide**

### **Annex E - The Deciding Officer Role**

### **Annex F - The Investigating Officer Role**

### **Annex G - Appeal Process**

### **Annex H - What if a complaint is made against me?**

## ANNEX A

### The Scottish Government Guide to standards of behaviour

#### Section 1 Our commitment

##### 1. Our commitment as an employer

1.1 The Scottish Government (SG) is an equal opportunities employer, committed to treating every employee with dignity and respect. It is our policy to ensure, as far as reasonably practicable, that all staff have equality of opportunity in their terms and conditions of employment and are able to work, and undertake work-related activities, in an environment free from harassment, victimisation, discrimination and/or bullying.

1.2 We believe that all of our employees should be treated with respect, regardless of sex, marital/civil partnership status, age, race, ethnic origin, sexual orientation, gender identity, disability, religion or any other irrelevant difference, e.g. social background, working pattern or trade union activity. This can only happen if every member of staff is aware of the standards of behaviour that we expect from them and behaves accordingly.

1.3 This policy statement is endorsed by the Permanent Secretary and applies to all staff including members of the Senior Civil Service and those in the agencies and associated Departments of the SG's Main Bargaining Unit. We also expect Scottish Ministers to behave acceptably and to act in the spirit of this policy statement.

1.4 The Council of Scottish Government Unions (CSGU) has been fully involved in the creation of this policy statement and the standards it sets out.

##### 2. The purpose of this policy statement

2.1 The purpose of this policy statement is to make clear that the SG, as an employer, observes a policy of zero tolerance in respect of incidents of behaviour that are found to be unacceptable.

2.2 It also sets out the standards of behaviour that we expect of our staff, managers and others, both in the workplace and when undertaking work-related activities, to ensure that the SG is free from harassment, victimisation, discrimination and bullying.

#### Section 2 Our expectations

##### 1. What you can expect from us as an employer

1.1 As an employer, we have a responsibility to take all reasonably practicable steps to ensure that staff are able to work in a safe and non-threatening working environment. This includes contact with Ministers, external stakeholders and other third parties.

1.2 We:

- will ensure that all line managers and other staff dealing directly with allegations of harassment, victimisation, discrimination and bullying in the workplace are equipped to identify and deal with these issues.
- give our commitment that all complaints will be dealt with sensitively, professionally, effectively and as quickly as practicable.
- will monitor incidents of alleged unacceptable behaviour as defined by this policy and address any issues arising from our monitoring quickly and appropriately.
- review this policy regularly, taking into account changes in best practice and legislation.

2. **What we expect from members of staff**

2.1 As a member of Scottish Government staff, you:

- have a responsibility to respect the dignity of others.
- must avoid behaving in a way that may cause offence or distress to your colleagues or others with whom you have contact as part of your duties, including service users and external contacts. (see [Appendix 1](#))

**It does not matter whether the perceived harassment, victimisation, discrimination or bullying is unintentional.**

- should be aware of, and adhere, to the Scottish Government's policies on [equal opportunities and diversity](#).
- should also support any colleague who feels that they have been harassed, victimised, discriminated against or bullied and encourage them to seek help from an appropriate source.
- behave appropriately at all times towards the people you work with.
- remember that inappropriate behaviour is behaviour which is "viewed as demeaning and unacceptable to the recipient".
- make sure you are familiar with the SG's policy on Fairness at Work and undertake training as necessary.
- should raise issues informally in the first instance if you feel that you have been treated unacceptably, or report the matter in writing to [HR.Help](#) if you do not feel able or if this does not work.
- should try to support anyone that you feel is being treated unacceptably and encourage them to seek help. If they do not feel able to report the behaviour themselves, you should:
- alert your line manager, or, alternatively, [HR.Help](#).



**Remember - unless you tell us about alleged unacceptable behaviour we may not be aware of it and will not be in a position to take steps to address it.**

### **3. What we expect from our managers**

#### **3.1 As a line manager, you:**

- have a responsibility to ensure that your staff work in an environment which is free from unacceptable behaviour and to encourage an atmosphere of tolerance and respect.
- should make sure that you have undertaken the appropriate level of training to carry out your duties effectively and try to lead by example through a fair and open management style.
- should make sure that all of your staff are aware of, and understand, the SG's Fairness at Work, diversity and equal opportunities policies, including the support options available to them. Ideally, this should be done as part of the induction process.
- must act if you are made aware of alleged inappropriate behaviour. It is not acceptable for you to do nothing as you may later be held accountable for your lack of action under the SG's performance appraisal or disciplinary procedures, or, in more serious cases, through the legal process.
- should apply this, and other policies, in a fair and consistent manner and staff should know who to contact if you are not available. This will normally be a more senior officer in the line management chain.

#### **3.2 If any of your staff raise concerns about unacceptable behaviour, you:**

- must take this seriously and act on their concerns quickly. In particular, you should make sure all of your staff are aware of their responsibilities and what action they should take if they become aware of unacceptable behaviour.

#### **3.3 If approached informally, you should:**

- investigate the circumstances of the complaint and take any action you feel is appropriate.
- keep a record of the incident and any action taken.

#### **3.4 If the complaint is more serious, you should:**

- assist the individual in making a formal complaint to HR.Help, or should do so yourself.
- make sure all parties to the complaint are aware of the support available to them.

#### **4. What we expect from our countersigning officers**

4.1 If any of your staff raise concerns about unacceptable behaviour, you must:

- take this seriously and act on their concerns quickly.

4.2 In particular, you should:

- take the actions outlined in "What we expect from our managers".
- make sure all of your line managers are appropriately trained and that all staff are aware of what is expected of them.
- act as a role model in and ensure that your work area is free from all types of unacceptable behaviour.
- carry out these duties in a fair, reasonable and consistent manner.

4.3 If you do so, your actions and behaviour **cannot be viewed as unreasonable**. However, you must also ensure that you perform these duties whilst upholding the principles of this policy statement, treating all staff fairly and respecting their dignity.

#### **5. What we expect if you are accused of unacceptable behaviour**

You:

- should try not to get defensive and listen to any advice and information you are given.
- should work with colleagues to try and reach satisfactory outcome to any complaint and seek support if you need it.
- must implement any recommendations made to you as a result of the complaint.

#### **6. What we expect if you are a witness to unacceptable behaviour**

6.1 You should:

- take any appropriate action to try to end such behaviour.
- participate fully with any action that is required of you during any investigation or resolution process.

#### **7. What you can expect from Human Resources (the HRSSC and HR Professional Advisers)**

7.1 Human Resources will:

- ensure that you are provided with advice if you feel that you have been the subject of unacceptable behaviour.

- take action if you make a formal complaint under the *Fairness at Work* procedures and ensure each complaint is fully and properly investigated as quickly as possible.
- take forward any recommendations resulting from any complaint of unacceptable behaviour, including disciplinary action.

## 8. Support and Advice

Please remember that apart from your manager and HR, the advice and support of the Welfare Officer and Employee Assistance Programme is available to you. Also, if you are a member, you may wish to contact your trades union.

## Section 3 Our standards of behaviour

### 1. Unacceptable behaviour

1.1 There is no single definition of what constitutes unacceptable behaviour. The Advisory, Conciliation and Arbitration Service (ACAS) refers to “unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. **The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient**”.

1.2 What is acceptable behaviour to one member of staff may not be acceptable to another and we should all be aware of the effect that our behaviour or language may have on others.

1.3 Unacceptable behaviours have a detrimental effect on both individuals and the organisation as a whole. They can significantly lower staff morale and motivation, cause increased absenteeism and turnover of staff and, in some cases, end in legal proceedings.

1.4 A list that illustrates examples of behaviours which *may* be considered unacceptable and which *may* amount to misconduct and, in some cases, serious misconduct, can be found in Appendix 1. This list is not exhaustive and conduct needs to be viewed in context.

## Appendix 1

### Examples of unacceptable behaviour

#### General

- Refusing to work with, ignoring or deliberately isolating or excluding colleagues, including from social events.
- Displaying or circulating offensive materials, including sectarian materials, homophobic or anti-gay or pornographic pictures/pin-ups.
- Discouraging someone from taking advantage of relevant and suitable training on grounds of irrelevant difference.
- Taking credit for others' work.
- Not taking the blame when things go wrong.
- Excessive, or inappropriate, detailed supervision.
- Lack of supervision which leaves the individual feeling unsupported or demoralised.
- Undermining an individual's authority.
- Reducing a job to tasks inconsistent with a person's grade, skills and abilities.
- Unjustifiably blocking promotion or training opportunities.
- Withholding information, ostracising, marginalising, spreading rumours etc.
- Unfair work allocation.
- Displaying tattoos that may be offensive in terms of fairness at work, equal opportunities or diversity.

#### Verbal

- Deriding an individual's religious or other beliefs or other personal circumstances, e.g. their trade union involvement.
- Unwelcome comments or jokes.
- Use of offensive language, name calling, taunts, jokes, mockery.
- Unwanted or derogatory comments about dress or appearance.
- Leering and suggestive gestures, comments or innuendo.

- Jokes, banter, insinuations, insults and taunts based on any irrelevant difference, including being Scottish, English or another UK nationality.
- Inappropriate questions about someone's personal life or questions about someone's sex-life.
- Aggression, bawling out, threats, shouting, swearing, abuse, physical or verbal intimidation.
- Humiliating, ridiculing or belittling efforts in front of others or in private.
- Gossip and speculation about an individual's personal life, e.g. their sexual orientation.

#### **Physical**

- Inappropriate physical contact, advances or propositions.
- Physical or verbal attacks, abuse or intimidation.

#### **Making assumptions**

- About an individual's personal or social life.
- About their physical or mental capability.
- About the existence of a non-visible impairment.
- Assuming that everyone is heterosexual.
- Assuming that all gay men are HIV positive.
- About age-related retirement.
- About ability or competence.

## ANNEX B

### Guide to Using the Mediation Service

1. The Scottish Government is introducing a mediation pilot scheme for all staff covered by the new Fairness at Work policy (staff on SG Main terms and conditions). The service may also be used by staff who are employed in Directorates and Agencies covered by SG Main but who have different terms and conditions, e.g. ex-Scottish Homes staff who opted to retain their existing terms and conditions. The pilot will use trained internal mediators provided by the Scottish Prison Service.

2. Providing an alternative way of resolving conflict or disputes through mediation can help by offering a quicker resolution, causing less stress to individuals, preserving the working relationship and offering a better chance of reaching a mutually successful outcome.

#### What is mediation?

3. **Mediation** is a process by which an impartial third party helps people in a dispute work out an agreement. The parties to the dispute, not the mediator, decide the terms of the agreement. Mediation usually focuses on future rather than past behaviour.

4. It is an option you can explore if you are involved in a workplace conflict or dispute. Or, you are concerned about or confronted by a situation or behaviour that you find unacceptable and you wish to attempt to resolve without formal action.

5. Mediation provides a structured though informal way of resolving complaints, grievances and disputes. It can help rebuild relationships and restore broken communication and trust because it does not seek to apportion blame. It is a viable way to tackle disputes as it brings people together to talk about the situation and can foster a joint problem-solving attitude, both of which are essential if working relationships are to be maintained or improved. The key is that mediators provide a safe and confidential environment, enabling people to talk freely.

#### When might it be appropriate?

6. Mediation must be a voluntary process. Deciding what might be successfully resolved through mediation is very much a matter of personal choice. Decisions should be made on each case on its merits. If you feel the following situations apply to you then you might benefit from mediation:

- The conflict/dispute is at an early stage.
- You are being affected by a situation at work in some way. It could be affecting your work performance, working relationship, emotion/physical wellbeing, personal or home-life.
- You are willing to be honest and open and willing to attempt to resolve the situation.
- You think the other party would be prepared to be honest and open and willing to seek to resolve the situation.
- You are willing to look at you own role in the situation.
- You are prepared to abide by a mediated agreement.

7. There will be maximum opportunity for resolution in cases that have the following characteristics:

- low levels of anger and physical or verbal intimidation.
- no serious breaches of workplace guidelines.
- no formal or other action being taken which would counter the mediation process.
- allegation and counter allegation.
- insufficient evidence for other action.
- facts which are difficult to substantiate.
- parties who are willing to contribute to resolution.
- room for improvement in relationships.
- parties who are not initially prepared to have face-to-face contact with their counterpart, but will with external help.

8. Mediation **may not be appropriate if:**

- there is a significant power imbalance between the parties which cannot be bridged.
- behaviour is going on between the parties which makes one or the other or both feel unsafe to negotiate.
- external rules need to be applied, for example if criminal activity is involved.
- one or other side or both sides are unwilling or unable to mediate.
- if a complaint involves behaviour which requires action against one of the parties e.g. serious misconduct, less than effective performance.

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

10. Even if you do not choose to enter into mediation, you might wish to discuss your concerns in confidence with an HR Professional Adviser, your trades union representative or the Employee Assistance Programme (EAP) at their helpline.

**The Process – Step 1**

11. The mediator will spend up to two or three hours with each party. At this initial meeting, each party is asked to talk in detail about their perspective of what has been going on. They are asked to be open about how they feel and what they consider needs to happen to resolve the situation and to create effective structures for future communication.

12. The mediator provides each party with the reflective space to work through difficult issues and build commitment to agreements.

13. They do this by:

- using reflective listening, empathy and rapport-building to create a constructive atmosphere.
- working with each party to identify issues, needs, concerns, vulnerabilities, habits and limiting beliefs.
- exploring contributory factors on all sides, e.g. background issues, the general context
- highlighting with each party possible options, and ways forward.

- if it becomes apparent at the Step 1 meetings that the issues have changed then it may be necessary to change the agreed process.

## **The Process – Step 2**

14. The mediator meets with the parties together, ideally in the same room, for up to three hours. The time will vary depending on numbers involved. There are ground rules to enable even those who may be feeling vulnerable to take part.

15. While it is preferable if the parties agree to talk face to face with the mediator as the intermediary, it is possible to use “shuttle” mediation where the mediator works with the parties in separate rooms. Shuttle mediation can be particularly helpful in the initial stages if emotions are running very high.

16. **At the face to face session the mediator works to enable the parties:**

- to have the same opportunity to speak about their feelings and concerns, without interruption.
- to look at the problems in turn, to move towards a mutual problem definition.
- to generate ideas for solutions.
- to plot potential hazards.
- to generate a time-frame for change.
- to create written agreements for future interaction where appropriate.

## **Feedback**

17. **The mediation process is totally confidential.** The detail of what is discussed between the mediator and the parties cannot be provided to the referring client. However the mediator will ask for written feedback from the parties on their assessment of the mediation. He/she will also ask if the parties wish feedback to be given to line management or HR. Please note that records will be kept of the number of cases referred so that the use of the service can be monitored.

18. The following pages explain how mediation works and are provided so that, when mediation is organised, **each party is aware of the ground rules and stages before it takes place.** A form for applying for mediation is at [Annex B\(i\)](#).



## **MEDIATION HANDOUT**

### **How Does Mediation Work?**

Mediation is when an impartial, trained person helps two or more people in a dispute to talk about their situation, exchange their concerns and come up with ideas about how to move forward. What is discussed in a mediation session is confidential and there are ground rules to help people feel confident and safe enough to communicate their needs, feelings and concerns.

### **Mediation Ground Rules**

These apply to the parties involved and to the mediator. We ask you to:

1. Listen to what each person has to say and speak one at a time.
2. Speak and behave in a non-threatening way; think how you would like to be treated.
3. Be as open as you can about what your concerns are and what you need.
4. Be as specific as you can about what you want to happen, what you can do and what you'd like others to do.
5. Stay seated and discuss any problems and doubts with the mediator or request a private space with them if you feel you need to.
6. The mediator may pause the mediation or end it if he or she feels it necessary.
7. Keep the detail of what is discussed private; the mediation is confidential; notes will be destroyed; **things said in mediation cannot be used in court or in any later internal procedures.**

### **The mediator will:**

- ensure that everyone has equal opportunities to communicate (speak and listen), negotiate and work out realistic and fair agreements.
- prevent name-calling, abuse or behaviour which stops people negotiating fairly.
- not take sides or make decisions for you.

### **The Stages of Mediation**

A preliminary meeting with the mediator will be arranged so that you can:

- describe the situation from your point of view.
- think clearly about ways of moving the situation forward.
- get to know more about how mediation works and the benefits of using mediation to find a settlement.

**A face to face meeting** will be held which has five stages;

1. **Describing the problem** – Setting the scene – hearing both sides of the situation.
2. **Exploring the issues** – Being clear what the important issues are, checking facts, comparing views of the problem, agreeing what issues can realistically be settled by mediation, agreeing to continue.
3. **Building agreements** – Exploring what people want and what can be done about the situation, working through differences, managing conflict, problem solving, preparing for decisions.
4. **Making agreements** – Testing likely outcomes, describing in detail what will happen next, future arrangements, what if something goes wrong? The agreement can be made verbally or in writing.
5. **Closure and follow-up** – Evaluating the session and ending the session, agreeing plans for future contact between the mediator and the parties concerned, if needed. The parties decide if they agree to any feedback to line management or HR.

A number of important principles underpin the operation of mediation:

- It must operate in a way which eliminates any kind of bias.
- Mediators should not work on the site at which they are based.
- Mediators will not mediate with people with whom they have had substantial previous contact.
- Parties will not be able to choose their mediator.
- Mediations will be totally confidential and there will be no reporting back on issues, outcomes or the process itself without explicit consent from the parties involved: and
- Mediation will not be used while other formal measures (such as grievance or disciplinary procedures) are in operation.

For these reasons the provision of mediation is managed centrally (including SG Main agencies) via SGHR and requests for mediation should be forwarded to [HR.Help](#) following which an HR Professional Adviser will be allocated to your case. The HR Professional Adviser will discuss the use of mediation with you and the potential for its suitability to resolve your issue. Remember, both parties need to voluntarily agree to the use of mediation.

As well as the HR Professional Adviser, there are a few other options for you to discuss your issue and its suitability for mediation:

- Welfare Officer.
- Employee Assistance Programme .
- Your line manager, or if that individual is involved in the issue, another manager.
- Your trades union representative.

Once the decision to use mediation to resolve the issue has been made, you and SGHR should follow this process for requesting a mediator:

1. Confirm your intention to use mediation to the HR Professional Adviser.
2. Complete a standard referral form ([Annex B\(i\)](#))

3. Forward the form to the HR Professional Adviser who has been dealing with your case.
4. The HR Professional Adviser will then arrange for a mediator to be allocated.
5. If you cancel the mediation, please let the HR Professional Adviser know.

There are times when the mediation process itself can be usefully supported by external mediators. These services can only be obtained through HR Professional Adviser. The same procedure should be followed if an external Mediator is required.

**Request for Mediation - Referral from Scottish Government Staff**

**Name of individual (s) requesting the mediation service:**

\_\_\_\_\_  
\_\_\_\_\_

**Work Location and phone contact numbers**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Circumstances relating to the mediation request:**

Signed \_\_\_\_\_ Date \_\_\_\_\_

To SPS

**Endorsement by SGHR Professional Adviser:**

**SGHR PA Name and contact number**

**I have discussed this with the individuals concerned and the case is referred for mediation under the terms of our agreement. I will act as case manager throughout the process and will arrange meetings.**

Signed \_\_\_\_\_ Date \_\_\_\_\_

## COMPLAINTS ABOUT EXTERNAL THIRD PARTIES

1. **Note – Under discrimination legislation employers will be liable where they fail to take reasonable practicable steps to prevent repeated sexual harassment of an employee by third parties. They may also fall foul of Health & Safety legislation in failing to: carry out an effective risk assessment, design a safe system of work and provide related training and information.**

2. The nature of our work means that many of us have working relationships with external partners, customers and other stakeholders who are employed or affiliated to other organisations. Our standards of conduct and how we will deal with these external contacts is the same as with colleagues. That is, we deal with them with appropriate courtesy meeting the published service standards. In return, all staff should expect the same treatment. There may be situations where a position has to be taken or advice given which the third party is unhappy with. While certain emotional reactions may be understandable, staff should not be expected to put up with bullying, harassment, intimidation or threats of, or actual, physical harm.

3. All such instances should be reported to your line manager immediately. The line manager will discuss with you and agree any possible course of action. Normally this will involve the line manager raising the matter with the other organisation; the expectation being that the organisation will investigate the complaint and if necessary, agree an interim course of action to deal with the working relationship. This, for example, could take the form of not dealing with the individual directly and instead going through another representative of the organisation. Or, it may mean that you would deal with the individual or situation only in the presence of others. (This does not preclude you raising a grievance or complaint through the Fairness at Work procedure.)

4. This is not only about the dignity of our staff at work but perhaps, more importantly, it may be a health and safety matter. Each Directorate and Agency is responsible for risk assessing the type of work carried out by their staff. Results of that assessment may indicate the need for a safe system of work to be designed. Staff can then be trained and provided with information on preventative measures and actions to be taken when certain situations arise. Advice on such matters can be sought from the Occupational Health and Safety team or your Agency local health and safety adviser.

5. Directorates and Agencies should also assess whether they have effectively set down the terms of engagement with these contacts. This, for example, may apply to those parts of the SG involved with inspection work.

## ANNEX D

### MANAGER GUIDANCE - CONDUCTING AN INFORMAL FAIRNESS AT WORK MEETING

1. Members of staff who raise a complaint either orally or in writing with their manager are looking to have the matter addressed fairly and, if possible, resolved quickly. Therefore, it is important that the informal process is conducted in a professional manner and given appropriate attention within the timescale in the policy. It is crucial to try to resolve problems before they become major issues as resentment can build and impact on the work of the individual and possibly their colleagues. Managers are responsible for ensuring the work environment is one where staff feel comfortable about raising matters informally and discussing them face to face.

#### **If you receive a complaint:**

2. Consider whether or not you are the appropriate manager to hear the complaint, taking into account the following:
- the nature of the complaint;
  - whether you have the authority to make a decision regarding the complaint; and
  - whether you have a sufficient overview of the team/branch/division to assess whether or not there will be any impact on others or current working practices.

It may be more appropriate for your line manager or another manager within your division to hear the complaint. Choosing the most appropriate manager should ensure that the member of staff will attend a fair, open and meaningful meeting.

#### **Preparing for the meeting:**

3. Ensure that the meeting will be held in private, without interruption and allow plenty of time. Remember that particular needs of disabled employees should be considered.
4. Advice can be sought from the HR Shared Service Centre. HR can provide general guidance on dealing with complaints and may be able to provide information on how other similar complaints have been resolved to ensure consistency of treatment.

#### **Conduct during the meeting:**

5. Remember that a meeting to discuss a complaint is not the same as a disciplinary hearing; it is an occasion where the objective is that discussion and dialogue may lead to the matter being resolved.
6. Invite the member of staff to re-state their complaint and how they would like to see it resolved.
7. Complaints raised by staff can sometimes feel like a personal criticism against you as manager. Listen to what is being said in a calm and impartial manner. Be as fair to the employee as possible, given the constraints of business operations and other staff considerations, in trying to resolve the problem.

8. Care and thought should go into resolving complaints. They are not normally issues calling for snap decisions. Consider if any serious precedent is being set that the business could not support. Take advice from HR if necessary.

9. Make allowances for the emotions that the individual displays including reasonable 'letting off steam' if he/she is under stress. Go through any points again with them to make sure you have understood what the problem really is. Consider too, that the problem they are presenting may, after careful questioning and discussion, may not be what is at the root of their discontent.

10. You should refer to the guide to standards of behaviour at [Annex A](#) when you have to deal with a complaint about another colleague's behaviour. In such cases, action you might consider could include:

- Encouraging the individual to resolve the matter directly with the other person.
- Offering to facilitate between the two individuals.
- Offering to represent the views of your member of staff with the other person; or
- Offering to take up the matter with the other person's manager.

11. Always remind the individual of the support the Employee Assistance Programme, Welfare Officer, their trades union and HR can provide.

12. After summing up, you may find it useful to adjourn before reaching a decision on how or if the complaint can be resolved – you may need to:

- investigate the complaint further.
- explore possibilities with other managers about the resolution of the grievance.
- give consideration to the impact any decision may have on the rest of your team and the business; and/or
- take advice on how to proceed further.

13. Tell the member of staff when they might reasonably expect a response if one cannot be made at the time, bearing in mind the time limit set out in the policy which is 2 days from the date of the meeting.

14. Respond to the member of staff's complaint within the 2 day time limit, confirming your response in writing. If a response is likely to take longer than the two days you may need to give an interim reply or agree another timescale with the individual. Review the case with him/her after a month unless he/she has decided to take formal action.

15. You should advise on the next step – raising the matter formally ([link to F@W](#)) or the possibility of [mediation](#) so that the individual knows what to do if unhappy with your decision.

## ANNEX E

### THE ROLE OF THE DECIDING OFFICER

#### What is a Deciding Officer?

1. A Deciding Officer (DO) is someone who considers all the relevant information surrounding a complaint or issue raised through the formal Fairness at Work process and makes a decision as to whether the complaint is well founded. The Deciding Officer may also make recommendations following their decision. An HR Professional Adviser (PA) will arrange for a DO (or two DOs where the case is complex) to be appointed to each case.

#### **Why does the Scottish Government need Deciding Officers?**

2. The Fairness at Work policy encourages the resolution of complaints at a local level. However in some cases, local efforts are not successful or the complainant feels unable to follow such a course of action and therefore submits a formal written complaint to HR. Deciding Officers, who are capable of reaching reasonable and logical conclusions, are essential to the procedure to ensure a fair and unbiased hearing and a result based on reasonable and balanced judgement.

#### **What does the role involve and what does the Deciding Officer do with my complaint?**

3. The role of DO involves considering the facts of the case which will involve a meeting with you. The DO will liaise and work with the HR PA allocated to the case throughout the process to collect information relevant to the complaint. The HR PA will provide support and guidance and be responsible for the administration and management of the process including minute taking. The HR PA will also decide if an Investigating Officer (IO) needs to be appointed. This will depend on the complexity of the case. In cases of harassment or bullying or other allegation about a colleague's conduct, it will be normal to appoint an IO.

4. If more than one DO is appointed, they will arrange to meet in advance of the meeting with the individual making the complaint, to review the papers, including the IO's report. The DO can seek further clarification from the IO if necessary. You will also get a copy of the IO's report.

#### **The Meeting**

5. The DO will meet you and read and analyse information presented including, if appointed, the IO's report. You are entitled to be accompanied at the meeting by either a colleague or a trades union representative and must be told this in the invitation to the meeting. HR hold standard letters that can be used by the DO.

6. At the meeting the DO will listen carefully to what you have to say, ask questions and answer any questions you may have. If the case is a complaint about a colleague's behaviour, then the DO may wish to interview that individual before reaching a decision. This is to ensure fair and full consideration of the case and allows that individual a final opportunity to put forward their position (they will have the right to be accompanied by a trades union representative or other colleague). Following the meeting, the DO will consider the full facts of the case before reaching a decision. They will then write a report which clearly demonstrates how the decision was reached and with recommendations that management or HR may want to take forward which may include disciplinary action. The DO will check with the HR PA and line management, as appropriate, that any recommendations are workable.

7. The report will be sent to the HR PA to take forward any recommendations. A copy of the report will also be sent to you. If the complaint involves allegations about a colleague's behaviour, the HR PA will arrange for the colleague to be informed of the DO's decision.



## ANNEX F

### THE ROLE OF THE INVESTIGATING OFFICER

1. The role of the Investigating Officer (IO) is to investigate impartially the facts and evidence of the matter, detailing the findings in a report. The report will be used by the Deciding Officer (DO). It is not the IO's role to make judgements or recommendations about their findings: that is the role of the DO.
2. The HR Professional Adviser (HR PA) will consider whether the case needs an IO – this will depend on the circumstances of the case. The HR PA will meet initially with the IO to go over the current known facts of the case.

### Neutrality and Impartiality

3. The IO will approach the investigation in a fair and impartial manner. They will avoid making snap judgements and assumptions and will be expected to put their own values or personal views on the case to one side. All parties involved will be listened to and given a fair opportunity to put forward an explanation of the matters relating to the complaint.

### Conducting Interviews

4. The IO will meet the parties to the complaint at a convenient office location. The IO will take into account any mobility or other special needs when arranging meetings. It is acceptable to verify the odd fact by phone or in writing subsequent to a meeting but the IO may also arrange follow-up meetings once others have been interviewed. To meet timescales, the meetings may be arranged by telephone. The individual raising the complaint will be interviewed first. This is to ensure the exact nature of the complaint is clear and to confirm any witnesses' details.
5. If the complaint or issue involves an individual being accused of unacceptable behaviour, then the individual will be given details of the complaint in advance of meeting the IO. They, and also all others interviewed, will be reminded of the support their trades union, the Welfare Officer and the EAP can give and that they have the right to be accompanied by a colleague or trades union representative at the interview.
6. During the process the IO will record all action taken and all contact with the parties involved. The IO may also be accompanied by a note-taker. The IO will ask questions and encourage comments that are pertinent to the matter being investigated. Interviewees will be given the opportunity to add anything they consider relevant to the case at the end of the interview. Interviewees will be given notes of the meeting to agree and sign. Internal witnesses are expected to attend an interview called by an IO but external parties are under no obligation to attend.

### The Report

7. A full report, which will include statements, interview notes and other evidence, will be passed to the HR PA who will provide a copy to the DO and the individual raising the complaint. If the complaint is about another individual's behaviour, then that individual can be provided with a copy of the report.

## ANNEX G

### APPEALS

#### Introduction

1. This common appeals process is used where all other review processes have been exhausted and is the **final** internal recourse to have a decision reconsidered.

#### Process

2.If you consider that the decision reached in your case is unsatisfactory (i.e. you consider the deciding authority's decision to be flawed, unfair or unreasonable) you may appeal against the decision.

3.You must make your appeal **within 10 working days** of receiving the relevant decision letter. All appeals should: be made in writing; set out clearly the grounds for the appeal; be sent to the HR Professional Adviser handling the case. As the appeal is by way of a review, the panel will not consider any new complaints but may consider new information relevant to your original case.

4.The appeal will be considered by an appeal panel consisting of 3 people: – the Chair who will be least one pay range above the previous Deciding Officer(s) or Panel/Board Chair; an HR Professional who will have had no previous involvement in your case; and another staff member from outside the HR area identified from a pool of trained SG staff. The membership of the panel will be confirmed to you in writing and no panel members will be from your line management chain.

**Note** – the HR Professional will be part of the panel as an independent member who will view the information presented to the panel objectively. They will not be representing HR but will bring their experience of good practice, precedent and employment legislation. Also, the aim will be to ensure the panel is of mixed gender.

5.The panel will be set up within 10 working days of receiving your written appeal and you will be advised in writing of a day, time and place for the hearing. You will be given 5 working days notice of the appeal Hearing date. You may be accompanied to the hearing by a trades union official or colleague.

#### The Role of the Panel

6. The panel will:

- give you the opportunity to present your case orally (and present any new relevant information);
- consider your oral and written representations and all other papers relating to the case to determine whether:
  - the procedures were correctly and fairly applied;
  - there were reasonable grounds to justify the finding; and

– the final decision reached was fair and appropriate.

7. The Panel may also suspend the hearing pending further investigation and/or the provision of new evidence and reconvene when the investigation has been concluded with any resulting evidence provided to all appropriate parties.

8. If the Panel is hearing a complaint about a colleague's behaviour, it may refer the papers to HR to consider disciplinary action.

### **The Panel's Decision**

9. In concluding its deliberations the Panel may:

- overturn the original decision. It may also, as appropriate to the nature of the case, recommend action to be taken after necessary consultation with management and HR;
- uphold the original decision; or
- uphold the decision but determine that the penalty or solution imposed is inappropriate. In such circumstances the panel will look to the original policy and guidance to help them determine an appropriate alternative penalty/outcome.

9. You will be given the panel's decision normally within 5 working days of the panel hearing. If this is not possible, you will be given an explanation for the delay and told when you can expect a response.

10. The panel's decision is final and the last stage in the internal process. However, in line with the provisions of the Civil Service Management Code you may appeal to the Civil Service Appeal Board against:

- refusal to allow participation in political activities.
- forfeiture of superannuation.
- dismissal and early retirement.
- the level of compensation, including non payment of compensation, if you are dismissed on grounds of inefficiency because poor health has affected your attendance or performance (this does not apply to medical retirement).

## Annex H

### What if a complaint has been made against me?

1. If you are accused of unacceptable behaviour it is natural that you may feel upset and defensive. Examples of unacceptable behaviour and the standards expected by the Scottish Government can be found at [Annex A](#). This may help you understand why the complaint has been raised. It is important that you remain calm and act in a fair and reasonable manner. You will be expected to work with colleagues to try to reach a satisfactory outcome to any complaint and seek support if you need it. Support and advice is available from Human Resources, your trades union, the Welfare Officer and the Employee Assistance Programme.
2. If a colleague approaches you on an informal basis to discuss their concern, you should try to understand the nature of their complaint, how your actions may have been perceived and consider ways in which you can work with him or her to resolve the matter.
3. The colleague may choose to report the matter to their manager on an informal basis. The manager may contact you or your manager to try to find ways of resolving the matter early. The manager may wish to speak to you in order to gain your view on the matter. The manager may suggest ways of resolving the matter and you can also put forward suggestions. It is in your own interests to be open to any such suggestions since they may lead to early resolution of the issue and help to preserve the working relationship. On reflection, even if you don't think you behaved inappropriately but understand that a different perception of your behaviour has caused upset, you might wish to consider apologising.
4. Mediation may be considered as an alternative to pursuing a formal resolution. This is entirely voluntary and both parties need to agree to do this. Information on mediation can be found at [Annex B](#).
5. If the alleged conduct is very serious, it may result in an investigation as a disciplinary matter rather than being dealt with under the Fairness at Work procedure. If a complaint is raised by someone from another organisation, it would also be investigated under the [disciplinary procedure](#).
6. Should it not be possible to resolve the matter informally the complainant may then raise the matter formally. If this happens, you will be interviewed to provide a statement. At the interview, you may be accompanied by your trades union representative or other colleague. This action is about considering the allegation and it does not necessarily follow that any formal action will be taken against you.
7. You will be kept informed of the progress of the grievance, its outcome and the reason for the particular outcome. You can have a copy of the investigation report if you wish.
8. At the formal stage, a Deciding Officer (DO) is appointed to review all the relevant information of a complaint and make a decision. This may include a meeting with you at which you can be accompanied by your trades union representative or other colleague. They will provide a report which clearly demonstrates how that decision has been reached. HR will arrange for you to be advised of the decision. If the DO upholds the complaint, they may include recommendations which could include consideration of disciplinary action that HR would arrange

to take forward. The disciplinary process includes a hearing at which you can be accompanied by your trade union or a colleague and has an avenue for appeal. You will be given a full opportunity to present your case. Other recommendations might include training, awareness raising, suggestions for development or reviewing local management arrangements and behaviours in the unit concerned. The DO might also recommend that a transfer of either party is the best option if it is detrimental for you to continue working together. Any such action will be considered by HR and line management in discussion with the individual raising the grievance.

9. Where it is clear that an allegation is malicious, this will be viewed seriously and dealt with under the disciplinary procedures. If you have been the subject of a malicious allegation, you will be given support by an HR Professional Adviser.

10. A record of the complaint will only be kept on your file if a penalty is imposed under any disciplinary action.

11.	1/7/10	Email chain between official and trade unions chasing up trade unions views on the draft policy
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**From:** [REDACTED]  
**Sent:** 01 July 2010 11:03  
**To:** [REDACTED]  
**Subject:** Re: Fairness at Work - Response - End June 2010

[REDACTED]

Still awaiting Unions - leave it with me and I will chase you will have a substantive response on Monday

[REDACTED]

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Sent:** Thu Jul 01 10:52:41 2010  
**Subject:** RE: Fairness at Work - Response - End June 2010

Hi all

Just thought I'd check whether you are happy to proceed yet?

[REDACTED]

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 21 June 2010 13:37  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at Work - Response - End June 2010  
**Importance:** High

Hi all

PSA the final version of the policy doc and the annexes. I have spoken [REDACTED] and, following this, also [REDACTED] about the paragraph on escalation.

I have re-drafted that particular paragraph taking into account everyone's views and hopefully it will be acceptable and reflect the appropriate level of authority. [REDACTED] had mentioned again looking outside the SG to the UK Civil Service to handle any situation involving the FM. I know we had considered (and discounted) this but you may wish to confirm this with him, [REDACTED] is keen to reflect all of the process within the policy.

Grateful for final sign-off as soon as you are able but the end of June would be good.

<< File: FAIRNESS AT WORK - Annexes.doc >> << File: Fairness at Work - Policy - Latest version - [REDACTED] - June 2010.doc >>

Many thanks.

[REDACTED]

12.	23/8/10	Email chain regarding comments from various Trade Union representatives then copied to the official
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**From:** [REDACTED]  
**Sent:** 23 August 2010 10:09  
**To:** [REDACTED]  
**Subject:** FW: Fairness at Work - Response - End June 2010

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**From:** [REDACTED]  
**Sent:** 07 July 2010 12:13  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Fairness at Work - Response - End June 2010

I agree with [REDACTED] comments. On mediation, This has been discussed a couple of times before and we were in broad support but only if the system appeared to be fair. I think the issue of having the mediators from another department is useful and I would be happy to proceed with a pilot on that basis

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 05 July 2010 09:45  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Fairness at Work - Response - End June 2010  
**Importance:** High

Colleagues

This is the final documentation for sign off – can [REDACTED] let me know if he is content with the Ministerial stuff?

My comments are as follows:-

Para 8.1.1 should include a reference to sexual orientation



Annex b – this is the first of us seeing the proposed mediation service entry so can colleagues look at this carefully and let me have comments. I think it is fine for a “pilot” but want to know how long this will run, who will evaluate etc. We also want a meeting to discuss this at the end of the pilot. It would also be good that if we are accepting this as a principle that we start to invest now in training our own staff.

Annex g – I don't think we can sign off without a discussion on the common appeals procedure. It is ridiculous to commit and invest invaluable internal resources and then allow an appeal panel to overturn a decision. This happened to one of my members recently and to add insult to injury it was done in secret.

I appreciate that this will add to a delay but we cannot get to the point where we have done all this good work to have a ridiculous appeals procedure which is open to abuse.

We also need to see the redrafted guidance for PA's etc

Can I invite comments by the end of the week – I will also try and get a meeting set up to discuss appeals.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 21 June 2010 13:37  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at Work - Response - End June 2010  
**Importance:** High

Hi all

PSA the final version of the policy doc and the annexes. I have spoken [REDACTED] and, following this, also [REDACTED] about the paragraph on escalation.

I have re-drafted that particular paragraph taking into account everyone's views and hopefully it will be acceptable and reflect the appropriate level of authority. [REDACTED] had mentioned again looking outside the SG to the UK Civil Service to handle any situation involving the FM. I know we had considered (and discounted) this but you may wish to confirm this with him, [REDACTED] is keen to reflect all of the process within the policy.

Grateful for final sign-off as soon as you are able but the end of June would be good.

<< File: FAIRNESS AT WORK - Annexes.doc >> << File: Fairness at Work - Policy - Latest version - [REDACTED] June 2010.doc >>  
Many thanks.

[REDACTED]

13. 16/7/10 Email from official chasing up a response to the draft policy

**From:** [REDACTED]  
**Sent:** 16 July 2010 10:04  
**To:** [REDACTED]  
**Subject:** F@W  
**Importance:** High

Hi [REDACTED]

Any advance on F@W? As you know we're very keen to progress this because of the time it has taken to get here and I had thought when we met in June we were very close. Would another quick meeting help?

[REDACTED]

[REDACTED]

[REDACTED]

14.	20/7/10	Email between officials cc Trade Unions re implementation of the policy
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**From:** [REDACTED]  
**Sent:** 20 July 2010 13:35  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at work policy

[REDACTED]

in the margins of another meeting that I had with [REDACTED] this morning, we spoke about the implementation of the Fairness at Work policy. [REDACTED] made some very useful remarks about the need to ensure that there is appropriate and timely training for everyone on both the policy itself, and our expectations in relation to implementation. I know that you have been doing a great deal of work on this and I would be grateful if you could remind me:

- what plans you have for training of those staff who will be investigating officers under the new policy;
- what plans you have for awareness raising sessions for PAs; and
- how, as policy lead, you plan to monitor the implementation of the new policy.

On a slightly separate matter, we have spoken about whether it would be worth running some refresher training for everyone in HR on the need to ensure equality and fairness of treatment in all dealings with staff. I'd be grateful to know if you have had the opportunity to give that any further thought.

Many thanks and happy to discuss.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15.	23/8/10	2 Email chains between Trade Union representatives then copied to the official about comments on the policy
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**1. From:** [REDACTED]  
**Sent:** 23 August 2010 10:09  
**To:** [REDACTED]  
**Subject:** FW: Fairness at Work - Response - End June 2010

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**From:** [REDACTED]  
**Sent:** 09 July 2010 14:04  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Fairness at Work - Response - End June 2010

R copied

I agree with your points below.

On the ministerial section, I did discuss some issues with [REDACTED]. There were two points which we agreed would be reflected. The first was her suggestion of reinforcing the Deciding Committee (DC) with a Cabinet Secretary to which I agreed. The second was my wish that we get an undertaking from HR that they were aware that, because of the difficulties in this area, we would keep it under review, that the unions would be able to revisit it if it didn't seem to be working and that this was a particular concern about complaints against or involving the FM (whoever occupied that role). I said that I'd be content as long as we got such an undertaking in a covering email. I know that we'll want to keep the whole policy under review as it beds in but I wanted a specific note from them that the FM/Ministerial area was one which might need further reinforcement. Having read the provision again since, I think I'd also like an undertaking from HR that, when it comes to changes in the timeframe, it will be unacceptable for a Minister to argue that their being busy means a change is "unavoidable".

In the mediation section, para 7 says "There will be maximum opportunity for resolution in cases that have characteristics which include . . . *insufficient evidence for other action* [my italics]". While the statement may be true, I'm not sure if the inclusion in the list of the bit in italics is helpful. Some might see it as a reason not to use mediation when there is evidence, while others may take the view that if mediation is being used it's because "they haven't got anything on me", neither of which would be helpful to what we're trying to achieve.

Minor points:

they could delete "escalation" in the first line of 6.5.5 – the following sub paras describe the procedure when a Minister's involved, it's not really all about escalation,

inset "how" in line 3 of the first para under "Escalation" in 6.5.5, so it reads "with details of incidents and witnesses and an indication of how you wish to resolve the situation". (I have some concerns about putting the onus on the member of staff but that's something I think we can review if problems arise.)

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 05 July 2010 09:45  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Fairness at Work - Response - End June 2010  
**Importance:** High

Colleagues

This is the final documentation for sign off – can [REDACTED] let me know if he is content with the Ministerial stuff?

My comments are as follows:-

Para 8.1.1 should include a reference to sexual orientation

Annex b – this is the first of us seeing the proposed mediation service entry so can colleagues look at this carefully and let me have comments. I think it is fine for a "pilot" but want to know how long this will run, who will evaluate etc. We also want a meeting to discuss this at the end of the pilot. It would also be good that if we are accepting this as a principle that we start to invest now in training our own staff.

Annex g – I don't think we can sign off without a discussion on the common appeals procedure. It is ridiculous to commit and invest invaluable internal resources and then allow an appeal panel to overturn a decision. This happened to one of my members recently and to add insult to injury it was done in secret.

I appreciate that this will add to a delay but we cannot get to the point where we have done all this good work to have a ridiculous appeals procedure which is open to abuse.

We also need to see the redrafted guidance for PA's etc

Can I invite comments by the end of the week – I will also try and get a meeting set up to discuss appeals.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 21 June 2010 13:37  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness at Work - Response - End June 2010  
**Importance:** High

Hi all

PSA the final version of the policy doc and the annexes. I have spoken [REDACTED] and, following this, also [REDACTED] about the paragraph on escalation.

I have re-drafted that particular paragraph taking into account everyone's views and hopefully it will be acceptable and reflect the appropriate level of authority. [REDACTED] had mentioned again looking outside the SG to the UK Civil Service to handle any situation involving the FM. I know we had considered (and discounted) this but you may wish to confirm this with him, [REDACTED] is keen to reflect all of the process within the policy.

Grateful for final sign-off as soon as you are able but the end of June would be good.

<< File: FAIRNESS AT WORK - Annexes.doc >> << File: Fairness at Work - Policy - Latest version - [REDACTED] June 2010.doc >>

Many thanks.

[REDACTED]

[REDACTED]

[REDACTED]

**2. From:** [REDACTED]  
**Sent:** 23 August 2010 10:09  
**To:** [REDACTED]  
**Subject:** FW: Fairness @ Work Policy Comments

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**From:** [REDACTED]  
**Sent:** 09 July 2010 12:28  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fairness @ Work Policy Comments

[REDACTED]

Here are my comments on the Fairness at Work Policy.

1: There doesn't appear to be much mention of records keeping at either the informal or formal resolution stage. I am not even sure if this would be common practice at the informal stage however I'm assuming that there must be some form of aide memoir of these meetings otherwise each individual will leave with their own perception of the meeting and its outcomes. There is no mention about who is responsible for ensuring the content of these documents is accurate either. I wonder if we should ask for a statement either in the resolution stages or their annexes to inform staff that where notes/minutes are taken they will be agreed by all parties present at that time to ensure all relevant issues/views surrounding the grievance are recorded and understood correctly. This could be reinforced by asking those involved to sign off the notes/minutes as being agreed there and then, but this might be perceived as overkill, not sure?

2: I would like to see more commitment from management regarding the review of the procedure. I personally think that writing a statement along the lines of '8.3 HR will also review the policy from **time to time** taking into account legislation, feedback from those involved and best practice' is a bit wishy washy. I think we should push for every 3 years or in response to changes in legislation, significant feedback and best practice guidelines; it is an important document and should be kept up to date.

3: I may have missed this but I couldn't see any reference to what happens if the grievance is withdrawn. Do we have a procedure which kicks into play after this or is it just closed and put on the shelf?

4: As you have already indicated I would also like to see some form of training or awareness sessions for all staff (especially those who will be expected to use this policy frequently) once this policy goes out.

Kind regards

(REDACTED)

(REDACTED)

(REDACTED)

16.	24/8/10	Email from official to trade union with final version of the policy following a discussion
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**From:** [REDACTED]  
**Sent:** 24 August 2010 09:09  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** F@W - Planned implementation date - 6 September  
**Importance:** High

[REDACTED]

Thanks again for coming out yesterday.

Following our discussion, here is the final version of the policy and annexes (changes tracked). I hope I've captured everything but will do a final edit and amend the intranet content once you reply. We also agreed the following:

- the mediation pilot would run for 6 months and that we could agree the detail of the evaluation process in due course.
- I would pursue the inclusion of an amendment to the Common Appeals Process so that any decision by a Deciding Officer cannot be reversed unless the original decision was obviously perverse, or based on incorrect information. The role of the disciplinary panel would be to decide on issues around charges and penalties – not to substitute their views in relation to any decision. [REDACTED] has already given agreement in principle. ([REDACTED] has suggested that R takes this forward as R is tied up with ER)
- The minutes of all interviews during the formal process would be agreed by the interviewee, but the informal process would remain "as is".
- That the Ministerial section in particular may need review as part of the ongoing monitoring process.

R will be in touch re observing the final Investigating Officer training day and send you the pack (if she hasn't already done so).

I'm back on Friday the 2<sup>nd</sup>. We'll also need to advise Perm Sec/FM once we get your final sign-off.

[REDACTED]



## **FAIRNESS AT WORK POLICY AND PROCEDURES**

- 1. The Scottish Government commitment**
- 2. Behaviour Standards**
- 3. Scope of Policy and Procedures**
  - 3.1 Who it covers**
  - 3.2 What it covers**
- 4. How does it work?**
- 5. What are the responsibilities of those involved?**
- 6. How do I raise an issue through the Fairness at Work Procedure?**
  - 6.1 Informal Resolution**
  - 6.2 Mediation**
  - 6.3 Formal Resolution**
  - 6.5 Appeal**
  - 6.5 Special Cases**
- 7. What if a complaint is made against me?**
- 8. HR Action**
  - 8.1 Integration**
  - 8.2 Review**

## **FAIRNESS AT WORK POLICY AND PROCEDURES**

### **1. Our commitment**

1.1 As an employer, the Scottish Government (SG) is committed to providing a workplace free from unfair discrimination and to ensuring the fair treatment of staff. But we also recognise that you may at some time have a problem or concern about your work, working conditions or your relationship with colleagues. You may feel that a certain management action or decision is unfair and has affected you adversely. In these circumstances, it is right that you are able to raise your concerns without feeling intimidated or concerned that the matter will not be given fair consideration. Or, that you may be treated less favourably or victimised in some way for making a complaint.

1.2 The SG is committed to dealing with staff grievances fairly, consistently, quickly and no-one will be penalised for raising a complaint in good faith. We aim to ensure that the outcome of any complaint will always be based on reasonable and balanced judgement following full consideration of the facts of the case.

1.3 We also recognise the potential value to all parties of being able to resolve a dispute in an alternative way. We have therefore, introduced the opportunity to resolve issues through mediation.

1.4 We recognise that, if concerns are not dealt with in a way that is perceived as fair or are left unresolved, the working relationship may deteriorate and impact on the well-being of you, your team and the business.

1.5 This commitment to fair treatment at work is underpinned by the following procedures.

### **2. Behaviour Standards**

2.1 For more information about the behaviour standards we expect, and the responsibilities of our managers, see **Annex A**.

### **3. Scope**

#### **3.1 Who is covered by this policy?**

3.1.1 All employees of the Scottish Government, both permanent and fixed-term, are covered, including those in SG Main Agencies.

3.1.2 If you are an inward seconded, the conditions of your secondment appointment apply. This means you can raise matters informally with an appropriate line manager. However, if you wish to pursue a formal complaint, this must be done through your employer's grievance procedure.

3.1.3 If you are an employment agency worker, you are not covered by this policy. If you have a complaint, you must raise this through your agency, who may then liaise with the SG.

3.1.4 If you are a SG employee, you can use the policy to raise a complaint about an agency worker or seconded (see **Complaints about an external third party(6.5.4)**).

#### **3.2 What does the policy cover?**

3.2.1 Most types of problems or concerns are covered (including those previously covered by the Dignity at Work policy). These could include (but are not limited to):

- bullying and harassment;
- relations with colleagues;
- working methods, conditions and work-loads (including health and safety);
- re-organisation of work or other organisational change; and
- equality and diversity issues.

3.2.2. The policy does not apply where:

- there are more appropriate policies and procedures, such as Attendance Management, Performance Management, or challenging a management decision on disciplinary action.
- you are disputing the terms of a collective agreement or Human Resources (HR) policy or specific terms of your employment. Separate arrangements have been put in place to resolve this through HR and the trade unions (see **Special Cases - 6.5**).
- there is a complaint raised about a management action by more than one employee. It will be normal to try to resolve such complaints informally first. If this fails then the process for resolution will be with the trade unions (see **Special Cases - 6.5**).

## 4. How does it work?

4.1 There are three steps in the process:

- informal;
- formal; and
- appeal.

4.2 It is in everyone's best interests to try to resolve problems before they develop into major issues. The first step is normally always to try to resolve matters locally and informally. This can mean agreeing to use a mediation service. The use of the service is voluntary and must be agreed to by both parties. This will not prevent you from raising a formal grievance but the process is suspended during mediation (see **Mediation - Annex B**).

## 5. What are the responsibilities of those involved?

5.1 Resolving your grievances is of key importance to us and we have put in place strict time limits for dealing with each step. **All parties** must stick to these time limits unless, exceptionally, an alternative is mutually agreed. Sometimes the complexity of a case will mean more time is needed and in such cases it is essential that all parties are advised of delays.

5.2 All parties must also recognise the importance of dealing with issues confidentially, especially those of a more sensitive nature.

5.3 You can only raise issues that the SG has the power to resolve. At the informal stage, managers must give complaints their proper and prompt attention and try to resolve matters taking into account the needs of the business and fair treatment of the individual. This is an opportunity to review what has been done, reflect on the impact and consider whether, in the circumstances, it is fair. By dealing with complaints in this manner, you should feel you have had a fair hearing and full consideration, even when the outcome is not what you had hoped.

5.4 All parties are expected to approach the raising of a complaint or problem and its resolution in good faith. Where it becomes clear that an accusation is malicious, this will be regarded as a disciplinary issue. HR will follow up on the disciplinary issue and will also provide support to the individual who has been falsely accused.

5.5 When dealing with complaints, managers must consider the needs of disabled staff. This might include providing an interpreter or arranging meetings in ground floor rooms. For specific advice please contact the HR Shared Service Centre (HRSSC), who will seek further guidance if necessary.

5.6 The timescales set in the procedures are those which will be expected to be met. Exceptionally, where it is not possible to meet a particular timescale, all parties should be advised and provided with an alternative date/time-frame.

## 6. How do I raise a complaint?

### 6.1 Informal Resolution

6.1.1 All Fairness at Work issues should first be raised informally with your line manager. There may be exceptions to this depending on the nature of the complaint where you feel you cannot do this. This could include, for example, where the issue is with your line manager. In these circumstances, please contact the HRSSC for advice. Additionally, in exceptional and serious instances, you can contact the Head of the Professional Advisers' Unit on [REDACTED] direct.

**Day 1 (as soon as possible after the incident occurs, or issue arises)**

6.1.2 Raise the complaint either verbally or in writing with your line manager (or other appropriate manager) and ask for a private meeting. By making your complaint as quickly as you can, you will ensure that it has the best chance of being handled effectively. You should explain what the problem is (with examples) and how you would like to see matters resolved. Your line manager has a responsibility to follow through on all complaints raised with them.

6.1.3 Once you raise the complaint, the line manager must agree which manager in the line management chain is most appropriate to deal with the issue ("the manager").

**By Day 4 (within 3 working days of receiving your complaint)**

6.1.4 The manager will meet with you, giving you the opportunity to explain fully what your complaint is and how you think it should be resolved. They will consider if, and how, the matter can be resolved, making further enquiries and investigation as necessary.

6.1.5 You can also seek other support and advice at this stage, including HR, the Employee Assistance Programme (EAP), the Welfare Officer or your trades union. Information and advice on dealing with complaints about another colleague's behaviour can be found at **Annex A**.

**By Day 6 (within 2 working days of the initial meeting)**

6.1.6 The manager will meet you again to explain their decision and any action being taken. The manager will confirm the decision in writing immediately thereafter.

**One month after the line manager makes their decision**

6.1.7 The manager will arrange to review the situation with you unless you have decided to take formal action. Guidance for managers in handling complaints is at **Annex D**.

**6.2 Mediation**

6.2.1 Depending on the outcome, you or your manager may find it useful to discuss the use of mediation in resolving matters before taking further action through formal stages. This can be put in place at any point and, if this happens during the formal process, it will be suspended while mediation takes place. Information on mediation is at **Annex B**.

**6.3 Formal Resolution**

**Day 1 You cannot resolve the situation informally**

6.3.1 If you have tried to resolve the situation informally but do not feel that your concerns have been properly addressed, you can make a formal complaint.

**By Day 16 (within 15 working days of being given the informal decision)**

6.3.2 You must submit your formal, written complaint. You can ask your trades union representative, or a colleague, to help you present your case and to support you through the process.

This should be in writing, to the HRSSC, providing:

- what the problem or complaint is, giving specific instances and details of witnesses if appropriate;
- why you think the informal stage did not address your concerns;
- how you would like to see matters resolved.

6.3.3 You should inform the manager who dealt with the informal stage. You may also wish to seek support and advice through the Employee Assistance Programme, or from the Welfare Officer.

6.3.4 Where serious allegations are made against a colleague, it may be more appropriate to follow disciplinary procedures. (Note: specific disciplinary procedures apply to staff on probation). This may be apparent when the complaint is made or following investigation. In such cases, the formal Fairness at Work action will be suspended pending the outcome of the disciplinary procedure and HR will provide advice and guidance. If necessary, the Fairness at Work process will resume following the conclusion of the disciplinary process.

6.3.5 The HRSSC will refer your case to an HR Professional Adviser (HRPA), who will acknowledge your complaint. HR will also appoint a Deciding Officer (DO) (selected from a pool of line managers from across the organisation) who will make a decision on your case where the facts are clear. The DO will be supported by an HR Professional Adviser (HRPA) throughout the process.

**Exceptionally**, where the matter is particularly sensitive or complex, two DOs may decide the case. Information on the role of the DO is available at **Annex E**.

**By Day 18 (within 2 working days of the formal complaint being received)**

6.3.6 Where fact-finding is required, and normally in cases of complaints about unacceptable behaviour (including bullying), an Investigating Officer (IO) will be appointed. This will enable the DO to consider, and decide on, more complex complaints. Information about the IO role is at **Annex F**.

**By Day 28 (within 10 working days of you making a formal complaint)**

6.3.7 The IO will produce a report for the DO.

**Deciding Officer Action**

**By Day 33 (or Day 10, if there has not been a full investigation)**

### 6.3.8 The DO will, along with an HRP:

- arrange to meet you to allow you to explain your case and how you think it should be resolved. If an IO has been appointed, you will be provided with a copy of the report and all related papers prior to the meeting. You have the right to be accompanied at the meeting by your trade union representative or a colleague. An HRP will attend the meeting to support the DO in terms of minute-taking and procedural and other advice.
- consider, particularly where an IO has not been appointed, whether anyone else needs to be interviewed, e.g. the line manager or, whether any further enquiries need to be made. Where resolution or other action is being recommended, the DO will discuss these with line management and HR to ensure they are workable.

### By Day 35 (or Day 12, if there has not been a full investigation)

- advise you in writing of the decision by the DO and reasons for it. You will also be provided with a copy of the minutes of the meeting and the report prepared by the DO.
- in cases which involve bullying, harassment or discrimination, and where such allegations are founded, the DO will refer the matter to HR to be dealt with under disciplinary procedures. The individual complained against will be advised of the result with reasons and, if founded, whether the matter has been referred to HR for consideration of disciplinary action.
- The HRP will be responsible for ensuring that any recommendations in the DO's report are actioned.

## 6.4 Appeal

### By Day 22 (within 10 working days of receiving the DO's decision)

6.4.1 If you feel that your complaint has not been dealt with satisfactorily, you have a right of appeal against the formal stage decision. **Annex G** provides details of the Common Appeals process. This should include your grounds for appeal. This is the final stage of the internal process.

Comment [FMC2]: Insert link

## 6.5 Special Cases

### Terms of collective agreements, HR policies or specific terms of your employment

6.5.1 Most terms and conditions of employment are subject to a process of collective bargaining with recognised trades unions. For this reason, complaints about the terms of collective agreements cannot be resolved by line management. In such situations, at the informal stage, the manager may only be able, after seeking HR's advice, to confirm that the agreed terms have been applied correctly. Issues concerning the terms of collective agreements must be addressed through negotiations with trades unions. If you are not satisfied with the application or interpretation of an agreement, then you should raise this with HR or your union.

### Group/Team complaints

6.5.2 It is usual where a number of staff wish to raise the same complaint that this is done via normal staff representation channels. However, the informal stage can work effectively in such situations and the group should first try to resolve the problem through the line management chain. An appropriate manager from the line will meet with the group where they will be given the opportunity to resolve the issue through open and reasoned discussion.

Where there are issues raised between two teams, two appropriate managers will meet first with their own teams to understand the complaint and possible resolution. The two managers will meet to assess how the matter can be resolved and then feedback to each team with the proposals. A joint meeting of both teams (or each team can select two representatives) along with the managers will follow to agree the final solution, where possible.

Where agreement cannot be reached through the informal stage and the parties wish to take the matter further, they should refer the matter to HR and their trade unions, who will discuss the lodging of a formal complaint.

#### **Whistle-blowing**

6.5.3 The Public Interest Disclosure Act gives protection to workers who blow the whistle about a wrongdoing and who are dismissed or suffer another detriment for doing so. Alongside the provisions of the Act, you also have the protections set out in the Civil Service Code. Specific procedures apply in the Scottish Government.

#### **Complaints about an external third party**

6.5.4 As the SG will not necessarily have the ability to deal directly with an individual affiliated to or employed by another organisation, other arrangements apply to these situations. Please see **Annex C** for reporting incidents. Where you feel these special arrangements fail to protect you in going about your normal work, you can raise the matter under the formal stages of this policy.

#### **Complaints about Ministers**

6.5.5 Where local, informal handling cannot resolve differences, the following escalation procedure will apply.

- You should approach the Head of HR direct by phone or e-mail to arrange a meeting to discuss and outline the problem. You can also ask your line manager or trade union representative to make the initial approach on your behalf. Your line manager or trade union representative can also accompany you during any discussion with the Head of HR to provide support.
- The Head of HR will gather background information and will discuss with you whether an informal resolution is possible and what you see as a satisfactory outcome of your complaint.

#### **Informal resolution**



- If you prefer to seek an informal resolution, the Head of HR will approach the Minister outlining the problem and suggesting a possible solution (the aim will be to achieve conciliation). Mediation can also be offered as a possible method 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.

### Escalation

- If the situation needs to be escalated, the Permanent Secretary will be informed. You should put your complaint to the Head of HR in writing with details of incidents and witnesses and an indication of how you wish to resolve the situation. The complaint will be passed to the Permanent Secretary and Deputy First Minister (or other Minister if the complaint is about the DFM). They will as a first step also consider what scope there might be for alternative resolution such as conciliation or mediation. As a last resort, a Deciding Committee (DC) will be set up to review the situation. The DC would comprise a Cabinet Secretary Minister, DG (different portfolio to the Minister involved) and Director of HRCS. Where necessary an investigator will be appointed to provide a report for the DC.
- The DC will meet with you to enable you to state your case. You can be accompanied (in line with the arrangements in the policy). The DC will also see the Minister concerned. It is the responsibility of the DC to ensure that it is satisfied it has sufficient information on which to make a fair and balanced judgement. The DC will complete a report stating why the complaint is or is not upheld with recommendations, if appropriate. It will also advise you and the Minister in writing, attaching a copy of the report. Recommendations might include conciliation, training or the Permanent Secretary and First Minister or Deputy First Minister considering what action should be taken.

In common with the emphasis on dealing with complaints as quickly as possible, the handling of a complaint that is referred to a DC should normally be completed within 4 weeks from the first report to the Head of HR. The agreement of both parties will be sought should any unavoidable changes to this timeframe be required.

## 7. What if a complaint is made against me?

7.1 You may find the guidance at **Annex H** useful if you find yourself in this situation

## 8. HR Action – Integration and Review

### Integration

8.1 Once the formal (or appeal) process is complete, an HRP will contact those involved and will work to assist them in moving on from the process. This may involve providing advice, support and coaching and will apply regardless of the outcome. You can also contact the Employee Assistance Programme (EAP) or the Welfare Officer at any time.

### Review

8.2 An HRP will also review how each case progressed. This is not about questioning the outcome but about the process and learning from experience. All those involved, including trade

union representatives, may be asked for their views on the way the case was handled. A member of the HR Employee Relations Team will also review individual cases with the HRPAs to feed into the policy review, to assess how the process has worked and how the recommendations have been implemented.

8.3 HR will also review the policy on a regular basis (but not less than every 3 years) ~~from time to time~~, taking into account legislation, feedback from those involved and best practice.

**June 2010**

**FAIRNESS AT WORK - SUPPORTING DOCUMENTS**

**Annex A - Behaviour standards and responsibilities**

- Our commitment
- Our expectations
- Our standards of behaviour
- Examples of unacceptable behaviour

**Annex B - Mediation Guide**

**Annex C - Complaints about External Third Parties**

**Annex D - Conducting an Informal Meeting – Manager’s Guide**

**Annex E - The Deciding Officer Role**

**Annex F - The Investigating Officer Role**

**Annex G - Appeal Process**

**Annex H - What if a complaint is made against me?**

**FAIRNESS AT WORK - SUPPORTING DOCUMENTS**

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**Annex C - Complaints about External Third Parties**

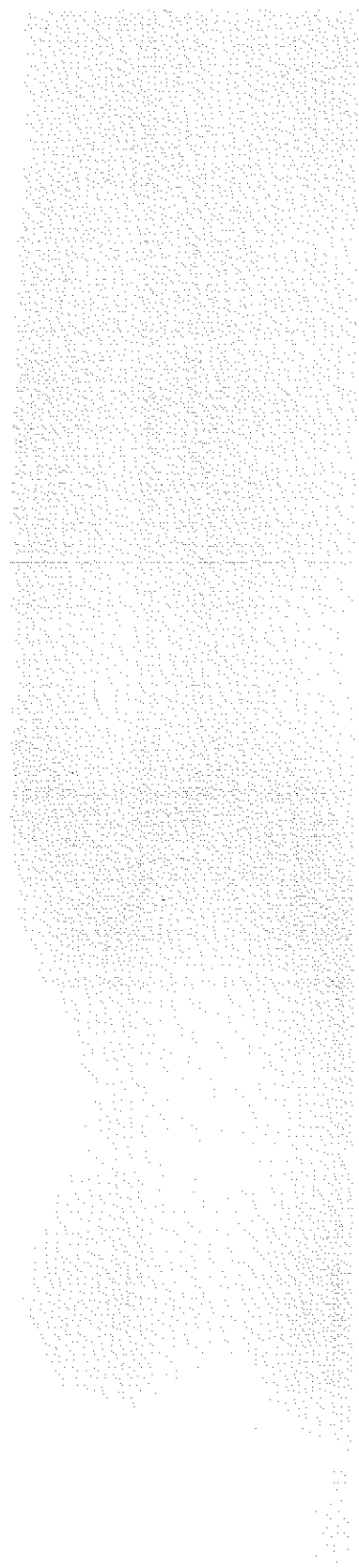
**Annex D - Conducting an Informal Meeting – Manager’s Guide**

**Annex E - The Deciding Officer Role**

**Annex F - The Investigating Officer Role**

**Annex G - Appeal Process**

**Annex H - What if a complaint is made against me?**



## ANNEX A

### The Scottish Government Guide to standards of behaviour

#### Section 1 Our commitment

##### 1. Our commitment as an employer

1.1 The Scottish Government (SG) is an equal opportunities employer, committed to treating every employee with dignity and respect. It is our policy to ensure, as far as reasonably practicable, that all staff have equality of opportunity in their terms and conditions of employment and are able to work, and undertake work-related activities, in an environment free from harassment, victimisation, discrimination and/or bullying.

1.2 We believe that all of our employees should be treated with respect, regardless of sex, marital/civil partnership status, age, race, ethnic origin, sexual orientation, gender identity, disability, religion or any other irrelevant difference, e.g. social background, working pattern or trade union activity. This can only happen if every member of staff is aware of the standards of behaviour that we expect from them and behaves accordingly.

1.3 This policy statement is endorsed by the Permanent Secretary and applies to all staff including members of the Senior Civil Service and those in the agencies and associated Departments of the SG's Main Bargaining Unit. We also expect Scottish Ministers to behave acceptably and to act in the spirit of this policy statement.

1.4 The Council of Scottish Government Unions (CSGU) has been fully involved in the creation of this policy statement and the standards it sets out.

##### 2. The purpose of this policy statement

2.1 The purpose of this policy statement is to make clear that the SG, as an employer, observes a policy of zero tolerance in respect of incidents of behaviour that are found to be unacceptable.

2.2 It also sets out the standards of behaviour that we expect of our staff, managers and others, both in the workplace and when undertaking work-related activities, to ensure that the SG is free from harassment, victimisation, discrimination and bullying.

#### Section 2 Our expectations

##### 1. What you can expect from us as an employer

1.1 As an employer, we have a responsibility to take all reasonably practicable steps to ensure that staff are able to work in a safe and non-threatening working environment. This includes contact with Ministers, external stakeholders and other third parties.

1.2 We:

- will ensure that all line managers and other staff dealing directly with allegations of harassment, victimisation, discrimination and bullying in the workplace are equipped to identify and deal with these issues.
- give our commitment that all complaints will be dealt with sensitively, professionally, effectively and as quickly as practicable.
- will monitor incidents of alleged unacceptable behaviour as defined by this policy and address any issues arising from our monitoring quickly and appropriately.
- review this policy regularly, taking into account changes in best practice and legislation.

## 2. What we expect from members of staff

### 2.1 As a member of Scottish Government staff, you:

- have a responsibility to respect the dignity of others.
- must avoid behaving in a way that may cause offence or distress to your colleagues or others with whom you have contact as part of your duties, including service users and external contacts. (see [Appendix 1](#))

**It does not matter whether the perceived harassment, victimisation, discrimination or bullying is unintentional.**

- should be aware of, and adhere, to the Scottish Government's policies on [equal opportunities and diversity](#).
- should also support any colleague who feels that they have been harassed, victimised, discriminated against or bullied and encourage them to seek help from an appropriate source.
- behave appropriately at all times towards the people you work with.
- remember that inappropriate behaviour is behaviour which is "viewed as demeaning and unacceptable to the recipient".
- make sure you are familiar with the SG's policy on Fairness at Work and undertake training as necessary.
- should raise issues informally in the first instance if you feel that you have been treated unacceptably, or report the matter in writing to [HR.Help](#) if you do not feel able or if this does not work.
- should try to support anyone that you feel is being treated unacceptably and encourage them to seek help. If they do not feel able to report the behaviour themselves, **you should:**
- alert your line manager, or, alternatively, [HR.Help](#).

**Remember - unless you tell us about alleged unacceptable behaviour we may not be aware of it and will not be in a position to take steps to address it.**

### **3. What we expect from our managers**

#### **3.1 As a line manager, you:**

- have a responsibility to ensure that your staff work in an environment which is free from unacceptable behaviour and to encourage an atmosphere of tolerance and respect.
- should make sure that you have undertaken the appropriate level of training to carry out your duties effectively and try to lead by example through a fair and open management style.
- should make sure that all of your staff are aware of, and understand, the SG's Fairness at Work, diversity and equal opportunities policies, including the support options available to them. Ideally, this should be done as part of the induction process.
- must act if you are made aware of alleged inappropriate behaviour. It is not acceptable for you to do nothing as you may later be held accountable for your lack of action under the SG's performance appraisal or disciplinary procedures, or, in more serious cases, through the legal process.
- should apply this, and other policies, in a fair and consistent manner and staff should know who to contact if you are not available. This will normally be a more senior officer in the line management chain.

#### **3.2 If any of your staff raise concerns about unacceptable behaviour, you:**

- must take this seriously and act on their concerns quickly. In particular, you should make sure all of your staff are aware of their responsibilities and what action they should take if they become aware of unacceptable behaviour.

#### **3.3 If approached informally, you should:**

- investigate the circumstances of the complaint and take any action you feel is appropriate.
- keep a record of the incident and any action taken.

#### **3.4 If the complaint is more serious, you should:**

- assist the individual in making a formal complaint to HR.Help, or should do so yourself.
- make sure all parties to the complaint are aware of the support available to them.

### **4. What we expect from our countersigning officers**

#### **4.1 If any of your staff raise concerns about unacceptable behaviour, you must:**

- take this seriously and act on their concerns quickly.

4.2 In particular, you should:

- take the actions outlined in “What we expect from our managers”.
- make sure all of your line managers are appropriately trained and that all staff are aware of what is expected of them.
- act as a role model in and ensure that your work area is free from all types of unacceptable behaviour.
- carry out these duties in a fair, reasonable and consistent manner.

4.3 If you do so, your actions and behaviour **cannot be viewed as unreasonable**. However, you must also ensure that you perform these duties whilst upholding the principles of this policy statement, treating all staff fairly and respecting their dignity.

## 5. **What we expect if you are accused of unacceptable behaviour**

You:

- should try not to get defensive and listen to any advice and information you are given.
- should work with colleagues to try and reach satisfactory outcome to any complaint and seek support if you need it.
- must implement any recommendations made to you as a result of the complaint.

## 6. **What we expect if you are a witness to unacceptable behaviour**

6.1 You should:

- take any appropriate action to try to end such behaviour.
- participate fully with any action that is required of you during any investigation or resolution process.

## 7. **What you can expect from Human Resources (the HRSSC and HR Professional Advisers)**

7.1 Human Resources will:

- ensure that you are provided with advice if you feel that you have been the subject of unacceptable behaviour.
- take action if you make a formal complaint under the *Fairness at Work* procedures and ensure each complaint is fully and properly investigated as quickly as possible.



- take forward any recommendations resulting from any complaint of unacceptable behaviour, including disciplinary action.

## 8. Support and Advice

Please remember that apart from your manager and HR, the advice and support of the Welfare Officer and Employee Assistance Programme is available to you. Also, if you are a member, you may wish to contact your trades union.

### Section 3 Our standards of behaviour

#### 1. Unacceptable behaviour

1.1 There is no single definition of what constitutes unacceptable behaviour. The Advisory, Conciliation and Arbitration Service (ACAS) refers to “unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. **The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient**”. Other irrelevant characteristics covered by the Scottish Government equal opportunities policy statement include sexual orientation, marital/civil partnership status, gender identity, caring responsibilities, working pattern or trades union membership.

1.2 What is acceptable behaviour to one member of staff may not be acceptable to another and we should all be aware of the effect that our behaviour or language may have on others.

1.3 Unacceptable behaviours have a detrimental effect on both individuals and the organisation as a whole. They can significantly lower staff morale and motivation, cause increased absenteeism and turnover of staff and, in some cases, end in legal proceedings.

1.4 A list that illustrates examples of behaviours which *may* be considered unacceptable and which *may* amount to misconduct and, in some cases, serious misconduct, can be found in Appendix 1. This list is not exhaustive and conduct needs to be viewed in context.

## Appendix 1

### Examples of unacceptable behaviour

#### General

- Refusing to work with, ignoring or deliberately isolating or excluding colleagues, including from social events.
- Displaying or circulating offensive materials, including sectarian materials, homophobic or anti-gay or pornographic pictures/pin-ups.
- Discouraging someone from taking advantage of relevant and suitable training on grounds of irrelevant difference.
- Taking credit for others' work.
- Not taking the blame when things go wrong.
- Excessive, or inappropriate, detailed supervision.
- Lack of supervision which leaves the individual feeling unsupported or demoralised.
- Undermining an individual's authority.
- Reducing a job to tasks inconsistent with a person's grade, skills and abilities.
- Unjustifiably blocking promotion or training opportunities.
- Withholding information, ostracising, marginalising, spreading rumours etc.
- Unfair work allocation.
- Displaying tattoos that may be offensive in terms of fairness at work, equal opportunities or diversity.

#### Verbal

- Deriding an individual's religious or other beliefs or other personal circumstances, e.g. their trade union involvement.
- Unwelcome comments or jokes.
- Use of offensive language, name calling, taunts, jokes, mockery.
- Unwanted or derogatory comments about dress or appearance.
- Leering and suggestive gestures, comments or innuendo.

- Jokes, banter, insinuations, insults and taunts based on any irrelevant difference, including being Scottish, English or another UK nationality.
- Inappropriate questions about someone's personal life or questions about someone's sex-life.
- Aggression, bawling out, threats, shouting, swearing, abuse, physical or verbal intimidation.
- Humiliating, ridiculing or belittling efforts in front of others or in private.
- Gossip and speculation about an individual's personal life, e.g. their sexual orientation.

#### **Physical**

- Inappropriate physical contact, advances or propositions.
- Physical or verbal attacks, abuse or intimidation.

#### **Making assumptions**

- About an individual's personal or social life.
- About their physical or mental capability.
- About the existence of a non-visible impairment.
- Assuming that everyone is heterosexual.
- Assuming that all gay men are HIV positive.
- About age-related retirement.
- About ability or competence.

## ANNEX B

### Guide to Using the Mediation Service

1. The Scottish Government is introducing a mediation pilot scheme for all staff covered by the new Fairness at Work policy (staff on SG Main terms and conditions). The service may also be used by staff who are employed in Directorates and Agencies covered by SG Main but who have different terms and conditions, e.g. ex-Scottish Homes staff who opted to retain their existing terms and conditions. The pilot will use trained internal mediators provided by VisitScotland.~~the Scottish Prison Service.~~
2. Providing an alternative way of resolving conflict or disputes through mediation can help by offering a quicker resolution, causing less stress to individuals, preserving the working relationship and offering a better chance of reaching a mutually successful outcome.

### What is mediation?

3. **Mediation** is a process by which an impartial third party helps people in a dispute work out an agreement. The parties to the dispute, not the mediator, decide the terms of the agreement. Mediation usually focuses on future rather than past behaviour.
4. It is an option you can explore if you are involved in a workplace conflict or dispute. Or, you are concerned about or confronted by a situation or behaviour that you find unacceptable and you wish to attempt to resolve without formal action.
5. Mediation provides a structured though informal way of resolving complaints, grievances and disputes. It can help rebuild relationships and restore broken communication and trust because it does not seek to apportion blame. It is a viable way to tackle disputes as it brings people together to talk about the situation and can foster a joint problem-solving attitude, both of which are essential if working relationships are to be maintained or improved. The key is that mediators provide a safe and confidential environment, enabling people to talk freely.

### When might it be appropriate?

6. Mediation must be a voluntary process. Deciding what might be successfully resolved through mediation is very much a matter of personal choice. Decisions should be made on each case on its merits. If you feel the following situations apply to you then you might benefit from mediation:
  - The conflict/dispute is at an early stage.
  - You are being affected by a situation at work in some way. It could be affecting your work performance, working relationship, emotion/physical wellbeing, personal or home-life.
  - You are willing to be honest and open and willing to attempt to resolve the situation.
  - You think the other party would be prepared to be honest and open and willing to seek to resolve the situation.
  - You are willing to look at you own role in the situation.
  - You are prepared to abide by a mediated agreement.

7. There will be maximum opportunity for resolution in cases that have the following characteristics:

- low levels of anger and physical or verbal intimidation.
- no serious breaches of workplace guidelines.
- no formal or other action being taken which would counter the mediation process.
- allegation and counter allegation.
- ~~insufficient evidence for other action.~~
- facts which are difficult to substantiate.
- parties who are willing to contribute to resolution.
- room for improvement in relationships.
- parties who are not initially prepared to have face-to-face contact with their counterpart, but will with external help.

8. Mediation **may not be appropriate if:**

- there is a significant power imbalance between the parties which cannot be bridged.
- behaviour is going on between the parties which makes one or the other or both feel unsafe to negotiate.
- external rules need to be applied, for example if criminal activity is involved.
- one or other side or both sides are unwilling or unable to mediate.
- if a complaint involves behaviour which requires action against one of the parties e.g. serious misconduct, less than effective performance.

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

10. Even if you do not choose to enter into mediation, you might wish to discuss your concerns in confidence with an HR Professional Adviser, your trades union representative or the Employee Assistance Programme (EAP) at their helpline.

#### **The Process – Step 1**

11. The mediator will spend up to two or three hours with each party. At this initial meeting, each party is asked to talk in detail about their perspective of what has been going on. They are asked to be open about how they feel and what they consider needs to happen to resolve the situation and to create effective structures for future communication.

12. The mediator provides each party with the reflective space to work through difficult issues and build commitment to agreements.

13. They do this by:

- using reflective listening, empathy and rapport-building to create a constructive atmosphere.
- working with each party to identify issues, needs, concerns, vulnerabilities, habits and limiting beliefs.

- exploring contributory factors on all sides, e.g. background issues, the general context
- highlighting with each party possible options, and ways forward.
- if it becomes apparent at the Step 1 meetings that the issues have changed then it may be necessary to change the agreed process.

#### **The Process – Step 2**

14. The mediator meets with the parties together, ideally in the same room, for up to three hours. The time will vary depending on numbers involved. There are ground rules to enable even those who may be feeling vulnerable to take part.

15. While it is preferable if the parties agree to talk face to face with the mediator as the intermediary, it is possible to use “shuttle” mediation where the mediator works with the parties in separate rooms. Shuttle mediation can be particularly helpful in the initial stages if emotions are running very high.

16. **At the face to face session the mediator works to enable the parties:**

- to have the same opportunity to speak about their feelings and concerns, without interruption.
- to look at the problems in turn, to move towards a mutual problem definition.
- to generate ideas for solutions.
- to plot potential hazards.
- to generate a time-frame for change.
- to create written agreements for future interaction where appropriate.

#### **Feedback**

17. **The mediation process is totally confidential.** The detail of what is discussed between the mediator and the parties cannot be provided to the referring client. However the mediator will ask for written feedback from the parties on their assessment of the mediation. He/she will also ask if the parties wish feedback to be given to line management or HR. Please note that records will be kept of the number of cases referred so that the use of the service can be monitored.

18. The following pages explain how mediation works and are provided so that, when mediation is organised, **each party is aware of the ground rules and stages before it takes place. You must apply for mediation using this form.**

## **MEDIATION HANDOUT**

### **How Does Mediation Work?**

Mediation is when an impartial, trained person helps two or more people in a dispute to talk about their situation, exchange their concerns and come up with ideas about how to move forward. What is discussed in a mediation session is confidential and there are ground rules to help people feel confident and safe enough to communicate their needs, feelings and concerns.

### **Mediation Ground Rules**

These apply to the parties involved and to the mediator. We ask you to:

8. Listen to what each person has to say and speak one at a time.
9. Speak and behave in a non-threatening way; think how you would like to be treated.
10. Be as open as you can about what your concerns are and what you need.
11. Be as specific as you can about what you want to happen, what you can do and what you'd like others to do.
12. Stay seated and discuss any problems and doubts with the mediator or request a private space with them if you feel you need to.
13. The mediator may pause the mediation or end it if he or she feels it necessary.
14. Keep the detail of what is discussed private; the mediation is confidential; notes will be destroyed; **things said in mediation cannot be used in court or in any later internal procedures.**

### **The mediator will:**

- ensure that everyone has equal opportunities to communicate (speak and listen), negotiate and work out realistic and fair agreements.
- prevent name-calling, abuse or behaviour which stops people negotiating fairly.
- not take sides or make decisions for you.

### **The Stages of Mediation**

A preliminary meeting with the mediator will be arranged so that you can:

- describe the situation from your point of view.
- think clearly about ways of moving the situation forward.
- get to know more about how mediation works and the benefits of using mediation to find a settlement.

A face to face meeting will be held which has five stages;

6. **Describing the problem** – Setting the scene – hearing both sides of the situation.
7. **Exploring the issues** – Being clear what the important issues are, checking facts, comparing views of the problem, agreeing what issues can realistically be settled by mediation, agreeing to continue.
8. **Building agreements** – Exploring what people want and what can be done about the situation, working through differences, managing conflict, problem solving, preparing for decisions.
9. **Making agreements** – Testing likely outcomes, describing in detail what will happen next, future arrangements, what if something goes wrong? The agreement can be made verbally or in writing.
10. **Closure and follow-up** – Evaluating the session and ending the session, agreeing plans for future contact between the mediator and the parties concerned, if needed. The parties decide if they agree to any feedback to line management or HR.

A number of important principles underpin the operation of mediation:

- It must operate in a way which eliminates any kind of bias.
- Mediators should not work on the site at which they are based.
- Mediators will not mediate with people with whom they have had substantial previous contact.
- Parties will not be able to choose their mediator.
- Mediations will be totally confidential and there will be no reporting back on issues, outcomes or the process itself without explicit consent from the parties involved: and
- Mediation will not be used while other formal measures (such as grievance or disciplinary procedures) are in operation.

For these reasons the provision of mediation is managed centrally (including SG Main agencies) via SGHR and requests for mediation should be forwarded to [HR.Help](#) following which an HR Professional Adviser will be allocated to your case. The HR Professional Adviser will discuss the use of mediation with you and the potential for its suitability to resolve your issue. Remember, both parties need to voluntarily agree to the use of mediation.

As well as the HR Professional Adviser, there are a few other options for you to discuss your issue and its suitability for mediation:

- Welfare Officer.
- Employee Assistance Programme .
- Your line manager, or if that individual is involved in the issue, another manager.
- Your trades union representative.

Once the decision to use mediation to resolve the issue has been made, you and SGHR should follow this process for requesting a mediator:

6. Confirm your intention to use mediation to the HR Professional Adviser.
7. Complete a standard referral form.



8. Forward the form to the HR Professional Adviser who has been dealing with your case.
9. The HR Professional Adviser will then arrange for a mediator to be allocated.
10. If you cancel the mediation, please let the HR Professional Adviser know.

**Request for Mediation - Referral from Scottish Government Staff**

**Name of individual (s) requesting the mediation service:**

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**Work Location and phone contact numbers**

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**Circumstances relating to the mediation request:**

Signed \_\_\_\_\_ Date \_\_\_\_\_

To Mediator

**Endorsement by SGHR Professional Adviser:**

**SGHR PA Name and contact number**

**I have discussed this with the individuals concerned and the case is referred for mediation under the terms of our agreement. I will act as case manager throughout the process and will arrange meetings.**

Signed \_\_\_\_\_ Date \_\_\_\_\_

**ANNEX C**

## COMPLAINTS ABOUT EXTERNAL THIRD PARTIES

1. **Note – Under discrimination legislation employers will be liable where they fail to take reasonable practicable steps to prevent repeated sexual harassment of an employee by third parties. They may also fall foul of Health & Safety legislation in failing to: carry out an effective risk assessment, design a safe system of work and provide related training and information.**
2. The nature of our work means that many of us have working relationships with external partners, customers and other stakeholders who are employed or affiliated to other organisations. Our standards of conduct and how we will deal with these external contacts is the same as with colleagues. That is, we deal with them with appropriate courtesy meeting the published service standards. In return, all staff should expect the same treatment. There may be situations where a position has to be taken or advice given which the third party is unhappy with. While certain emotional reactions may be understandable, staff should not be expected to put up with bullying, harassment, intimidation or threats of, or actual, physical harm.
3. All such instances should be reported to your line manager immediately. The line manager will discuss with you and agree any possible course of action. Normally this will involve the line manager raising the matter with the other organisation; the expectation being that the organisation will investigate the complaint and if necessary, agree an interim course of action to deal with the working relationship. This, for example, could take the form of not dealing with the individual directly and instead going through another representative of the organisation. Or, it may mean that you would deal with the individual or situation only in the presence of others. (This does not preclude you raising a grievance or complaint through the Fairness at Work procedure.)
4. This is not only about the dignity of our staff at work but perhaps, more importantly, it may be a health and safety matter. Each Directorate and Agency is responsible for risk assessing the type of work carried out by their staff. Results of that assessment may indicate the need for a safe system of work to be designed. Staff can then be trained and provided with information on preventative measures and actions to be taken when certain situations arise. Advice on such matters can be sought from the Occupational Health and Safety team or your Agency local health and safety adviser.
5. Directorates and Agencies should also assess whether they have effectively set down the terms of engagement with these contacts. This, for example, may apply to those parts of the SG involved with inspection work.

## ANNEX D

### MANAGER GUIDANCE - CONDUCTING AN INFORMAL FAIRNESS AT WORK MEETING

1. Members of staff who raise a complaint either orally or in writing with their manager are looking to have the matter addressed fairly and, if possible, resolved quickly. Therefore, it is important that the informal process is conducted in a professional manner and given appropriate attention within the timescale in the policy. It is crucial to try to resolve problems before they become major issues as resentment can build and impact on the work of the individual and possibly their colleagues. Managers are responsible for ensuring the work environment is one where staff feel comfortable about raising matters informally and discussing them face to face.

#### If you receive a complaint:

2. Consider whether or not you are the appropriate manager to hear the complaint, taking into account the following:
- the nature of the complaint;
  - whether you have the authority to make a decision regarding the complaint; and
  - whether you have a sufficient overview of the team/branch/division to assess whether or not there will be any impact on others or current working practices.

It may be more appropriate for your line manager or another manager within your division to hear the complaint. Choosing the most appropriate manager should ensure that the member of staff will attend a fair, open and meaningful meeting.

#### Preparing for the meeting:

3. Ensure that the meeting will be held in private, without interruption and allow plenty of time. Remember that particular needs of disabled employees should be considered.
4. Advice can be sought from the HR Shared Service Centre. HR can provide general guidance on dealing with complaints and may be able to provide information on how other similar complaints have been resolved to ensure consistency of treatment.

#### Conduct during the meeting:

5. Remember that a meeting to discuss a complaint is not the same as a disciplinary hearing; it is an occasion where the objective is that discussion and dialogue may lead to the matter being resolved.
6. Invite the member of staff to re-state their complaint and how they would like to see it resolved.
7. Complaints raised by staff can sometimes feel like a personal criticism against you as manager. Listen to what is being said in a calm and impartial manner. Be as fair to the employee as possible, given the constraints of business operations and other staff considerations, in trying to resolve the problem.

8. Care and thought should go into resolving complaints. They are not normally issues calling for snap decisions. Consider if any serious precedent is being set that the business could not support. Take advice from HR if necessary.

9. Make allowances for the emotions that the individual displays including reasonable 'letting off steam' if he/she is under stress. Go through any points again with them to make sure you have understood what the problem really is. Consider too, that the problem they are presenting may, after careful questioning and discussion, may not be what is at the root of their discontent.

10. You should refer to the guide to standards of behaviour at Annex A when you have to deal with a complaint about another colleague's behaviour. In such cases, action you might consider could include:

- Encouraging the individual to resolve the matter directly with the other person.
- Offering to facilitate between the two individuals.
- Offering to represent the views of your member of staff with the other person; or
- Offering to take up the matter with the other person's manager.

11. Always remind the individual of the support the Employee Assistance Programme, Welfare Officer, their trades union and HR can provide.

12. After summing up, you may find it useful to adjourn before reaching a decision on how or if the complaint can be resolved – you may need to:

- investigate the complaint further.
- explore possibilities with other managers about the resolution of the grievance.
- give consideration to the impact any decision may have on the rest of your team and the business; and/or
- take advice on how to proceed further.

13. Tell the member of staff when they might reasonably expect a response if one cannot be made at the time, bearing in mind the time limit set out in the policy which is 2 days from the date of the meeting.

14. Respond to the member of staff's complaint within the 2 day time limit, confirming your response in writing. If a response is likely to take longer than the two days you may need to give an interim reply or agree another timescale with the individual. Review the case with him/her after a month unless he/she has decided to take formal action.

15. You should advise on the next step – raising the matter formally ([link to F@W](#)) or the possibility of mediation so that the individual knows what to do if unhappy with your decision.

## ANNEX E

### THE ROLE OF THE DECIDING OFFICER

#### What is a Deciding Officer?

1. A Deciding Officer (DO) is someone who considers all the relevant information surrounding a complaint or issue raised through the formal Fairness at Work process and makes a decision as to whether the complaint is well founded. The Deciding Officer may also make recommendations following their decision. An HR Professional Adviser (PA) will arrange for a DO (or two DOs where the case is complex) to be appointed to each case.

#### **Why does the Scottish Government need Deciding Officers?**

2. The Fairness at Work policy encourages the resolution of complaints at a local level. However in some cases, local efforts are not successful or the complainant feels unable to follow such a course of action and therefore submits a formal written complaint to HR. Deciding Officers, who are capable of reaching reasonable and logical conclusions, are essential to the procedure to ensure a fair and unbiased hearing and a result based on reasonable and balanced judgement.

#### **What does the role involve and what does the Deciding Officer do with my complaint?**

3. The role of DO involves considering the facts of the case which will involve a meeting with you. The DO will liaise and work with the HR PA allocated to the case throughout the process to collect information relevant to the complaint. The HR PA will provide support and guidance and be responsible for the administration and management of the process including minute taking. The HR PA will also decide if an Investigating Officer (IO) needs to be appointed. This will depend on the complexity of the case. In cases of harassment or bullying or other allegation about a colleague's conduct, it will be normal to appoint an IO.

4. If more than one DO is appointed, they will arrange to meet in advance of the meeting with the individual making the complaint, to review the papers, including the IO's report. The DO can seek further clarification from the IO if necessary. You will also get a copy of the IO's report.

#### **The Meeting**

5. The DO will meet you and read and analyse information presented including, if appointed, the IO's report. You are entitled to be accompanied at the meeting by either a colleague or a trades union representative and must be told this in the invitation to the meeting. HR hold standard letters that can be used by the DO.

6. At the meeting the DO will listen carefully to what you have to say, ask questions and answer any questions you may have. If the case is a complaint about a colleague's behaviour, then the DO may wish to interview that individual before reaching a decision. This is to ensure fair and full consideration of the case and allows that individual a final opportunity to put forward their position (they will have the right to be accompanied by a trades union representative or other colleague). Following the meeting, the DO will consider the full facts of the case before reaching a decision. They will then write a report which clearly demonstrates how the decision was reached and with recommendations that management or HR may want to take forward which may include disciplinary action. The DO will check with the HR PA and line management, as appropriate, that any recommendations are workable.

7. The report will be sent to the HR PA to take forward any recommendations. A copy of the report will also be sent to you. If the complaint involves allegations about a colleague's behaviour, the HR PA will arrange for the colleague to be informed of the DO's decision.

## ANNEX F

### THE ROLE OF THE INVESTIGATING OFFICER

1. The role of the Investigating Officer (IO) is to investigate impartially the facts and evidence of the matter, detailing the findings in a report. The report will be used by the Deciding Officer (DO). It is not the IO's role to make judgements or recommendations about their findings: that is the role of the DO.
2. The HR Professional Adviser (HR PA) will consider whether the case needs an IO – this will depend on the circumstances of the case. The HR PA will meet initially with the IO to go over the current known facts of the case.

#### Neutrality and Impartiality

3. The IO will approach the investigation in a fair and impartial manner. They will avoid making snap judgements and assumptions and will be expected to put their own values or personal views on the case to one side. All parties involved will be listened to and given a fair opportunity to put forward an explanation of the matters relating to the complaint.

#### Conducting Interviews

4. The IO will meet the parties to the complaint at a convenient office location. The IO will take into account any mobility or other special needs when arranging meetings. It is acceptable to verify the odd fact by phone or in writing subsequent to a meeting but the IO may also arrange follow-up meetings once others have been interviewed. To meet timescales, the meetings may be arranged by telephone. The individual raising the complaint will be interviewed first. This is to ensure the exact nature of the complaint is clear and to confirm any witnesses' details.
5. If the complaint or issue involves an individual being accused of unacceptable behaviour, then the individual will be given details of the complaint in advance of meeting the IO. They, and also all others interviewed, will be reminded of the support their trades union, the Welfare Officer and the EAP can give and that they have the right to be accompanied by a colleague or trades union representative at the interview.
6. During the process the IO will record all action taken and all contact with the parties involved. The IO may also be accompanied by a note-taker. The IO will ask questions and encourage comments that are pertinent to the matter being investigated. Interviewees will be given the opportunity to add anything they consider relevant to the case at the end of the interview. Interviewees will be given notes of the meeting to agree and sign. Internal witnesses are expected to attend an interview called by an IO but external parties are under no obligation to attend.

#### The Report

7. A full report, which will include statements, interview notes and other evidence, will be passed to the HR PA who will provide a copy to the DO and the individual raising the complaint. If the complaint is about another individual's behaviour, then that individual can be provided with a copy of the report.

## ANNEX G

### APPEALS

#### Introduction

1. This common appeals process is used where all other review processes have been exhausted and is the **final** internal recourse to have a decision reconsidered.

#### Process

2. If you consider that the decision reached in your case is unsatisfactory (i.e. you consider the deciding authority's decision to be flawed, unfair or unreasonable) you may appeal against the decision.

3. You must make your appeal **within 10 working days** of receiving the relevant decision letter. All appeals should: be made in writing; set out clearly the grounds for the appeal; be sent to the HR Professional Adviser handling the case. As the appeal is by way of a review, the panel will not consider any new complaints but may consider new information relevant to your original case.

4. The appeal will be considered by an appeal panel consisting of 3 people: – the Chair who will be least one pay range above the previous Deciding Officer(s) or Panel/Board Chair; an HR Professional who will have had no previous involvement in your case; and another staff member from outside the HR area identified from a pool of trained SG staff. The membership of the panel will be confirmed to you in writing and no panel members will be from your line management chain.

Note – the HR Professional will be part of the panel as an independent member who will view the information presented to the panel objectively. They will not be representing HR but will bring their experience of good practice, precedent and employment legislation. Also, the aim will be to ensure the panel is of mixed gender.

5. The panel will be set up **within 10 working days** of receiving your written appeal and you will be advised in writing of a day, time and place for the hearing. You will be given 5 working days notice of the appeal Hearing date. You may be accompanied to the hearing by a trades union official or colleague.

#### The Role of the Panel

6. The panel will:

- give you the opportunity to present your case orally (and present any new relevant information);
- consider your oral and written representations and all other papers relating to the case to determine whether:
  - the procedures were correctly and fairly applied;
  - there were reasonable grounds to justify the finding; and



– the final decision reached was fair and appropriate.

7. The Panel may also suspend the hearing pending further investigation and/or the provision of new evidence and reconvene when the investigation has been concluded with any resulting evidence provided to all appropriate parties.

8. If the Panel is hearing a complaint about a colleague's behaviour, it may refer the papers to HR to consider disciplinary action.

#### **The Panel's Decision**

9. In concluding its deliberations the Panel may:

- overturn the original decision. It may also, as appropriate to the nature of the case, recommend action to be taken after necessary consultation with management and HR;
- uphold the original decision; or
- uphold the decision but determine that the penalty or solution imposed is inappropriate. In such circumstances the panel will look to the original policy and guidance to help them determine an appropriate alternative penalty/outcome.

9. You will be given the panel's decision normally within 5 working days of the panel hearing. If this is not possible, you will be given an explanation for the delay and told when you can expect a response.

10. The panel's decision is final and the last stage in the internal process. However, in line with the provisions of the Civil Service Management Code you may appeal to the Civil Service Appeal Board against:

- refusal to allow participation in political activities.
- forfeiture of superannuation.
- dismissal and early retirement.
- the level of compensation, including non payment of compensation, if you are dismissed on grounds of inefficiency because poor health has affected your attendance or performance (this does not apply to medical retirement).

## Annex H

### What if a complaint has been made against me?

1. If you are accused of unacceptable behaviour it is natural that you may feel upset and defensive. Examples of unacceptable behaviour and the standards expected by the Scottish Government can be found at [Annex A](#). This may help you understand why the complaint has been raised. It is important that you remain calm and act in a fair and reasonable manner. You will be expected to work with colleagues to try to reach a satisfactory outcome to any complaint and seek support if you need it. Support and advice is available from Human Resources, your trades union, the Welfare Officer and the Employee Assistance Programme.
2. If a colleague approaches you on an informal basis to discuss their concern, you should try to understand the nature of their complaint, how your actions may have been perceived and consider ways in which you can work with him or her to resolve the matter.
3. The colleague may choose to report the matter to their manager on an informal basis. The manager may contact you or your manager to try to find ways of resolving the matter early. The manager may wish to speak to you in order to gain your view on the matter. The manager may suggest ways of resolving the matter and you can also put forward suggestions. It is in your own interests to be open to any such suggestions since they may lead to early resolution of the issue and help to preserve the working relationship. On reflection, even if you don't think you behaved inappropriately but understand that a different perception of your behaviour has caused upset, you might wish to consider apologising.
4. Mediation may be considered as an alternative to pursuing a formal resolution. This is entirely voluntary and both parties need to agree to do this. Information on mediation can be found at [Annex B](#).
5. If the alleged conduct is very serious, it may result in an investigation as a disciplinary matter rather than being dealt with under the Fairness at Work procedure. If a complaint is raised by someone from another organisation, it would also be investigated under the [disciplinary procedure](#).
6. Should it not be possible to resolve the matter informally the complainant may then raise the matter formally. If this happens, you will be interviewed to provide a statement. At the interview, you may be accompanied by your trades union representative or other colleague. This action is about considering the allegation and it does not necessarily follow that any formal action will be taken against you.
7. You will be kept informed of the progress of the grievance, its outcome and the reason for the particular outcome. You can have a copy of the investigation report if you wish.
8. At the formal stage, a Deciding Officer (DO) is appointed to review all the relevant information of a complaint and make a decision. This may include a meeting with you at which you can be accompanied by your trades union representative or other colleague. They will provide a report which clearly demonstrates how that decision has been reached. HR will arrange for you to be advised of the decision. If the DO upholds the complaint, they may include recommendations which could include consideration of disciplinary action that HR would arrange

to take forward. The disciplinary process includes a hearing at which you can be accompanied by your trade union or a colleague and has an avenue for appeal. You will be given a full opportunity to present your case. Other recommendations might include training, awareness raising, suggestions for development or reviewing local management arrangements and behaviours in the unit concerned. The DO might also recommend that a transfer of either party is the best option if it is detrimental for you to continue working together. Any such action will be considered by HR and line management in discussion with the individual raising the grievance.

9. Where it is clear that an allegation is malicious, this will be viewed seriously and dealt with under the disciplinary procedures. If you have been the subject of a malicious allegation, you will be given support by an HR Professional Adviser.

10. A record of the complaint will only be kept on your file if a penalty is imposed under any disciplinary action.

17.	9/9/10	Email from official to trade union with templates that will be used to create reports
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**From:** [REDACTED]  
**Sent:** 09 September 2010 11:46  
**To:** [REDACTED]  
**Subject:** F@W - templates

Hi [REDACTED]

FYI – the templates that will be used to create reports of F@W cases. If you have any comments, just let me know.

F.

[REDACTED]  
(REDACTED)

[REDACTED]  
(REDACTED)

**FAIRNESS AT WORK – DECIDING OFFICER REPORT**

Case reference		
Date of case		
Parties		
Complainant		
Respondent		
Summary of complaint		
Witnesses		Date interviewed
Summary of findings		
Allegation	Finding	
Recommended action		
Date and signature		

**Comment [FMC3]:** Insert case reference

**Comment [FMC4]:** Insert date complaint raised

**Comment [FMC5]:** Insert details of parties (name, grade, staff number)

**Comment [FMC6]:** Insert full summary of complaints made.

**Comment [FMC7]:** Insert name of witness.

**Comment [FMC8]:** Insert grade and staff number of witness.

**Comment [FMC9]:** Insert date (s) witness was interviewed.

**Comment [FMC10]:** Insert details of allegation (use additional lines where there is more than one allegation).

**Comment [FMC11]:** Insert finding (Founded; unfounded; insufficient evidence and summarise evidence on which finding is based.

**Comment [FMC12]:** Insert summary of recommended action.

**Comment [FMC13]:** Insert signature, name, staff number and date of report.

**FAIRNESS AT WORK – INVESTIGATING OFFICER REPORT**

- Section 1 Case details
- Section 2 Details of complaint
- Section 3 Evidence
- Section 4 Additional information
- Annexes**
- Annex 1 Timeline of investigation
- Annex 2 Extract of business directory
- Annex 3 Statement of complainant (s)
- Annex 4 Statement of respondents (s)
- Annex 5 Witness statement(s)

**RESTRICTED STAFF AND MANAGEMENT  
FAIRNESS AT WORK – INVESTIGATING OFFICER REPORT**

<b>Section 1</b>		<b>Case details</b>
Case reference		
Date of case		
Investigating Officer		
<b>Section 2</b>		<b>Details of complaint</b>
Parties		
Complainant		
Respondent		
Summary of complaint		
<b>Section 3</b>		<b>Evidence</b>
Summary of evidence		
Allegation		
1.		
Evidence		
Allegation		
2.		
Evidence		
<b>Section 4</b>		<b>Additional information</b>
Issue		
Evidence		
Date and signature		

**Comment [FMC14]:** Insert case reference

**Comment [FMC15]:** Insert date complaint raised

**Comment [FMC16]:** Insert name and staff number.

**Comment [FMC17]:** Insert details of parties (name, grade, staff number)

**Comment [FMC18]:** Insert full summary of complaints made.

**Comment [FMC19]:** Insert details of each individual allegation. Add more lines in necessary.

**Comment [FMC20]:** Provide detailed evidence in respect of each allegation made.

**Comment [FMC21]:** Insert evidence to support or disprove each allegation, including source of evidence, relevant dates etc.

**Comment [FMC22]:** Insert any other relevant information here. Specify the issue and any supporting evidence

**Comment [FMC23]:** Insert signature, name, staff number and date of report.

**Annexes**

Annex 1 Timeline of investigation

Annex 2 Extract of business directory

Annex 3 Statement of complainant(s)

Annex 4 Statement of respondent(s)

Annex 5 Witness statement(s)

**Comment [FMC24]:** Insert additional annexes as required, e.g. copies of relevant correspondence; copies of other documents etc. Each should be separated by a page break.

**Comment [FMC25]:** This should include dates of each relevant event during the investigation with explanations of delays to standard timescales where appropriate.

**Comment [FMC26]:** This should name name, locations and grades of parties.