

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

Procedure aims

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

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

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

Procedure principles

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

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

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

If a complaint of bullying or other unwanted conduct is made outwith the time limit, there will be a consideration of available information before a decision is made on whether it would be equitable to take forward the complaint using this procedure notwithstanding that a complaint is made outwith the time limit. It may be the case

that a complaint made may not be taken forward under this procedure if it is no longer possible to investigate it fairly and effectively because of the passage of time.

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

The need to maintain confidentiality does not affect the right of any member of staff to be protected from detriment because they have made a qualifying disclosure (sometimes called whistleblowing) within the meaning of the Public Interest Disclosure Act 1998 (PIDA).

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

Scope of procedure

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

The following are outwith the scope of the procedure:

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

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

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

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

Procedure (summary)

The procedure will consist of five stages:

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

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

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

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

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

Where parties involved may be the victim of a crime

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

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

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

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

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

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

Record keeping

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

Records will be protectively marked, kept securely, and handled in line with the SG record management policy in compliance with the requirements of data protection legislation.

Procedure (full)

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

- **Complainer:** the person(s) making a complaint. The complaint might come from the person who experienced the behaviour, someone who witnessed it or a trade union representative supporting a member of staff.
- **Subject of complaint:** the subject(s) of the complaint. This will be the Minister or former Minister who is alleged to have behaved inappropriately during their term of office, but may include others, for example civil servants.
- **Witness:** Anyone who witnessed the alleged inappropriate behaviour, who can provide corroborating evidence to support either the complainer's or subjects of complaint's account of events or who has other information relevant to the complaint.
- **Decision maker:** the external person(s) appointed by the Scottish Government to consider the complaint and decide on appropriate action.
- **Investigator:** The external person(s) appointed by the Scottish Government to undertake an impartial collection of facts and evidence and produce a report.
- **SG nominated contact:** The person(s) in Scottish Government responsible for appointing the external decision maker and investigator, retaining a record of the complaint, and taking forward any further actions as appropriate.
- **Support contact:** The person(s) in Scottish Government responsible for provision of relevant pastoral support.
- **Trade Union representative:** If parties are a member of a trade union, they may wish to discuss with their representative who can offer appropriate advice and support.
- **Appeal decision maker:** the external person(s) appointed by the Scottish Government to consider an appeal.

Stage 1 Initial contact and assessment

The complainer will set out their complaint in writing to Propriety & Ethics, providing:

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

The SG nominated contact, who will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint, will acknowledge receipt of the complaint.

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

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

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

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

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

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

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

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

Stage 2 Investigation

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

The decision maker will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint.

The decision maker will commission an external investigator, appointed by the SG nominated contact, who will have had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint.

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

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

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

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

If the investigation is not completed after 30 working days, the case should be reviewed by the SG nominated contact. The purpose of the review is to ensure that everything possible is being done to progress the investigation, that the correct process is being followed and that all reasonable steps are being taken to avoid delays. Following review, the SG nominated contact may direct the decision maker or investigator to complete the investigation as far as is reasonably practicable.

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

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

Stage 3 Decision

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

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

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

At the meeting, the decision maker will allow the complainer to explain their complaint and how they think it should be resolved and clarify any points which are not clear. The decision maker will also offer a meeting to the subject of complaint to allow them to set out their position.

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

After the meeting(s), the decision maker will assess the evidence put forward, make findings where possible on any contested facts and decide whether to uphold the complaint or not. This may include partially upholding the complaint (for example, if some allegations are found to be justified, and others are not).

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

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

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

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

Stage 4 Employer Action

The SG nominated contact will share the final report, the decision letter and any other recommendations with the Permanent Secretary or delegate.

The SG nominated contact will consider the report and ensure that any recommendations are considered and implemented as appropriate. This may include arrangements to engage with the complainer on further action. Further action could include: steps to support and protect staff wellbeing, to ensure a positive working environment, and to ensure lessons are learnt for the future. For complaints which are not upheld, this could include actions to resolve remaining issues informally or other management actions.

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

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

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

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

Stage 5 – Appeal

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

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

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

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

The SG nominated contact will assign the appeal to an external appeal decision maker who has had no prior involvement with any aspect of the matter being raised, and no close association with the complainer or the subject of complaint. The SG nominated contact will notify the complainer and the subject of complaint when this has been done.

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

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

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

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

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

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

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

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

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

Equality Impact Assessment

Updated procedure for handling complaints by civil servants about a Minister or former Minister's behaviour

Description of Policy

Title of policy/ practice/ strategy/ legislation etc.	Updated Procedure for handling complaints by civil servants about a Minister or former Minister's behaviour	
Minister	P&E – DG Corporate	
Lead official	[Redacted]	
Officials involved in the EQIA	name	team
	[Redacted]	Propriety & Ethics People Directorate
Directorate: Division: Team	Propriety & Ethics Directorate, DG Corporate	
Is this new policy or revision to an existing policy?	Revision to existing practices to create a new process	

Screening

Policy Aim

The aim of the process is to ensure that a robust and trustworthy system is in place where staff can raise complaints about a Minister or former Minister's behaviour during their term of office in the knowledge that these will be considered impartially and independently.

This process contributes to the National Human Rights Outcome:

- **Human Rights: we respect, protect and fulfil human rights and live free from discrimination**

Scottish Government Equality Outcomes:

(drawn from SG Equality Outcomes and Mainstreaming Report 2021)

Our ambition is to be a world-leading, diverse and inclusive employer where people can be themselves at work. We are committed to building a workforce of people with a wide range of backgrounds, perspectives, and experiences, who are valued for their unique contributions in an environment that is respectful, supportive and free of discrimination, harassment or bullying.

What is the Policy Intent/ Desired Outcome?

The Scottish Government (SG) handling of harassment complaints involving a former First Minister has been subject to a judicial review and three subsequent reviews - by James Hamilton into the actions of the First Minister under the Ministerial Code, by Laura Dunlop QC into the SG procedure for handling harassment complaints involving current or former ministers, and by the Parliamentary Committee into the SG's handling of harassment complaints.

A joint response to the three reviews (and associated implementation plan) published on 21 June 2021 considered the findings and recommendations by the reviews.

The SG response includes a commitment to the development of a single process for handling formal complaints by civil servants about a Minister or former Minister's behaviour during their term of office, introducing external and independent investigation and adjudication of complaints. Developing a single process for handling formal complaints by civil servants about a Minister's or former Minister's behaviour supports a wider set of initiatives to rebuild confidence in our standards of behaviour and our actions when standards fall short.

The updated procedure will set the rules for how the SG will apply the policy when a complaint is received.

New guidance will provide the necessary detail to ensure all parties in the application of the procedure understand their respective roles and responsibilities.

The procedure and guidance will deliver the commitments within the published implementation plan. It will be essential that these satisfy the SG's responsibilities as an employer and the First Minister's responsibilities under the Ministerial Code, whilst also satisfying general requirements of fairness to Ministers and former Ministers.

The updated procedure will sit under the SG's grievance framework which will help to:

- promote positive standards of behaviour and seek to prevent unacceptable behaviours
- create a safe and supportive environment to speak up
- set out clear routes to informal early intervention, which is often the best way to resolve issues
- ensure all concerns are handled sensitively, fairly and in a timely manner

Criteria for Success

- Building trust of civil servants, ministers and parliament in the process;
- The process is human, underpinned by our values of integrity and kindness;
- Those delivering external investigation and decision making are independent (i.e. not connected with events or people, and not “interested” in the outcome);
- It is endorsed as far as is practical – by our staff, Ministers, Trade Unions and by external observers (including the Scottish Parliament who will reflect the trust and confidence of the public);
- It meets the Scottish Government’s responsibilities as an employer and reflects the First Minister’s responsibilities under the Ministerial Code;
- The process is inclusive, transparent, fair and lawful.

Alignment with Staff Grievance procedures

The updated procedure will sit within an overarching SG staff grievance framework that sets out the scope for raising complaints in respect of bullying, harassment or any unacceptable behaviour experienced by all staff in the course of discharging their duties, with a commitment to ensure that such complaints are handled sensitively, fairly and expeditiously and in doing so all parties are treated with respect and dignity and outcomes are promptly actioned without prejudice or interference.

There will be one set of definitions which apply to all grievance processes (e.g. definition of bullying, harassment, discrimination and victimisation), and consistent approaches on core elements (e.g. ACAS approach to meetings. And to time limits etc.).

Legislative/ contractual framework:

Links to Civil Service Code - employee and employer obligations (to have a clear grievance procedure and associated policy which complies with the ACAS code [Code of Practice on disciplinary and grievance procedures | Acas](#)) and employment law including equality obligations)

Equality Act - The SG has employer duties under the Equality Act 2010, which legally protects people from discrimination in the workplace and in wider society.

Who Will It Affect

All SG Staff (who work with/have contact with Ministers)

The updated procedure will apply to all Scottish Government staff, including senior civil servants and civil servants working in the Scottish Government’s executive agencies.

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

Employment agency workers are not covered by this policy. If an agency worker has a complaint, this must be raised through the agency, who may then liaise with the Scottish Government. Propriety & Ethics will take steps to assure that any agency worker with a concern about a Minister's behaviour can have their issue addressed.

Line Managers. As set out in the overarching grievance framework, line managers are expected to ensure that they and their team are familiar with the grievance policy, create an environment of openness and trust in their team, recognise when concerns are raised and seek advice when necessary.

Current and Future Ministers. The procedure has been externally published and the Scottish Parliament are engaged via the Finance and Public Administration Committee. A Ministerial induction programme was refreshed in 2021, and follow up engagement with Ministers following publication of the procedure will be scheduled for March 2022.

Former Ministers – the procedure applies to the behaviour of former Ministers during their term of office, regardless of whether they had already ceased to be a Minister at the time of the introduction of the procedure.

Unions – Regular engagement and partnership working with recognised trade unions throughout the development of the updated procedure. Ongoing engagement with the unions as the procedure goes in to operation.

What might prevent the desired outcomes being achieved?

- A lack of engagement with trades unions and stakeholder groups may distance the application, understanding and feedback on the procedure and the processes around it.
- Infrequent or a lack of communications and staff training to promote an improvement in a safe and supportive environment to speak up.
- Unclear routes to informal early intervention and responsibilities.
- We have conducted an initial round of engagement internally with staff networks, and will continue to engage with equalities groups internally and externally, to ensure the procedure addresses the needs of all people who require to use it.
- We will reach out in particular to those groups identified in Stage 2 of this EQIA as reporting higher levels of bullying and harassment, especially groups that may be marginalised or who might find it challenging to make a complaint.

- We will also engage with staff with office bases outside Edinburgh and Glasgow, for example rural offices, to ensure that the views of all staff are taken into account.

Extent/Level of EQIA required:

The evidence captured in the next section has been drawn from a range of sources, including evidence from the annual People Survey undertaken within the Scottish Government and its agencies, discussions with staff networks, especially the Scottish Government's Women's Development Network, and a workshop with representatives from the Scottish Government Trade Unions.

The revisions to the complaints procedure about the behaviour of Ministers or former Ministers is not a Scottish Government policy, and forms part of the Grievance Framework. In that respect, a light-touch EQIA is required for the purposes of this procedure.

Stage 2: Data and evidence gathering, involvement and consultation

This section includes the results of the evidence gathering including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups. (note: all figures rounded to nearest full %). The Scottish Government undertook work into cultures and behaviours in the Scottish Government, published in June 2021, which was informed by a range of sources, some of which are noted in the references to source material in this document. That report into culture and behaviours likewise informed the work on this procedure and this EQIA.

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>People Survey results 2020 – Bullying and harassment - No significant variations noted across age groupings, slightly heightened in 45-54 age group (8% compared to 6% for other groupings)</p> <p>Private office demographic is on average younger than SG staff overall and the need for support for PO staff to ensure they feel able and empowered to recognise and challenge bullying or harassment behaviours.</p>	<p>Scottish Government People Survey 2020;</p> <p>Workshop with Scottish Government Trade Unions</p>	<p>It was noted during the workshop with Scottish Government Trade Unions that age can be a factor affecting confidence in raising issues with traditionally younger/ less experienced staff less likely to raise formal issues.</p>
DISABILITY	<p>People Survey results 2020 – Bullying and harassment – Higher rates of bullying and harassment noted by respondents with a long term limiting condition, illness or disability –13% of respondents compared to 7% of all staff</p>	<p>Scottish Government People Survey 2020</p>	

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

	The workshop with Scottish Government Trade Unions noted that it would be useful to consider issues around neurodiversity. A need was recognised to ensure accessibility and readability of staff guidance including using graphics.	Workshop with Scottish Government Trade Unions	
SEX	The SG workforce is made up of 56% women and 44% men. There are more women with disabilities (15%) than men (12%).	Scottish Government People Survey Gender pack (2019)	
	People Survey Results 2020 – Bullying and Harassment 7% of all staff responses experiencing bullying and harassment. Sex breakdown - 7% female respondents, compared to 6% male respondents	Scottish Government People Survey 2020	
	Presentation and discussion at SG Women’s Development Network, 27 January 2022 – did not highlight any additional concerns or suggestions	Scottish Government Women’s Development Network	
	Themes identified from a range of feedback from staff with lived experience, which have fed into the development of the procedure.	Feedback from staff with lived experience	

	<p>The workshop with Unions explored how cultural backgrounds and race and religion can impact if/how people choose to take forward issues with union representatives. It was noted for some religions there may be gender considerations also, and important to ensure people have a choice in terms of the gender of points of contact they engage with. There was a more general point noted in relation to points and avenues of contact, and ensuring flexibility is provided through e.g. a number of and variety of points of contact including email, telephone contact options.</p>	Workshop with Scottish Government Trade Unions	
	<p>Reflection on first application of the previous complaints process has identified certain areas where there were unhealthy local cultures, particularly in relation to female staff, where they may have experienced sexual harassment, or more widely, bullying.</p>	<p>Internal reflection;</p> <p>Submission from FDA to Scottish Parliament Committee on Scottish Government's Handling of Harassment Complaints</p>	
	<p>The report by Dame Laura Cox into bullying in the House of Commons also provided background to the Scottish Government's consideration of the behaviours and cultures in government</p>	<p>https://www.parliament.uk/globalassets/documents/conduct-in-parliament/dame-laura-cox-independent-inquiry-report.pdf</p>	
PREGNANCY AND MATERNITY	No available data.		
GENDER REASSIGNMENT	People Survey results 2020 – Bullying and harassment	Scottish Government People Survey 2020	

	Data for respondents whose gender identity does not match sex registered at birth not captured due to results suppressed to protect confidentiality		
SEXUAL ORIENTATION	<p>People Survey results 2020 – Bullying and harassment</p> <p>7% of respondents identifying as straight/ heterosexual had experienced bullying and harassment. This compares to 10% of gay or lesbian respondents and 12% of bisexual respondents</p>	Scottish Government People Survey 2020	
RACE	<p>People Survey results 2020 – Bullying and harassment</p> <p>7% of white respondents had experienced bullying and harassment. This compares to 6% for ethnic minority staff as a group.</p>	<p>Scottish Government People Survey 2020;</p> <p>Scottish Government Race Recruitment and Retention action plan 2021</p>	
	<p>The workshop with Unions explored how cultural backgrounds and race and religion can impact if/how people choose to take forward issues with union representatives. It was noted for some religions there may be gender considerations also, and important to ensure people have a choice in terms of the gender of points of contact they engage with. There was a more general point noted in relation to points and avenues of contact, and ensuring flexibility is provided through e.g. a number of and variety of points of contact including email, telephone contact options.</p>	Workshop with Scottish Government Trade Unions	

RELIGION OR BELIEF	<p>People Survey results 2020 – Bullying and harassment</p> <p>7% of respondents identifying as having no religion and 7% of respondents identifying as Christian had experienced bullying and harassment. Data for other groups not captured due to results suppressed to protect confidentiality</p>	Scottish Government People Survey 2020	
<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)</p>			

Stage 3: Assessing the impacts and identifying opportunities to promote equality

At this stage of the equality impact assessment, the qualitative scoring of the potential impacts (negative, positive and neutral) have been considered for each of the protected characteristics and the other specified characteristics already listed in this interim EQIA. This qualitative scoring has been undertaken using the data and evidence available and gathered to date.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Ensuring that there is a robust complaints process in place will provide confidence that age is not an excuse for being treated differently or being bullied or harassed. In Ministerial Private Offices, the average age is lower than across the wider Scottish Government, so a robust complaints process will give confidence that younger staff have a means of challenging bullying or harassing behaviour. Line Managers will have a role in reinforcing this with their teams.
Promoting good relations among and between different age groups	X			Ensuring a robust complaints process is in place will ensure that bullying and harassment is tackled and that a person's age is not used as an excuse for inappropriate behaviour.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Ensuring that there is a robust complaints process in place will provide confidence that disability is not an excuse for being treated differently or being bullied or harassed. A robust complaints process will give confidence that staff with a disability have a means of challenging bullying or harassing behaviour.
Promoting good relations among and between disabled and non-disabled people	X			Ensuring that there is a robust complaints process in place will provide confidence that disability is not an excuse for being treated differently or being bullied or harassed. Ensuring that treatment is fair, regardless of disability is integral to the procedure and central to the National Outcome of protecting and respecting human rights and living free of discrimination.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse

				behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Putting in place a rigorous and independent complaints procedure in place for the behaviour of Ministers ensures that there should be no concern among staff that they will face bullying or harassment as a result of their gender, and that any incidences will be investigated rigorously.
Promoting good relations between men and women	X			Ensuring that there is a robust complaints process in place will provide confidence that gender is not an excuse for being treated differently or being bullied or harassed.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	During the work to update the policy, little reference has been made to any forms of bullying or harassment, or unlawful discrimination with regard to pregnancy or maternity. The update to the procedure will give an independent and robust investigation process, and where bullying or harassment on these grounds are experienced by staff, will enable these to be considered and acted on appropriately.
Advancing equality of opportunity			X	During the work to update the policy, little reference has been made to any forms of bullying or harassment with regard to pregnancy or maternity.
Promoting good relations			X	During the work to update the policy, little reference has been made to any forms of bullying or harassment with regard to pregnancy or maternity.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Putting in place a rigorous and independent complaints procedure in place for the behaviour of Ministers ensures that there should be no concern among staff that they will face bullying or harassment as a result of gender reassignment, and that any incidences will be investigated rigorously.
Promoting good relations	X			Ensuring that there is a robust complaints process in place will provide confidence that gender reassignment is not an excuse for being treated differently or being bullied or harassed.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Putting in place a rigorous and independent complaints procedure in place for the behaviour of Ministers ensures

				that there should be no concern among staff that they will face bullying or harassment as a result of sexual orientation, and that any incidences will be investigated rigorously.
Promoting good relations	X			Ensuring that there is a robust complaints process in place will provide confidence that sexual orientation is not an excuse for being treated differently or being bullied or harassed.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Putting in place a rigorous and independent complaints procedure in place for the behaviour of Ministers ensures that there should be no concern among staff that they will face bullying or harassment as a result of their race, and that any incidences will be investigated rigorously.
Promoting good race relations	X			Ensuring that there is a robust complaints process in place will provide confidence that a person's race is not an excuse for being treated differently or being bullied or harassed.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			The revised procedure will bring the opportunity for complaints to be dealt with in a more assured and rigorous way, ensuring that those who experience harassment and bullying are heard by a fair and robust system. This should lead to greater trust in the process and deter adverse behaviours, in the knowledge that there is a robust system to deal with them.
Advancing equality of opportunity	X			Putting in place a rigorous and independent complaints procedure in place for the behaviour of Ministers ensures that there should be no concern among staff that they will face bullying or harassment as a result of their religion, and that any incidences will be investigated rigorously.
Promoting good relations	X			Ensuring that there is a robust complaints process in place will provide confidence that a person's race is not an excuse for being treated differently or being bullied or harassed.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership²	Positive	Negative	None	Reasons for your decision
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² In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Eliminating unlawful discrimination			X	During the work to update the policy, little reference has been made to any forms of bullying or harassment, or unlawful discrimination with regard to marriage or civil partnership. The update to the procedure will give an independent and robust investigation process, and where bullying or harassment on these grounds are experienced by staff, will enable these to be considered and acted on appropriately.
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Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Positive impacts have been identified for many of the equality groups, with improvements to the complaints procedures intended to impact favourably on all staff within the organisation, ensuring a working environment where any bullying or harassment by Ministers is properly investigated. No negative impacts have been identified.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ³ ?	No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable.
If not justified, what mitigating action will be undertaken?	Not applicable.

Monitoring and Review

The procedure, once introduced, will be monitored during the first year of its implementation. Similarly, this EQIA will be reviewed at the end of the first year of operation of the procedure, but will remain as a live document for updating during the course of the year.

The Scottish Government will provide the Finance and Public Administration Committee with written updates on the continuous improvement programme on completion of the milestones for the end of March, June and December 2022. Any oral sessions will be agreed by the Committee and the Scottish Government.

³ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the updated procedure for handling complaints about a Minister or former Minister's behaviour, and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Ian Mitchell

Position: Director for Propriety and Ethics

Authorisation date: 23/02/2022

References

Scottish Government report into culture and behaviours in the context of harassment complaints, June 2021:

[Scottish Government culture and behaviours in the context of harassment complaints - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/culture-behaviours-in-the-context-of-harassment-complaints-2021/pages/1-10.aspx)

Scottish Government race recruitment and retention – an instigation for change: action plan, February 2022:

[Race recruitment and retention - an instigation for change: action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/race-recruitment-and-retention-an-instigation-for-change-action-plan-2022/pages/1-10.aspx)

Dame Laura Cox's report into the Bullying and Harassment of House of Commons staff:

<https://www.parliament.uk/globalassets/documents/conduct-in-parliament/dame-laura-cox-independent-inquiry-report.pdf>

TUC report “Still just a bit of banter? – sexual harassment in the workplace 2016”:

<https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

TUC report “Sexual harassment of LGBT people in the workplace”, April 2019:

https://www.tuc.org.uk/sites/default/files/LGBT_Sexual_Harassment_Report_0.pdf

FDA written submission to the Scottish Parliament Committee on the Scottish Government's Handling of Harassment Complaints: [Written submission from FDA.pdf \(parliament.scot\)](https://www.parliament.scot/committees/committee-on-the-scottish-governments-handling-of-harassment-complaints/written-submission-from-fda.pdf)

Equality and Human Rights Commission report “Turning the tables: ending sexual harassment at work”, 27 March 2018: <https://www.equalityhumanrights.com/en/publication-download/turning-tables-ending-sexual-harassment-work>

Scottish Parliament report on its Sexual Harassment and Sexist Behaviour Survey, 26 February 2018:

http://www.parliament.scot/StaffAndManagementResources/10130_Sexual_Harassment_Sexist_Behaviour_Survey_-_Final_Report_260218.pdf

Naomi Ellenbogen QC report into Bullying and harassment in the House of Lords, 12th July 2019:

[Microsoft Word - House of Lords Independent Inquiry Report.10.July 2019.FINAL CORRECTED.12.07.19.docx \(parliament.uk\)](https://www.parliament.uk/globalassets/documents/other-parliamentary-business/naomi-ellenbogen-qc-report-into-bullying-and-harassment-in-the-house-of-lords-12-july-2019-final-corrected-12-07-19.docx)

UPDATED PROCEDURE FOR HANDLING FORMAL COMPLAINTS BY CIVIL SERVANTS ABOUT A MINISTER OR FORMER MINISTER

Decision Makers

- Colin Boag
- Vanessa Davies
- Kevin Dunion
- Gareth Morgan
- Bill Thomson

Investigators

- Suzanne Burton
- Gordon Crossan
- Nick Dishon
- Karimullah Khan
- Jackie Mann
- Susan Walsh