

From: Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Sent: 16 June 2020 15:10
To: Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Subject: 11 Jan - Complaints against ministers

11 Jan - Complaints against ministers

10 January 2018
10:03

Subject	RE: 2018 01 08 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM
From	[Head of Branch, People Directorate 2]
To	Mackinnon J (Judith)
Cc	[Head of Branch, People Directorate 1]
Sent	09 January 2018 15:51
Attachments	<<2018 01 09 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM.docx>>

See attached. We will need to pick up with James H on Thursday.

Cc [Head of Branch, People Directorate 1] for info as well.

[Head of Branch, People Directorate 2] | [Redacted]
[Redacted]

From: Mackinnon J (Judith)
Sent: 09 January 2018 11:59
To: [Head of Branch, People Directorate 2]
Subject: RE: 2018 01 08 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM

That would do it I think.

Judith

From: [Head of Branch, People Directorate 2]

Sent: 09 January 2018 10:48

To: Mackinnon J (Judith)

Subject: RE: 2018 01 08 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM

Thanks Judith. We'll need to pick up with them. I guess the drafting might be wide enough to allow for the situation you envisage. Maybe we should put an extra sentence in to note that we won't inform the police without the employee's consent?

[Head of Branch, People Directorate 2] | [Redacted]
[Redacted]

From: Mackinnon J (Judith)

Sent: 08 January 2018 18:05

To: [Head of Branch, People Directorate 2]

Subject: 2018 01 08 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM

<< File: 2018 01 08 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM .docx >>

[Head of Branch, People Directorate 2] – have only added one comment in the last paragraph (nothing to do with the unions comments) – [Redacted]. We will have to draw James Hynds attention to this as it is a change.

Judith

Created with Microsoft OneNote 2016.

In the comments to this attachment [**] replaces [Head of Branch, People Directorate 2]

CONTENT OF ATTACHMENT BELOW:

Handling of Harassment Complaints Involving Current or Former Ministers

Initial contact

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

2. At this early point it will be important to support the individual to consider the outcome they are seeking how best to resolve their grievance issue. At this point the options available to the staff member might want to consider possible resolutions such as: s choices include:

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

2.2 Indicating that they wish to make a formal complaint.

2.2 **NOTE:** At all times the staff member is free to make a complaint directly to the police – see Para 19 onwards for further information..

Formal complaints against current Scottish Government Ministers

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

Role of Permanent Secretary

¹ <https://beta.gov.scot/publications/scottish-ministerial-code-2016-edition/>

Commented [u1]: Preserved refs to harassment

Commented [u2]: Can we be consistent with the language of fairness at work i.e raise a grievance

Commented [u3]: [**]- Reject change to complaint Reference to "Issue maintained"

Commented [u4]: I think we are all trusted!

Commented [u5]: [**] - Accept change to delete trusted

Commented [u6]: [**] - Accept change to insert "of your choosing"

Commented [u7]: [**] - Textual change for reading consistency.

Commented [u8]: Who's file, how do we ensure that patterns are monitored (and confidentiality is respected)?

Commented [u9]: [**] - These are valid points. It will be held on the HR file and normal process around data protection / handling will be respected. Reference to "people directorate" included here.

Commented [u10]: This feels awfully vague. There must be a process for review. Is it held by HR professionals (DD People Advice)?

Commented [u11]: [**] - As above – reference to people directorate included

Commented [u12]: under the Fairness at Work policy.

Commented [u13]: [**]- No -- formal complaint will follow process set out below.

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Commented [u14]: [**]- Included this text to pick up on comments later in document to make sure route to police is clearly noted at outset.

Commented [u15]: Expand upon what this means

Commented [u16]: [**]- Have inserted a footnote / link to Ministerial code

Commented [u17]: [**] - Included this wording to reflect on discussion at meeting.

Commented [u18]: [**] - Reflected on union changes to wording wording and noted FM's responsibility to judge

Commented [u19]: Drop sentence? Not necessary, and as we see at Westminster just now, not always the case!

Commented [u20]: [**]- have maintained this as it Sets our expectation so have maintained this.

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Commented [u21]: As discussed, include something here confirming Perm Sec's role?

Commented [u22]: [**]- Inserted heading and some further explanatory wording

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

Commented [u23]: [**] - Preserved refs to harassment

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

Commented [u24]: [**] - Included this wording to reflect union comments.

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

Commented [u25]: [**] - Preserved refs to harassment.

Commented [u26]: Isn't this the role of the senior officer in this case? If so, then why not imbed it in existing procedures and language?

Commented [u27]: [**] - This sits apart from the ordinary Fairness at Work processes however the role of an "Investigating Officer" is commonly understood so accept change here.

Commented [u28]: Is this just collecting facts or is it aligning/relating facts to the code of conduct? Need to clarify further, including the likely engagement with the complainant.

Commented [u29]: [**] - No, it is collecting facts – this is consistent with the role of an IO under the separate fairness at work process.

Commented [u30]: Included reference to member of staff for clarity

Commented [u31]: [**] - It isn't just wellbeing, it is to protect staff in exercising the legal duty of care the FM has

Commented [u32]: As we discussed, helpful to see potential response of Perm Sec bolstered here to better reassure staff.

Commented [u33]: [**] - As discussed, we don't want to specify actions which might be taken – better to leave this broad as it enables perm sec to take all and any action required.

Commented [u34]: [**] Need to keep this language in – it is making it clear that our expectation is that they will cooperate.

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Commented [u35]: Preserved reference to harassment

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

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

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

Formal complaints against former Scottish Government Ministers

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

Commented [u36]: [**] Again, referred to Investigating officer role as commonly understood.

Commented [u37]: [**] Complaint rather than grievance

Commented [u38]: [**] - As above. Investigating Officer role. Commented [u39]: Conduct interviews?

Commented [u40]: [**] Amended to make process the same as above

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

Commented [u41]: "should/will be invited to"?

Commented [u42]: [**] - changed to will

Commented [u43]: Should refer back to the process in 6-7

Commented [u44]: [**]- I've compared and made sure this is comparable

Commented [u45]: Should the complainant be informed at this stage? Right of reply recourse especially if new "facts" emerge.

Commented [u46]: [**] - noted to share with the staff member

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

Commented [u47]: Parties have their own processes so next steps will vary, but this feels very loose.

Commented [u48]: Is there scope for referral to parliamentary ombudsman / commissioner for ethical standards here?

Commented [u49]: As above

Commented [u50]: [**] - to consider ombudsman points at later date with input from cab secretariat.

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

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

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

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

17. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party

Leader of the outcome of the investigation and that the former Minister has declined to cooperate. It will be the responsibility of the Party to consider any further action.

NOTE: COMPLAINTS AND ENGAGEMENT WITH POLICE

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

19. Throughout the process, all available steps will be taken to support the staff member and ensure they are protected from any harmful behaviour. However, if at any point it becomes apparent to the SG that criminal behaviour might have occurred the SG may bring the matter directly to the attention of the Police. Also, if it becomes apparent that the matter being raised is part of a wider pattern of behaviour it may be necessary for the SG to consider involving the Police in light of the information provided. SG as employer will not refer specific cases to the police without the knowledge / consent of the employee. Should either of these steps be necessary the staff member will be advised and supported throughout.

Scottish Government
December 2017

Commented [u51]: Rather than notes at the end, shouldn't the legal points on potentially more serious matters be in their own section, or at least advice provided at the outset advising staff to contact the police if merited.

Commented [u52]: I've left this here for the moment but put a reference at the top so staff know where it is

Formatted: Justified

Commented [u53]: [Redacted]. Need to pick up specifically with James H etc and include.

Commented [u54]: What is HR's role?

Commented [u55]: Actually, we cannot notify the police if the victim/staff member doesn't want us to. The best we could do is pass on some intelligence to the police, especially if there is a pattern of behaviour becoming apparent and SG thinks others could be at risk.

Commented [u56]: See above.

Commented [u57]: Do we include link to whistleblowing too?

Commented [u58]: Not in this context as whistleblowing isn't appropriate for an individual HR matter, unless there are concerns of a wider nature. The whistleblowing policy refers.