

# Finance and Public Administration Committee

30<sup>th</sup> Meeting (Session 6), Tuesday 22 November 2022

## Scottish Government's Continuous Improvement Programme and updated complaints policy

### Purpose

1. The Committee is invited to take evidence from the Deputy First Minister and Cabinet Secretary for Covid Recovery, in relation to:
  - his proposals to bring greater transparency to the Scottish Government's updated procedure for future complaints by civil servants regarding the behaviour of a Minister or former Minister, and
  - the Scottish Government's latest Update of Progress against its Continuous Improvement Programme dated 29 July 2022.
2. The Deputy First Minister's letter to the Committee of 27 June 2022, which sets out his intention to achieve greater transparency in relation to future complaints, is provided at Annexe A. The Deputy First Minister wrote again to the Committee on 18 November attaching two further documents: a summary of the proposed transparency changes to the Procedure for Making a Formal Complaint about a Minister's or Former Minister's Behaviour, and the Changes Required to the Procedure. These documents are attached at Annexe B to this paper.
3. The Scottish Government's latest update of progress against its Continuous Improvement Programme, dated 29 July 2022, is attached at Annexe C.
4. This paper provides background in relation to both the Deputy First Minister's plans to update the complaints policy and the latest progress update, to inform the Committee's evidence-taking on 22 November.

### Complaints procedure

5. An updated procedure for civil servants making a complaint about a Scottish Government Minister or former Scottish Government Minister came into force on 24 February 2022. This followed the Committee's evidence session with the Deputy First Minister on a draft of the procedure on [25 January 2022](#) and a subsequent exchange of correspondence<sup>1</sup> in relation to issues raised by the Committee. This updated procedure was put in place in response to recommendations of three

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<sup>1</sup> Letter from Deputy First Minister of [4 February 2022](#) and response from Committee on [10 February 2022](#).

harassment reviews,<sup>2</sup> which were initiated following a successful judicial review brought by the former First Minister against the Scottish Government in relation to the handling of complaints made against him.

6. Earlier this year, the Scottish Government attracted some criticism when it would not confirm whether an investigation of a complaint of bullying against a now former Minister, which took place in 2021, had been upheld. The First Minister, when asked about the outcome of the investigation during [First Minister's Questions \(FMQs\) on 12 May 2022](#), confirmed that this information could not be disclosed due to “very considerable legal data protection issues”. The issue was again raised at [FMQs on 23 June 2022](#), when the First Minister said she had since sought further advice on whether it would be possible to report publicly the outcome of complaints involving Ministers without breaching legal and confidentiality obligations. She said this advice confirmed that, “although we cannot apply this retrospectively, there is a way to do that in relation to future complaints”, adding that this would “involve changes to the Ministerial Code and probably to the complaints procedure that is in place”. She added that work was underway to make the necessary changes.

7. The Deputy First Minister told the Committee, in his letter of 27 June 2022, that he had since asked his officials “to bring forward proposals which would look at greater transparency in the process for future complaints made which have been completed, in order to better balance the public interest with considerations of privacy, confidentiality and confidence in the process”. These changes would apply to the subject of the complaint, while confidentiality would be retained for the complainer. He explained that he would be proposing that the First Minister makes changes to the Ministerial Code, along with minor revisions to the procedure, and had “asked officials to consider the changes necessary, drawing on advice of the independent advisors on the Ministerial Code and engaging with other key interested parties”.

8. The additional information provided with the Deputy First Minister's latest letter of 18 November (at Annexe B) confirms that, “for any future complaints, we will now publish certain information once the full process, including any appeals, has concluded”. The name of the Minister or former Minister subject to the complaint will be published at the end of the process, along with the outcome. A decision report in cases where the complaint is partially or fully upheld would also be published, with redactions to protect the identity of the complainer and any witnesses.

9. The Summary notes that, “after careful consideration, in the interests of increasing transparency, we will now publish the number of ‘ongoing cases’—if any—that are currently being taken forward under the procedure” [and] we will periodically publish information on ongoing complaints on the Scottish Government website every six months”. The First Minister will now also be told at the outset of a complaint the name of the Minister who is the subject of the complaint, and that a

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<sup>2</sup> [Report from the Committee on the Scottish Government's Handling of Harassment Complaints \(SGHHC\)](#) published on 23 March 2021, [Report from Laura Dunlop QC on her review of the procedure for handling harassment complaints against former or current Ministers](#), of 16 March 2021, and [James Hamilton's Independent Report on the First Minister's self-referral under the Scottish Ministerial Code](#) of 22 March 2021,

complaint has been received in relation to a former Minister (though the name of the former Minister will not be provided). The First Minister would, at the end of the process, “now see a copy of the decision letter concerning either a current or former Minister”. The Summary further notes that “relevant special advisor would also now be informed at the end of the process, in order to provide handling advice”.

10. Updates will be made to the Ministerial Code to reflect these changes.

## Culture and Behaviours in the Scottish Government: Continuous Improvement Programme 2022

11. The [Scottish Government's response](#) to the three harassment reviews indicated that it would focus on the following three areas for improvement:

- rebuilding confidence in its complaints process,
- improving the robustness of, and compliance with, its document management and storage processes, and
- improving the effectiveness of its internal arrangements for managing issues involving propriety and ethics

12. The response included an Implementation Plan of actions completed by the end of 2021 and also set out the details of a broader Continuous Improvement Programme including “activities that the Scottish Government will develop in 2022 to ensure that the updated complaints procedure is not seen in isolation but is set within a wider context that fosters a culture of openness and inclusion”. The Committee has previously taken evidence from the Deputy First Minister on the Scottish Government’s updates on progress on [25 January](#) and [26 April](#).

13. The Scottish Government, in its latest update of progress dated 29 July 2022 at Annexe C, sets out those activities that were completed by the end of June 2022, as planned, as follows:

- **Build complaint investigation capability, to ensure confidence of those participating.** SG officials met the external pool of investigators and decision-makers on 28 June to review revised guidance to support the procedure and the investigators in the event of an investigation. Operational protocols for each stage of the process were, at that point, being finalised.
- **Communications on updated procedure and culture and behaviours.** An updated grievance procedure featured on the Scottish Government’s staff intranet and disseminated through internal communications channels. A survey to gauge understanding of the procedure was being developed to be carried out in early autumn.
- **Training on staff grievance policy and best practice refresh.** This includes holding workshops on the procedure and supporting individual managers with coaching as required. Learning resources were also due to be developed in the autumn.
- **Measures of success agreed and discussed with trade unions and stakeholders and ready to implement.** Measures of success focus on

staff trust and confidence in the processes that are in place and are largely drawn from the People Survey, “with the potential to supplement these with additional local surveys and qualitative assessment”.

14. Activities in the Continuous Improvement Programme expected to be completed by the end of December 2022 include:

- alignment to wider culture and behaviour initiatives, including organisational vision and values, with engagement with staff,
- proactive outreach work in the Scottish Government to inform risk assurance and cultural improvement,
- a review of the processes in use, including Propriety and Ethics,
- continuing to implement the information management review and improve the quality of digital storage and retrieval processes. The Scottish Government’s update of 29 July 2022 notes that most of the recommendations in the Corporate Review of Information Management report are now complete or underway and separate measurements of success for this programme have been agreed. A behavioural insights survey has been issued to help understand attitudes, behaviours and knowledge about records management.

15. The results of the Scottish Government’s People Survey for 2021 compared against 2020 and 2019 figures have been included in the 29 July update. It shows that 71% of people know how to raise a concern if they see or experience any form of wrongdoing in the organisation, and 47% feel confident that, if they did challenge a senior member of their team, department or division, those challenged would be open to receiving that challenge. The survey results also show that 7% of people said they had been bullied or harassed at work in the past 12 months, compared with 7% in 2020 and 11% in 2021.

Committee Clerking Team  
November 2022

## Letter from the Deputy First Minister and Cabinet Secretary for COVID Recovery to the Convener of 27 June 2022

Dear Kenneth,

I understand you are considering your forward work programme. I have welcomed the constructive and helpful scrutiny by the Committee of the updated procedure for handling formal complaints by civil servants about a Minister's or former Minister's behaviour.

As intimated by the First Minister at First Minister's Questions last week (23<sup>rd</sup> June) the issue of transparency regarding the subject of complaints against Ministers must be carefully balanced against considerations of privacy and confidentiality. As we have previously discussed, it is essential that we ensure that there is full confidence in the process and that we encourage staff to come forward and use the revised process should they have a need to do so.

I have asked my officials to bring forward proposals which will look at greater transparency in the process for *future* complaints made which have been completed, in order to better balance the public interest with considerations of privacy, confidentiality and confidence in the process. Our intention is to make these changes relevant to the subject of the complaint, not the complainer where confidentiality would be retained. I intend to propose that the First Minister make changes to the Ministerial Code, along with minor revisions to the procedure. I do not intend to suggest any further changes to the wider procedure which was the subject of widespread engagement and scrutiny by your Committee.

I have asked officials to consider the changes necessary, drawing on advice of the independent advisors on the Ministerial Code and engaging with other key interested parties. I will let you know of these proposals after summer recess and look forward to discussing further with the Committee in September. I am grateful to the Committee for its continued engagement on this issue.

John Swinney

## Additional information supplied by the Scottish Government on 18 November 2022

Dear Kenneth,

As you are aware, and as intimated by the First Minister at First Minister's Questions in June, officials have been working on proposals to improve transparency regarding complaints by civil servants about the behaviour of Ministers or former Ministers. This issue is complex, and requires careful balancing of considerations of transparency and public interest against privacy and confidentiality. It is essential that we ensure that there is full confidence in the process and as I outlined earlier in the year to Committee we want to encourage staff to come forward and use the revised process should they have a need to do so.

I intend to propose that the First Minister make changes to the complaints procedure, along with associated changes to the Ministerial Code, in order allow for the publication of certain information about future complaints. We have consulted with staff and other key stakeholders.

I have attached a summary of the proposed changes that we intend to make to the procedure, along with a copy of the drafting changes themselves, that I hope will be helpful to the Committee in their consideration of this issue.

I should note that the essence of the complaints procedure remains as introduced in February this year following scrutiny by your Committee including the independent investigation and independent decision making on complaints made about Ministers or former Ministers.

I look forward to discussing these proposals with the Committee on 22 November.

John Swinney

Attachments:

1. Draft transparency changes to the Procedure For Making A Formal Complaint About A Minister's Or Former Minister's Behaviour: Summary
2. Procedure For Making A Formal Complaint About A Minister's Or Former Minister's Behaviour: Draft Changes Required To Procedure

# Proposed transparency changes to the Procedure For Making A Formal Complaint About A Minister's Or Former Minister's Behaviour

## Summary

1. The Procedure For Making A Formal Complaint About A Minister's Or Former Minister's Behaviour ('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) of a Minister or former Minister, in the course of discharging their duties as civil servants in their employment by the Scottish Government ('SG'). The procedure has been in place since February 2022.
2. The First Minister told Parliament on 23 June 2022 that she intended to make changes to the procedure in order to better balance the public interest with considerations of privacy and confidentiality, to ensure we strengthen confidence in the process.
3. These changes cannot be applied retrospectively, but they will apply to all future formal complaints, regardless of when the behaviour occurred or whether the Minister is still in office or not. More detail on these changes is set out below.
4. Of paramount importance as we make these changes is our continuing commitment to protecting the protecting the privacy and confidentiality of complainants and witnesses, and ensuring their confidence in the process.

## The changes

### Completed complaints

5. For any future complaints, we will now publish certain information once the full process, including any appeals, has concluded.

For complaints that are upheld or partially upheld:

- a. the name of the Minister or former Minister who was the subject of the complaint; and
- b. the outcome of the complaint (i.e. 'upheld' or 'partially upheld'); and
- c. a redacted version of the decision report (redacting any information that would identify complainants).

For complaints that are not upheld:

- d. the name of the Minister/former Minister who is the subject of the complaint; and
  - e. the outcome of the complaint (i.e. 'not upheld').
6. For complaints that are not upheld, publication will be for a limited period of six months. In these cases we will not publish any more information about the nature of the complaint, nor will we publish the decision report.
  7. The information listed above will be published on the Scottish Government website after the full procedure of independent investigation and independent decision making, including any appeals, has been concluded and we are content that the appropriate legal, privacy and safeguarding checks have been satisfactorily discharged. The identity of the complainer(s) and any witnesses will remain confidential and any information which could lead to identification of the complainer or witnesses will be redacted. Publication will normally be within 20 working days.

## Ongoing complaints

8. After careful consideration, in the interests of increasing transparency, we will now publish the number of 'ongoing cases' – if any – that are currently being taken forward under the procedure.
9. There is a balance to be struck between transparency and confidentiality. For ongoing cases, we intend to publish the existence of a formal complaint but no further details including the Minister/former Minister's name, or any other information about a complaint, until the process has concluded.
10. Investigating and coming to a decision on a complaint should not be undertaken against a backdrop of speculation. This would risk undermining the fairness and integrity of the process, and potentially deterring future complaints.
11. We will periodically publish information on ongoing complaints on the Scottish Government website every six months.

## Information shared with the First Minister

12. Given the intention to make public certain information about complaints, we have also made changes to the information that will be shared with the First Minister at the appropriate points in the procedure.
13. As before, the First Minister will have no role in the procedure, and will not be invited to comment on any live investigations.
14. We are making changes so that, for a complaint about a current Minister, the First Minister would now be told at the outset the name of the Minister who was



the subject of a complaint to be investigated. For a former Minister, the First Minister would now be told at the outset that a complaint about a former Minister had been received and would be investigated, but would not be told any other information including the former Minister's name.

15. At the end of the process, the First Minister would now see a copy of the decision letter concerning either a current or former Minister. The relevant special advisor would also now be informed at the end of the process, in order to provide handling advice.

## **Ministerial Code changes**

16. We are making associated changes to the Ministerial Code to reflect these changes and make explicit the expectations on Ministers.

END

# Changes Required to Procedure – Proposed [Highlighted]

## 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). Details of SG's policy on raising a concern under the Civil Service Code and whistleblowing can be found [here](#).

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

## Scope of procedure

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

The following are outwith the scope of the procedure:

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

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

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

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

## Procedure (summary)

The procedure will consist of five stages:

1. Initial contact and assessment. The complainer will set out their complaint in writing to [Propriety & Ethics](#). The SG will carry out initial checks, confirm whether the complaint can be taken forward under this procedure, and notify the relevant parties.
2. Investigation. Where a complaint is to be investigated, the SG will assign an external decision maker and an external investigator to the case. The decision maker will commission the investigator to undertake an impartial collection of facts and evidence from the relevant parties including the complainer and the subject of complaint, prepare a summary of the relevant facts, and submit a report for the decision maker.
3. Decision. The decision maker will ensure that a reasonable investigation has been carried out, notify the relevant parties of the report and share copies as appropriate. The decision maker will meet with the complainer and may also meet with the subject of complaint. The decision maker will decide whether to uphold the complaint or not and if appropriate make recommendations on what action, if any, should be taken. The decision maker will notify the complainer of their decision in writing and will also notify the subject of complaint. The decision maker will also notify the SG for the purposes of consideration by SG as the employer in line with Stage 4 of this procedure.
4. Employer Action. The SG will be responsible for ensuring that any recommendations are considered and implemented as appropriate. Where the complaint is about a current **or former** Minister, the SG will notify the First Minister **and the appropriate Special Adviser(s)**. Where a complaint is about the First Minister, the SG will notify the Deputy First Minister **and the appropriate Special Adviser(s)**.
5. Appeal. Where either the complainer or the subject of complaint are unsatisfied with the decision, they can appeal. Appeals will be considered by an external appeal decision maker.

## Where parties involved may be the victim of a crime

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

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

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

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

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

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

## Record keeping

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

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

## Procedure (full)

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

- **Complainer:** the person(s) making a complaint. The complaint might come from the person who experienced the behaviour, someone who witnessed it or a trade union representative supporting a member of staff.

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

## Stage 1 Initial contact and assessment

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

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

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

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

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

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

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

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

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

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

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

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

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

## Stage 2 Investigation

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

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

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

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

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

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

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

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

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

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

### Stage 3 Decision

The decision maker will ensure that a reasonable investigation has been carried out in accordance with the terms of reference. The decision maker may require the



investigator to clarify points and update the report. Once satisfied, the decision maker will notify the complainer of the report and provide a copy. The SG nominated contact and the subject of complaint should also receive a copy of the report. This will usually also include any witness statements to ensure openness and transparency in the investigation process.

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

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

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

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

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

The decision maker will have access to appropriate advice through the SG nominated contact, where they may need further guidance or support. The decision maker will notify the complainer of their decision by letter, including the written notes of the meeting and any recommendations for action. They will also notify the outcome to the subject of complaint.

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

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

## Stage 4 Employer Action

The SG nominated contact will share the final report, the decision letter and any other recommendations with the Permanent Secretary or delegate, **provided that no**

appeal has been lodged by either of the parties within ten working days. The process for appeal is set out in Stage 5.

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

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

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

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

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

## Stage 5 – Appeal

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

The complainer or subject of complaint should make their written appeal to [Propriety & Ethics](#). The written appeal should clearly set out the grounds for appeal, the outcome sought, and provide any supporting information and evidence. Grounds for appeal could include (but are not limited to):

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

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

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

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

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

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

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

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

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

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

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

## Reporting the outcome of concluded complaints

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

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

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

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

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

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

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

**END**

# Update of progress against the Scottish Government's Continuous Improvement Programme of 29 July 2022

## Culture and Behaviours in the Scottish Government: Continuous Improvement Programme 2022

### Update to the Finance and Public Administration Committee for activities to be completed by the end of June 2022

1. The Propriety & Ethics Directorate was established in August 2021 to provide corporate oversight of and co-ordination on sensitive and cross cutting issues affecting the Scottish Government as a whole. This flowed from our early 2021 response to the Parliamentary inquiry and associated independent reports into the highest profile harassment case.<sup>3</sup>
2. The key project in the Continuous Improvement Programme (CIP, 'the Programme') was putting in place revised and updated procedures to handle complaints about Ministers, former Ministers and in parallel, a revised and refreshed internal process relating to complaints about staff. These are two distinct processes, both delivered in the early part of 2022. These procedures were the product of considerable engagement with staff - including those with prior experience of making a complaint - with our recognised trade unions, and with external expert advice.
3. Delivering the revised procedures were significant milestones. However, they were not in themselves intended to demonstrate the progress made in ensuring that staff who want to make a representation or complaint about behaviour can do so in the knowledge that this will be investigated fairly, swiftly and with an impartial investigation, or, in the case of Ministers, through independent investigation and decision making on the outcome.
4. The procedures can only work in the context of an organisation fully committed to living the Scottish Government vision, values, culture and behaviours as set out in '*In Service of Scotland*'. The Continuous Improvement Programme focuses on the values of kindness and integrity in promoting and ensuring the highest standard of respectful behaviour.
5. Achieving the outcomes of the programme's activities is a matter for the whole organisation and requires engagement from leaders across the board. This is

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<sup>3</sup> [Handling of harassment complaints - gov.scot \(www.gov.scot\)](http://www.gov.scot)

especially true for building a positive working environment that people can thrive in, as well as making sure that all are aware of early intervention or mediation in resolving situations in working relationships.

6. The outcomes are co-ordinated by the Propriety & Ethics Directorate. The role and functions of Propriety & Ethics that relate to the establishment of the Continuous Improvement Programme's measures of success are:
  - Responsibility for overall co-ordination and risk management in relation to emerging and potentially significant propriety and ethics issues within the Scottish Government
  - Promoting positive standards of behaviour, seeking to prevent unacceptable behaviours, and creating a safe and supportive environment to speak up.
  - Being a point of contact for propriety and ethics issues within the organisation.
  
7. After the launch of the updated procedure for handling complaints about Ministers in early 2022 and the staff grievance policy in April 2022, the Continuous Improvement Programme is tracking and demonstrating whether these formal procedures and the associated wraparound work are achieving tangible change - for example, to the experiences of staff and how they can engage with the wider processes as may be required. The Programme sets out a series of activities in a schematic that is submitted to the Finance and Public Administration Committee on a quarterly basis (see Appendix 1).

### Activities completed at the end of June 2022

8. The following activities were completed by the end of June as planned (see Appendix 2 for the Continuous Improvement Programme tracker):
  - Measures of success agreed and discussed with trades unions and stakeholders and ready to implement
  - Build complaint investigation capability, to ensure confidence of those participating
  - Staff training on grievance policy and best practice refresh
  - Communications on updated Procedure and culture and behaviours
  
9. The measures of success were discussed with trade unions and internal and external stakeholders and are ready to be implemented. The measures will assess the impact of the Continuous Improvement Programme across Government, with the intention of shaping future considerations around the programme and possible future activity. The measures focus on staff trust and confidence in the processes that have been put in place, and attempt to assess the degree to which the Continuous Improvement Programme has contributed to an improved culture of openness and inclusion; a workplace

where bullying and harassment is not tolerated; and where – when needed - our staff feel able and willing to tackle unacceptable behaviours. The measures are largely drawn from the People Survey (against 2019 results as a baseline), with the potential to supplement these with additional local surveys and qualitative assessment. The programme activities support progress towards improving measures of success. See Appendices 3 and 4 for the measures of success.

10. Building the complaint investigation capability to ensure the confidence of those participating is completed. Five external investigators and six external decision makers have been recruited in a public appointments process. This a group of people who have a wealth of experience in conducting workplace investigations and decision-making. All members of the group have been engaged in refining the guidance that supports the procedure. The guidance was produced in partnership with recognised trade unions. The operational protocols for each stage of the procedure are being finalised by the Propriety & Ethics Directorate.
11. Staff communications on the updated procedure and the grievance policy were published on the staff intranet and disseminated through internal communication channels. The communications underline the importance of the organisation's culture and behaviours in maintaining an inclusive and respectful working environment. A survey to gauge staff understanding will be carried out in early autumn.
12. The People Advice and Wellbeing team in HR is supporting teams with workshops on the updated staff grievance policy and will continue to deliver training beyond the end of June 2022, while also providing coaching and advice to individual managers on the process and early intervention. The team will also work with learning and development colleagues in autumn to curate and design learning resources to support staff, following the introduction of the new grievance policy.

### Activities planned until December 2022

13. For the second part of 2022, the Continuous Improvement Programme will concentrate on the following activities, using the measures of success as a guide:
14. The Continuous Improvement Programme will continue with the alignment to the organisation's wider culture and behaviour initiatives, including organisational vision and values. The Programme is underpinned by the organisational values of kindness and integrity, as was the development of the updated procedure. In October, we intend further communications with staff to link the organisational vision and values with the updated procedure and Continuous Improvement Programme. This will involve demonstrating how the

programme is being delivered in a way that is aligned with the organisational vision.

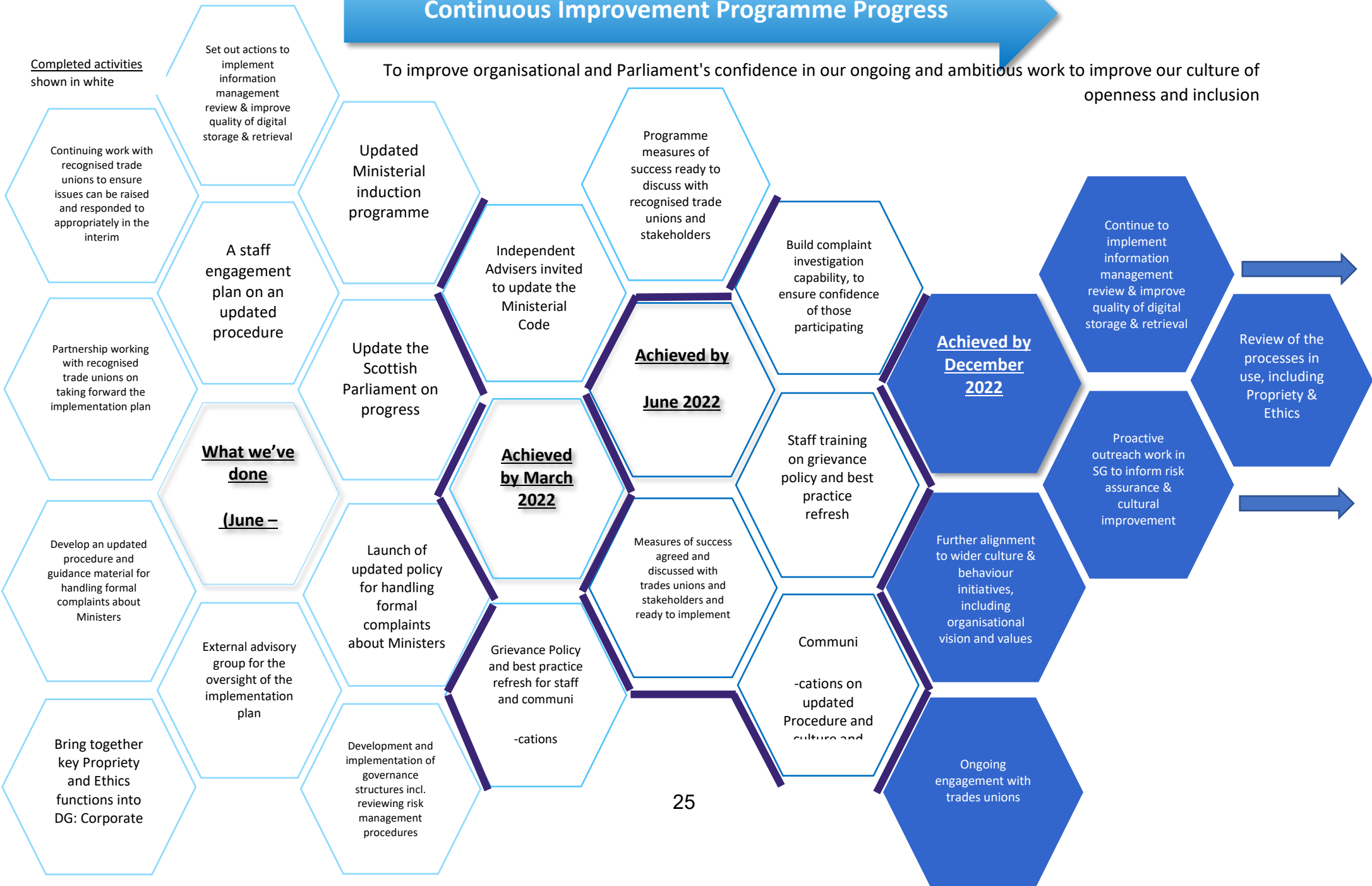
15. Proactive engagement with staff networks and Scottish Government offices in locations outside of the central belt will continue. These conversations are the beginning of a long-term project that will inform risk assurance and cultural improvement in the organisation. They will be carried out by the Propriety & Ethics Directorate in order to gain a better understanding of the challenges in maintaining a safe and respectful workplace and to make progress on the measures of success. As part of this, the programme will agree the approach on these conversations with trade unions and HR and we will use appropriate improvement methodologies to underpin the work.
16. In the second half of 2022, the Propriety & Ethics Directorate will instigate the review of its process in use, to be completed by December 2022.
17. The Continuous Improvement Programme tracks the activity of the Information Governance Programme in its progress to implement the information management review and improve the quality of digital storage and retrieval processes. The Information Governance Programme has made proposals for the continuing measurement of the recommendations contained within the Corporate Review of Information Management report, which was published in June 2021. Most of the recommendations are now complete or underway and Information Governance programme measurements of success - which are in addition to the CIP measures in Appendix 3 and include both qualitative and quantitative indicators - have been agreed by the Information Governance Board to keep track of the Information Governance Programme progress.

Propriety & Ethics Directorate  
Scottish Government  
July 2022



# Continuous Improvement Programme Progress

To improve organisational and Parliament's confidence in our ongoing and ambitious work to improve our culture of openness and inclusion





Alignment to wider culture & behaviour initiatives, including organisational vision and values



Briefings for Ministers on the updated Procedure

*Updated June 2022*

## Continuous Improvement Programme Tracker: activities ending June 2022

The updated Procedure for handling complaints about current or former Ministers is viewed within the context of a wider programme of continuous improvement to improve our culture of openness and inclusion.

This tracker sets out the actions completed by June 2022 and those that are ongoing until December 2022.

Activity in 2022	Achieved by (Owner)	Monthly Update
<b>Communications with staff on updated Procedure and culture and behaviours</b>	June 2022, then ongoing until December 2022	The updated grievance policy and procedure for staff came into operation on 21 April. This was featured in the staff intranet and disseminated through internal communications channels. The communications underlined the importance of the organisation's culture and behaviours in maintaining an inclusive and respectful working environment. Questions to gauge the understanding of the procedure are in development, this survey will be carried out in early autumn.
<b>Staff training on grievance policy and best practice refresh</b>	June 2022 (then continuing until December 2022)	Teams across the government are being supported with workshops on the updated staff grievance procedure and early intervention. Individual managers are being supported with coaching as required. Online learning for the grievance policy is also being designed.
<b>Build the independent complaint investigation capability to ensure the confidence of those participating</b>	June 2022 (then ongoing throughout 2022)	The Propriety & Ethics Directorate met the external pool of investigators and decision makers on 28 <sup>th</sup> June to review revised guidance to support the procedure and to review

		<p>operational support to them in the event of an investigation.</p> <p>A process mapping exercise has been completed with the Propriety and Ethics business management team to work through the operational processes to be followed in the event of a complaint.</p>
<b>Measures of success ready to implement</b>	June 2022	The measures of success were redrafted to focus on staff trust and confidence, and drawn from the People Survey. Internal consultation was undertaken to determine the measures with the People Advice and Wellbeing Team, Corporate Analysis Services Team; People Directorate policy teams; and Ministerial Private Office. External consultation was carried out with the Reviews Implementation Assurance Group and trade unions.
<b>Alignment to wider culture and behaviour initiatives, including organisational vision and values, with engagement with staff</b>	December 2022	<p>Work is ongoing to support the implementation of the <i>In the Service of Scotland</i> (ItSoS) organisational vision and values. There are two key milestones:</p> <ul style="list-style-type: none"> <li>• August 22 – launch of next phase internal campaign with aspect of this focusing on what it means to be ‘values driven’</li> <li>• October 22 – the next ItSoS all-staff conference that will be designed around the four vision priorities.</li> </ul> <p>The aim of these organisational level interventions is to improve knowledge and understanding of the vision and values with the purpose of supporting local behaviour change.</p>
<b>Proactive outreach work in Scottish Government to inform risk assurance and cultural improvement</b>	December 2022	The Propriety & Ethics Directorate is working with People Directorate to take a joint approach

		to engagement with staff networks, satellite offices and Ministerial Private Office on the grievance policy and updated procedure for formal complaints about Ministers. The first meeting has been conducted with the Rural Payments Division as a satellite office.
<b>Review of the processes in use, including Propriety &amp; Ethics</b>	December 2022	The project will begin in the second half of 2022.
<b>Continue to implement the information management review and improve the quality of digital storage and retrieval processes</b>	Update in December 2022	<ul style="list-style-type: none"> <li>• The 3<sup>rd</sup> and 4<sup>th</sup> communication issued on Saltire about the reduction in the use of unstructured data repositories. These are open to all and have been attended by over 2,200 colleagues so far.</li> <li>• Webinar training sessions on Drive Management have been arranged throughout May, June &amp; July to provide more detailed advice and guidance for colleagues on how to move information from unstructured data repositories to OneDrive and eRDM.</li> <li>• The Drive Management Project has advised teams on the removal of unstructured data repositories to assess the impact on their business and to ensure business continuity following this change.</li> <li>• An Information Governance Board (IGB) meeting took place on 27 April. An Information Governance Programme Delivery Group meeting took place on 23 June.</li> <li>• A measuring success paper specifically for the Information Governance Programme was discussed at the IGB board and</li> </ul>

		<p>approval to the draft measures is being sought from the IGB members via correspondence.</p> <ul style="list-style-type: none"><li>• Further success measures are currently being considered with senior colleagues.</li><li>• A paper was presented to the IGB for a new Information Governance Impact Assessment. The approach was approved by the board and implementation will now be progressed.</li><li>• Initial analysis work has been undertaken on the responses to the Information Management Maturity Assessment and further advice and guidance has been provided.</li><li>• A behavioural insights survey has been issued. The purpose of this research is to help us understand attitudes, behaviours and knowledge about record management.</li></ul>
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## Continuous Improvement Programme to improve culture and behaviour: Measures of Success

1. The following measures of success have been developed in collaboration with People Directorate and trade union colleagues, the Reviews Implementation Assurance Group, and staff networks, in order to assess the positive impact of the Continuous Improvement Programme (CIP) across Scottish Government; as well as to shape future considerations around the programme and possible future activity.
2. They are intended to focus on the extent to which our staff say that they have trust and confidence in the processes that have been put in place. They attempt to assess the degree to which the CIP has contributed to an improved culture of openness and inclusion; a workplace where bullying and harassment is not tolerated; and where – when needed - our staff feel able and willing to tackle unacceptable behaviours and understand and have confidence in the processes that are in place.
3. The primary data source is the People Survey, which provides the largest, most comprehensive and authoritative dataset, telling us about important trends in our workplace, and allowing us to understand the employee voice and experience at an organisational and local level. In certain areas we may consider supplementing People Survey data, for example to gain further insight into the headline figures, such as through the Scottish Government 'People Panel', which provides a representative sample of SG employees, and/or targeting specific groups through qualitative discussions, such as with staff networks and equality groups as part of the Propriety and Ethics Directorate's proactive outreach work to inform risk assurance and cultural improvement.
4. These types of measures, focussing on staff trust and confidence, cover a large range of factors that are likely to impact on the overall figures, including external factors (for example the implementation of hybrid working and partial return to offices following the COVID-19 pandemic). There are also limitations to the People Survey, given its large scale and the broad nature of the questions. We have attempted to mitigate these where possible, for example drawing on 'local' questions selected by Scottish Government, and, as above, considering how we can supplement these with additional local data where required.
5. Despite the challenges of measurement, we consider that these are the most appropriate measures of the success of the CIP, and that tracking the trends over time will help us to assess the impact of the CIP, as well as to identify priorities for the CIP going forward. We will continue to work closely with colleagues across SG, including in People Directorate to keep these measures under review, and to consider any additions or changes.

## Proposed measures

6. In our view the questions from the People Survey present the most appropriate measures of the success of the CIP. We would expect to see an improvement across these measures, compared to previous years (noting the likely impact of the COVID-19 pandemic on 2021 and 2022 results):
  - a. If I see or experience any form of wrongdoing in my organisation, I know how to raise a concern<sup>4</sup>;
  - b. I feel able to challenge inappropriate behaviour in the workplace;
  - c. I make a point of tackling bullying, harassment and other inappropriate behaviours when I see it happening around me;
  - d. I feel comfortable speaking to those more senior than me about their actions and impact; and
  - e. I feel confident that if I challenged someone more senior than me in my Area, Directorate or Division they would be open to receiving the challenge.
  
7. Additionally, we will measure Ministerial awareness of the revised procedure with the aim that:
  - f. all Ministers have attended a briefing session on the revised Ministerial complaints procedure by December 2022 (to be measured through a survey of ministerial private offices).
  
8. We will continue to track the People Survey question “have you been bullied or harassed at work, in the past 12 months?” as a control measure (alongside our regular engagement with business areas) to understand where there may be a need for action to be taken to address areas where cases have been raised. While bullying and harassment is not tolerated, our focus is be on ensuring that, where cases arise, they can be dealt with appropriately and that staff feel confident to raise issues.
  
9. The 2019 People Survey will provide a baseline for measurement, allowing for several years of data, and is likely to provide the most comparable data for 2022, as the last year of pre-COVID 19 pandemic survey data. As above, we anticipate that some of the results in 2020 and 2021 may be impacted by the pandemic and shift to home working, and this is likely to be evident in 2022 results.

Propriety & Ethics Directorate  
Scottish Government  
July 2022

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<sup>4</sup> Note that questions a, and c-e are ‘local questions’ selected by Scottish Government for inclusion in the People Survey for SG employees, in addition to the standard set of People Survey questions used across the civil service. [They are not published as part of the Cabinet Office publication].



Table of measures showing SG People Survey results  
(source Cabinet Office, People Survey 2021, 2020, 2019  
and Scottish Government)

	People Survey reference	People Survey question	SG score 2021	SG score 2020	SG score 2019	Notes
a.	LQB5	If I see or experience any form of wrongdoing in my organisation, I know how to raise a concern (% positive)	71	73	-	
b.	B57	I feel able to challenge inappropriate behaviour in the workplace (% positive)	69	67	66	
c.	LQB2	I make a point of tackling bullying, harassment and other inappropriate behaviours when I see it happening around me (% positive)	65	65	65	
d.	LQB3	I feel comfortable speaking to those more senior than me about their actions and impact (% positive)	54	53	51	
e.	LQB4	I feel confident that if I challenged someone more senior than me in my Area, Directorate or Division they would be open to receiving the challenge (% positive)	47	45	40	
f.	-	<i>All Ministers have attended a briefing session on the revised Ministerial complaints procedure, by December 2022 (% attendance)</i>		-	-	<i>Not part of the People Survey. To be measured through a survey of ministerial private offices.</i>
-	E03	<i>Have you been bullied or harassed at work, in the past 12 months? (% yes)</i>	7	7	11	<i>Not formally a measure of the CIP, but to be tracked</i>