Dear Ms Fabiani

**Committee on the Scottish Government Handling Complaints**

On 8 September I undertook to write to the Committee to provide further information in response to questions raised.

**Development of the Procedure**

Mr Fraser asked whether I was the reporting or countersigning officer for the annual reporting of complaints. Annual reporting of statistics about complaints received does not form part of the Scottish Government’s official workforce statistics releases, however these figures have been provided routinely in response to Freedom of Information requests. If the question was seeking to understand whether I have an oversight role in relation to formal complaints raised, I can confirm that, as a matter of routine, I would only be involved where I have a stated role in a procedure.

Mr Fraser also asked about whether people were moved rather than seeking to resolve issues when they have arisen. In addition to what was covered in the session about informal resolution, there may be instances where it is appropriate to put measures in place to protect staff (both those making complaints and those complained against) whilst a formal complaint is being investigated and resolved, and this may include a move to another team.

Ms Mitchell asked about the contact with Police Scotland during the development of the procedure. Members of Police Scotland’s Public Protection Specialist Crime division were consulted about person-centred processes in which the names of support organisations were provided. The HR team drew on those materials – and still do – incorporating them into signposts offered to staff for further external support.
Ms Mitchell also asked about the process for passing complaints to the Police. As set out in the Procedure, at all times staff members are able to make a complaint directly to the Police and the Scottish Government will co-operate fully with any Police investigation or criminal proceedings. If it becomes apparent to the Scottish Government that criminal behaviour might have occurred, the Scottish Government may decide that it needs to 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 Scottish Government to consider involving the Police in light of the information provided. Should either of these steps be necessary, the staff member will be advised and supported throughout. This is in line with ACAS guidance. In general, the process for contacting Police Scotland is handled on a case by case basis by the HR professional team providing the support.

Ms Mitchell asked some questions about the decision and process for referral to Police Scotland in this specific case. This will be covered by the forthcoming written statement on the Scottish Government’s investigation of the complaints which the Committee has requested.

Ms Baillie asked for information about the route map and an associated exchange of specific correspondence. The documents to which Ms Baillie referred have already been provided to the Committee – on 19 June 2020. I have provided below weblinks to the documents which were also released in response to a Freedom of Information request:


Ms Baillie asked about staff contacted about the Sky news story. I am not able to answer that because of the risk of jigsaw identification.

You asked about the development of the Procedure in relation to situations in which the former Minister is the same political party as the incumbent First Minister. Paragraph 12 of the Procedure, which describes how complaints involving a former Minister who is a member of the same party would be notified to the First Minister, was refined through the iterative drafting process. The purpose was to acknowledge that, whilst as an employer the Scottish Government has a duty to consider a complaint raised as an employment matter, in this scenario the Scottish Government’s options as an employer are limited in terms of seeking remedies. The provision included in the Procedure for notifying the party leader of the outcome allowed for action to be considered through the party route, if the individual were still a member. It was important to clarify in the Procedure that the First Minister would not be in a position to sanction a former Minister not of the same party and nor would it be appropriate to notify them; instead the correct reporting route would be to the relevant party leader.

Finally, noting the discussion that took place at the evidence session with PCS and FDA (and their subsequent written response), I would like to take the opportunity to confirm that the ‘confidential sounding board’ role has not been stood down formally and reference to it remains on our staff intranet. It is available for staff as one of a range of routes for raising concerns and seeking advice on issues – although it has not been used extensively in recent times.

Judicial review

Ms Baillie referred to the £512,000 litigation costs for the judicial review, and asked for the total cost to the Scottish Government, including in-house lawyers, civil servants and senior counsel. It is not possible to provide this figure. Dealing with this case was part of the normal range of duties undertaken by a number of different civil servants, including lawyers in the Scottish Government Legal Directorate. Civil servants receive a salary rather than being separately remunerated for dealing with particular matters. In addition, they do not record the proportion of their time that they spend working on particular matters as a matter of course. It is therefore not possible to say how much was paid to lawyers or other civil servants employed by the Scottish Government for dealing with this matter.


Yours sincerely,

Leslie Evans
Permanent Secretary to the Scottish Government