

Finance and Public Administration Committee

3rd Meeting, 2021 (Session 6), Tuesday 25
January 2022

Implementation Plan progress and updated complaints procedure

Purpose

1. The Committee is invited to take evidence from John Swinney MSP, Deputy First Minister and Cabinet Secretary for Covid Recovery, in relation to:

- progress in delivering the actions in the Scottish Government's implementation plan of June 2021, which is part of the response to the findings of three recent investigations led by the Committee on the Scottish Government's Handling of Harassment Complaints, Laura Dunlop QC, and James Hamilton, and
- the updated procedure for handling formal complaints by civil servants regarding the behaviour of a Minister or former Minister.

2. This scrutiny falls within the public administration element of the Committee's remit. The evidence session therefore focuses on the lessons learned, actions taken, and progress made, by the Scottish Government in response to the findings of the three investigations (which concluded in March 2021), rather than revisiting the events that led up to them.

Scottish Government response

3. On 21 June 2021, the Scottish Government published its response to the following reports:

- [Report from the Committee on the Scottish Government's Handling of Harassment Complaints \(SGHHC\)](#) published on 23 March 2021, which concluded that the Committee "hopes its recommendations can lead to significant improvements which will generate, in time, a renewed confidence in the Scottish Government's ability to respond to complaints and learn from them as an organisation". Improvements were sought in the following areas:
 - Culture and behaviours: The Committee recognised "the innate power imbalance between civil servants and Ministers". This, it argued, "can make it extremely difficult to challenge the behaviour of Ministers [and] it is of paramount importance that governments foster an organisational culture which tackles this issue in practice". It further indicated that the Scottish Government must "seek to reassure staff that matters of bullying and harassment will be dealt with properly, fairly and robustly".

- Openness and transparency: The Committee noted a lack of transparency around the exact detail of the process to be followed during the investigation of a complaint against a former Minister which, it suggested, “has the potential to undermine confidence in its fairness”. It recommended that detailed guidance should be provided, along the lines produced by the Ethical Standards Commissioner for Scotland, for witnesses in complaints made to the Commissioner¹. Concerns were also raised about the challenges the Committee faced in obtaining evidence from the Scottish Government to assist its inquiry.
 - Record-keeping and information management: The Committee indicated that it “would have expected to have had access to the full records of key decision-making through consistently made notes, minutes and document retention processes”. It recommended that the Permanent Secretary should “publish a statement detailing what the requirements under the Civil Service Code are for record-keeping and how the Scottish Government intends to improve its performance in meeting these requirements under the Civil Service Code”.
 - Governance and oversight: The Committee highlighted for example evidence that suggested there was “a confusion of governance” regarding who had oversight of the response to the judicial review brought against the Scottish Government by the former First Minister.
 - Clear separation of roles and responsibilities under the complaints process: The Committee recommended that both the investigating officer and deciding officer “should have no prior involvement with the complaints they are deciding upon”. It added that “the multiple roles of the Permanent Secretary, who was the deciding officer, in the development and ultimately the implementation of the procedure, could lead to the perception that there wasn’t sufficient distance and independence in the decision-making process”.
 - The need for an independent, confidential complaints process allowing historic complaints, along with supporting guidance, and an independent support service:
- [Report from Laura Dunlop QC on her review of the procedure for handling harassment complaints against former or current Ministers](#), published on 16 March 2021, which aimed to strengthen the process for handling such complaints. Recommendations included: there being no time limit in which civil servants can make complaints of harassment against a Minister or former Minister, independent investigation of complaints against former Ministers, adjudication and support, consideration of how to respect complainers’ wishes not to involve the police, record-keeping, and legal advice made available to decision-takers.
 - [James Hamilton’s Independent Report on the First Minister’s self-referral under the Scottish Ministerial Code](#) of 22 March 2021, which concluded that there was no breach of the Code. Mr Hamilton decided to defer consideration of whether any revisions to the Ministerial Code were needed, until after decisions

¹ [Investigation Process MSPs | Ethical Standards Commissioner](#)

on changes to the procedure were taken, and he also suggested that the other independent adviser be involved in that process.

4. The [Scottish Government's response to the three harassment reviews](#) stated that the Scottish Government 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

5. The First Minister and Permanent Secretary in a joint foreword to the response, stated that “the Scottish Government has welcomed all three reports and together they inform the actions being announced today”. They added that “the actions set out here, drawing on the insights from the three reports, aim to ensure that change happens [and] we have made that commitment to staff, to Parliament and to the public and it is absolute”. The response included an implementation plan, setting out high-level actions and outcomes to be achieved.

6. Two further documents were published alongside the Scottish Government's response on 21 June: a [Review of Corporate Information Management](#), which aims to improve the robustness of, and compliance with, its document management and storage processes, and a [Report on Culture and Behaviours in the context of harassment complaints](#), looking at “the broad range of initiatives that exist within the Scottish Government, in actively promoting the positive values, culture and behaviours we want to see across government and in our relationship with stakeholders”.

Progress update, January 2022

7. The implementation plan committed the Scottish Government to reporting to Parliament on progress and launching an updated policy for the handling of harassment complaints by the end of 2021.

8. The Deputy First Minister and Cabinet Secretary for Covid Recovery however advised the Committee in his letter of 21 December 2021² that he proposed “to engage further with staff and trade unions on the procedure” and that the Omicron variant was “absorbing the time and priorities of Ministers and officials who recognise the importance of this procedure and wish to make it as fair and as robust as it can be before presentation to Parliament”. The Deputy First Minister wrote³ to the Committee on 13 January 2022 with copies of the progress update and updated complaints policy, indicating that the policy would come into operation in February 2022, following further engagement with trade unions, staff, Ministers and the Parliament. He explained that “the implementation plan progress includes a broader Continuous Improvement Programme (CIP) setting out the activities that the Scottish

² [Handling formal complaints Scottish Government update 2 | Scottish Parliament Website](#)

³ [Updated procedure for handling formal complaints | Scottish Parliament Website](#)

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”.

9. According to the CIP, measures delivered by December 2021 include a Ministerial induction process, a staff engagement plan, an external advisory group with oversight of the implementation plan, and development and implementation of governance structures including reviewing risk procedures. The CIP also sets out expectations around future actions, including that:

- by March 2022, independent advisers, James Hamilton and Dame Elish Angiolini will be asked to consider changes to the Ministerial Code, in light of the new complaint procedure;
- by June 2022, measures of success will be ready to implement, and
- by December 2022, implementation of the information management review will continue, along with improvements to the quality of digital storage and retrieval.

10. The Scottish Government will review the effectiveness of the CIP and set out its future direction in 2023.

11. Both the implementation plan update, including the CIP, and the updated complaint procedure are provided at Annexe A to this paper. The specific actions taken by the Scottish Government in response to the findings of the three harassment reviews, as set out in the implementation plan update and CIP, and how it is rebuilding confidence in its complaints process, are issues for further discussion with the Deputy First Minister.

Next steps

12. The Committee will consider next steps in relation to this work following the evidence session.

**Committee Clerking Team
January 2021**

Letter from the Deputy First Minister and Cabinet Secretary for COVID Recovery to the Convener of 13 January 2022

Dear Kenneth

On 21 December I wrote to you advising that the Scottish Government would be able to share the updated procedure for handling formal complaints by civil servants about a Minister's or a former Minister's behaviour and the progress on the implementation plan with the Finance and Public Administration Committee in early 2022.

I am grateful for your understanding of my request for a short extension and I am pleased to attach the following documents today:

- The updated Procedure for handling formal complaints by civil servants about a Minister's or a former Minister's behaviour
- Progress on the implementation plan as set out in the annex of the Scottish Government's response to the reports by Laura Dunlop QC, James Hamilton, Independent Adviser on the Scottish Ministerial Code, and the Committee on the Scottish Government Handling of Harassment Complaints.

I would wish the Committee to note that there will be a short period of time before the procedure is enacted to have further engagement with trade unions, staff, Ministers and with Parliament before it comes into operation in February 2022. This will allow me to consider representations from the Committee when I am scheduled to give evidence to the Committee on 25th January.

I also wish the Committee to note that the implementation plan progress includes a broader continuous improvement programme setting out the 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.

I look forward to the subsequent discussions with you and the Committee.

John Swinney

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 [[insert link](#)]) 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 [\[include link\]](#).

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 [\[insert link\]](#).

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 [\[insert link\]](#). 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 [\[insert link to Propriety & Ethics\]](#). The SG will carry out initial checks, confirm whether the complaint can be taken forward under this procedure, and notify the relevant parties.

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

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

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

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

Where parties involved may be the victim of a crime

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

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

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

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

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

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

Record keeping

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

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 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 [\[insert link to Propriety & Ethics\]](#), providing:

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

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

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

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

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

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

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

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

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

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

Stage 2 Investigation

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

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

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

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

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

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

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

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

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

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

Stage 3 Decision

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

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

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

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

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

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

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

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

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

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

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

Stage 4 Employer Action

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

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

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

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

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

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

Stage 5 – Appeal

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

The complainer or subject of complaint should make their written appeal to the SG [\[insert link to Propriety & Ethics\]](#). 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.

Implementation Plan Progress, 2021 and the Continuous Improvement Programme

Culture and behaviours in the Scottish Government

The Scottish Government's response to the three investigations into its handling of complaints about the former First Minister was published in June this year.

The annex set out an implementation plan to respond to the findings of the review led by Laura Dunlop QC, the Harassment Committee's report and James Hamilton's report.

Our own internal lessons report looked at the broad range of initiatives on culture and behaviours that exist within the SG and these lessons, as well as the three reports, informed the implementation plan.

In the interest of transparency, the government proactively published the lessons in the Culture & Behaviours report alongside the Committee, Dunlop and Hamilton findings.

It is essential that the updated procedure is viewed in the context of this wider improvement work on culture and behaviours.

The ultimate test for an updated procedure is how our staff and Ministers will feel about it and how trusting and confident they will be that the organisation will set a positive and supportive culture where bullying and harassment is addressed fairly and swiftly.

The updated procedure is set with this broader understanding. There is a wraparound programme of support already underway and this will be the central element of a continuous improvement programme.

We have invested time in listening to those staff who have lived experience of the issues, and distilling the learning from those conversations. This learning has given us a foundation on which to build an improvement programme to wrap around the development of the updated procedure.

We know that for the implementation of the procedure to be successful, it must sit within a supportive culture designed to improve a culture of openness and inclusion. The cultural conditions needed to enable people to come forward with issues from a position of confidence and trust. The ongoing work supporting the embedding of our organisational values - integrity, innovation, collaboration, inclusion, kindness - will provide the corporate context in which to do this.

The aim is to rebuild confidence in our complaints process and improve the effectiveness of our arrangements for managing issues involving propriety and ethics.

We are listening and acting on feedback from staff who have experience of the Scottish Government's formal Fairness at Work (FAW) process, and those who have a role in the process, through a collaborative project between the Scottish Government and the Council of Scottish Government Unions (CSGU). This feedback is informing improvements to the way we approach grievance handling, as well as informing policy and procedure.

In order to demonstrate that the updated procedure is not to be viewed in isolation, as the shape of the updated procedure and the refresh of Fairness At Work develops, we have done some

thinking on medium to longer term to develop the implementation plan that was published in response to the harassment reports into a Continuous Improvement Programme.

This plan sets out the actions we have completed in the implementation plan and those that lead from it, sets out what we have in train, and what we intend to do by the end of 2022.

We will review the effectiveness of the programme and set out its future direction in 2023.

Continuous Improvement Programme

The updated Procedure will be seen within the context of a wider programme of continuous improvement to improve our culture of openness and inclusion. This programme (the initial actions of which are set out overleaf) sets out the actions we have completed in the implementation plan and those that lead from it in 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

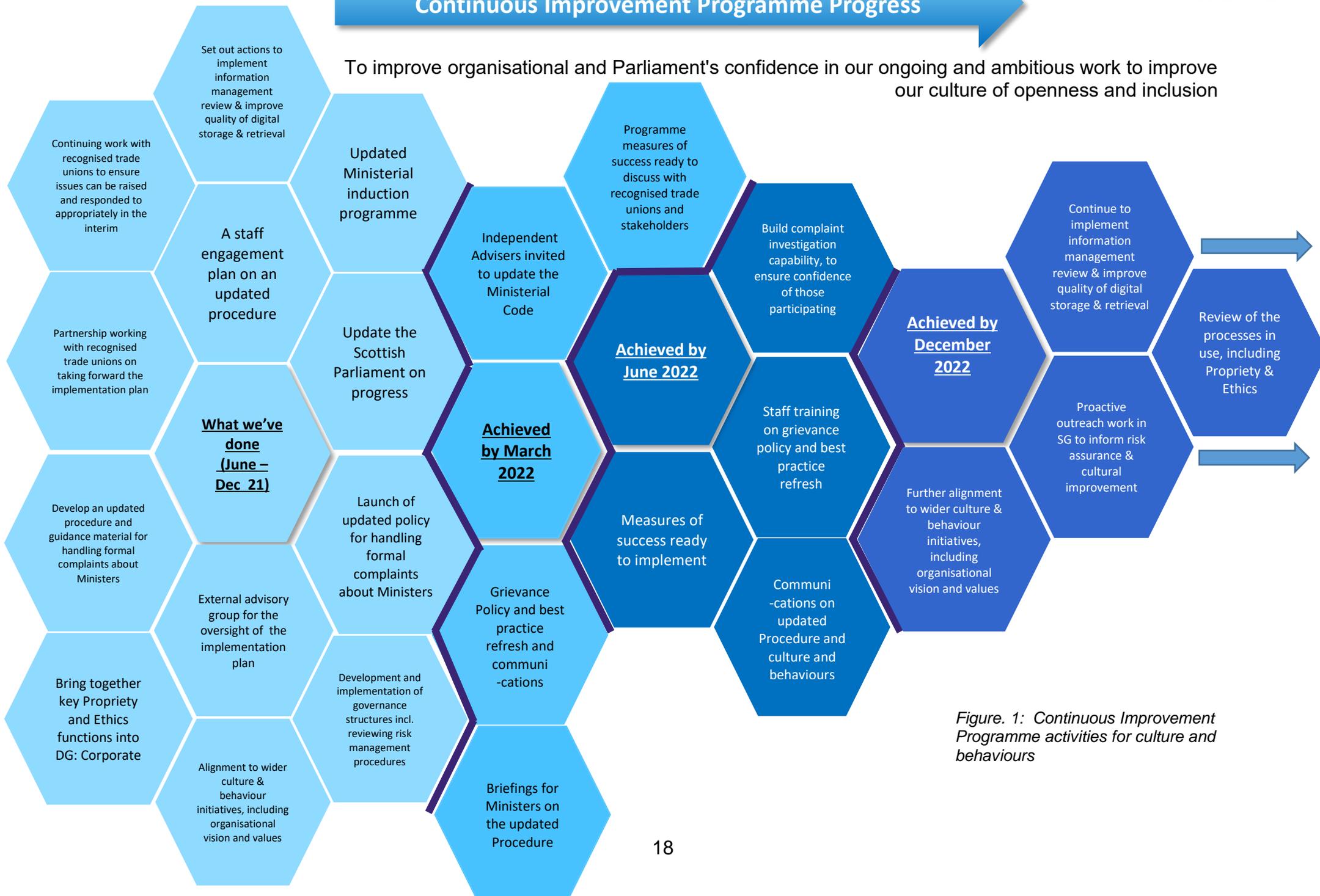


Figure 1: Continuous Improvement Programme activities for culture and behaviours

Implementation Plan Progress

This implementation plan is in the annex of the Scottish Government's response to the reports related to the harassment reviews and inquiries, published in June 2021, and sets out the high-level actions and outcomes that the Scottish Government will take forward.

Activity	Achieved by	December 2021 Progress Update
<p>Continuing work with recognised trade unions to ensure issues can be raised and responded to appropriately in the interim</p>	<p>Immediate and ongoing</p>	<p>Completed: December 2021</p> <p>Existing channels of engagement were in place for engagement with the Scottish Government and our recognised trade unions to discuss case work. An additional forum was established where People Directorate met with Trade Unions regularly to discuss progress on grievance policy, procedure and practice, and consult/ negotiate on changes. This ensured clear channels for raising and responding to issues in the interim. Additional improvement work with trade unions was carried out in this period to consider ways of working and experience of formal grievance handling.</p>
<p>An updated Ministerial induction programme has been designed to support the incoming administration. One of the key aims of the programme is to support Ministers to work effectively with the civil service in a culture of mutual support and respect.</p>	<p>May – September 2021</p>	<p>Completed: October 2021</p> <p>The Ministerial Induction programme was designed to be delivered after Government formation. The programme comprised of an induction pack and introductory meetings with senior officials. A series of briefing sessions were offered to Ministers, including a session covering complaints, bullying and harassment, and included inputs from Ministers, senior officials and trade unions.</p>
<p>Partnership working with recognised trade unions on taking forward the implementation plan</p>	<p>May – December 2021</p>	<p>Completed: December 2021</p>

		<p>Channels already in place for trade union engagement continued in this period included a partnership working committee and a strategic forum with national union representatives. An additional forum was established where the Scottish Government met with trade unions regularly to discuss progress on grievance policy, procedure and practice and consult / negotiate changes, as discussed above.</p> <p>The trade unions have commented at each milestone in delivering the updated procedure. The Scottish Government continues to work with the recognised trade unions on a refresh of wider grievance policy, procedure and practice, in line with the Partnership Agreement.</p>
<p>Develop an updated procedure and guidance material for handling formal complaints about Ministers which will include consideration of:</p> <ul style="list-style-type: none"> • A single process for both bullying and harassment; • Introduction of external, independent investigation and adjudication; • Separation of roles; • Benchmarking; • Time limits; • Initial assessment; • Criminality and police involvement; • Support for all parties including Ministers; • Further consideration to referencing alternative resolution options (including informal routes and mediation); • Censure with consent 	<p>May – December 2021</p>	<p>Completed: February 2022</p> <p>As set out in the letter to the Finance and Public Administration Committee and the Presiding Officer, we are presenting the procedure with a short period of time before it is enacted. This will offer a short phase of further engagement with trade unions and with Parliament before the procedure comes into operation early in 2022.</p> <p>The contents of the updated Procedure is set out in the current draft, guidance will be provided when the procedure comes into operation.</p>
<p>External advisory group for the oversight of the implementation plan</p>	<p>June 2021 – June 2022</p>	<p>Completed: Set up in June 2021, ongoing</p> <p>The Reviews Implementation Assurance Group (RIAG) provides external perspectives, support and challenge on the delivery of the implementation plan. RIAG is made up of senior leaders from the UK Government and the devolved administrations, senior</p>

		public sector leaders, and trade union representatives. The Group meets monthly and is chaired by DG Corporate.
A staff engagement plan on an updated procedure	July – October 2021	Completed: First phase completed by December 2021, then ongoing
		<p>Staff engagement consisted of internal communications to Scottish Government staff; seeking the views of staff with lived experience as part of embedding lessons learned in the updated procedure and regular trade union working group meetings.</p> <p>More staff communications are planned to announce the progress with the procedure in December. Following on from this, staff engagement activity planned for the refresh of the grievance policy and practice.</p>
Bring together key Propriety and Ethics functions into DG: Corporate	July – September 2021	Completed: September 2021
		<p>The role of Propriety & Ethics is to provide corporate oversight of and co-ordination on sensitive issues. It is the point of contact for propriety and ethics issues within the organisation and its public bodies. Propriety & Ethics is established and is the point of contact with a pool of external investigators and adjudicators to be called upon in the event of a complaint being brought under the updated procedure.</p> <p>The team will provide specialist and dedicated support to other parts of Scottish Government in handling complex and/or cross cutting cases of alleged breaches of propriety and ethics. It will handle the continuous improvement programme in relation to promoting positive standards of behaviour, seeking to prevent unacceptable behaviours, and creating a safe and supportive environment to speak up.</p>
	May 2021 – December 2021	Completed: Two year programme of work, progress on track in December 2021

<p>Set out the specific actions we will take to implement our information management review and improve the quality of our digital storage and retrieval processes</p>		<p>There are actions being taken to address all eight of the key recommendations from the Corporate Review of Information Management Report, which is a two year programme of work.</p> <ul style="list-style-type: none"> • A new Information Management Governance Structure is established. • A communications and stakeholder engagement plan and forward look for six month intervals. • Staff engagement is via topic specific presentations and new training modules. There has been increased engagement across all SG and with DG Senior Management Teams via these presentations. • A best practice Information Management section has been added to the existing induction document for new starts to the Scottish Government. • The Information Management Strategy launched in August and is published on gov.scot • Knowledge and Information Shared Services will work closely with the new COVID Oversight divisions in preparation for the COVID Inquiry. • We are implementing an Information Governance benchmark Maturity Assessment to measure confidence in the application of current policies and procedures. • A data cleanse of legacy data repositories work has begun in order to improve the search capability of documents in Scottish Government stores
<p>Alignment to wider culture and behaviour initiatives, including organisational vision and values, with engagement with staff to:</p> <ul style="list-style-type: none"> • Build consensus on values; • Encourage staff to speak up; • Pay attention to local cultures, early intervention and local support. 	<p>May – December 2021</p>	<p>Completed: December 2021</p> <p>The Scottish Government’s first mission, vision, and values setting out our expectations of how we will work and develop as an organisation was launched on 21st June. Accompanying this launch were the provision of virtual briefings for senior staff and a series of documents detailing the mission, vision and values. The staff response to the launch has been positive towards the content of the vision and values. Events were held to</p>

		<p>communicate the mission, vision, and values, and provide case studies to illustrate the future direction, with colleagues invited to contribute their views and experiences. The sessions included Ministers and external stakeholders as well as colleagues from across the organisation.</p> <p>Senior leaders will be tasked with capturing how they are making local improvements towards the new values to accompany these organisation-wide changes.</p>
<p>Development and Implementation of Governance structures including reviewing risk management procedures</p>	<p>July – December 2021</p>	<p>Completed: Actions until December 2021 on a two year programme of work</p> <p>There are actions being taken to address all eight of the key recommendations from the Corporate review of Information Management Report - a two year programme of work:</p> <ul style="list-style-type: none"> • Work is progressing on the setting up of new governance structures (which includes the new governance boards mentioned above). There will also be new information management roles at Directorate General, Directorate and Divisional level. • Work is underway with Governance and Risk colleagues to strengthen the information management section as part of the Certificates of Assurance process. • Revised guidance on minute taking is being prepared, emphasising the message in the Civil Service Code for civil servants to ‘...keep accurate official records and handle information as openly as possible within the legal framework...’.
<p>Update to the Scottish Parliament on progress</p>	<p>Before the end of 2021</p>	<p>Completed: December 2021</p> <p>The Deputy First Minister has written to the Finance and Public Administration Committee presenting the Procedure with a short period of time before it is enacted. This will offer a short phase of further engagement with trade unions and with Parliament before the procedure comes into operation early in 2022.</p>

		The documents sent to the Finance and Public Administration Committee includes a copy of this implementation plan.
Launch of updated policy for handling formal complaints about Ministers	Before the end of 2021	Completed: Updated provided in December, policy launch expected in early 2022 after a short period of consultation
		As set out in the letter to the Finance and Public Administration Committee and the Presiding Officer, we are presenting the procedure with a short period of time before it is enacted. This will offer a short phase of further engagement with trade unions and with Parliament before the procedure comes into operation early in 2022.

Table 1: Implementation Plan progress

Continuous Improvement Programme

The updated Procedure will be seen within the context of a wider programme of continuous improvement to improve our culture of openness and inclusion. The following activities are planned for 2022.

Activity in 2022	Achieved by	Commentary
Grievance Policy and Best Practice refresh, including update to Fairness at Work	March 2022	<p>This will include</p> <ul style="list-style-type: none"> • Refreshed Standards of Behaviour • Informal Resolution Guidance and core narrative including roles and Routes for Support & Advice • Refreshed Grievance Policy and Procedure • Ministerial Procedure <p>Associated Guidance including mediation and facilitation guidance as well as refreshed guidance for investigating officers, deciding officers and appeal managers</p> <ul style="list-style-type: none"> • Ongoing Training (NB this will not be delivered by March – see below) • Additional improvements in response to joint work with trade unions
Briefings for Ministers on the updated Procedure	March 2022	To provide an opportunity to ensure current Ministers are familiar with the process, while also stressing the First

		<p>Minister’s commitment to a respectful working environment to underpin good government in the service of Scotland.</p> <p>The briefings will promote a positive culture in which individuals feel safe and supported in raising concerns and complaints about behaviour that does not meet the highest standards.</p>
Measures of success to be defined and discussed with trade unions and stakeholders	March 2022	Engage with trade unions and stakeholders on tracking activity and progress on organisational culture, business practice and procedures.
Update the Ministerial Code in cooperation with its Independent Advisers	March 2022	Offer the Independent Advisers to the Ministerial Code, Mr James Hamilton and Dame Elish Angiolini, the final, approved version of the new procedure for them to consider for them to consider changes to the Ministerial Code.
	June 2022	The intention is to produce a updated version of the Ministerial Code within three months of publication of the updated Procedure. This final timetable is subject to the availability of the Independent Advisers.
Communications with staff on updated Procedure and culture and behaviours	June 2022, then ongoing until December 2022	<p>The communications will set out clear and consistent routes to handling and constructively addressing grievance and tackling bullying and harassment. The launch of the updated Procedure will demonstrate that it is part of the wider, ongoing programme of continuous improvement on culture and behaviours.</p> <p>Communications throughout the year will ensure staff are well informed on the improvement programme and how they can participate.</p>

Staff training on grievance policy and best practice refresh	June 2022 (then continuing until December 2022)	A continuation of the training for the grievance and best practice refresh above.
Build the independent complaint investigation capability	June 2022 (then ongoing throughout 2022)	Provide training to ensure that those raising complaints, those subject to them, those applying the policies, and the trade unions - can have confidence in processes to investigate allegations of bullying or harassment. Familiarisation and training on updated Procedure will be provided, in particular for other teams involved in handling complaints (HR, Propriety & Ethics)
Measures of success ready to implement	June 2022	Establish and manage governance to effectively monitor the progress of the continuous improvement programme.
Alignment to wider culture and behaviour initiatives, including organisational vision and values, with engagement with staff	December 2022	This will involve ongoing monitoring of corporate actions in response to the People survey and the sharing of good practice identified via the People survey results. There will also be the monitoring of staff sentiment through routine employee engagement activity. Leaders will monitor their staff survey reports from 2021 and undertake further analysis where required to establish where enhanced monitoring, safeguarding and support may be beneficial.
Proactive outreach work in Scottish Government to inform risk assurance and cultural improvement	December 2022	A programme of discussion and dialogue across the Scottish Government to take the temperature of how our culture and behaviour change programmes are being received and acted upon. This will specifically focus on area offices and discussion with equality network groups.
Review of the processes in use, including Propriety & Ethics	December 2022	Use the measures of success to review the effectiveness of the continuous improvement programme to inform planning for 2023 activities.
Continue to implement the information management review and improve the quality of digital storage and retrieval processes	Update in December 2022	<ul style="list-style-type: none"> Strengthen the Scottish Government's annual assurance process to enable Directors General to

		<p>confirm that all of their information management procedures are robust. This process supports the Permanent Secretary’s governance statement as part of the annual accounts.</p> <ul style="list-style-type: none"> • Information Governance Impact Assessments will be implemented • Ensure Information Governance Roles & Responsibilities are signed off at senior leadership level • Continue work to reduce access to and use of unstructured information repositories. • Review resourcing of information management across the SG
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Table 2: Continuous Improvement Programme Activities for 2022