

## Where are we now...

20 June 2018 10:07

### Products:

1. procedural matters: advice to Perm Sec on procedural issues raised by L& M and draft response (will issue in Perm Sec name)
2. Report
3. Advice on basis for forming a decision
4. Next steps advice:
  - o If not well-founded
  - o If well-founded
  - o Police
  - o notification
    - o complainants

### Emergency response if this becomes public:

1. Immediate comms response:

current line:

"It is incumbent on the Scottish Government to deal with staff grievances fairly and without prejudice. The Scottish Government's HR policies respect and protect the individual's right to decide if they wish to pursue a formal complaint. Therefore, in line with our refreshed procedures, we will not be commenting on the existence or otherwise of any cases."

if details become public would we say something like:

"concede that complaints have been received and we are applying the process agreed in Nov/Dec 2017"

1. who needs to be mobilised and would we have all their numbers?

Starter pack of info and leave info being collated. ([Private Secretary 2])

### Timings

- 20/21 June - Process letter
- This week? - notify FFM of Fol
- Report drafting
- 4 July - aim for final report
- 4 July - advice on basis for forming a decision:
  - o Well-founded
  - o Well-founded [Redacted]
- w/c 9 July
  - o decision reached
  - o considering next steps; notification; 'publication'
  - o Police
  - o Next steps with complainants
  - o FM
  - o FFM
- w/b 9 July - LE may be in [Redacted]
- [16 July - Fol due]

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For 16 July:

- Audiences:
  - o Complainants
  - o Witnesses
  - o Key people
  - o Organisation
    - o ET
    - o Directors
    - o Wider
  - o London
  - o Unions
  - o Cabinet
  - o External statements
    - o LE
    - o FM
  - o Parliamentary interest / PAPLS
  - o Party process
- Messages for each
  - o Principles for doing
  - o Process
  - o Appropriateness of what can be shared with a view to protecting individuals
  - o Importance of learning lessons:
    - o Who might review this?
    - o Advice for Perm Sec
    - o possible request to Perm Sec from FM for training / advice to cabinet
  - o Govt carries on / moving on
- Balance of statement: doing right thing; learning lessons; how much can we share
- Advice, support and protection for staff who may be contacted
- Readiness to deal with other complaints #metoo
- Readiness to deal with Fols
- Readiness to deal with correspondence
- News management lead: [Redacted]
- Internal comms lead: check with BA / [Redacted]
- Perm Sec interests: [Redacted]
- Establish battle rhythm for updates / comms etc: daily sitrep
- Support role for Perm Sec? NXD?

Should look again at FMQ in case FM asked directly - do we need to make this clear and include the Fol. Check in with office.

Publication

- Proactive publication - public authorities cannot rely on legitimate interest condition under GDPR/DP. When thinking about whether release of personal details under an Fol then back to considerations around legitimate interest, how senior is the person etc. Answer to Fol will be the answer to the publication question.
  - o 'Processing is necessary for the performance of a task carried out in the public interest'
  - o What's our purpose here? Policy driven currently by duty of care to employees;
- May have to react / respond to what we put out under the Fol
- When do we notify people when have Fol about someone. To not tell his representatives that an Fol exists early on could be seen as problematic. This is very clearly about him, let them share any concerns, leaving decision to us as the public authority. If he says that this would breach his rights then would need to go to court to get an interdict to prevent publication of the Fol.

- FoI - 'any info related to complaints about conduct'
  - o How will we answer this?
  - o How to define?
  - o In line with precedent
    - o Formal complaints
    - o Fact of complaints and investigated

#### FoI

- Tell L&M about it
- This is how we judge we need to respond
  
- When do we notify people when have FoI about someone. To not tell his representatives that an FoI exists early on could be seen as problematic. This is very clearly about him, let them share any concerns, leaving decision to us as the public authority. If he says that this would breach his rights then would need to go to court to get an interdict to prevent publication of the FoI.
- FoI - 'any info related to complaints about conduct'
  - o Set out how we have defined this
  - o In line with precedent
    - Definition of complaints
    - Complaints under Ministerial Code - matter of public record
    - Formal complaints held by HR
    - Fact of complaints and investigated. Can we respond to it along those lines given this is explicitly about one individual? Very serious impact on privacy, particularly if it hasn't been concluded.
    - However if it did go back then would need to be very clear that we weren't giving the impression that nothing was happening. Cannot say that we hold no information. At the very least we would have to say that we're applying exemptions.
  
- Accompanying commentary.