

Written submission from FDA

I am responding on behalf of FDA as General Secretary. In doing so I have consulted with Allan Sampson, who joined FDA in September 2015. (His predecessor retired in 2015 and sadly passed away in June 2020). In addition, I have consulted the relevant Convenors and other branch reps who supported members within Scottish Government (SG) as well as policy development over the period you have identified in your letter.

Background

The FDA represents public service managers and professionals. We have a long-established branch in the Scottish Government (SG) which works in partnership with the Council of Scottish Government Unions (CSGU). CSGU is made up of the five trade unions recognised by the Scottish Government for collective bargaining and employee relations purposes. Engagement with the CSGU by the Scottish Government is governed by a Partnership Agreement.

Policy Development

It was under that Partnership Agreement that FDA worked from January 2008 to September 2010 with our partners to develop the policy change from a 'Dignity at Work' policy to what became the 'Fairness at Work' policy published in September 2010. The FDA now holds very limited information on our involvement in this but a copy of what we do have is attached (**Annex A**).

The FDA is not aware of any relevant policy changes between 2010 and 2017 although we made representations as appropriate to the SG during this period when members concerns were raised (see below under 'Culture').

In the autumn of 2017 the FDA engaged with the SG as a result of concerns based on a perceived increase in bullying and harassment issues being raised from our members in general, as well as the results from civil service People Surveys, and against a backdrop of specific approaches from our SG members and an understanding of actions being taken to support individuals in areas of the SG who had regular direct contact with Ministers. (This engagement was ultimately fed into the revised policy review and in particular our desire to strengthen the process for review and resolution in relation to Ministers as described below).

The FDA nationally had been actively involved throughout 2017 in relation to developments in the House of Commons and at that time was pressing for independent scrutiny of complaints against Ministers in all administrations. In addition, FDA nationally was responding to press activity around the '#me too' movement, and was made aware of a letter from Sir Jeremy Heywood to all Permanent Secretaries of the UK Civil Service to review their policies in November 2017.

The FDA in the SG, along with our partners in CSGU, were informed by SG that the First Minister had asked the Permanent Secretary to review the SG policies and participated in the policy review to map out sexual harassment policy against existing policies, and to develop what became the Ministerial Harassment Policy.

A working group was set up by the SG including CSGU in order to co-ordinate and lead on this activity.

The FDA understands the initial intention was for this working group to review the existing suite of policies for conduct, discipline and grievance to ensure that they were collectively fit for purpose in light of the increased focus on sexual harassment in the workplace arising from the 'me too' movement as well as responding to the request from the First Minister to the Perm Sec to review the SG policies.

The purpose of the new policy development evolved as the working group looked at the route map and the gaps within existing policies.

As part of the working group, the FDA was therefore involved in the review of the suite of policies and the development of the harassment policy. The FDA shared with the working group relevant information from their 2017 survey of FDA members across the UK (including the devolved administrations) on bullying and harassment, the result of which was published in January 2018.

The FDA was conscious that the original SG Fairness at Work policy of 2010 was the only extant policy in the UK that included a process for employees to raise concerns about Ministers' behaviour separate from the Ministerial Code. Given all that was happening in the wider world, the FDA raised other examples of good practice, not least work being done (ultimately successfully) in the House of Commons.

The FDA was not made aware of any changes to any policy being reviewed at a political level. The drafts produced by the working group reflected comments made by us, and formed the final policy document.

The FDA expressed the strong desire to see a fully independent process in place for the investigation of Ministerial harassment complaints in line with what we had pressed for to be included within the House of Commons process. This was not adopted and instead the agreed policy required the investigation to be conducted by an independent party within the organisation. This work was paused in January 2019.

The information held on our involvement in the Harassment policy review is attached (**Annex B**).

Culture

It is almost impossible to define an organisational culture and clearly, from a trade union perspective, we often are involved where relationships in particular, have gone wrong.

Those working at the heart of government, particularly in and around ministers will have witnessed many times, the stress of events unfolding that can create tension between ministers and civil servants. This is the very nature of government where some of the most complex and difficult issues have to be resolved under an incessant media spotlight and often in a hostile political environment.

Most relationships between ministers and civil servants are respectful, productive and strong. Both recognise each other's values and civil servants recognise that ministers, regardless of their political affinity, are committed public servants. They also witness first-hand the pressures ministers face and the enormous strain this places on them and their families. Their instinct, almost in their DNA, is to look to support ministers and do whatever is possible to assist. As in many workplaces where people work together towards a common goal, often under extreme pressures, strong bonds will be built among the team and ministers will be included in this.

I emphasise this for two reasons. Firstly, most relationships between civil servants and ministers (indeed the vast majority) are, as I have said, professional and respectful. Secondly, the environment is routinely high-pressured, and civil servants will know this before they consider a role working in the private office of, or closely with, Ministers. There is never any excuse for bullying or inappropriate behaviour in the workplace, from civil servants or ministers, but those working at the heart of government will experience frequently the stresses and occasional lapses in behaviour that can arise in that environment.

The FDA has supported members since the inception of the Scottish Parliament in handling informal and formal complaints against Ministers. Members have reported concerns of bullying or inappropriate behaviour of Ministers towards civil servants in all the administrations of varying political colours.

The FDA worked with our CSGU partners and SG and pushed for the changes to the policy in 2010 to ensure the behaviour of Ministers could be addressed, and this led to the publication of the Fairness at Work policy in September 2010. This policy was considered a flagship policy and was seen as a progressive step forward by other administrations within the UK. As we have indicated elsewhere, this was in part driven by concerns members had been raising over many years and a lack of any formal process in resolving these when it came to concerns about the conduct of ministers.

Around this time, the culture within the former First Minister's Office and other ministerial offices in relation to bullying behaviour became a concern for us and was raised with successive Permanent Secretaries. Although action was taken and short-term improvements or apologies were made, this did not bring about an overall change in culture. Some civil servants expressed to us that they were operating in a culture of fear and were unable to speak truth unto power and discharge their duties effectively.

The culture within the Ministerial offices in the organisation was such that despite the support of FDA, some members made clear to us that they did not trust SG to handle complaints effectively or to ensure confidentiality of the complainants. They furthermore expressed concerns over the effectiveness of the policies at that time. In particular, members in the former First Minister's office indicated that they felt isolated and out of the policy protection of the rest of the SG. Individuals spoke in confidence and did not wish to raise complaints because they thought this may be detrimental to their career aspirations or their current role.

FDA undertook analysis of the cases where members sought personal support within Scottish Government and this first featured in the annual reports to our members from 2017 onwards. Bullying and Harassment has been in the top 3 themes for personal support every year. The percentage of members coming forward for personal support

has risen year on year against a backdrop of an unprecedented increase in membership of the branch of 45% since 2017.

In response to the Westminster sexual harassment scandal and subsequent review of policies across the civil service, the FDA had surveyed all our members in the UK on these issues to inform our dialogue with the Cabinet Office on the outcome of the review.

The results of this UK survey were shared with Scottish Government with a direct approach to ask SG to do more than just talk about being an excellent employer but make a concerted effort to review policy and handle complaints effectively.

The full survey and breakdown for SG are attached (**Annex D**). The response rate for the entire membership was just under 7% and for SG, just over 5%.

<https://www.fda.org.uk/home/Newsandmedia/News/Survey-flags-real-concern-over-workplace-harassment-bullying.aspx>

In reflecting back on the last 10 years we are aware of approaches on behalf of around 30 members in relation to at least 5 Ministerial Offices, ([redacted]). A number of these approaches were resolved through mediation and formal resolution. However, many of those who approached FDA did not want us to pursue the matter as the perception was that their concerns would not be handled sensitively or in confidence and they were concerned that raising the issue could impact on their career.

We do not routinely collect stats on this area of casework. Given the sensitive and political nature of raising complaints against a minister, a complaint of this nature would normally be raised to the level of General Secretary. Over the same period, only a handful of issues have been raised within other government departments across our entire membership.

Clearly there could be many explanations for this - reluctance to approach the union or indeed that those with concerns were not trade union members. The number of known potential complainants from SG does however stand out quite significantly when compared with not only other government departments of a similar size, but the rest of the FDA membership across the civil service.

It is also clear that despite Scottish Government remaining the only part of the UK civil service with a clear process for civil servants to raise complaints about ministers, rather than having to rely on the opaque Ministerial Code, this has not proved effective in eliminating behaviour that raises concern. We can see no sign of any discernible reduction in the number of concerns raised by members.

Extracts of some of our communications with Members and Scottish Government on culture are attached (**Annex C**).

I have received your letter of 30th July 2020 with regards to oral evidence on the 25th August 2020 and I will attend on behalf of FDA and I am course happy to expand on this evidence at that point.

Dave Penman

General Secretary
4 August 2020

List of Annexes:

Annex A – Policy development information

Annex B – Harassment policy review

Annex C – Communications with Members and Scottish Government

Annex D – FDA members survey