

# EXECUTIVE COUNCIL PUBLIC

<b>Title:</b>	Government Response to Principal Complaints Commissioner's Report "The Complainant v FIG" dated October 2015
<b>Paper Number:</b>	163-16
<b>Date:</b>	14 September 2016
<b>Responsible Director:</b>	Chief Executive
<b>Report Author:</b>	Attorney General
<b>Portfolio Holder:</b>	Matter referred by MLA Gavin Short
<b>Reason for paper:</b>	This paper is submitted to Executive Council:  To meet a statutory requirement
<b>Publication:</b>	Yes
<b>Previous papers:</b>	None
<b>List of Documents:</b>	Appendix 1: Published Complaints Commissioner's Report "The Complainant v FIG" Appendix 2: Government's proposed response

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## 1. Recommendations

Honourable Members are recommended to:

- (a) Approve the response set out in Appendix 2, to be issued to the Principal Complaints Commissioner pursuant to section 28 of the Complaints Commissioners Ordinance.

## 2. Additional Budgetary Implications

None

## 3. Executive Summary

- 3.1 In accordance with the Complaints Commissioners Ordinance, this report sets out the Government's response to the Principal Complaints Commissioner's report dated October 2015 entitled "The Complainant v FIG".

## **4. Background**

- 4.1 The role of the Principal Complaints Commissioner arises under section 95 (Chapter IX) of the Falkland Islands Constitution. The role is conducted in accordance with the Complaints Commissioners Ordinance. The role of the Complaints Commissioner is a valuable governance element of our constructions, providing a valuable safeguard to the public.
- 4.2 Following an investigation instigated on behalf of a constituent by MLA Gavin Short, the Principal Complaints Commissioner issued a report on the matter pursuant to section 24 of the Complaints Commissioners Ordinance. In accordance with section 26(2) of the Complaints Commissioners Ordinance, the Governor directed the removal of material from the report prior to disclosure. The copy of the report attached at Appendix 1 is the report, redacted accordingly.
- 4.3 A draft Government response was produced on 25 January 2016 and issued for internal consultation within FIG. Unfortunately, it has taken some time for the Government's response to be finalised and this is now attached at Appendix 2.
- 4.4 Honourable Members will note that the Principal Complaints Commissioner takes great care in explaining the basis upon which he believes he has jurisdiction to carry out the investigation, notwithstanding that schedule 2, part 2 paragraph 20 precludes jurisdiction in relation to: "any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension, or dismissal or terms of service of any officer or employee of the Government..."

## **5. Resource Implications**

### 5.1 Financial Implications

None

### 5.2 Human Resource Implications

The recommendations accepted by the Government in its response have resulted in changes to Government employment policies as specified in the Government's response. In addition, guidance has been strengthened to ensure the quality and accuracy of interview records during the disciplinary process.

### 5.3 Other Resource Implications

None

## **6. Legal Implications**

- 6.1 Clearly, it is important that the Principal Complaints Commissioner is not improperly constrained from discharging an important constitutional role. A Complaints Commissioner must do so in accordance with the law. In this instance, the Government will not take issue with the question of jurisdiction, but no admission is made that the Principal Complaints Commissioner is acting in accordance with his legal powers. The

Government's position is reserved. It is a vital element of our constitution that governance structures operate appropriately within their powers. Should a question of the lawfulness of an investigation arise in the future, this can of course be challenged through the courts using judicial review procedures.

## **7. Environmental & Sustainability Implications**

None

## **8. Significant Risks**

- 8.1 There is a risk that an apology issued by the Government to the Complainant gives rise to a false expectation to the Complainant that they are entitled to seek compensation through legal proceedings.
- 8.2 There is a risk that the Government, by accepting this report and its recommendations at all, creates an expectation about the Principal Complaints Commissioner's jurisdiction.

## **9. Consultation**

- 9.1 Internal only

## **10. Communication**

This report only, including its publication.

REPORT OF  
  
THE PRINCIPAL COMPLAINTS  
COMMISSIONER

Dick Sawle

Re

THE COMPLAINANT v. FIG

OCTOBER 2015

Submitted for consideration by

The Honourable Gavin Short MLA

Note:- On direction of the Governor (Section 26 of the Complaints Commissioners Ordinance refers), all references to individuals have been made anonymous. The police incident referred to on page 9 of this report has also been removed.

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### **1. Receipt of Complaint**

The complaint was forwarded to me by email by MLA Short on the 7<sup>th</sup> August 2015 for consideration. I read through the file and responded on the 9<sup>th</sup> August to both MLA Short and the Complainant and also the Acting Governor Mrs Sandra Tyler Haywood.

As I wrote at the time, It was clear from the file *“that the Complainant's complaint is going through a FIG complaints procedure even though what procedure is being used is far from clear. It is also clear that, as the Complainant is no longer an employee of FIG, the Complainant has no right to appeal, so the current procedure is the last resort.*

*This means that the current FIG procedure has to be finalised - Part 3 Section 13 (1) of the Complaints Commissioner Ordinance is clear that the aggrieved person must have taken “reasonable steps to obtain a remedy under the procedure before making a complaint”.*

*The current investigation by FIG must therefore in my view finish before I can commence any investigation.....It may be that the Complainant is content with the outcome from FIG.”*

The Investigating Officer, was due to return from leave on the 24<sup>th</sup> August and the Complainant was informed that the Investigating Officer would finalise the investigation upon their return.

The Investigating Officer concluded their investigation and a final outcome letter was sent to the Complainant by post on the 2<sup>nd</sup> September 2015. <sup>1</sup>

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<sup>1</sup> final outcome letter from FIG (The Investigating Officer) to the Complainant

The Complainant indicated on the 4<sup>th</sup> September to MLA Short that they were not happy with the outcome. On the same day MLA Short approved that the Complainant forward the complaint to me to investigate. On the 12<sup>th</sup> September I wrote to the Governor who endorsed my investigation which formally commenced on the 14<sup>th</sup> September.

I was due to return to the Falklands on the 28<sup>th</sup> September and was able to spend some time before my return reviewing the files and making some preliminary investigations. I was able also to inform the relevant people of my investigation as required under the Complaints Commissioner Ordinance.

## **2. Jurisdiction**

A complaint submitted to the PCC (Complaints Commissioner Ordinance Section 3) is made by an aggrieved person [a member of the public] *“who claims to have suffered injustice in consequence of –*

- a) maladministration in the government of the Falkland Islands...;or*
- b) conduct mentioned in subsection (2)”*

Subsection 2 lists examples of conduct such as discourtesy etc but is clear that the list of examples given *“includes but is not limited to”* those examples.

My first consideration was therefore one of jurisdiction. There are two types of complaint [Section 3 (a) and (b) above] which are not mutually exclusive being linked by the conjunctive (rather than disjunctive) *“or”*.

Maladministration – requires me, for example, to consider if the investigation was carried out correctly, if it followed all of the correct procedures, and if all evidence was properly sought and considered.

Turning again to Section 3, there is an argument that the PCC should also consider conduct – in short, if the Complainant was being bullied or not by Officer 1

However, Part 2 section 20 of Schedule 2 of the Ordinance is very clear that the PCC does not have jurisdiction in *“any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension, or dismissal of service of an Officer or employee of the Government...”*

There then followed a number of letters and emails and subsequently a meeting between myself and FIG Legal Services in which I sought to clarify my jurisdiction.

After consideration of the advice given to me, I accepted that the PCC does not have jurisdiction to investigate the original complaint of bullying and that my investigation must therefore only consider the question of maladministration – i.e. was the investigation properly carried out.

However, this gives rise to two questions which will be pertinent in any future cases.

Firstly, clearly the Complainant’s original complaint was that they were being bullied by Officer 1. However, as the Complainant was an employee of the Government at the time of

the complaint, does section 20 apply or not given that the Complainant is now a member of the public? The complaint received by the PCC was made when the Complainant was a member of the public.

Section 20 is very clear and specific regarding what matters cannot be considered by the PCC, but neither bullying nor any type of behaviour is mentioned in Schedule 20. However, as the Complainant is now a member of the public, should the Complainant not have redress via Section 3 (b) of the Ordinance which covers conduct giving rise to a sense of injustice (such as bullying)?

Secondly, FIG is very clear on the question of the Complainant's ability to appeal the findings of the Investigating Officer. FIG's clearly stated position is that the Complainant cannot do so given that the Complainant is no longer an employee of the Government. The Complainant therefore has no right of appeal as a member of the public and the PCC is the Complainant's only possible route for any form of recourse (other than a court of law which I do not consider reasonable at this stage), yet the PCC cannot consider this complaint as an appeal. This lack of the right to appeal is a direct consequence of the Complainant's employment status yet it is the same argument used in reverse that denies the Complainant the right to have the PCC consider the original complaint of bullying at work.

I will return to these points in my recommendations, as this situation necessarily gives rise to a deep sense of injustice from the point of view of any Complainant in a similar situation.

Given the sense of injustice that the Complainant feels, **it is inevitable that I will recommend a fair appeal process that should reconsider the original complaint.**

### **3. Process used by FIG to handle the complaint**

The Complainant's original letter of complaint to Officer 1 and copied to the Investigating Officer, Human Resources and the Complainant's department director dated the 27<sup>th</sup> February<sup>2</sup> makes serious allegations of bullying at work by Officer 1. The procedure for handling such a complaint is clearly via the Harassment at Work Policy (HAWP) rather than the Grievance Procedure (GP).

Under the GP (level 1), it is made clear in para 6.1 of that procedure that the Complainant must clearly state "that the formal grievance procedure is being invoked"

**The Complainant did not state the wish for their complaint to be dealt with under the GP.**

It was very clear from the Complainant's letter that the allegations *inter alia* centred on bullying which clearly should be handled under the HAWP and not the GP.

Unlike the GP, the HAWP does not require the Complainant to state that this is how they wish their complaint to be dealt with. It should, however, have been evident from the very serious allegations that this was the correct procedure to be followed from the contents of the

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<sup>2</sup> letter dated 27<sup>th</sup> Feb from the Complainant to Officer 1 copied to Human Resources, the Investigating Officer and the Complainant's department director

Complainant's letter of the 27<sup>th</sup> February. Furthermore, section 11.2 of the HAWP specifically concerns bullying at the workplace.

The Investigating Officer wrote to the Complainant an email on the 3<sup>rd</sup> March in which they state “ *In light of the serious allegations made within the documents it would be normal practice for this matter to be handled in line with FIG's formal Grievance procedure, (a copy of which is attached for your review)*” the Investigating Officer goes on to say that the purpose of the request for a meeting is “*to allow you to explain your grievance in full to me and discuss how best it may be resolved*”.

The Complainant's legal advisor (LA) wrote to the Investigating Officer on the 6<sup>th</sup> March on behalf of their client, the Complainant, requesting that the complaint be dealt with under the FIG Management Code, Chapter 2, paragraph 11 and Appendix 3; Harassment at Work Policy.

The response from the Investigating Officer to LA by letter dated 13<sup>th</sup> March reiterates that the Investigating Officer's view is that it should be handled under the GP as Officer 1 “*was working with the Complainant to improve the Complainant's performance*”. Dealing with the complaint under the HAWP is dismissed by the Investigating Officer who argues that Section 11.2 of Chapter 3 of the Code states “*to constitute bullying the behaviour must be consistent – one off incidents in which someone loses his/her temper do not count and neither does the use of legitimate and constructive criticism of an employee's performance, or “strong management”, if this can be justified and the individual is treated with dignity and respect*”.

**Potentially, this could be seen as pre-judging the outcome of the investigation at an early stage in the process. The Complainant's allegations are centred on the allegation that they were being bullied. The Complainant is not asking for their capability to be reviewed. The Complainant's claim is they were not treated with dignity and respect. Whether or not those allegations are ill-founded should be the final outcome of an investigation via the HAWP.**

LA responded on the 13<sup>th</sup> March requesting once again clarification as to which procedure FIG was following given the uncertainty of the Investigating Officer's response. LA also asks if the Investigating Officer is acting under the HAWP as the Complainant's line manager or Investigating Officer.

The response from the Investigating Officer on the 17<sup>th</sup> March simply says “*As per my letter to you [13<sup>th</sup> March] ...I detailed FIG's position*”

**That “position” [i.e. what procedure was being followed] was never made clear by the Investigating Officer or any officer of FIG either during or after the investigation to either LA or the Complainant.**

From the evidence, it is clear that the Complainant's allegations are not based on a one-off incident and the Complainant's claims are that they were bullied and not treated with dignity and respect on a number of occasions, albeit only over a short period. It is the case that this alleged “storm” of behaviour took place over an eight day period which, discounting a weekend, related to only six working days. That in itself merits investigation as to what could

spark such a storm of discontent. The underlying reasons for this “storm” were never investigated thoroughly and are beyond the scope of this report.

Turning to the internal report prepared by the Investigating Officer <sup>3</sup>(and not released to the Complainant), we can see that at the outset, these allegations are being dealt with under the GP and not the HAWP. Paragraphs 1.5 to 1.9 indicate very clearly that the Investigating Officer is the Investigating Officer and that they are dealing with it as a grievance.

This is an important point. Under the GP, the Investigating Officer would be entitled to be the Investigating Officer as officer 1’s line manager. However, under the HAWP the normal procedure would be for an independent Officer to be appointed. Para 9 of the HAWP states *“on receipt of a complaint, the line or other manager should, in liaison with the Director of Human Resources, appoint an Investigating Officer who will, following his/her investigation, produce a report for the Complainant’s manager as to whether there is a valid complaint”*

My understanding is that it is standard procedure followed by FIG under the HAWP to appoint an impartial Investigating Officer who is not connected to the case or department concerned.

However, turning once again to the internal report compiled by the Investigating Officer as Investigating Officer, it is clear from paras 1.14 and 1.15 that they changed their opinion and the Investigating Officer was now treating the complaint under the HAWP.

the Investigating Officer’s report para 1.17 clearly states *“The investigation was carried out as per the Complainant’s request”*. I take that to mean under the HAWP, although there is still a failure even in this internal document to plainly state what policy or procedure is being used.

**Normally, due to the seriousness of the allegations made and the potentially equally serious disciplinary consequences, as previously mentioned, an independent officer would have been appointed as investigating officer under the HAWP.**

However, the Investigating Officer’s report (para 1.16) makes it clear that following discussion with the Human Resources and the department director, the department director decided that the Investigating Officer would remain as Investigating Officer *“because of the sensitive and highly confidential nature of the work of the Complainant’s department and the fact that such an investigation may require discussion of individual cases”* It was also stated that this was the preferred process as the Investigating Officer had *“a sound understanding and knowledge of the work carried out in the section (and have sufficient clearances needed to protect sensitive information), being both the next level of management, the Head of the department.”*

1. I would strongly argue that the Investigating Officer being the next level of management, the Head of the department and are the precise reasons why the Investigating Officer should **not** have been appointed as Investigating Officer. The complaint was too close to home and there is too great a possibility of conflict of interest. There is always the possibility that “bad blood” can exist or be perceived to exist between personalities that work in the same departments.

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<sup>3</sup> internal report by investigating Officer

**This may or may not have been the case, but impartiality in an investigation of this serious nature is paramount and fundamental to the principles of fairness and the independence of any investigation.**

2. The point about having a working knowledge of the the Complainant's professional role is irrelevant in my view. It is clear from the Investigating Officer's report that the focus of the investigation is more on capability than conduct. Whilst the Complainant does have a medical condition , the complaint is centred on allegations of conduct.

**The internal report concentrates on the FIG view that the Complainant is not capable rather than on allegations *inter alia* of bullying.**

3. The point regarding having sufficient clearances is equally irrelevant. There was and still is no need to discuss any client cases. Indeed, in all of the evidence gathered by the Investigating Officer there is only one short email in which it was necessary to make any redaction. There is a procedure involved for all those involved with the Complainant's department which binds them to confidentiality.

**That same procedure could have been used to give sufficient clearance to any other FIG officer and thereby allow them to be the investigating officer.**

I would argue that the Complainant has every right to know under what policy or procedure their complaint is being handled, the rationale for the chosen procedure and any reasons for any change in direction.

**At no time was the Complainant informed that the process being used for the investigation was the HAWP.**

#### **4. Evidence considered**

In the Investigating Officer's internal report Section 2 "Scope and coverage", there is no consideration of the Complainant's claim that they were the subject of constructive dismissal. the Complainant alleges that in their first 1-2-1 with Officer 1 , the officer had told the Complainant that they should seek to "*take an early pension or explore charity work, as there was no future for the Complainant within the department*".

When this point was put to Officer 1 in an interview on the 27<sup>th</sup> May, Officer 1's response was that "*it was ludicrous that the Complainant thought Officer 1 had constructively dismissed the complainant*"<sup>4</sup>

There is no follow up to this point and many others made during the interview with Officer 1 on the 27<sup>th</sup> May. The answers given by Officer 1 are brief and at times evasive. For example, when asked if Officer 1 had ever raised their voice to the Complainant or felt they had intimidated the complainant in any way Officer 1 avoided giving a direct answer - "*Officer 1 said that there was no reason why they should need to raise their voice in such discussions*". There is little follow up to this question and many others that were asked. It begs the question as to whether the interview was thorough enough.

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<sup>4</sup> FIG meeting notes with Officer 1 27<sup>th</sup> May

**Once again, it would have been a fairer situation for all parties had it been conducted by an independent person rather than by Officer 1's line manager.**

The majority of the interview addresses whether or not Officer 1 felt that the Complainant was capable of doing their job and very little effort is made to investigate the substance of the Complainant's allegations which centre on conduct and not capability issues. This is a recurring theme throughout the interviews with all staff.

**There is a lack of focus on the Complainant's allegations.**

Only one previous Manager was consulted, Officer 2 who had only worked with the Complainant for a period of three months. Officer 3 was not consulted as the Investigating Officer states Officer 3 was absent '*when the events in question occurred*' yet this would not preclude Officer 3 (if capability really was the issue) from giving an honest opinion as to the Complainant's capabilities which was the focus of the interview with Officer 2. It should be pointed out that Officer 2 was also not working within the Complainant's department at the time of these allegations yet Officer 2 was interviewed and Officer 3 was not.

There was also no attempt made to contact Officer 4 who had worked with the Complainant for a considerable time. If the Complainant's capability was being raised as the root cause for the "storm" of discontent, Officer 4 could doubtless have provided further and more accurate insight.

**The Complainant's assertion therefore that "*none of Officer 1's predecessors found fault with the Complainant's work*" was not thoroughly investigated.**

Witnesses were interviewed, these being five in total. None of these interviews were audio recorded, but notes were made by FIG and those interviewed were given the opportunity to make amendments which they did in some cases by hand afterwards. Not all of the hand written amendments made post interview by witnesses were accepted by the Investigating Officer.

**This in itself is a worrying matter as far as procedure is concerned. Follow-up interviews could have been held to further investigate what was said or, more importantly, what any witness was intending to say.**

The witness statements<sup>5</sup> naturally vary in their content, but they do contain many supportive comments of the Complainant's allegations. There is passing mention made of them in the Investigating Officer's final report, **but only in support of the Investigating Officer's conclusions**. This is not only against Section 2.1 (a) of the Investigating Officer's definition of scope and coverage which is to consider "*the evidence relating to the events in question*", but also contrary to natural justice. Those witness statements could have been investigated more thoroughly and fairly.

**Evidence given by witnesses that is contrary to the conclusions was either ignored or not accepted in some cases when amendments were made post interview.**

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<sup>5</sup> Witness statements from five witnesses

There is much substance in those interviews which appears to concur with the Complainant's version of events. It is of serious concern that three of the potential witnesses to the actual events did not entirely agree with the notes taken – some of the changes they made in handwritten form showed much greater support for the Complainant's allegations, and not all such changes were accepted by the Investigating Officer.

**If there had been the need to clarify accounts, it would have been a simple matter to hold further interviews. This was not done.**

It is worth adding that notes taken during the interview with Officer 2 also were disputed by Officer 2 (who was not a witness at the time).

**Officer 2's subsequent comments in fact reduce the strength of the comments noted in the FIG notes concerning the Complainant's capabilities and attitude.<sup>6</sup>**

**In the same vein, notes taken at the initial meeting with the Complainant were extensively added to but only after insistence by the Complainant post that meeting.<sup>7</sup>**

**Details of police incident were also reported upon (police log ref 4753/15)**

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<sup>6</sup> Email from Officer 2 to Human Resources dated 17<sup>th</sup> June

<sup>7</sup> 2<sup>nd</sup> revised minutes sent to HR by the Complainant 08/07/15

## 5. Conclusions / Recommendations

1. I have accepted that in this case, the Complaints Commissioner does not have jurisdiction to investigate the original complaint. In my view, to not allow an appeal only gives rise to a greater sense of injustice. The Complainant has lost their right to appeal as the Complainant is no longer an FIG employee. I recommend that there be an appeal process to cover this case and any similar cases given that not to allow an appeal is contrary to the principles of fair play and justice.
2. Any such appeal must be fully investigated by an independent person who is not connected with any of the people involved.
3. An appeal should focus on the allegations made by the Complainant. The Complainant's medical condition and capability or otherwise at work should be of secondary concern and not the main focus.
4. In future, whether or not the Complainant has made it clear under what procedure they wish their complaint to be heard, FIG officers must make it plain what procedure is being used and the reasons for it in the interests of clarity and fairness.
5. I find no inherent fault with either the GP or the HAWP as they stand other than the lack of an appeal process when an employee has subsequently left FIG employment.
6. Any such appeal process should aim to discover the root cause of this storm of discontent which erupted over a very short period of time. I am not satisfied that all evidence has been sought.
7. Consideration be given to recording interviews in such serious cases for the sake of accuracy. If this is not possible or practical, then follow-up interviews should be held to clarify the evidence.
8. The Complainant's position is that they feel the investigative process has not been fair or transparent. I find this to clearly be the case and recommend that, along with the offer of an appeal, FIG recognises that the investigation was flawed in many respects and makes apology for that without, of course, offering any opinion as to what the final outcome of an appeal may be.

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## **Executive Council Paper 163-16 Appendix 2**

### **Government's Response to the Complaints Commissioner In accordance with Section 28 of the Complaints Commissioner's Ordinance in response to:**

**The Principal Complaints Commissioner's Report dated October 2015 (entitled "*Compliant v. FIG*").**

**Response dated: 25<sup>th</sup> January 2016**

#### **Introduction**

The Government thanks the Principal Complaints Commissioner and acknowledges his work in the investigation and production of this Report. The Report was formally released to on 22<sup>nd</sup> January 2016.

Despite the Government's concerns that this investigation and report, is outside the PCC's statutory powers, Government will respond fully to each of the recommendations made.

#### **Government reservations about this Report**

The Principal Complaints Commissioner contends that he has jurisdiction to investigate this matter notwithstanding Part 2 paragraph 20 of Schedule 2 of the Complaints Commissioner's Ordinance to the extent that the circumstances amount to maladministration (quoted at page 4 of the report)

*" is very clear that the PCC does not have jurisdiction in "any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension, or dismissal of service of an Officer or employee of the Government..."*

*..[m]y investigation must therefore only consider the question of maladministration – i.e. was the investigation properly carried out."*

It is the Government's view that the investigation of matters relating to treatment of government employees in the course of their employment falls outside the intended scope of the complaints commissioner's ordinance.

The Principal Complaints Commissioner's contention (at page 5 of his report) that, once ceasing to be an employee of government, a person's employment complaint can, in effect be reopened because they are then a 'member of the public' is concerning for a number of reasons:

- It undermines the clear intention of schedule 2 paragraph 20;
- the individual has alternative rights of redress through the courts under both employment protection and contract laws.

- by investigating matters of this nature (under whoever excuse) the PCC creates the likelihood that he (and potentially the Governor’s Office) could be drawn into any court proceedings.
- in this case the Complainant has no legitimate claim against the government having left voluntarily under enhanced retirement terms.
- the report fails (in many places) to link a finding of error to an injustice or legitimate feeling of injustice
- An abundance of caution is required as, if the complaints commissioner has correctly interpreted his jurisdiction, potentially every internal government employment decision could be held to scrutiny in a similar manner. This makes the government’s ability to managed staff, particularly the most difficult grievance and capability proceedings extremely difficult.

The Government’s contention that the legislative intention of paragraph 20 of schedule 2 is to ensure that FIG as employer is not prejudiced in its ability to employ and manage its own staff within the law. It may not be in the public interest for the government to respond to reports of this nature in the future.

**Recommendations:**

Parts of the Report are in bold text appearing to be a combination of findings and assertions by the Principal Complaints Commissioner. The Government makes no comment on these and focusses only on the eight Conclusions and sic recommendations set out in part 5 of the report.

<p>1. I have accepted that in this case, the Complaints Commissioner does not have jurisdiction to investigate the original complaint. In my view, to not allow an appeal only gives rise to a greater sense of injustice.</p> <p>The Complainant has lost their right to appeal as the Complainant is no longer an FIG employee. I recommend that there be an appeal process to cover this case and any similar cases given that not to allow an appeal is contrary to the principles of fair play and justice</p>	<p><b>Accepted:</b> The Government accepts that Grievances and Complaints can be useful highlighting opportunities to improve.</p> <p>If an employee leaves Government employment during an ongoing Grievance or Harassment at Work Policy Complaint raised by them, the Government will permit the full procedure (including all appeal steps) continue, at the option of the former employee - unless that employee has entered into a compromise agreement with the Government.</p>
<p>2. Any such appeal must be fully investigated by an independent person who is not connected with any of the people</p>	<p><b>Accepted.</b> Whilst preliminary enquiries may be undertaken by line managers, formal Grievances and Harassment at Work Policy Complaints will be cared out or overseen by a director who is</p>

involved	independent of the directorate in which the matter arises
3. An appeal should focus on the allegations made by the Complainant. The Complainant's medical condition and capability or otherwise at work should be of secondary concern and not the main focus	<b>Partially accepted</b> An appeal should focus on all matters relevant to the appeal which may not exclusively relate to allegations made by the Complainant.
4 In future, whether or not the Complainant has made it clear under what procedure they wish their complaint to be heard, FIG officers must make it plain what procedure is being used and the reasons for it in the interests of clarity and fairness	<b>Accepted:</b> The procedure to be used should be identified at the outset and if in doubt will be determined in accordance with the advice of the Government's HR department.
5. I find no inherent fault with either the GP or the HAWP as they stand other than the lack of an appeal process when an employee has subsequently left FIG employment.	<b>Noted</b>
6. Any such appeal process should aim to discover the root cause of this storm of discontent which erupted over a very short period of time. I am not satisfied that all evidence has been sought.	<b>Noted</b>
7. Consideration be given to recording interviews in such serious cases for the sake of accuracy. If this is not possible or practical, then follow-up interviews should be held to clarify the evidence	<b>Agreed</b> The government agrees that accurate records of interviews should be maintained to create an accurate (and preferably agreed) record.
8. The Complainant's position is that they feel the investigative process has not been fair or transparent.  I find this to clearly be the case and recommend that, along with the offer of an appeal, FIG recognises that the investigation was flawed in many respects and makes apology for that without, of course, offering any opinion as to what the final outcome of an appeal may be.	<b>Partially accepted</b> The Government will issue an apology that the investigative procedure has caused the complainant anxiety and upset.  The Complainant has voluntarily left the employment of the Government and has received a significant redundancy package. It appears that there is no remedy that would be available to the Complainant as a consequence of any re-hearing of this matter. Whilst Government's procedures have been changed to permit appeals to be launched even if an individual's employment ends during the process, this change will only apply for current and future employees.  In practice, a re-hearing or appeal can create no benefit for

	the Complainant but the matters raised in the report have been discussed with the Managers involved and the Government has learnt from them to ensure its administrative procedures are improved.
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