

**FORMAL COMPLAINTS ABOUT THE CONDUCT OF  
THE RIGHT HONOURABLE DOMINIC RAAB MP  
DEPUTY PRIME MINISTER  
LORD CHANCELLOR  
AND  
SECRETARY OF STATE FOR JUSTICE**

**INVESTIGATION REPORT  
TO THE PRIME MINISTER**

**ADAM TOLLEY KC**

Fountain Court

London

**20 April 2023**

## A. INTRODUCTION AND TERMS OF REFERENCE

### (1) *Overview*

1. This report is the product of my investigation into the facts surrounding the formal complaints made about the conduct of the Right Honourable Dominic Raab MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice (the “**DPM**”). The report sets out, to the extent consistent with upholding the important principle of confidentiality, my findings of fact. In the interest of transparency, it also addresses the process which I adopted and my approach to evidence, including the representations made by the DPM.
2. The investigation was conducted on the basis of the confidentiality of the identity of those who participated as witnesses. As a result, it has been possible only to include the most general reference to the factual detail in order to avoid identification or the risk of identification.
3. It is important, for a proper understanding of its content, to read the report as a whole.

### (2) *The Terms of Reference and the Complaints*

4. On 23 November 2022 the Prime Minister appointed me as an independent investigator in respect of what were then two formal complaints about the conduct of the DPM. The appointment was made pursuant to published Terms of Reference<sup>1</sup> (the “**Terms of Reference**”).
5. The Terms of Reference state as follows:

*The Prime Minister has appointed Adam Tolley KC to conduct an independent investigation into two formal complaints which have been made about the conduct of the Rt Hon Dominic Raab MP, the Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice.*

*As an independent investigator, Adam Tolley KC has been asked to:*

- a. *establish the specific facts surrounding the formal complaint made on 15 November about Mr Raab’s conduct at the Ministry of Justice;*
- b. *establish the specific facts surrounding the formal complaint made on 15 November about Mr Raab’s conduct at the Foreign, Commonwealth and Development Office.*

*Information provided to the investigator is provided in confidence.*

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<sup>1</sup> [www.gov.uk/government/publications/terms-of-reference-investigation-into-formal-complaints](http://www.gov.uk/government/publications/terms-of-reference-investigation-into-formal-complaints).

*The investigation should be completed as swiftly as possible and the investigator will proceed on that basis.*

*The investigation will be undertaken by Adam Tolley KC with support from officials in the Cabinet Office. Those officials will work under the direction of the investigator and in line with the Civil Service Code.*

*The independent investigator will report to the Prime Minister on his investigation.*

*As set out in the Ministerial Code, the Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.*

*The report of the investigation will be made public.*

*These Terms of Reference may be updated at the discretion of the Prime Minister, in consultation with the investigator.*

6. As appears from the Terms of Reference, the first formal complaint had been made on 15 November 2022. It included (amongst other things) allegations about the conduct of the DPM at the Ministry of Justice (the “**MoJ**”), in his capacity as Lord Chancellor and Secretary of State. For reasons which I explain below, I will refer to this complaint as the “**MoJ Group Complaint**”.
7. The second formal complaint was also made on 15 November 2022. It concerned allegations about the conduct of the DPM at the Foreign Commonwealth and Development Office (the “**FCDO**”), in his capacity as Secretary of State. I will refer to this complaint as the “**FCDO Complaint**”.
8. On 16 November 2022 the DPM wrote a public letter to the Prime Minister in which he requested that the Prime Minister commission an independent investigation into what he referred to as the “claims” (*viz* the MoJ Group Complaint and the FCDO Complaint) as soon as possible. He stated that he would cooperate fully and respect whatever outcome the Prime Minister decided. He went on to state that he had “*never tolerated bullying, and always sought to reinforce and empower the teams of civil servants working in my respective departments*”.
9. The Prime Minister replied on 16 November 2022 to confirm that he agreed that the two formal complaints (referring to the MoJ Group Complaint and the FCDO Complaint) should be investigated independently and fully.

10. A third formal complaint was made on 23 November 2022. It contained allegations about the conduct of the DPM at the Department for Exiting the European Union (“**DExEU**”), in his capacity as Secretary of State. I will refer to this complaint as the “DExEU Complaint”. On 24 November 2022 the Prime Minister asked me, and I agreed, also to establish the specific facts surrounding this complaint, in line with the Terms of Reference. On 25 November 2022, the Government confirmed this publicly. On 5 December 2022 the Minister for the Cabinet Office provided an answer to a written Parliamentary question, stating that the Prime Minister had asked me to establish the specific facts surrounding the DExEU Complaint, in line with the Terms of Reference.
11. Between 25 November 2022 and 13 December 2022 five further formal complaints were made about the DPM’s conduct at the Ministry of Justice, in his capacity as Lord Chancellor and Secretary of State. The Prime Minister asked me, and I agreed, to include these additional complaints as part of the investigation and in line with the Terms of Reference. This was publicly confirmed on 14 December 2022. For obvious reasons, I will refer to these complaints as the “**MoJ Additional Complaints**”.
12. There are therefore eight formal complaints within the Terms of Reference: (1) the MoJ Group Complaint; (2) the FCDO Complaint; (3) the DExEU Complaint; and (4)-(8) the MoJ Additional Complaints. Any other number in this respect which appeared in media reporting was not correct.
13. I will refer for short to the MoJ Group Complaint and the MoJ Additional Complaints as the “**MoJ Complaints**”. I will refer compendiously to the MoJ Complaints, the FCDO Complaint and the DExEU Complaint as “the **Complaints**”.
14. All of the Complaints were treated, for the purpose of the investigation, as arising pursuant to the Ministerial Code. The relevant versions of the Ministerial Code, in force at the material times, were those issued by the then Prime Minister, Mrs May, in January 2018 and by the subsequent Prime Minister, Mr Johnson, in August 2019. So far as necessary, I explain below the nature and content of the Ministerial Code.
15. My role under the Terms of Reference has at all times been to investigate and establish the facts in relation to the Complaints. This has been an investigation into the specific facts surrounding the relevant allegations, rather than an inquiry into general matters

such as the role of a Minister or the relationship between Ministers and the Civil Service.

16. I have, where and to the extent possible, made findings of fact in respect of the Complaints. My reasoning is expressed briefly and in summary terms because a full account would involve the release (or the unacceptable risk of release) of confidential information. I was not asked to advise the Prime Minister as to whether the DPM's conduct amounted to a breach of the Ministerial Code and have not done so. The final decisions based on my findings of fact, as to whether there has been any breach of the Ministerial Code, and if so, the appropriate consequences, are matters for the Prime Minister.

(3) *The Ministerial Code*

17. Ministers of the Crown are appointed as office-holders by His Majesty the King on the advice of the Prime Minister. They are not employees and have no contract. The removal of a minister from office is a matter for the King acting on the advice of his Prime Minister.
18. Since 1945 Prime Ministers have issued written guidance to ministers of the Crown on the standards of conduct expected in the performance of their ministerial duties. This guidance was published for the first time in 1992. In July 1997 it was issued under the title "Ministerial Code: a code of conduct and guidance on procedures for Ministers". This title was shortened to "Ministerial Code" in July 2007.
19. From October 2007 until October 2015, paragraph 1.1 of the Ministerial Code was identified as stating the "General principle" in brief terms, namely:

*Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety.*

20. The version of the Ministerial Code issued in January 2018 (the "**2018 Ministerial Code**") included for the first time<sup>2</sup> an articulated statement of the standards expected

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<sup>2</sup> The July 1997 Ministerial Code had stated, at paragraph 56 (retained in the July 2001 Ministerial Code at paragraph 58 and in the July 2005 Ministerial Code at paragraph 3.1) the somewhat different point that Ministers have a duty (amongst other things) "*to observe the obligations of a good employer with regard to terms and conditions of those who serve them*". These words were removed in the July 2007 Ministerial Code and not replaced.

of a Minister in working relationships. The then Prime Minister, Mrs May, in her foreword to the 2018 Ministerial Code, wrote as follows:

*This Code sets out the standards of behaviour expected from all those who serve in Government. The values it promotes should underpin our conduct as we tackle the challenges of our times and seek to build that fairer Britain, a country of genuine opportunity for all where everyone plays by the same rules. Parliament and Whitehall are special places in our democracy, but they are also places of work too, and exactly the same standards and norms should govern them as govern any other workplace. We need to establish a new culture of respect at the centre of our public life: one in which everyone can feel confident that they are working in a safe and secure environment.*

21. The 2018 Ministerial Code itself was revised to include the following new paragraph which, together with a modified paragraph 1.1, was identified as stating the “General principle”:

*1.1 Ministers of the Crown are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.*

*1.2 Ministers should be professional in all their dealings and treat all those with whom they come into contact with consideration and respect. Working relationships, including with civil servants, ministerial and parliamentary colleagues and parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour wherever it takes place is not consistent with the Ministerial Code and will not be tolerated.*

22. A further revision was made to the 2018 Ministerial Code. Paragraph 5.1, which had since 2007 been concerned with the general principle that Ministers must uphold the political impartiality of the Civil Service, was revised to include the following sentence:

*... Ministers should be professional in their working relationships with the Civil Service and treat all those with whom they come into contact with consideration and respect.*

23. The 2018 Ministerial Code was the version in force at the time of the matters raised in the DExEU Complaint.

24. In August 2019 the then Prime Minister, Mr Johnson, reissued the Ministerial Code (the “**2019 Ministerial Code**”) with his foreword stating (so far as material) as follows:

*... we must uphold the very highest standards of propriety – and this code sets out how we must do so.*

*There must be no bullying and no harassment ...*

25. The 2019 Ministerial Code retained paragraphs 1.1, 1.2 and 5.1 of the 2018 Ministerial Code (set out above). The 2019 Ministerial Code was the version in force at the time of the matters raised in the FCDO Complaint and the MoJ Complaints.
26. In addition, paragraph 1.6 of both the 2018 Ministerial Code and the 2019 Ministerial Code stated:

*Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public. However, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. The Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.*
27. This form of words has been included in the Ministerial Code since the version issued in July 2007. Similar statements had been included previously.
28. The 2019 Ministerial Code revised paragraph 1.4 to provide that the Prime Minister “*may ask the Cabinet Office to investigate the facts of the case*”. It had previously (since July 2007) provided only for the Prime Minister to consult the Cabinet Secretary and to refer the matter to the independent adviser on Ministers’ interests.
29. In view of the nature of the Complaints and the wider context in which they were made, and with no Independent Adviser in post at the time, the Prime Minister decided to appoint me, rather than a Cabinet Office official, to carry out an independent investigation into the facts surrounding the Complaints.
30. Paragraph 1.4 of the Ministerial Code also provides that it is not the role of the Cabinet Secretary or other officials to enforce the Ministerial Code. This or a similar point has been made in all versions of the Ministerial Code since 2001.
31. All of the specific and relevant provisions referred to above (paragraphs 1.1, 1.2, 1.4, 1.6 and 5.1) have been retained in the December 2022 version of the Ministerial Code issued by the Prime Minister.

**(4) *The position of civil servants***

32. Unlike Ministers, civil servants are employees. They are employed by the relevant government department. They will typically have a detailed contract of employment, with a number of written policies which may or may not be contractual (depending on the department).
33. The Civil Service Code (unlike the Ministerial Code) has a statutory basis<sup>3</sup> and is incorporated into the contract of employment of every civil servant. Its core values are: integrity (putting the obligations of public service above personal interest); honesty (being truthful and open); objectivity (basing advice and decisions on rigorous analysis of the evidence); and impartiality (acting solely according to the merits of the case and serving equally well governments of different political persuasions).
34. The Civil Service Code contains more detail in relation to each of these core values. One relevant, or potentially relevant, aspect of this detail relates to the core value of ‘objectivity’. The Civil Service Code states that civil servants must not ignore inconvenient facts or relevant considerations when providing advice or making decisions and must not frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.
35. While it forms part of the contract between a civil servant and her or his employer, the Civil Service Code may also be read as an exhortation to high standards of behaviour. It concludes:

*This Code is part of the contractual relationship between you and your employer. It sets out the high standards of behaviour expected of you which follow from your position in public and national life as a civil servant. You can take pride in living up to these values.*

**(5) *Confidentiality***

36. The Terms of Reference stated that information provided to me as part of the investigation is provided in confidence. This has been and remains a central principle of the investigation. The integrity of the process itself depended on respect for this principle. It was also essential to ensure that no-one was deterred from participating

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<sup>3</sup> Constitutional Reform and Governance Act 2010.



in this process and is similarly important to ensure that others are not deterred from raising issues in the future.

37. Confidentiality was therefore required of and agreed by all participants in the investigation, both during the process and thereafter. It covers both the identities of those involved (save of course for the DPM himself) and the content of all the information provided to me.
38. It was of course necessary for me to use the information provided for the purpose of the investigation, which included putting it to others on an attributable basis for a response or comment and, ultimately, reporting to the Prime Minister. However, that did not – and should not – mean a public loss of confidentiality.
39. Every individual (other than the DPM) who contributed to the investigation did so on this basis. I made it clear to all concerned that I would need to consider carefully, in light of the evidence as a whole, whether it was necessary to identify individuals in my report. With only two exceptions, namely Sir Philip Barton and Antonia Romeo, I have concluded that it is not necessary to do so. The two individuals concerned both understood throughout their involvement in the investigation that it was more likely than not that they would be named in the report. They have been given the opportunity to comment on those sections of the report which refer to them, only for the purpose of ensuring that the loss of confidentiality is no greater than necessary.
40. In accordance with this approach to confidentiality, I have sought to avoid including in my report any fact which could lead directly or indirectly to the identification of any person (other than the two individuals mentioned and the DPM). In my sections on fact-finding, I have therefore avoided the inclusion of any details which would enable such identification. For the same reason, albeit at the risk of some loss of grammatical precision, I have used the pronouns “they” or “their” when referring to particular individuals to avoid the inclusion of a hint as to a person’s identity.
41. This approach to confidentiality means that the report is not as factually detailed as it might otherwise have been; that is in my view the correct outcome. The public interest in maintaining the principle of confidentiality, in this instance and for future investigations of this nature, hugely outweighs any interest that anyone may have in the full extent of the factual detail. In reaching my findings of fact, I have of course

carefully considered and analysed all of the material available as a result of the investigation.

42. During the course of the investigation, there has been a certain amount of media attention. None of the material reported was provided by me or by anyone else involved in the conduct of the investigation. The reports were repeatedly inaccurate in significant respects. More importantly, they had the potential to undermine the integrity of the process, to deter people from coming forward or to affect the evidence provided by those who did. I have had to consider carefully whether and to what extent evidence provided or not provided to me was or may have been affected by such reporting. I have also addressed below the treatment of material that featured only in media reporting and was not provided to the investigation.
43. Some individuals wished to contribute to the investigation only on the basis of anonymity (or non-attributability) to others involved in the process apart from me. In such cases, I had to consider whether it was possible to take their contribution into account, bearing in mind the principle of fairness to the DPM (to enable him to understand and respond to any allegation). Communication of sufficient details of an anonymised allegation would also run the risk of identification contrary to the individual's wishes.
44. Ultimately, there was only one instance in which I decided that I could properly consider such an allegation. It was put to the DPM for a response, because there was sufficient material to enable him fairly to address it and the individual concerned accepted that it would be possible for the DPM to identify them even though their name had been withheld.
45. All of the material obtained in the course of the investigation is available to the Prime Minister, subject to the same terms as to confidentiality as it was given to me.

(5) ***The focus of the investigation***

46. All of the Complaints are concerned with the relationship between the DPM acting in his capacity as a Minister and civil servants acting in the course of their employment. In light of paragraphs 1.1, 1.2 and 5.1 of the 2018 and 2019 Ministerial Codes, my investigation has therefore been concerned with standards of workplace behaviour.

47. The civil servants in question are (or were) employed either as policy officials (concerned with the development, formulation and implementation of government policy) or in the DPM's private office (responsible for the effective administration of his work as a Minister and acting as the interface between the DPM and policy officials).
48. An employer owes a legal duty of care to its employees to ensure their safety and dignity at work. The employer of civil servants is the relevant government department (here, DExEU, FCDO and MoJ) and not the Minister<sup>4</sup>. However, as the foreword to the 2018 Ministerial Code made clear, "*Parliament and Whitehall ... are places of work too, and exactly the same standards and norms should govern them as any other workplace*". The DPM accepted that it was immaterial, for the purpose of the investigation, that he was not in law the employer of the civil servants in question.
49. In view of the content of the Complaints, the focus of the investigation was on the question of bullying ("*... Harassing, bullying or other inappropriate or discriminating behaviour wherever it takes place is not consistent with the Ministerial Code and will not be tolerated*"). 'Bullying' is not a legally defined term and is not a defined term for the purpose of the Ministerial Code. I explain below the approach I took to its meaning for the purpose of the investigation.
50. Harassment and discrimination are statutory concepts, defined in the Equality Act 2010. This type of unlawful behaviour is premised on the affected individual having one or more of the 'protected characteristics' (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)<sup>5</sup>. The evidence obtained in the investigation did not indicate that there was any such unlawful element to the DPM's conduct.
51. The meaning of 'bullying' for the purpose of the Ministerial Code was considered by the High Court of Justice in 2021, in the context of an application by the FDA trade union for judicial review of the approach of the then Prime Minister, Mr Johnson, to a complaint about the conduct of the then Home Secretary in relation to civil servants<sup>6</sup>

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<sup>4</sup> A Minister is, however, treated as the employer of her or his special advisers.

<sup>5</sup> Equality Act 2010, sections 4-12.

<sup>6</sup> *R (FDA) v Prime Minister and Minister for the Civil Service* [2021] EWHC 3279 (Admin), [2022] 4 WLR 5 (Lewis LJ and Steyn J), 6 December 2021.

(the “*FDA Case*”). A number of points may usefully be taken from the judgment in the *FDA Case*.

52. First, in providing that harassment, bullying and discrimination was not consistent with the Ministerial Code and was not to be tolerated, the 2018 Ministerial Code was, viewed objectively, intending to set a standard of behaviour for Ministers in respect of their treatment of civil servants (amongst others)<sup>7</sup>.
53. Secondly, the Court accepted<sup>8</sup> that there was a broad consensus that conduct would fall within the description of ‘bullying’ if it can be characterised as:
- (1) Offensive, intimidating, malicious or insulting behaviour; or
  - (2) Abuse or misuse of power in ways that undermine, humiliate, denigrate or injure the recipient<sup>9</sup>.
54. Thirdly, it was expressly stated<sup>10</sup> that conduct may fall within the first limb of the definition, and so constitute bullying within the meaning of paragraph 1.2 of the Ministerial Code, whether or not the perpetrator is aware or intends that the conduct is offensive, intimidating, malicious or insulting.
55. Fourthly, in addressing the example of a decision to remove some of the responsibilities of a particular civil servant, the Court stated<sup>11</sup> that this may be a legitimate management choice or it may be done with the aim (or intention) of denigrating or humiliating the person concerned. Only in the latter type of case would this type of conduct be regarded as bullying.
56. Fifthly<sup>12</sup>, the Ministerial Code is different from typical workplace policies governing the behaviour of employees, which will usually include both a grievance policy and a disciplinary policy. Such policies often provide a definition of unacceptable behaviour and are structured to take account of a wide range of factors, including: the nature and seriousness of the conduct; the reasons, understanding and intentions of the alleged

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<sup>7</sup> See [49].

<sup>8</sup> At [50].

<sup>9</sup> None of the constituent elements of this accepted characterisation of bullying is a legally defined term. All of the words used are capable of a range of interpretations. Where relevant, I have explained below the sense in which I have used any of these words.

<sup>10</sup> [50], final sentence.

<sup>11</sup> At [51].

<sup>12</sup> See [54].

perpetrator; questions of mitigation including expressions of regret or apologies; and the ability to ensure proper work practices in future. Although disciplinary policies will take such matters into account in various ways, such as by defining certain conduct to be minor, serious or gross misconduct or providing for a range of sanctions, the language and structure of the Ministerial Code do not reflect that ability to consider all relevant matters in deciding how to deal with conduct which falls within the description in paragraph 1.2.

57. The Prime Minister has indicated that for the purpose of this investigation, and any decision he may take, he is content to adopt the approach to bullying explained by the High Court in the FDA Case.
58. Accordingly, in obtaining evidence in this investigation and identifying potentially relevant material for the purpose of the Prime Minister's ultimate decision, I have focused my attention on the matters identified in the FDA Case, which include the following:
  - (1) The facts and context of the conduct of the DPM.
  - (2) The nature and (if relevant) seriousness of the conduct, including whether it was offensive, intimidating, malicious or insulting, or was experienced as such, or was an abuse or misuse of power in ways that undermine, humiliate, denigrate or injure the recipient.
  - (3) The reasons, understanding and intentions of the DPM.
  - (4) If relevant, questions of mitigation including expressions of regret or apologies.
  - (5) The ability to ensure proper work practices in future.
59. The first three such aspects have been my primary focus. I have also addressed the latter two in case they should be regarded as relevant by the Prime Minister.
60. While recognising that neither of the reports referred to here formed part of the analysis set out in the FDA Case, I have also found useful, for the purpose of making findings of fact, the distinction set out in the 2018 report of Dame Sue Owen DCB, "*Review of Arrangements for Tackling Bullying, Harassment and Misconduct in the Civil Service*", between 'abusive' behaviours, i.e. ones that are intended and specifically targeted, and 'abrasive' behaviours, i.e. personal styles, which feel like bullying (or other misconduct) to the individual, but are not intended to be so and where the perpetrator

may often be unaware of the impact. Both such types of behaviour may comprise bullying in the sense used in the FDA Case. I obtained further assistance, in terms of the range of possible behaviours which may be relevant in the context of an allegation of bullying, from the independent inquiry report of Dame Laura Cox DBE, “*The Bullying and Harassment of House of Commons Staff*” (15 October 2018)<sup>13</sup>.

61. My attention has also been drawn to the approach to bullying adopted by Sir Alex Allan in his findings as Independent Adviser into the Conduct of Priti Patel<sup>14</sup>. He stated:

*... The definition of bullying adopted by the Civil Service accepts that legitimate, reasonable and constructive criticism of a worker’s performance will not amount to bullying. It defines bullying as intimidating or insulting behaviour that makes an individual feel uncomfortable, frightened, less respected or put down.*

62. I did not detect any difference of substance between Sir Alex Allan’s approach to the meaning of bullying and that adopted in the FDA Case, which was itself considering Sir Alex Allan’s findings. I have approached my findings of fact on the premise that it is necessary and appropriate to distinguish between “*legitimate, reasonable and constructive criticism*” of an employee’s performance and behaviour capable of being regarded as bullying.

63. In his written representations to the investigation (addressed more generally below), the DPM contended that there must be an objective element to the alleged conduct before one could regard it as bullying. In particular, he suggested that the following question (derived from the test of harassment under section 2 of the Protection from Harassment Act 1997) should form part of the test for determining whether bullying has taken place:

*Did the person know, or ought they to have known, that the conduct in question was i) offensive, intimidating, malicious or insulting; or ii) an abuse or misuse of power which was likely to undermine, humiliate, denigrate or injure the recipient?*

64. This proposed test may not represent an accurate statement of the legal position, at least in relation to the first limb of the test which the High Court adopted in the FDA Case.

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<sup>13</sup> See paragraphs 105-109 in particular.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/937010/Findings\\_of\\_the\\_Independent\\_Adviser.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/937010/Findings_of_the_Independent_Adviser.pdf).

Had it been regarded as relevant, the High Court is likely to have included this proposition in its analysis. It would also not be consistent with the High Court's view that conduct can amount to bullying even though the perpetrator is not aware of and does not intend its adverse effect. In substance, the point may be relevant to the seriousness of the conduct, rather than to its nature. The High Court in the FDA Case did, however, recognise in relation to the second type of bullying conduct (abuse or misuse of power in ways that undermine, humiliate, denigrate or injure the recipient) that intentionality is "*in truth a reflection of that type of conduct*"<sup>15</sup>.

65. In order to ensure the fairness of the process, and given that my role is not to determine as a matter of law what 'bullying' means for the purpose of the Ministerial Code, I have considered the position and made findings of fact with the DPM's representation in mind. I have therefore also addressed the questions whether he "knew or ought to have known" that any relevant conduct was offensive, intimidating, malicious or insulting, or an abuse of misuse of power which was likely to undermine, humiliate, denigrate or injure the recipient.
66. In addition, the DPM made representations that bullying: (1) entails "*some element of targeting*" of an individual or a group, whether or not intentionally; (2) does not "*encompass generalised styles of working applied equally across a department which have an adverse effect on a minority of staff*"; and (3) does not include behaviour which is "*direct, demanding, challenging, rigorous or questioning ... particularly where the recipient is a senior person in a high-stakes professional environment*". For the same reasons as before, I have in making findings of fact given consideration to each of these matters.

**(6) *The production of this report***

67. I have had invaluable assistance throughout the investigation from a number of officials working in the Cabinet Office. They would not welcome being publicly named. This report is, however, my own work and any errors or omissions are mine alone. I have not at any stage been put under any pressure as to what to investigate or not to investigate or as to what findings of fact should or should not be made.

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<sup>15</sup> At [51].

**B. THE INVESTIGATION PROCESS AND APPROACH TO EVIDENCE**

**(1) *The investigation process***

68. The investigation process has throughout been conducted on a consensual basis. The DPM himself requested that the Prime Minister should commission an independent investigation. Individuals who provided information to me did so voluntarily and each was asked specifically to agree (subject to confidentiality) that I might use their information for the purpose of the investigation.
69. I had no legal powers to compel the attendance of a witness or the production of documents. However, with no material exception, I was able to interview every person I wished. Documents were also produced on request by the FCDO and the MoJ and, where relevant, by individuals.
70. The investigation was not a form of litigation and was not governed by any strict rules of procedure or evidence. As to procedure, I sought throughout to ensure that essential principles of fairness and due process were observed. In relation to evidence, I have considered all contributions as a matter of substance, and regardless of form or type. Some types of contribution (such as an account of direct experience) were obviously of greater potential weight than others (such as an account of what one person told another about their experience). I have referred in this report to all such contributions as ‘evidence’, but without intending to suggest that any legal rules applied to matters of admissibility or weight.
71. My team liaised with the FCDO and the MoJ in order to ascertain which individuals:
- (1) had themselves made or participated in one of the Complaints;
  - (2) wished to provide evidence to the investigation in relation to a formal complaint and in respect of conduct which they alleged had been experienced either directly or by someone else;
  - (3) wished to express views or recollections which were not based on direct experience.
72. I sought but did not purport to require the provision of written evidence. A total of 44 such contributions were submitted, many in the form of responses to a template questionnaire (used in part to assess which individuals I should interview) and others in the form of statements.



73. I decided who should be interviewed. A total of 66 interviews were held, mostly in person and some by video conference. I conducted all of the interviews myself. If and to the extent appropriate, I sought to test the accounts provided, although I did not conduct (or purport to conduct) what might be regarded as a cross-examination. The interviews commenced on 20 December 2022. The last interview took place on 3 April 2023. I am grateful to all those interviewed, and all those who provided written contributions, for their cooperation and participation, particularly in circumstances where it must have been difficult for many to do so.
74. Each interviewee was entitled to be accompanied by a colleague or, where relevant, a trade union officer, acting purely in a supporting role. No legal representation was permitted at any interview.
75. A member of my Cabinet Office team attended every interview in order to take a note. A draft of the interview note was provided to each interviewee. The notes were prepared to a high standard of detail and accuracy. In most cases, subject to minor or incidental corrections, the notes were agreed. In a few cases, individuals did not respond to requests to approve the notes of their interview; in the absence of any objection, and in view of the quality of the note-taking, I have treated the notes in such instances as agreed. Some individuals wished to make additional comments or contributions; this was acceptable albeit that such matters were treated separately rather than as corrections to the note of interview.
76. At appropriate points in the process, and with the assistance of the Cabinet Office team, I considered all of the evidence so far obtained in relation to each of the DExEU Complaint, the FCDO Complaint and the MoJ Complaints. I carried out an exercise in selection of the material to be put to the DPM for his response. Separately in relation to each of the DExEU Complaint, the FCDO Complaint and the MoJ Complaints, I provided the DPM with a copy of the Complaint (or Complaints in the case of MoJ) and a summarised written statement of the additional matters arising from the investigation on which I sought his response. Where relevant, I provided supplementary or revised summaries to the DPM to take account of further evidence.
77. Following receipt of each of these packs of materials in relation to the FCDO Complaint and the MoJ Complaints, the DPM made a number of requests for documents. With

the assistance of the FCDO and the MoJ, the documents requested were, so far as legitimately possible, collated and provided to the DPM prior to the relevant interview.

78. The DPM attended four separate interviews, taking approximately 2½ days in total. For convenience, the interviews were structured by reference to each of the DExEU Complaint, the FCDO Complaint and the MoJ Complaints. There was an additional interview in relation to the MoJ Complaints. The DPM engaged seriously and conscientiously with the investigation process. His interviews combined the provision of his evidence with the making of representations. He suggested a number of further interviewees, from whom I selected and interviewed those whom I considered were likely to be able to assist in relation to the allegations which had been made.
79. After the evidence-gathering phase of the investigation, the DPM made written representations. A number of these representations concerned the investigation process and the approach to evidence. It is important that I should respond to those representations in this report and have done so in the sections which follow.
80. I commenced the work necessary to make findings of fact and produce this report only after all of the evidence had been obtained and the DPM had made his written representations.

**(2) *The ‘burden’ and ‘standard’ of proof***

81. As indicated above, the investigation was not governed by strict rules of evidence appropriate to court proceedings. Concepts applicable in legal proceedings such as the ‘burden of proof’ and the ‘standard of proof’ did not apply as such. However, as a general requirement of fairness, I have treated the burden of establishing any proposition as resting on the person who asserted it. I have made findings of fact on the basis that the applicable test is analogous to the balance of probabilities approach in civil proceedings.

**(3) *The scope of the Complaints***

82. The Terms of Reference provide that I should establish the specific facts surrounding the Complaints. The published Terms of Reference refer in terms to the MoJ Group Complaint and the FCDO Complaint. The DExEU Complaint was added on 24 November 2022, at the Prime Minister’s request. The MoJ Additional Complaints were added on 14 December 2022, again at the Prime Minister’s request. In relation to both

the DExEU Complaint and the MoJ Additional Complaints, I was asked to establish the specific facts surrounding the complaints.

83. In his written representations, the DPM contended that the Terms of Reference were limited to the MoJ Group Complaint, the FCDO Complaint and the DExEU Complaint and that if I were to make factual findings in relation to any other matter, that would go beyond the authorised scope of the investigation. Although not stated in terms, the necessary implication was that the MoJ Additional Complaints were outside the Terms of Reference. The DPM's written representations went on to submit that if any matter other than the MoJ Group Complaint, the FCDO Complaint and the DExEU Complaint were to form the basis of findings, that would risk unfairness on the basis of a significant change in the Terms of Reference which was not notified to him.
84. I do not accept these representations about the scope of the Terms of Reference. I notified the DPM on 30 November 2022 that I would establish the specific facts in relation to the DExEU Complaint. Following the Prime Minister's decision on 13 December 2022, I wrote again the following day to inform the DPM that the MoJ Additional Complaints were to be investigated under the Terms of Reference. I stated: "*As the current Terms of Reference allow me to consider this material, they do not need to be amended for this purpose*". I made the same point in the course of my first interview with the DPM (about the DExEU Complaint). The DPM did not prior to his written representations suggest that it was unacceptable for me to investigate and find specific facts in relation to the MoJ Additional Complaints. I wrote to the DPM on 6 March 2023, including copies of all of the MoJ Additional Complaints and also including in the written summary the additional material that I had obtained during the investigation and to which the DPM's response was sought. I did not detect in the DPM's treatment at interview of the MoJ Additional Complaints any lack of attention to detail. Accordingly, I do not consider that there is or has been any unfairness in this respect.
85. I do, however, accept that there is a difference of principle between an allegation made by an individual who is a party to one of the Complaints and an allegation made by an individual who participated in the investigation only as a witness. The latter type of material had the potential to assist in relation to the presence or absence of any pattern in respect of the conduct alleged. But if such material was inconclusive or did not in

any event assist in establishing the specific facts surrounding the Complaints, I have made no finding about it and have not otherwise referred to it.

**(4) Specificity**

86. The DPM's written representations made a further point about the level of detail in the Complaints and in the summaries provided to him, contending that many of the matters included were "*surprisingly non-specific*". He argued that if I were to make factual findings based on non-specific allegations, there would be a risk of unfairness because there would not have been a sufficient opportunity to respond.
87. Where information such as dates and subject-matter of meetings was available, it was provided to the DPM. However, it is fair to acknowledge that some of the allegations made in the Complaints, together with the additional material obtained in the investigation, were based on what was said to have been an accumulation of experience but without specific details such as dates or particular meetings at which conduct is alleged to have occurred.
88. I have taken into account, in relation to the findings I have made, the legitimate difficulty for the DPM in dealing with allegations which were not specific. I should say that, in view of the nature of the allegations, I did not find such a lack of specificity to be particularly surprising. Nor did I regard it as a matter which by itself undermined the merit of any of the Complaints. In relation to those individuals working in private office, they would have had frequent contact with the DPM and often on numerous occasions every day. It was inherently difficult to remember any particular occasion. Unless a person had been keeping a contemporaneous record of events, it was unlikely that they would be able to remember specific details of dates and subject-matter. Meetings with policy officials tended to be less frequent and more focused on a particular subject-matter and so afforded a greater opportunity for specific recollection. Indeed, this was an obvious pattern in terms of the level of detail available in respect of the allegations made: allegations by policy officials tended to have a significantly higher level of specificity. Both specific and non-specific allegations were included within the Terms of Reference. If and to the extent that the allegations were put to the DPM in general terms, I was of course prepared to receive the DPM's response in similar terms and to make findings on that basis.

(5) *Passage of time and lack of earlier complaints*

89. The DPM's written representations made two points in this respect which to an extent I accept as well-founded. First, he referred to the length of time that had passed since the events in question and the inevitable effect on the quality of memory and his corresponding ability to respond.
90. This point was of greatest relevance in relation to the DExEU Complaint, given that the events in question related to a period between July and November 2018 and there were no available documents to assist. It was of less relevance to the FCDO Complaint because of the particular circumstances which gave rise to it and the availability of contemporaneous documents, albeit that the distance of over two years between the events and the investigation was bound to have affected the quality of recollection. It was relevant in part in respect of the MoJ Complaints, which concerned the period from September 2021 to September 2022. Some of the allegations in the MoJ Complaints were based on more detailed recollections than others.
91. In this context, it is worth noting that the typical time limit for a claim in the employment tribunal is three months from the date of the matter complained of, albeit that there is a power to extend time in certain cases and a series of events may be treated as ending at its conclusion. The DPM did not take a technical point in this respect, but observed correctly that the time limit in relation to legal proceedings in the employment tribunal provides an indication of the promptness with which the law expects a complaint to be brought forward.
92. Secondly, the DPM drew attention to the lack of any contemporaneous complaint. The DPM argued that the lack of a contemporaneous complaint should be regarded as a strong indication that the conduct was not regarded at the time as giving rise to legitimate grounds for complaint. The extent to which this argument was valid depended on the specifics of each of the Complaints and I therefore deal with it in the context of each of the Complaints. The DPM made a further point, that the allegations comprised in the Complaints were not raised with him at or close to the time of the events with which the allegations are concerned. I accept that point and have acknowledged that the passage of time since the event in question may in certain respects have diminished the DPM's ability to deal with the content of the Complaints.

There may of course be difficulties for an individual civil servant in feeling able to make a contemporaneous formal complaint about a serving Minister.

**(6) *Access to documents***

93. The nature of the allegations in the Complaints is such that one would not expect much in the way of directly relevant documentary evidence. All of the allegations were in substance about the conduct of the DPM in meetings with policy officials or in daily interactions with members of private office. One would not expect such events to be the subject of documentary record.
94. The FCDO and the MoJ were able to provide all of the documents which the DPM requested, mainly for the purpose of providing factual context in respect of the meetings which were the subject of the allegations in the Complaints. DExEU has obviously ceased to exist and the events which were the subject of the DExEU Complaint were not likely to have been recorded in documents in any event.
95. It became apparent to me during the investigation that there were likely to be numerous ephemeral written communications in the form of text or WhatsApp messages. I was shown some such messages on request, but I did not consider it necessary or appropriate to seek access to the entire history of such messages, in view of their limited relevance (they did not form part of any of the alleged conduct) and the degree of intrusion involved. As a matter of substance, I have been able to reach conclusions on the specific facts surrounding the Complaints; to the limited extent that conclusions were not possible, the availability of such material is most unlikely to have made any difference.

**(7) *'Cross-admissibility' and media coverage***

96. The DPM made a number of points in this respect in his written representations, some of which I found persuasive and others which I did not. The DPM contended, and I agree, that each allegation in the Complaints should be subject to separate and careful scrutiny. He also contended, and I also agree, that it would not be appropriate for the number of allegations alone to lend weight to their credibility. However, a degree of similarity amongst allegations may be relevant in establishing a pattern of conduct; the extent to which it would or might do so would depend on the particular circumstances, including the degree of independence of the sources of evidence.

97. The DPM went further in his written representations and argued that, in view of the significant level of media reporting and the timing of the allegations in the Complaints, I should not treat the evidence of any witness as “*cross-admissible*” in relation to any other matter unless I was sure that the evidence was not in any way influenced – whether consciously or subconsciously – as a result of their exposure to or knowledge of allegations made by others. He submitted that I should exclude from consideration allegations which: resemble conduct reported in the press; were made after the relevant press reporting; and are not corroborated by other witnesses. The DPM made it clear that he did not suggest that there had been deliberate collusion to give false evidence.
98. It seems to me that these contentions go significantly further than necessary for the purpose of the conduct of a fair investigation of this kind. As I have said, the investigation was not a form of litigation procedure. I have not been required to apply and have not applied strict rules of evidence, still less the sort of rules which would be relevant in the context of a criminal trial (and in light of applicable statutory requirements<sup>16</sup>).
99. I accept that I should have in mind the potentially prejudicial effect of media reporting and should take into account the risk that allegations were prompted or embellished by exposure to such reporting or by unwitting influence arising from knowledge of another person’s complaint. I have also considered whether and the extent to which the subject-matter of the Complaints was discussed by individuals making, participating in or supporting the Complaints. It may also be relevant for the Prime Minister to have in mind the extent to which allegations which were the subject of the Complaints have also been communicated directly to the media and the reason or reasons why that was done. I have addressed these matters, so far as possible and to the extent relevant, in the context of each of the Complaints.

**(8) *Allegations reported only in the media***

100. If and to the extent that allegations have been reported in the media but have not been the subject of any evidence provided to me, I have excluded them entirely from consideration. All such allegations were made anonymously. It would be contrary to the essential requirement of fairness to take any such matter into account.

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<sup>16</sup> For example, the rules on the admissibility of ‘bad character’ evidence in the Criminal Justice Act 2003 (Part 11, Chapter 1).

101. There has been a series of inaccurate and misleading media reports about the investigation. I do not propose to set out a list. The level and frequency of such media reports, and the perceived risk that some individuals were prepared to use others' confidential information for their own purposes, had significant potential to deter people from coming forward as witnesses. I cannot assess whether or to what extent this in fact happened.



**C. FINDINGS OF FACT: GENERAL**

**(1) *Introduction***

102. I have in this section set out as many generally applicable findings of fact as possible, without thereby disclosing, or risking the disclosure, of confidential information. I acknowledge the difficulty for participants, many of whom went to considerable effort to assist the investigation and some of whom were taking a risk in respect of their careers.
103. I have concluded that it is necessary to include details of evidence provided by two individuals (Sir Philip Barton and Antonia Romeo) because the findings were sufficiently important and there was no practicable means of making those findings public without disclosure of their identities. Those individuals have been given the opportunity to comment on the content of the report only in so far as it referred to them and only for the purpose of ensuring that the release of confidential information went no further than necessary.

**(2) *The timing of the Complaints***

104. The MoJ Group Complaint had in substance been communicated within the MoJ in early March 2022. It was not treated as having been made pursuant to any particular procedure. Steps were taken internally within the MoJ to address the content of the MoJ Group Complaint. The MoJ Group Complaint was not put to the DPM in March 2022 and there is no evidence to suggest that he was shown a copy of it. It was released to the media and many of the allegations were made public in November 2022.
105. The MoJ Group Complaint, once treated as a formal complaint in November 2022 and this investigation had been commissioned, led directly to the making of the MoJ Additional Complaints. The MoJ Additional Complaints could have been made earlier, although that timing did not make a material difference to their cogency or the DPM's ability to address them.
106. The FCDO Complaint was also made in view of the media reporting about the MoJ Group Complaint. The specific nature of the circumstances of the FCDO Complaint meant that the passage of time did not materially diminish the DPM's ability to respond. However, other matters which arose in the course of the investigation into the FCDO

Complaint could not be pursued as if they had themselves been the subject of a complaint.

107. The DExEU Complaint was made after the investigation had been announced. It was promptly added to the Terms of Reference. Some of the same subject-matter had been raised by the individuals concerned with Cabinet Office in March 2019 (after the DPM had ceased to be the relevant Secretary of State and had left the Government) but it was not intended to be pursued and was not pursued. Cabinet Office considered that those matters did not warrant an investigation. There were real difficulties in my investigating matters which were said to have occurred more than four years earlier. No contextual documents were available. The allegations were inevitably less specific and it was more difficult for the DPM to respond.

(3) *The different roles of a Minister and a line manager*

108. A Minister does not have line management responsibilities for the civil servants who work as policy officials in the relevant department or those who work in the private office. Such line management responsibility resides within the department itself, ultimately with the Permanent Secretary as the department's most senior civil servant.
109. However, a Minister may to a significant extent depend, in order to progress his or her policies and other goals, on the quality of work provided by civil servants, in the form of advice (including written submissions and other papers) and general management and administration.
110. There is an unresolved policy issue of some general relevance, material to some of my findings, as to the extent to which it is appropriate for a Minister to provide comments to civil servants in the nature of performance feedback. In this context, there is of course an important difference between a constructive comment to the effect that a piece of work can be improved by taking a certain step and an unconstructive and unfair general criticism, and there is a range of intermediate possibilities. There can be a degree of real urgency in relation to a Minister's priorities and it may be a source of frustration if those priorities cannot be successfully pursued.
111. Many of the civil servants working in a Minister's private office (engaged in the role of 'Private Secretary' or 'Assistant Private Secretary') are relatively junior in status or grade. The most senior private office official, the 'Principal Private Secretary', would normally be at the level of the Senior Civil Service ("SCS"), but is sometimes at the

grade immediately below. Everyone else employed in the private office will be non-SCS.

112. There are a range of grades of policy official. At the apex of any department is the Permanent Secretary. There may be a Second Permanent Secretary. Within the SCS grades, there will then be Director Generals, Directors and Deputy Directors. A 'grade 7' official is two grades below SCS.

**(4) *The DPM's style of working as a Minister***

113. In light of the nature of the Complaints, which are concerned with the manner in which the DPM interacts with civil servants, it is necessary to make some general findings about the DPM's style of working as a Minister in order to provide context for the findings which follow in relation to the Complaints.

114. In view of the evidence which I received, I find as follows. These findings are relevant for a number of reasons: to set the context for the interactions between the DPM and civil servants; to establish some parameters as to the inherent probabilities of what occurred on particular occasions; and to provide the foundation for certain of my findings as to what the DPM knew or ought reasonably to have known about his conduct. The DPM is highly intelligent, pays close attention to detail and seeks to make decisions based on evidence. He has strong principles and is guided by them in practice. He works assiduously and typically from about 0730 until about 2200, Monday to Thursday. This includes working during the car journey to Westminster and from Westminster to home. Fridays are allocated to constituency work. He usually does extensive work on weekends also. He makes a determined effort to use his working time effectively. He seeks to use meetings with policy officials in order to test the relevant material and make a decision.

115. The DPM's style is, in his own words, inquisitorial, direct, impatient and fastidious. The DPM told me, and I accept, that he tends to prepare extensively for meetings, will typically have read all of the key papers and identified questions in advance. He explained that he does not wish to receive a recitation of papers which he has already read. He will focus on the points of interest to him.

116. An important part of the DPM's general approach as a Minister is, as he explained and I accept, to seek to ensure that responsibility for the performance of any task is allocated

to a suitable, identified individual. He will then operate on the basis that the individual is accountable for the performance of the task in question.

117. In the course of his ministerial work, the DPM often encounters what he genuinely sees as frustrations in respect of the quality of work done, its speed of production and the extent to which it implements his policy decisions. It has not been necessary to make any finding as to whether any of those frustrations was well-founded in any particular case. He prefers to receive papers in a set format so that he can quickly assimilate the information in question. If work is not provided to his satisfaction, he will in general say so. If in the course of a meeting an attendee does not in the DPM's view answer a question in a manner which he regards as direct and straightforward, the DPM will likely interrupt. One of the key questions in relation to the MoJ Complaints and, to a lesser extent, the DExEU Complaint is the extent to which the DPM's style of conducting a meeting, and in particular when frustrated, goes beyond what would normally be regarded as acceptable. I have addressed this question in the context of the relevant Complaints.
118. The DPM often operates on the basis that once he has made a policy decision, it should not be revisited subsequently by civil servants. He refers to this, when it occurs, as 'relitigating his steers'. Views can, however, reasonably differ as to whether an earlier policy decision (or 'steer') was truly final, particularly in light of new or additional circumstances which may arise. Civil servants have a duty to give informed and impartial advice and Ministers have an obligation (under paragraph 5.2 of the Ministerial Code) to consider it.
119. The DPM tends to take a clear view of an issue, whatever it may comprise. This applies across the range of matters with which he deals, from policy decisions to the presentational format of papers. In the context of the investigation, this approach manifested itself in what I considered to be a somewhat absolutist approach in his response to certain points, such as whether a particular conversation had occurred, either at all or in a certain way. His responses were frequently put in 'black or white' terms, with no room for nuance even where nuance might reasonably be expected. I did not find this approach persuasive. However, I have in every instance of factual dispute considered what appeared to me to be the inherent probabilities, the evidence as a whole and the overall context before reaching any conclusion.

120. I heard from a number of people that the DPM is ‘inconsistent’ or ‘unpredictable’, either in the sense that having offered criticism on one occasion, he may offer praise at the next, or vice versa, or in the sense of his ‘steer’ changing from one occasion to the next (and without any acknowledgment that it had). Having considered these points in light of all the evidence, I do not find that these particular criticisms are well-founded. The available evidence did not enable me to make a finding as to the DPM changing his ‘steer’. In relation to the question of variable criticism and praise, while there may be an issue as to the way in which he provides critical feedback, what became apparent to me is that the DPM does not, after an occasion of criticism, then keep track such that on the next occasion the same official will be disadvantaged. The DPM tends to ‘wipe the slate clean’ from one occasion to the next; he will neither expect to offer criticism nor necessarily offer it. What is, however, also apparent is that some officials, not used to the DPM’s approach, may reasonably anticipate that one occasion of criticism from the DPM will necessarily lead to another. The anticipation of criticism may well be inhibiting to good performance.

(5) *The use of physical gestures*

121. I heard a good deal of evidence about the DPM’s use of physical gestures in communication. At the most extreme, and which would have been unacceptable, this was put as extending his hand directly out towards another person’s face with a view to making them stop talking. Another example of such an allegation was loud banging of the table to make a point. At the opposite end of the spectrum, which would be regarded as acceptable, suggestions were made of the use of a defensive gesture to suggest that a person should hold off from speaking further, accompanied by a verbal explanation, or the use of a finger extended downwards to make a particular point.

122. It seemed to me that there was, and is, significant scope for misunderstanding in relation to the use of physical gestures as part of communication. I was not convinced that the DPM used physical gestures in a threatening way, although those unused to this style of communication might well have found it disconcerting. I did not consider that there was any basis for legitimate criticism in this respect. The ‘hand out’ gesture was not in my view nearly as emphatic as the allegation suggested. Nor did I consider that any ‘banging’ of the table was such as would be likely to cause alarm.

(6) *No shouting or swearing*

123. There was no persuasive evidence that the DPM shouted at individuals. I also conclude that he did not swear at any individual or swear more generally.

(7) *Intention and alleged vindictiveness*

124. Some of the Complaints included the contention that the DPM intended to conduct himself in the way that he did. I am sure that this is correct. There was no question on the evidence of him losing control.

125. What was sometimes suggested in the context of the MoJ Additional Complaints was that the DPM is vindictive and intended to harm those to whom his conduct was directed. Ultimately, this was presented as a matter of argument by way of inference from the facts. Although I accept that these views were genuinely held, I do not consider that there is any sound basis for such an allegation. I accept, as the DPM contended, that he is focused on delivery of what he regards as important outcomes and he would have no reason to behave in the vindictive manner alleged. There is, however, one specific allegation of vindictiveness in relation to the FCDO Complaint, which I address below.

(8) *The communication of warnings about conduct or the effect of conduct*

126. I find that at no stage prior to the investigation did anyone communicate to the DPM in terms that his conduct in relation to civil servants was or might amount to a form of bullying, in that there was no evidence that the word ‘bullying’ (or any cognate) was ever used in any communication to him. However, as I set out below, there were certain communications which sought to alert the DPM to the existence of an issue as to his behaviour.

127. In the context of the FCDO Complaint, there was a factual dispute as to whether, following a particular meeting at which the DPM referred, in the context of the work of the civil servants present, to the question of their compliance with the Civil Service Code, Sir Philip (the Permanent Secretary) communicated to the DPM that he should not do this. The DPM denied that there had been any such communication. The DPM suggested that, in view of media reporting of the allegations against him (the DPM), Sir Philip was under pressure to explain what he had done in respect of the allegations. The DPM also questioned why there were no minutes of the discussion.

128. Sir Philip's evidence was convincing and I do not think that he had any good reason to make up such a conversation with a view to protecting himself after the event. None of the details of the FCDO Complaint has been the subject of media reporting and there would therefore have been no reason for Sir Philip to react defensively. Contrary to the DPM's assertion, I did not regard it as plausible that the meeting should have been minuted or the occasion treated as though the DPM were an employee and Sir Philip the representative of his employer.
129. In the context of the MoJ Complaints, there was a similar factual dispute between Antonia Romeo (Permanent Secretary) and the DPM as to whether she had on a number of occasions (said to have been 9 March 2022, 14 July 2022 and 27 October 2022), drawn to his attention concerns about his tone and behaviour in interactions with civil servants, as distinct from matters of work pressure and overall departmental morale. Ms Romeo produced notes of these conversations, which I was satisfied were derived from her contemporaneous records. The DPM sought to challenge the reliability of these notes on various grounds. I was not convinced by those challenges and did not consider that Ms Romeo would have had any reason to manufacture or manipulate the content of these notes. The consequent findings are as follows:
- (1) On 9 March 2022 Ms Romeo told the DPM that there had been complaints about his behaviour in relation to civil servants, although she did not provide any specific information. She made the point that if he had performance concerns about any particular official, he should not seek to address them in the context of a meeting but should rather address them to her.
  - (2) A similar point was conveyed on 14 July 2022. Ms Romeo acknowledged that the DPM may be frustrated when the department did not deliver what he required, but said that if such an occasion arose, and she was not present, he should speak to her about it afterwards rather than express frustration to the officials in question.
130. The dispute about the 27 October 2022 conversation was in substance a reflection of the dispute about the earlier conversations. None of the Complaints allege any unacceptable conduct in the period following the DPM's reappointment as Secretary of State for Justice. It is not necessary in those circumstances to go further.

131. The relevance of these findings requires some further explanation. It is not suggested that Ms Romeo told the DPM that any complaints about him were well-founded or conveyed any specific allegation. Nor is it suggested that the DPM was told that his conduct was or might amount to bullying. The relevance of the findings is that the DPM had been told on 9 March 2022, and reminded on 14 July 2022, that he should regulate his behaviour by not communicating frustration directly to individual civil servants in the context of particular meetings. In addition, and in view of the DPM's dispute as to whether these conversations occurred, I infer that he did not accept that there was any legitimate basis for such regulation of his behaviour.

(8) *The resilience of officials*

132. The DPM did not at any time suggest that any of the Complaints was derived from a so-called 'snowflake' quality or allege that any of the individuals concerned should be so regarded.

133. The DPM made the point, which I accept, that he (and any Minister) is reasonably entitled to expect a certain level of resilience from civil servants, particularly those who are at SCS level. So far as may be relevant, I did not detect any material lack of resilience in those who had made the Complaints. Most of the individuals in question had many years of experience working closely with Ministers.

134. In view of the need to maintain confidentiality, I cannot state detailed findings about the complainants. I can record the following points:

- (1) There was a general acceptance of the propositions that Ministers are entitled to have high standards and to make constructive criticism of work.
- (2) It was also accepted that it is the role of the Civil Service to adapt to Ministers' working preferences and in each of the relevant departments, that is what individuals strove to achieve.
- (3) The individuals involved in private office in each of the departments went to considerable lengths to respond to the DPM's working preferences (by, for example, setting up arrangements to archive submissions and enable them to be retrieved quickly or to calibrate the amount of work provided to the DPM for car journeys).



(4) The DPM recognised the high quality of the performance of many civil servants. Although there were from time to time issues which he sought to address, there were also considerable achievements which he acknowledged and appreciated.

135. Although the merit of each Complaint varied, I find that the complainants were in every case acting in good faith in raising concerns which they genuinely held. In some cases, their experience involved a significant adverse impact on their health. While I have not been able to reach any findings on whether such effects were in fact caused by the DPM's conduct, I recognise and accept that the impacts communicated to me had genuinely been experienced.

## **D. THE DEXEU COMPLAINT**

### **(1) *Introduction***

136. Only a limited amount of information can be included in the report in respect of my findings about the DEXEU Complaint because confidential information about individuals would otherwise be made public, contrary to their rights.
137. The DEXEU Complaint is concerned with interactions between the DPM and civil servants. The DPM was Secretary of State for Exiting the European Union between 13 July 2018 and 15 November 2018 (the “**DEXEU Period**”).

### **(2) *Findings of fact***

138. The DEXEU Complaint was made on 21 November 2022. It followed media reporting and was made in the knowledge that the MoJ Group Complaint and the FCDO Complaint had been made and were to be investigated independently. This timing was approximately four years after the end of the DEXEU Period.
139. The DEXEU Period was intense and politically fraught. This was the DPM’s first experience as a Secretary of State. The DPM considered that some officials were being deliberately unhelpful. It was not possible for me to form any view about such matters, which did not in any event concern the individuals who had made the DEXEU Complaint.
140. There were genuine limitations on the DPM’s ability to deal fairly with the DEXEU Complaint, in view of the significant passage of time and the lack of specificity of most of the allegations (in terms of dates or contextual circumstance). In addition, some of the allegations were based on information provided by individuals who did not wish to participate in the investigation.
141. Although the DEXEU Complaint was made with knowledge of the fact (but not the content) of the MoJ Group Complaint and the FCDO Complaint, there was no sign of collusion, advertent or inadvertent, which might have affected the evidence.
142. Some of the content of the DEXEU Complaint was communicated by the individuals concerned to the Cabinet Office in March 2019. However, no action was requested or expected and the Cabinet Office considered that an investigation was not necessary.
143. By his own account, the DPM is demanding, driven and focused on detail. He works long hours. He can be impatient and will become frustrated when others do not deliver

what he requires, either in substance or form, or he perceives that others are obstructing his efforts. Such frustration is likely to have been expressed by the DPM on occasion, particularly in the high-pressure and tense working environment involved.

144. I find that the DPM's conduct in the DExEU Period was not offensive, malicious or insulting. It could reasonably have been and was experienced as intimidating, in the sense of unreasonably demanding. In view of the passage of time and the lack of available evidence, I have not been able to make any finding as to whether his conduct was in fact intimidating in this sense. I found no evidence to suggest any abuse or misuse of power.
145. Certain individuals genuinely believed that they had suffered significant negative impacts on their psychological well-being as a result of their interactions with the DPM. Although they also said that they attributed these impacts to the DPM's conduct, it was not possible in view of the available evidence for me to form any conclusion as to cause and effect.
146. I find that the DPM did not intend any adverse effect on others. Some of his conduct was undoubtedly experienced as abrasive and difficult and that experience was to some extent inevitable, particularly in the unusually tense and high-pressure work environment of the DExEU Period. It appears to me that the DPM was so focused on achieving his desired outcomes, in what he genuinely believed to be the public interest, that there were occasions when he did not take into account, fully or at all, his likely effect on some others.
147. On the basis of the evidence I received, at no stage during the DExEU Period did anyone draw to the DPM's attention that his conduct was in any way problematic. No-one used the term 'bullying' (or anything similar) in discussion with him.
148. The DPM did not know and could not reasonably have been aware of what was said to have been the impact of his conduct on certain individuals. No such matter was brought to his attention prior to the DExEU Complaint itself.

**E. THE FCDO COMPLAINT**

**(1) *Introduction***

149. The circumstances of the FCDO Complaint are such that very few details can be included in the report without involving a breach of confidentiality.
150. The FCDO Complaint is concerned with interactions between the DPM and civil servants. The DPM was Secretary of State for the FCO (subsequently FCDO) between 24 July 2019 and 15 September 2021 (the “**FCDO Period**”).

**(2) *Findings of fact***

151. The FCDO Complaint was submitted on 15 November 2022. Although it concerns events during the FCDO Period, its level of specificity was sufficient to enable the DPM to deal with it fairly. It would have been possible to have made the complaint earlier, although the individual in question was encouraged by line management not to pursue the matter at the time of the events. The investigation in relation to the FCDO Complaint has not been affected in any way by media reporting.
152. The DPM exercised his executive judgment in a particular way, which he was entitled to do as a form of legitimate management choice. The DPM had formed an adverse view as to the way in which civil servants had acted in relation to an ongoing work project. For the purpose of analysis in this report, I have assumed (without so concluding) that the DPM was entitled to form an adverse view, although I should also record that even on this premise there were no grounds for disciplinary action. However, as part of the process towards and implementation of this management choice he acted in a way which was intimidating, in the sense of unreasonably and persistently aggressive in the context of a workplace meeting. His conduct also involved an abuse or misuse of power in a way that undermines or humiliates. In particular, he went beyond what was reasonably necessary in order to give effect to his decision and introduced a punitive element. His conduct was bound to be experienced as undermining or humiliating by the affected individual, and it was so experienced. I infer that the DPM must have been aware of this effect; at the very least, he ought reasonably to have been so aware.
153. In addition, on a separate but closely related occasion concerned with the same subject-matter, the DPM referred to the Civil Service Code in a way which could reasonably

have been understood as suggesting that those involved had acted in breach of the Civil Service Code (and so would have been in breach of their contracts of employment). This had a significant adverse effect on a particular individual (a different person from the individual who made the FCDO Complaint), who took it seriously. The DPM's conduct was a form of intimidating behaviour, in the sense of conveying a threat of unspecified disciplinary action. He did not target any individual, nor intend to threaten anyone with disciplinary action. However, he ought to have realised that referring in this way to the Civil Service Code could have been understood as such a threat.

154. After this (second) occasion, Sir Philip Barton told the DPM in a private and informal meeting that he should not threaten officials with reference to the Civil Service Code. The DPM disputed that any such conversation had occurred. The discussion was not minuted or otherwise recorded. On this point, I prefer the evidence of Sir Philip. He had no reason to make up such a conversation with a view to protecting himself; the FCDO Complaint has not been made public. Nor was Sir Philip acting as though he were the DPM's employer or manager.
155. I also find that neither Sir Philip, nor anyone else, used the word 'bullying' or anything similar in communication with the DPM.
156. In so far as may be relevant, there are some findings of fact which could be taken into account as potential mitigating (but not justifying) circumstances in respect of the DPM's conduct:
  - (1) His belief in the correctness of his view of events is genuinely held.
  - (2) There was or could reasonably be thought to have been an element of provocation, in the sense that others underestimated the extent to which the DPM wished to be involved in the detail of decision-making.
  - (3) The events in question took place a considerable time before the FCDO Complaint was made.
  - (4) The FCDO Complaints related only to part of the FCDO Period.

## **F. THE MOJ COMPLAINTS**

### **(1) *Introduction***

157. Only a limited amount of information can be included in the report in respect of my findings about the MoJ Complaints because confidential information about individuals would otherwise be made public in breach of confidence.
158. The MoJ Complaints are concerned with interactions between the DPM and civil servants, some working in private office and others as policy officials. The MoJ Complaints concern the first period of the DPM’s appointment as Secretary of State for Justice and Lord Chancellor, from 15 September 2021 to 6 September 2022 (the “**MoJ Period**”).
159. It is necessary to explain separately certain of the material facts about each of the MoJ Group Complaint and the MoJ Additional Complaints. I then set out my findings relevant to the MoJ Complaints.

### **(2) *The MoJ Group Complaint***

160. The MoJ Group Complaint was prepared by a group of non-SCS policy officials and is signed collectively. It was the product of discussions within an informal network of civil servants whose number is uncertain. For the purpose of the investigation, nine individuals identified themselves as parties to the MoJ Group Complaint.
161. Only some of those individuals had any direct experience of the DPM; some had never met him at all but were seeking to support their colleagues. Each individual was entirely open about what they could or could not say. The substantive content of the MoJ Group Complaint is therefore limited but it paved the way for the MoJ Additional Complaints and so too, albeit indirectly, the FCDO Complaint and the DExEU Complaint.
162. The MoJ Group Complaint was originally submitted internally within MoJ in March 2022. It was then not regarded as reaching the threshold for escalation. The MoJ took certain internal steps in response.
163. On 15 November 2022 the MoJ Group Complaint was resubmitted on the express basis that it should be treated as a formal complaint. Its content was the same as it had been in March 2022, although the circumstances surrounding the MoJ Group Complaint were then materially different.

(3) *The MoJ Additional Complaints*

164. All of the MoJ Additional Complaints were submitted in the period between 25 November 2022 and 13 December 2022, after the announcement of the investigation and its extension to include the DExEU Complaint.
165. There are five MoJ Additional Complaints. Some were submitted by senior (SCS level) policy officials and others by private office officials, both SCS and non-SCS level.

(4) *Findings of fact*

166. At the time of the DPM's appointment, he had identified a number of serious problems which required attention. He considered that the department required significantly more in the way of oversight and accountability.
167. The DPM's policy priorities included the Bill of Rights and reform of the parole system. The DPM perceived what he described as 'cultural resistance' to these, amongst other, policies. This perception was regarded by the civil servants concerned as highly contentious and was emphatically rejected by many, particularly in view of the obligation to give informed and impartial advice. It was not necessary for me to resolve this dispute because the relevant findings of fact about the DPM's behaviour are not affected by the question whether he was or was not correct to have held this perception. Accordingly, for the purpose only of the analysis which follows, I have made my findings of fact on the assumed basis (but without concluding) that the DPM's perception was well-founded.
168. Most of the media reporting related to the investigation has concerned the MoJ. I could not form any reasoned view as to the source or sources within the MoJ of the media reporting. I did not regard it as appropriate to give less weight to *all* of the evidence in respect of the MoJ Complaints because some unidentifiable individuals, who may or may not also have participated in the investigation, had also chosen to engage with the media on an anonymous basis. However, in view of general concerns arising from such engagement, I have had regard in my findings to the following factors: the potentially prejudicial effect to the DPM of media reporting; the risk that allegations were prompted or embellished by exposure to such reporting or by unwitting influence arising from knowledge of another person's complaint; and whether and the extent to which the subject-matter of the MoJ Complaints was discussed by individuals making, participating in or supporting the MoJ Complaints (or other Complaints).

169. The significance of the MoJ Group Complaint is that it led to the making of all of the other Complaints. The participants in the MoJ Group Complaint deserve credit for their courage in coming forward. It cannot have been easy for them to do so and their motivation was to stand up for more senior colleagues whose experiences they had observed at one remove. Having interviewed almost all of the individuals closely involved, I find that they are sincere and committed civil servants, with no ulterior agenda.
170. However, the composition and content of the MoJ Group Complaint make it unsuitable as a basis for any findings about the DPM's conduct. In particular:
- (1) It was the product of discussions, involving a large number of individuals, over an extended period in February and March 2022.
  - (2) It was drafted by 'committee', with multiple contributors.
  - (3) It is focused only to a limited extent on the DPM himself, with references also to Ministers (plural) and other civil servants.
  - (4) It uses the language of a "*perverse culture of fear*" without a clear explanation of what it is said to mean. I received different explanations from different individuals.
  - (5) It refers to a significant extent to material in relation to effects on colleagues about which none of the interviewees in respect of the MoJ Group Complaint knew anything specific.
  - (6) It made allegations about unreasonable work deadlines which were not persuasively instantiated by any witness.
171. In relation to the MoJ Additional Complaints, I have considered those allegations which are included in the MoJ Additional Complaints themselves separately from those allegations which were raised by witnesses but which do not form part of the MoJ Additional Complaints. Where the latter type of allegation was closely linked to one of the MoJ Additional Complaints, I have considered, and taken into account in my findings below, whether it sheds any light on the presence or absence of a relevant pattern of conduct. If it raised a separate allegation, which was not the subject of an MoJ Additional Complaint, it was not appropriate or necessary to find any facts about it.



172. I can deal with my specific findings of fact about the MoJ Additional Complaints on a compendious basis, using particular matters to explain my findings:

- (1) It is likely that there had been some discussion and cooperation between certain relevant individuals before the MoJ Additional Complaints were submitted. However, I did not detect any sense in which they attempted to tailor their evidence to fit with any other person's.
- (2) On a number of occasions of meetings with policy officials (albeit by no means in every case) the DPM acted in a manner which was intimidating, in the sense of going further than was necessary or appropriate in delivering critical feedback and also insulting, in the sense of making unconstructive critical comments about the quality of work done (whether or not as a matter of substance any criticism was justified). Specific instances of this type of conduct are set out below.
- (3) The DPM sometimes takes a strong view that officials should have been prepared in advance to answer his questions at a meeting and, in the event that they cannot do so, offers largely unconstructive criticism about the matter. A particular phrase used by the DPM was to complain about the absence of what he referred to as 'basic information' or 'the basics'. The public airing (in the context of a meeting) of a comment of this kind, where others present are not or may not be well-placed to judge whether the criticism is well-founded, is likely to be experienced as an unfairly personal criticism by the individual to whom the comment is directed and was so experienced by some individuals.
- (4) The same type of interaction could also occur when the DPM felt frustrated that his policy objectives were not being implemented with sufficient commitment. There was an occasion when I find, on balance, that the DPM referred to 'obstructiveness' on the part of the relevant team. The DPM held the view that there was what he regarded as a 'cultural resistance' within the MoJ to his reforms and it is more likely than not that this view was manifested by the DPM in his comments. One individual perceived the comment to have been directed personally and unfairly at him and was insulted by it. I do not find that the DPM intended his comment personally, but it was reasonably interpreted in that way.

- (5) There was a similar occasion when the DPM was frustrated that one of his steers about a proposed reform had not been implemented in the paper presented. For the purpose of analysis, it does not matter whether the DPM's frustration was or was not well-founded and so I have assumed (without concluding) that the DPM was legitimately frustrated. There was a stark dispute as to whether the DPM had described the work done as 'utterly useless' and 'woeful'. On balance, I think that these were the words used; they comprised criticism that was not in the nature of constructive feedback. They were reasonably understood as insulting personal criticism.
- (6) It is likely that at the same meeting the DPM referred to the Civil Service Code, in the context of expressing his frustration that officials were not doing what he had asked of them. However, this was not intended as a threat of disciplinary action and was not understood as such.
- (7) I find that the DPM did not intend by the conduct described to upset or humiliate. He was typically so focused on what he regards as his desired outcome and how – as he saw it - to achieve that outcome effectively that he did not always have in mind the impact of his approach at the level of the individual who was affected by it.
- (8) The DPM did not target anyone for a specific type of treatment. On the contrary, he appears to have adopted the same style throughout (at least until the commencement of the investigation). However, he ought to have realised earlier that some individuals would find it difficult to cope with his style and should have adjusted his behaviour accordingly.
- (9) The DPM's approach to accountability and responsibility may on occasion be applied with undue inflexibility. For example, his dissatisfaction that a particular, if relatively minor, issue had not been resolved after an extended period of time led him to press repeatedly, to identify the very junior official responsible and to the appearance of a more senior official to apologise to the DPM. However, neither of those officials gave evidence that they had been adversely affected and the individual who raised the matter did not suggest that they had been significantly affected by it.

- (10) A further similar example is that the DPM made a point of requiring a meeting with a policy official for the sole purpose of criticising them for their team's failure to deliver a submission on time and without having requested in advance any extension. There was no underlying urgency. For the individual in question, the experience was humiliating and upsetting.
- (11) In relation to the subject of undue interrupting, which featured in all of the MoJ Additional Complaints, most of the experiences described are likely to be attributable to the DPM's approach to preparation and his desire to use the time in a meeting in as focused and effective a manner as possible. He is typically not prepared to sit passively while attendees make a point that he has already understood or repeat the content of a paper that he has absorbed. He generally demands that his questions be answered in a manner which he regards as direct and straightforward. I do not regard the criticism of this part of the DPM's method of working as itself indicative of behaviour that was 'intimidating' or 'insulting'. However, individuals who had previously experienced the DPM express an unconstructive criticism of their work (and probably understood it as a criticism of them personally) might reasonably have interpreted a series of interruptions as a form of implicit criticism. The combination of explicit unconstructive criticism and frequent interrupting may have a cumulative effect as a form of intimidating or insulting behaviour.
- (12) The individuals involved in the MoJ Additional Complaints experienced a range of impacts, including stress and anxiety, the taking of special unpaid leave, and in one case a period of stress-related sick leave. Although they said - and genuinely believed - that these impacts were attributable to the DPM's conduct, in view of the available evidence it was not possible for me to make a finding about cause and effect.
- (13) The DPM was not aware, nor could he reasonably have been aware, of the impact on individuals in terms of what are said to have been the effects on psychological health. He was aware of the case of the individual who took stress-related sick leave, but it was not suggested that he knew or should have known that they attributed that to the DPM. There is otherwise no suggestion that any similar impact was brought to his attention.

- (14) Overall, I conclude that the DPM's conduct during the MoJ Period was on some occasions 'abrasive', in the sense of a personal style which is and feels intimidating or insulting to the individual, but is not intended to be so. His conduct was not, however, 'abusive', in the sense of behaviour which is intended and specifically targeted. He has been able to regulate this level of 'abrasiveness' since the announcement of the investigation. The DPM should have altered his approach earlier, and in particular after certain concerns had been flagged by Sir Philip Barton and Antonia Romeo.
173. In case it should be regarded as relevant, I have made the following findings of fact which could be taken into account as potential mitigation (but not justification) and in relation to the ability to ensure proper working practices in future:
- (1) The DPM has expressed regret in relation to the impact on individuals, which has been communicated to him for the first time in the course of the investigation. He has not offered any apology, given that he does not accept that he has done anything wrong.
  - (2) There was a broad consensus amongst interviewees that, whatever might have been said about the DPM's conduct prior to the investigation, there was little or no valid ground for criticism of the DPM's conduct once the investigation was announced. Some of the individuals concerned with the MoJ Additional Complaints acknowledged that if the DPM had behaved previously as he has more recently behaved, there would have been no valid grounds for complaint.
  - (3) The DPM said that he is committed to acting professionally and focusing on the job, because he cares far more about issues of national interest than his personal position. I accept that this is true, although he has also been left with a sense (as he put it) of having been 'wronged' and he referred to certain 'propriety issues' arising from the allegations within the Complaints. There is to that extent a risk of repetition, albeit one whose extent is difficult to assess.

**G. CONCLUSION**

174. As I said at the outset, this report is the product of my investigation into the facts surrounding the Complaints. It states, to the extent consistent with upholding the principle of confidentiality, my findings of fact. I reiterate the importance, for a proper understanding of the subject-matter, of reading the report as a whole.
175. As set out in paragraphs 53 and 57 above, for the purpose of this investigation under the Ministerial Code, conduct would fall within the description of ‘bullying’ if it can be characterised as:
- (1) Offensive, intimidating, malicious or insulting behaviour; or
  - (2) Abuse or misuse of power in ways that undermine, humiliate, denigrate or injure the recipient<sup>17</sup>.
176. In summary, I have found as follows:
- (1) In relation to the DExEU Complaint:
    - (a) The DPM’s conduct cannot be characterised as offensive, malicious or insulting. It was experienced as intimidating, in the sense of excessively demanding. I could not make a finding as to whether it was in fact intimidating in this sense. There was no evidence to suggest any abuse or misuse of power.
    - (b) The DPM did not intend any adverse effect on others.
    - (c) No-one drew to the DPM’s attention that his conduct was in any way problematic.
    - (d) He did not know and could not reasonably have been aware of what is said to have been the impact of his conduct on certain individuals.
  - (2) In relation to the FCDO Complaint:
    - (a) The DPM made a legitimate management choice, on the basis of his genuine, adverse view about the work of others (albeit without any grounds for disciplinary action).

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<sup>17</sup> None of the constituent elements of this accepted characterisation of bullying is a legally defined term. All of the words used are capable of a range of interpretations. Where relevant, I have explained the sense in which I have used any of these words.

- (b) In reaching and implementing this management choice he acted in a way which was intimidating, in the sense of unreasonably and persistently aggressive conduct in the context of a work meeting. It also involved an abuse or misuse of power in a way that undermines or humiliates. He introduced an unwarranted punitive element. His conduct was experienced as undermining or humiliating by the affected individual, which was inevitable. It is to be inferred that the DPM was aware that this would be the effect of his conduct; at the very least, he should have been aware.
  - (c) On a separate occasion, the DPM referred to the Civil Service Code in a way which could reasonably have been understood as suggesting that those involved had acted in breach. This had a significant adverse effect on a particular individual who took it seriously. The DPM's conduct was a form of intimidating behaviour, in the sense of conveying a threat of unspecified disciplinary action, and was experienced as such. He did not target any individual, nor intend to threaten anyone with disciplinary action. However, he ought to have realised that his reference to the Civil Service Code could well have been understood as a threat.
- (3) In relation to the MoJ Complaints:
- (a) The significance of the MoJ Group Complaint is that it paved the way for all of the other Complaints. The participants in the MoJ Group Complaint deserve credit for their courage in coming forward. But its composition and content make it unsuitable as a basis for any findings about the DPM's conduct.
  - (b) On a number of occasions at meetings with policy officials, the DPM acted in a manner which was intimidating, in the sense of going further than was necessary or appropriate in delivering critical feedback, and also insulting, in the sense of making unconstructive critical comments about the quality of work done (whether or not as a matter of substance any criticism was justified). By way of example, he complained about the absence of what he referred to as 'basic information' or 'the basics', about 'obstructiveness' on the part of officials whom he perceived to be

resistant to his policies, and described some work as ‘utterly useless’ and ‘woeful’.

- (c) The DPM did not intend by the conduct described to upset or humiliate. Nor did he target anyone for a specific type of treatment.
- (d) His interruptive style is not itself behaviour that could be regarded as intimidating or insulting. However, individuals who had previously experienced the DPM express an unconstructive criticism of their work (and understood it as a criticism of them personally) might reasonably have interpreted a series of interruptions as a form of implicit criticism. The combination of unconstructive critical feedback and regular interruption is likely to be experienced as intimidating, in the sense of being unreasonably difficult to deal with, and plainly was so experienced by some individuals.
- (e) The DPM was not aware, nor could he reasonably have been aware, of the impact on individuals in terms of what are said to have been the effects of his behaviour on their health.
- (f) Adopting the language of Dame Sue Owen’s report (while acknowledging that it is not part of the definition accepted in the FDA Case and that both types of conduct may amount to bullying), the DPM’s conduct during the MoJ Period was sometimes ‘abrasive’, in the sense of a personal style which is or feels intimidating or insulting to the individual, but is not intended to be so. His conduct was not, however, ‘abusive’, in the sense of behaviour which is intended and specifically targeted.
- (g) The DPM has been able to regulate this level of ‘abrasiveness’ since the announcement of the investigation. He should have altered his approach earlier.
- (h) Since the investigation was announced, there has not been any valid ground for criticism of the DPM’s conduct.

177. In view of the findings of fact, and in light of the Terms of Reference, questions in relation to the Ministerial Code are a matter for the Prime Minister.

Adam Tolley KC

Fountain Court

20 April 2023