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# STATES OF JERSEY



## HR LOUNGE REPORT AND BE HEARD SURVEY SUMMARY FINDINGS

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Presented to the States on 15th March 2021  
by the Chief Minister

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STATES GREFFE

## REPORT

The States Employment Board has had a clear focus on understanding the views of the workforce and the experience of working across the public service.

Overall, the follow up survey and report show we are now making progress in improving the employment environment across the public service. We recognise that employees are proud public servants and provide services sometimes in very difficult and demanding circumstances. The public service should be commended for their commitment during the COVID-19 pandemic and the changes during the modernisation of public services.

In 2017/18, the Board commissioned:

- ORC International to conduct an employee engagement survey (OneVoice)
- HR Lounge to conduct an investigation into a culture of bullying and harassment across States entities
- TDP Jersey (Team Jersey) to conduct a review of the culture of the public service.

The Board committed to returning at regular intervals to measure progress and identify further areas for improvements as a programme of continuous improvement.

### **Baseline position (2018/9)**

The **employee survey** in 2018 (with a response rate of 62 per cent) found

#### Positives

- An overall engagement score of 50 per cent
- 58% employees proud to work within the public service
- 67% positive scores in relation to team working
- 91% positive scores in relation to the skills individuals have to be effective in their role
- 88% felt their job is worthwhile

#### Areas of concern

- 36% would recommend the public service as a great place to work
- 36% with a strong commitment to working in the public service
- 24% of employees wanted to leave their role within a year (21% of them ‘as soon as possible’)
- 25% felt clear communications and a sense of a compelling vision
- 36% felt change was managed well
- 33 out of the 37 key measures of the survey were below the private sector benchmark for large organisations.

The three areas driving dissatisfaction at the time were identified as:

- Frustrations with management stem from systems and process, behaviour and equity
- The Workforce Modernisation programme is cited in comments about pay, communications and recognition.

- Strategy and planning is largely department focussed and a wish for consistency and clarity of purpose.

The [HR Lounge](#) report (February, 2018) concluded that:

‘(the States) have a level of bullying and harassment complaints that is significant and requires attention..... (that was) symptomatic of a style of leadership that exists in some parts of your organisation’.

The report made 29 recommendations for improvement based on observations of:

- Inconsistent application of procedures
- Complainants feeling exposed and vulnerable
- Low quality of investigations
- Lack of clarity of roles and responsibility
- Capacity issues within the Case Management Unit
- Unclear set of expectations for the application of values and behaviours
- The time to investigate complaints took too long and didn’t resolve the complaints at an early stage.

The [Team Jersey Phase One Report](#) (March 2019) identified barriers to the success of the OneGov approach and built on the findings of the OneVoice staff survey.

### **Current position**

The States Employment Board were mindful that in 2020, the pressure on public services due to the COVID-19 response would cause difficulties in following up on these reports. However, the importance to the Board of improving culture and behaviours meant that a delay to receiving assurance about progress was not desirable.

Between June and September 2020, an employee engagement survey (BeHeard) was undertaken and between October 2020 and January 2021 the HR Lounge were asked to conduct a follow-up investigation and assurance visit into bullying and harassment within the workplace.

This report provides a copy of the outcome of the employee engagement survey (BeHeard) (Appendix One) and the HR Lounge, ‘Review of Progress, Bullying and Harassment’ (Appendix Two).

The BeHeard survey indicates that there has been a slight improvement in engagement scores from 50% to 53%.

The Board recognises that this is a small amount of progress, however, increasing engagement at a time of global uncertainty and disruption showed a greater resilience in public service engagement.

Positive results included:

- A positive strength of feeling for scores related to:
  - My Company (Score 5.04/7.0) – how people feel about working for the organisation and their affiliation to it

- My Manager: (Score 4.45/7.0) How people feel they are supported and managed
- Personal Growth (Score 4.45) How people feel about their role including interest in the work they do, development and their skills
- My Team (Score 4.84/7.0) How people feel about the support they receive and given in the team environment.
- 60% are proud to work in the public service (+2%)
- 73% have a positive view about their team (+6%)
- 86% feel they can make a valuable contribution to the organisation (no comparative data)

Areas for further work include:

- 37% saw a positive change from the Team Jersey programme, 43% were neutral in their answers: suggesting the work of Team Jersey is having an impact in some areas but not consistently. 18% were negative about the impact of Team Jersey
- 37% said that they supported the changes of OneGov vision, 43% were neutral in their position. This suggests that more communication and examples of the benefits of OneGov are needed.

Areas of concern include:

- 24% would leave the organisation if they had another job. This has not changed since the last survey but remains a high percentage of people with this feeling.
- Leadership scores across all questions are below the expectations of the States Employment Board.
- Wellbeing scores demonstrate the impact of the COVID-19 response and large organisational change programmes.

### **Bullying and Harassment Improvements**

The HR Lounge has concluded that:

*“(They) are pleased to now report that the position has improved. There remain some issues to address and a way to go yet but you should be complimented on the progress made and the way that you have responded to the challenges thus far.”*

From their fieldwork, case audits and policy review, the report identifies and provides assurance that 20 of the 29 original recommendations have been fully implemented. 2 further recommendations are being progressed and 7 recommendations are yet to be put in place.

The report identifies that the leadership of the organisation takes allegations of bullying and harassment seriously and have provided a safe way for complaints to be made.

It recognises the importance of the values and behaviours framework in improving the overall culture of the organisation.

Credit is given to the helpline, reporting, case management and early resolution measures, supported by a new policy and management training.

The report identifies that the Education department should be more involved in organisation-wide culture and behavioural programmes to ensure a consistency with all employees. Additionally, an individual service area has been identified as having a particularly problematic approach to a complaint raised. This has been redacted within the report to avoid identifying individuals within this case.

### **Summary**

The States Employment Board welcomes and recognises the improvements in employee engagement and the efforts made to create a safe place for complaints about bullying and harassment and the approach to fairly investigating them.

The Board noted that the improvements have been made during 2020 and during a difficult year for the public service.

It is recognised that more work is required, although our trajectory shows modest improvements and a good foundation going forward.

The Government Plan has invested in People and Corporate Services and the delivery of a new People Strategy to provide greater focus for improvements.

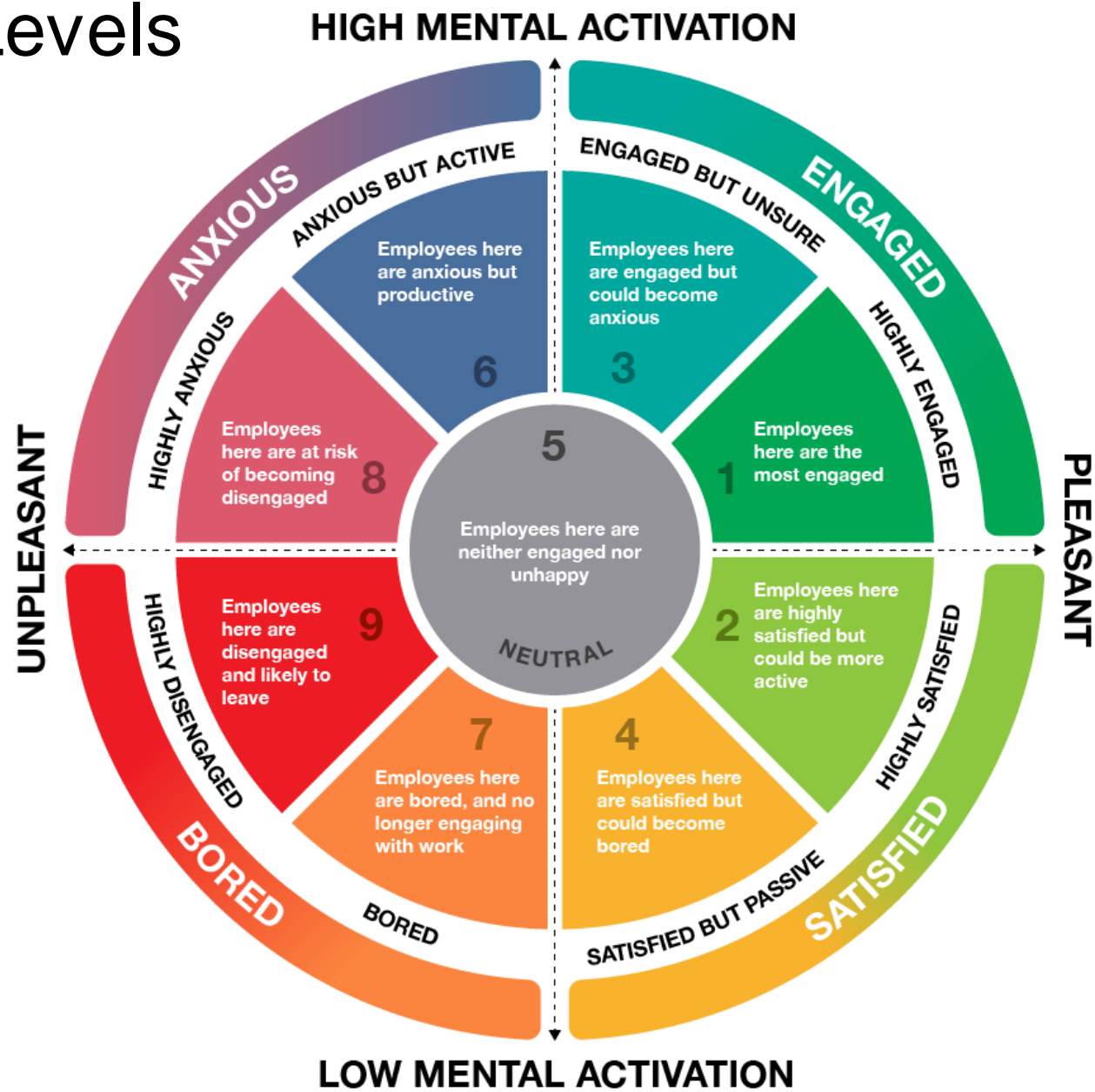
The Board recognises that there are a number of significant programmes that will benefit employees, including new working environments through the new HQ and Our Hospital projects, an investment in technology and the implementation of a People Strategy.

The Board Members extend their appreciation to our employees for taking part in the survey, and their hard work and dedication to the Island in the most difficult of circumstances.

# Be Heard Employee Survey Results 2020

## States Members Briefing

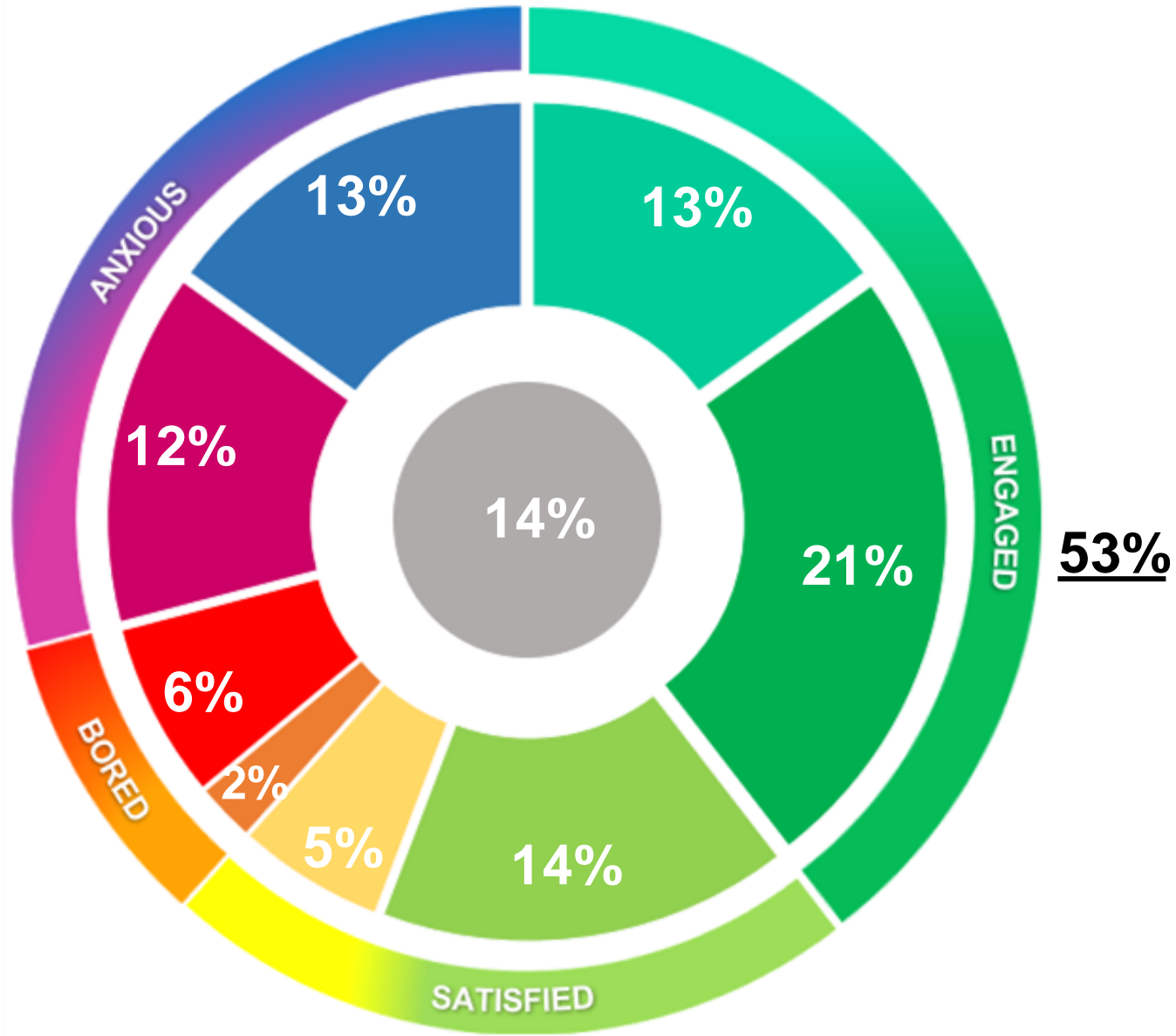
# Engagement Levels



# Government of Jersey Overall Engagement Results



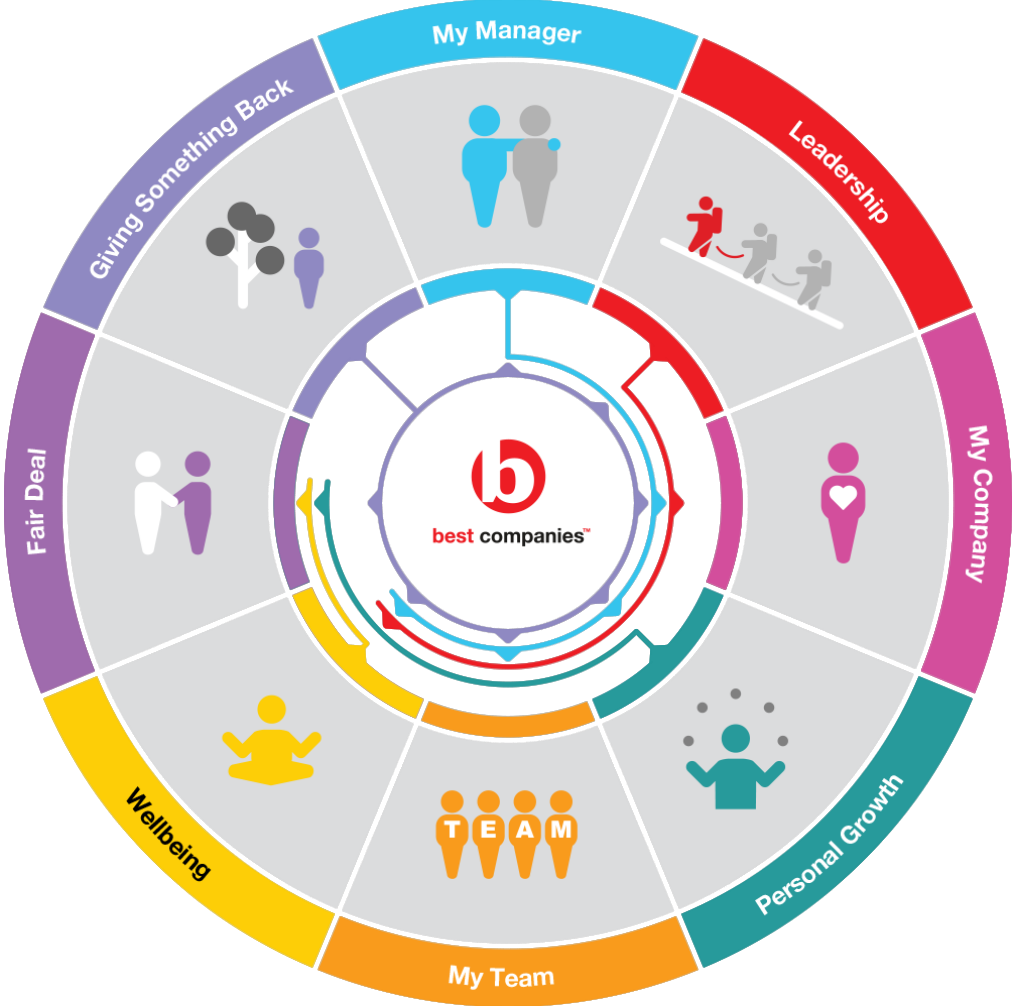
Our overall  
employee  
engagement figure  
is  
**53%**



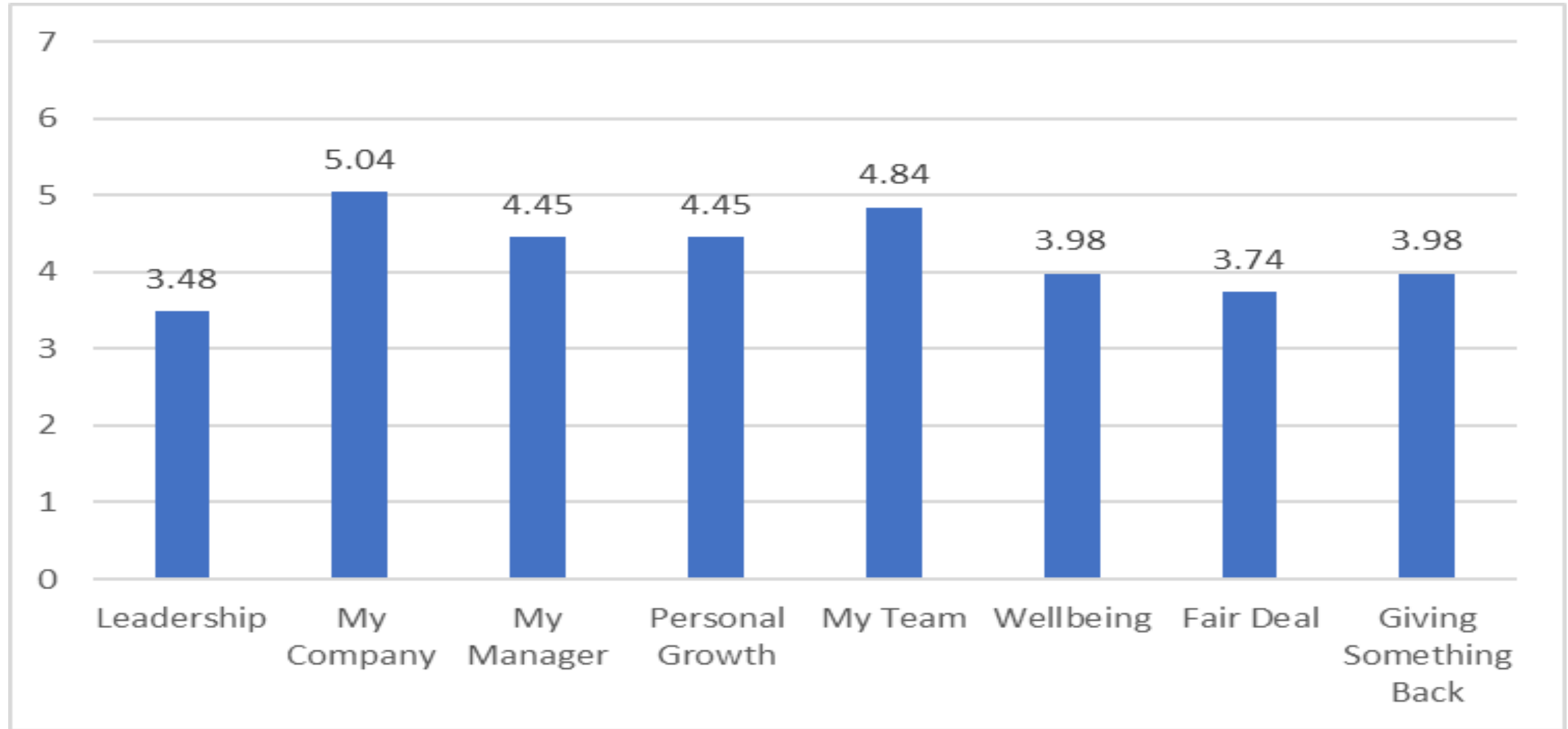
This is a **3%**  
**increase** since  
the 2018 survey



# The 8 Factors of Engagement: How it works



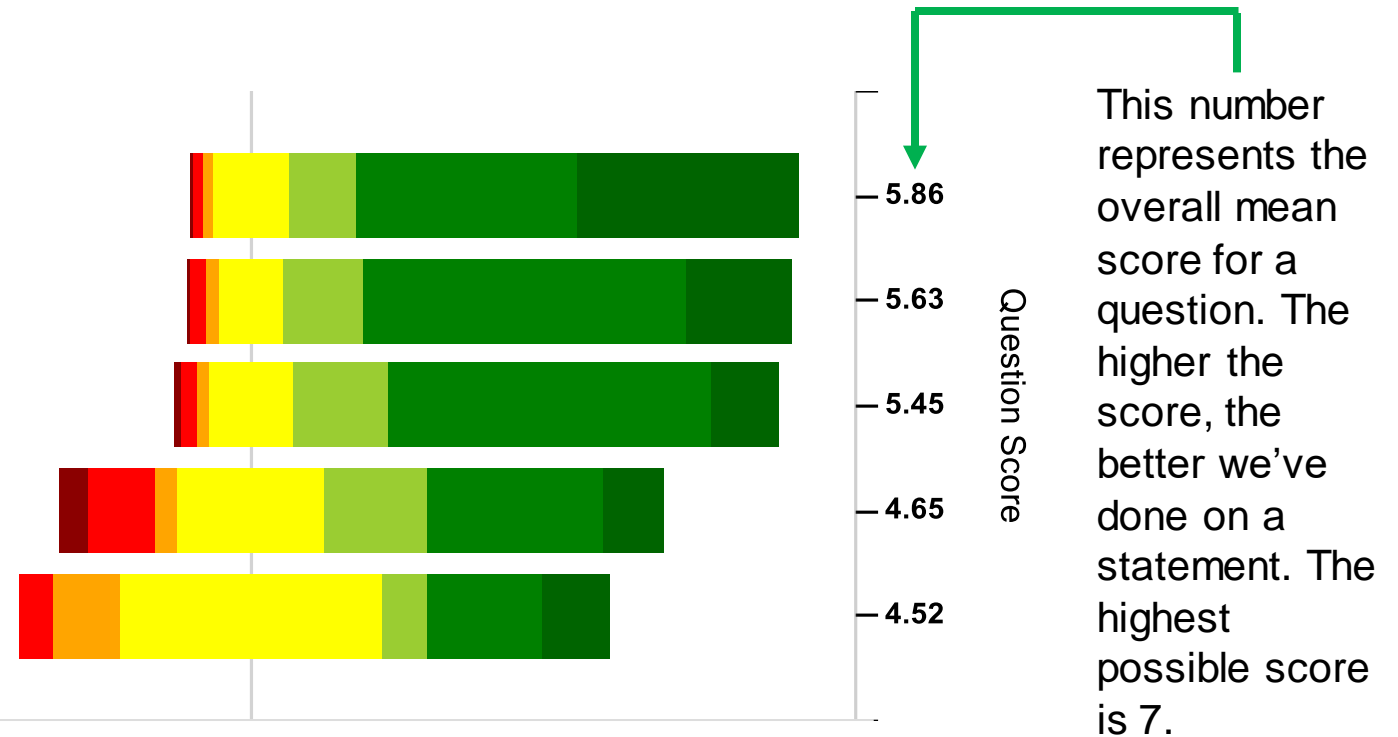
# Summary Results by Factor



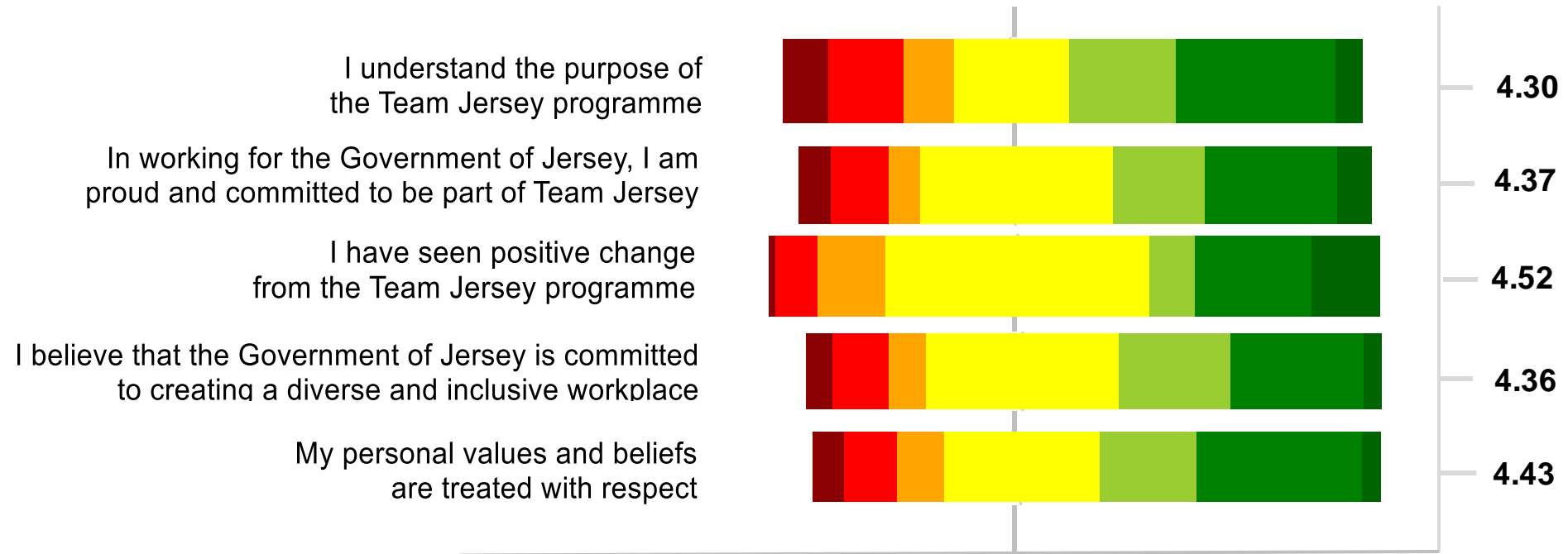
# Understanding our results – how to interpret heatmaps



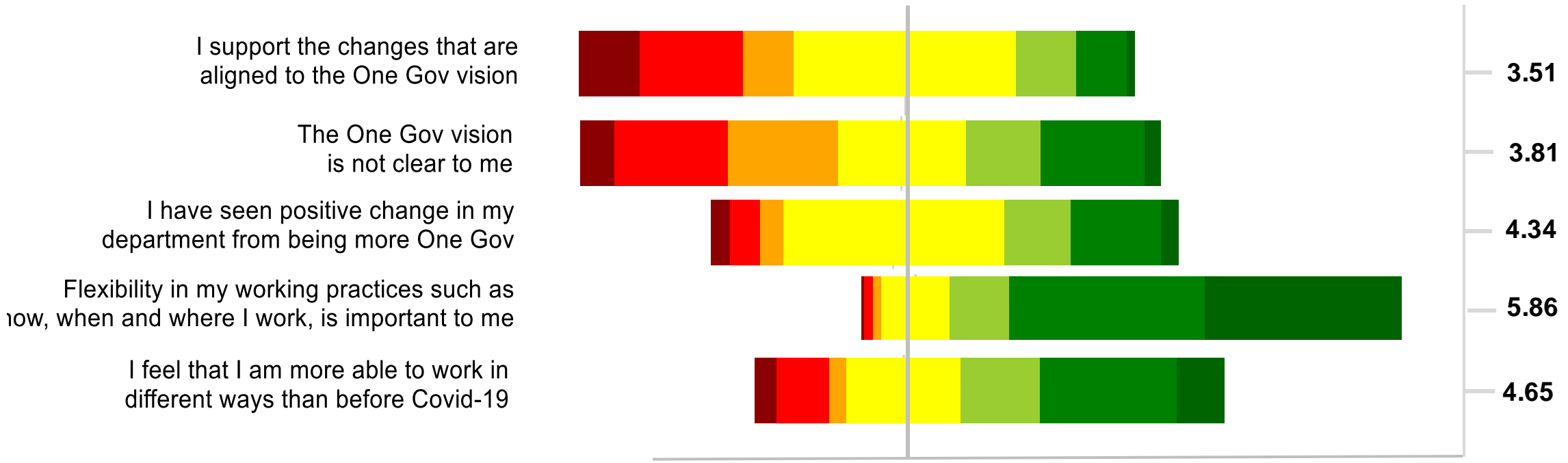
- A heatmap shows the response patterns and gives an idea of how many people responded at each point of the Strongly Positive to Strongly Negative scale.
- Red indicates areas for improvement and green is always positive (even if the statement is phrased negatively).



# Our results: Government of Jersey bespoke questions (1 of 3)

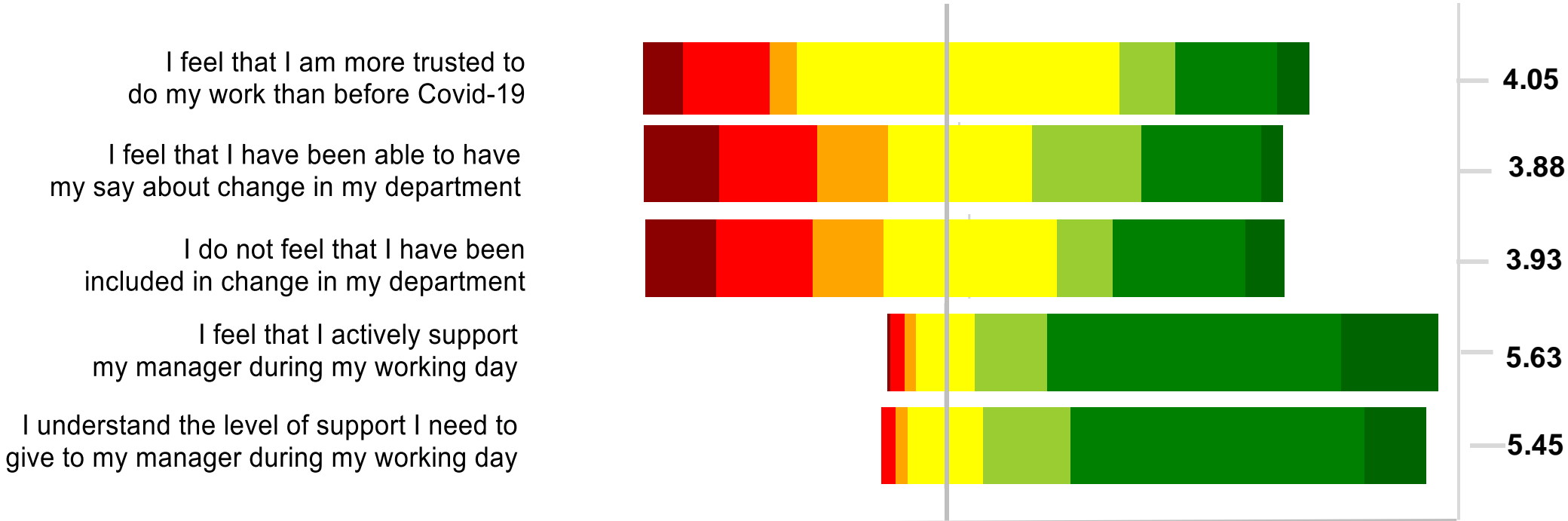


# Our results: Government of Jersey bespoke questions (2 of 3)

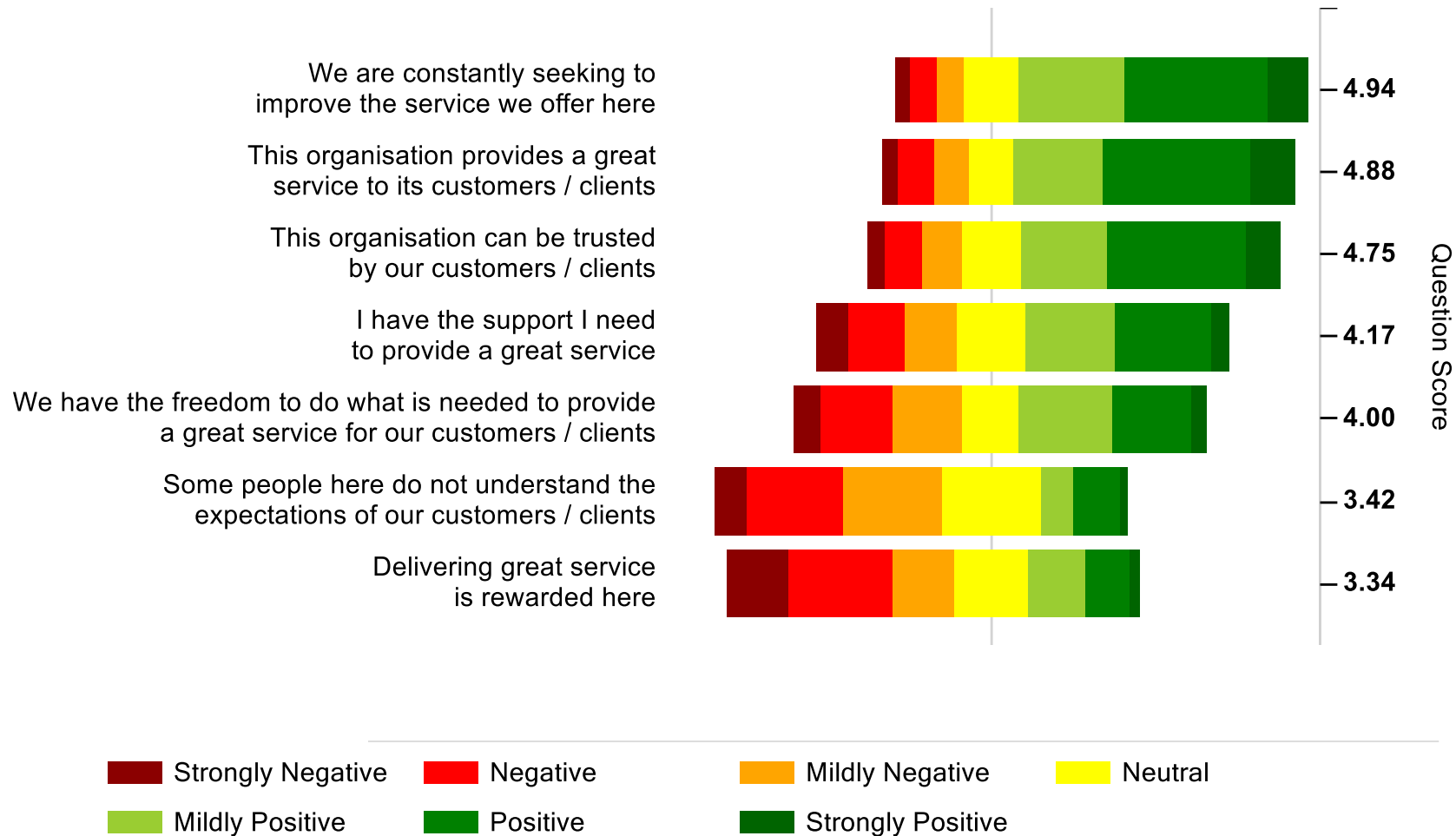


Strongly Negative   
  Negative   
  Mildly Negative   
  Neutral  
 Mildly Positive   
  Positive   
  Strongly Positive

# Our results: Government of Jersey bespoke questions (3 of 3)

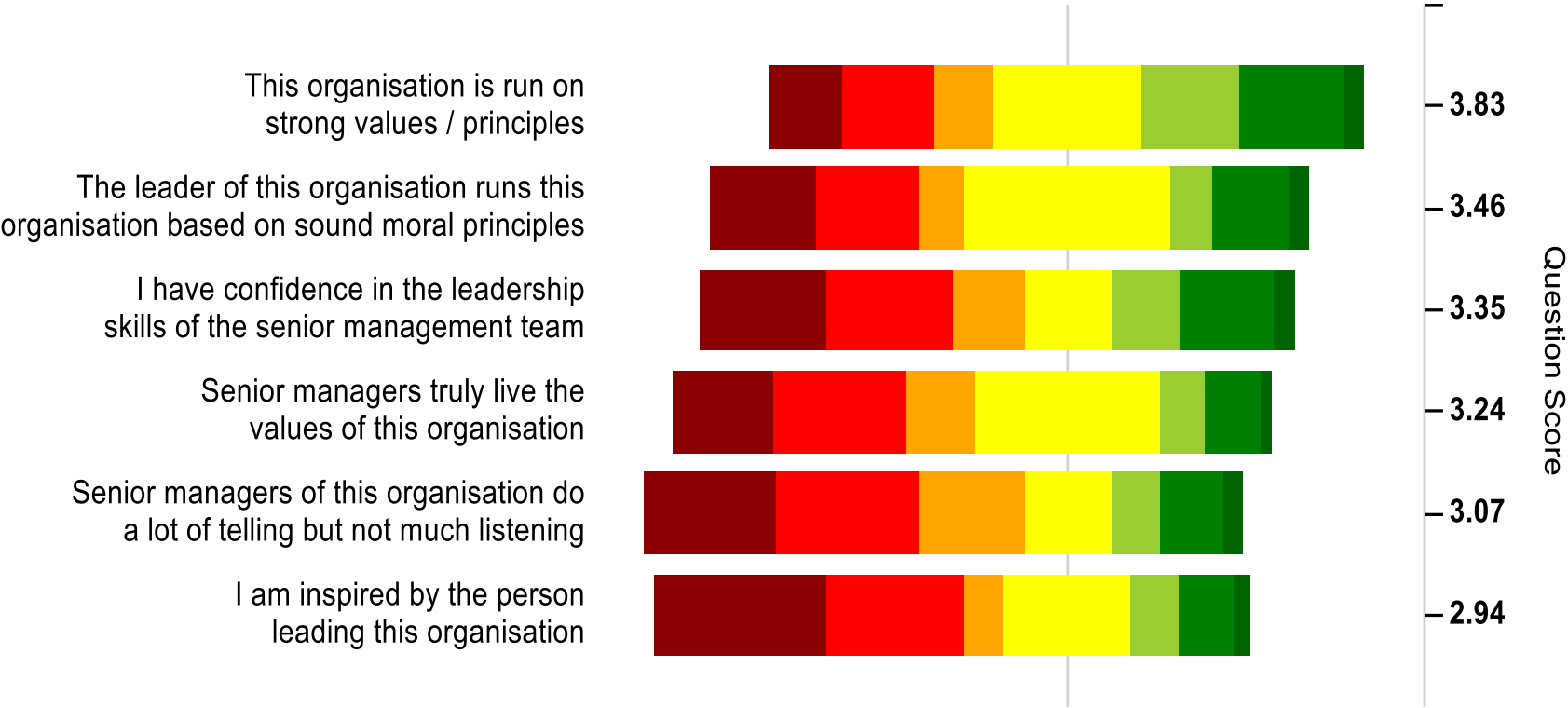


# Our results: Government of Jersey customer service



Customers include all users of Government services or citizens with rights and expectations \*This includes anyone who interacts with any part of Government of Jersey either voluntarily or involuntarily or because they are required to \*Other examples of how we might refer to customers: Business Owner, Patient, Citizen, Client, Service User, Student, Pensioner, Tax payer, Architect, Prisoner, Income Support Recipient, Supplier

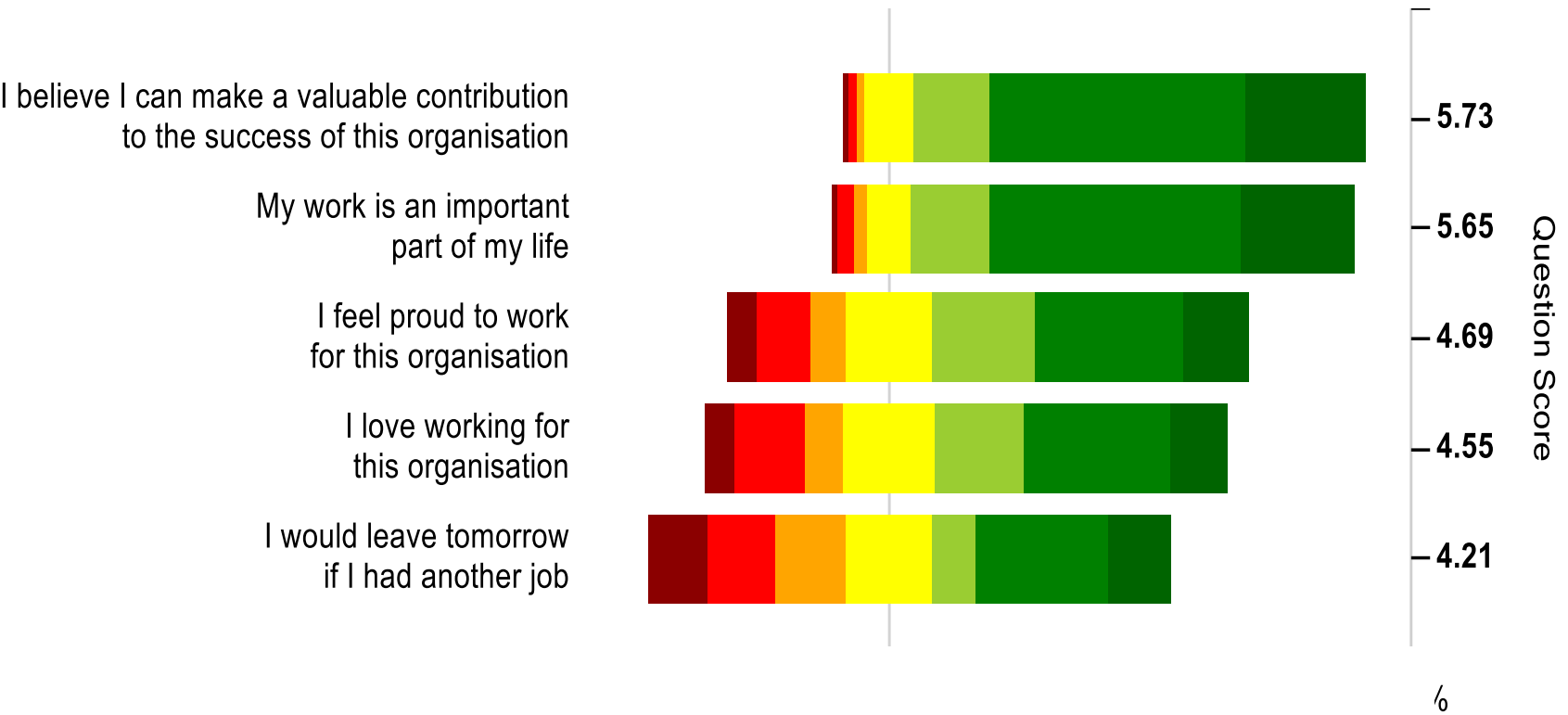
# Our results: Be Heard Survey – Leadership





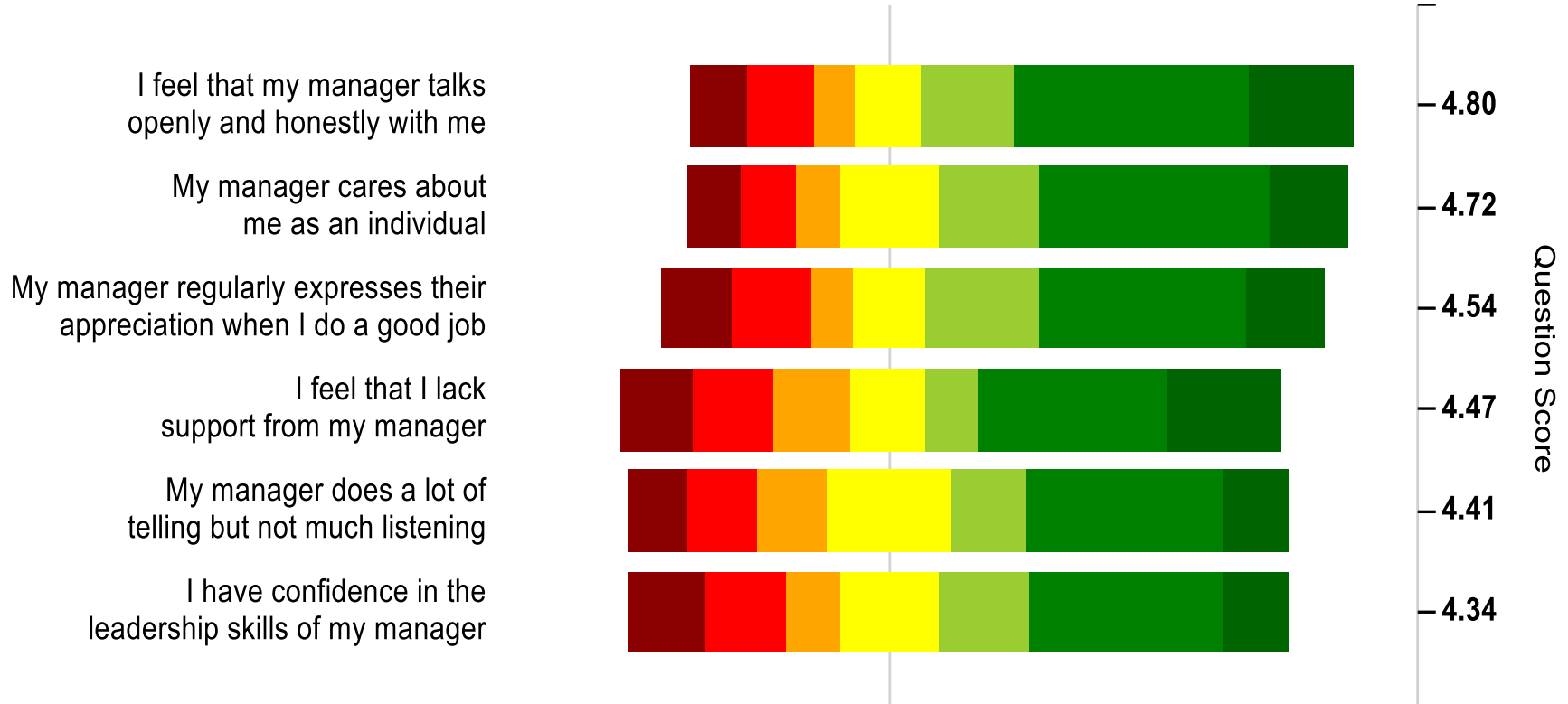
# Our results: Be Heard Survey – My Company\*

\*My Company means Government of Jersey



**Remember: green is always positive, even if the question is phrased negatively**

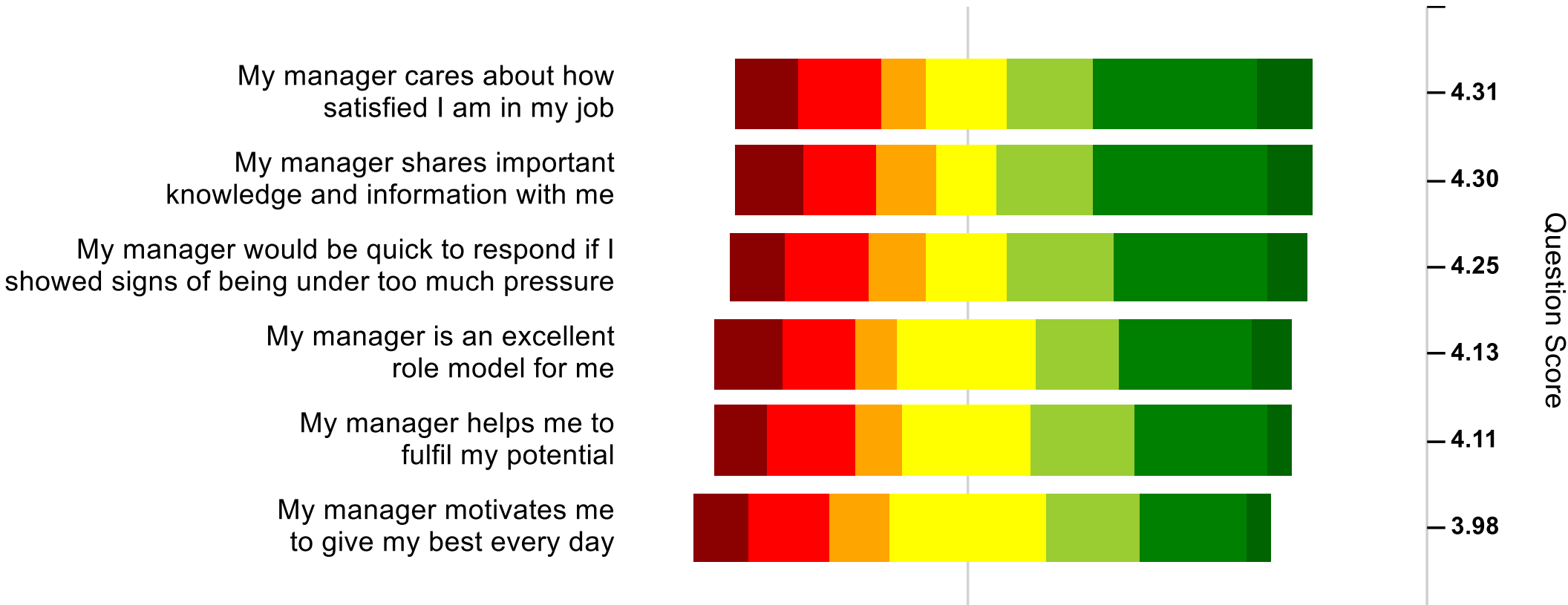
# Our results: Be Heard Survey – My Manager (1 of 2)



Strongly Negative   Negative   Mildly Negative   Neutral  
Mildly Positive   Positive   Strongly Positive

**Remember: green is always positive, even if the question is phrased negatively**

# Our results: Be Heard Survey – My Manager (2 of 2)



# Our results: Be Heard Survey – Personal Growth

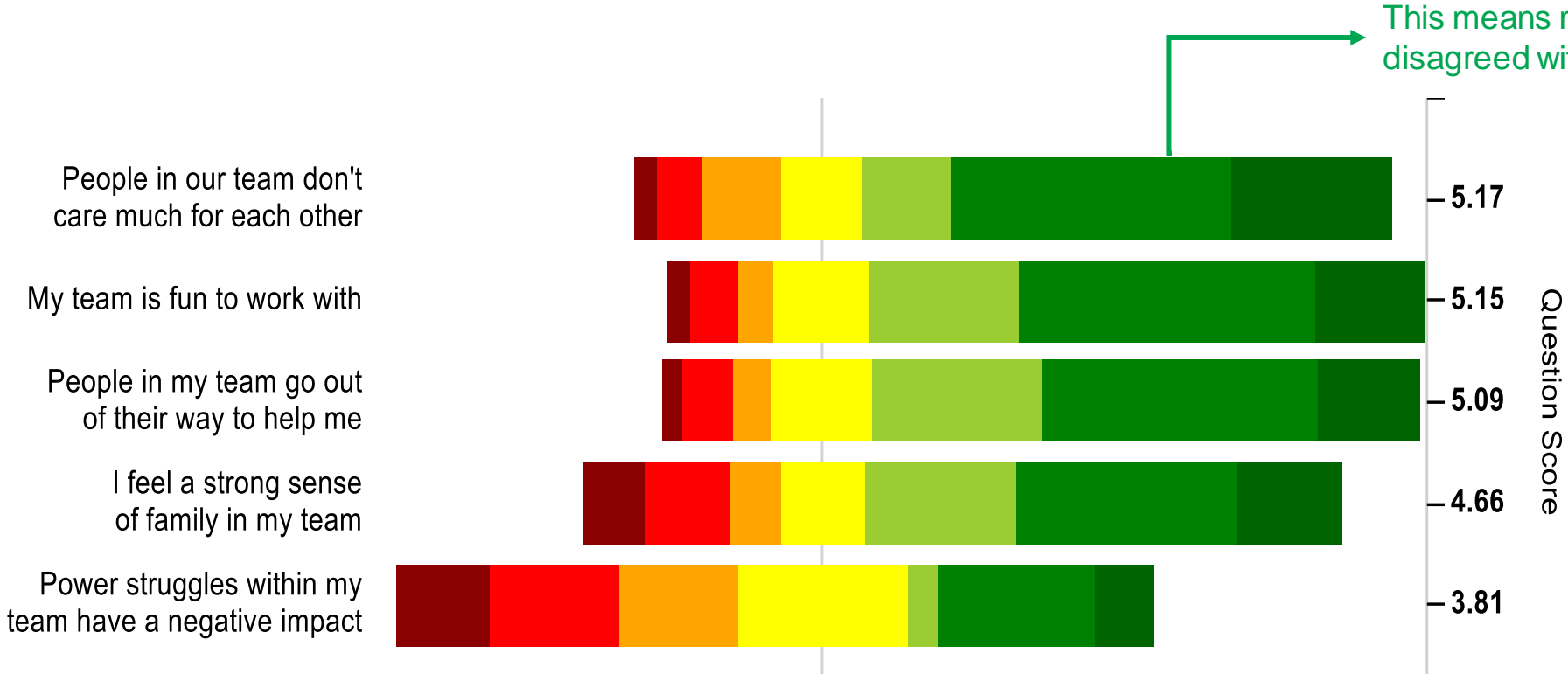


This means many people disagreed with this statement

- Strongly Negative
- Negative
- Mildly Negative
- Neutral
- Mildly Positive
- Positive
- Strongly Positive

**Remember: green is always positive, even if the question is phrased negatively**

# Our results: Be Heard Survey – My Team

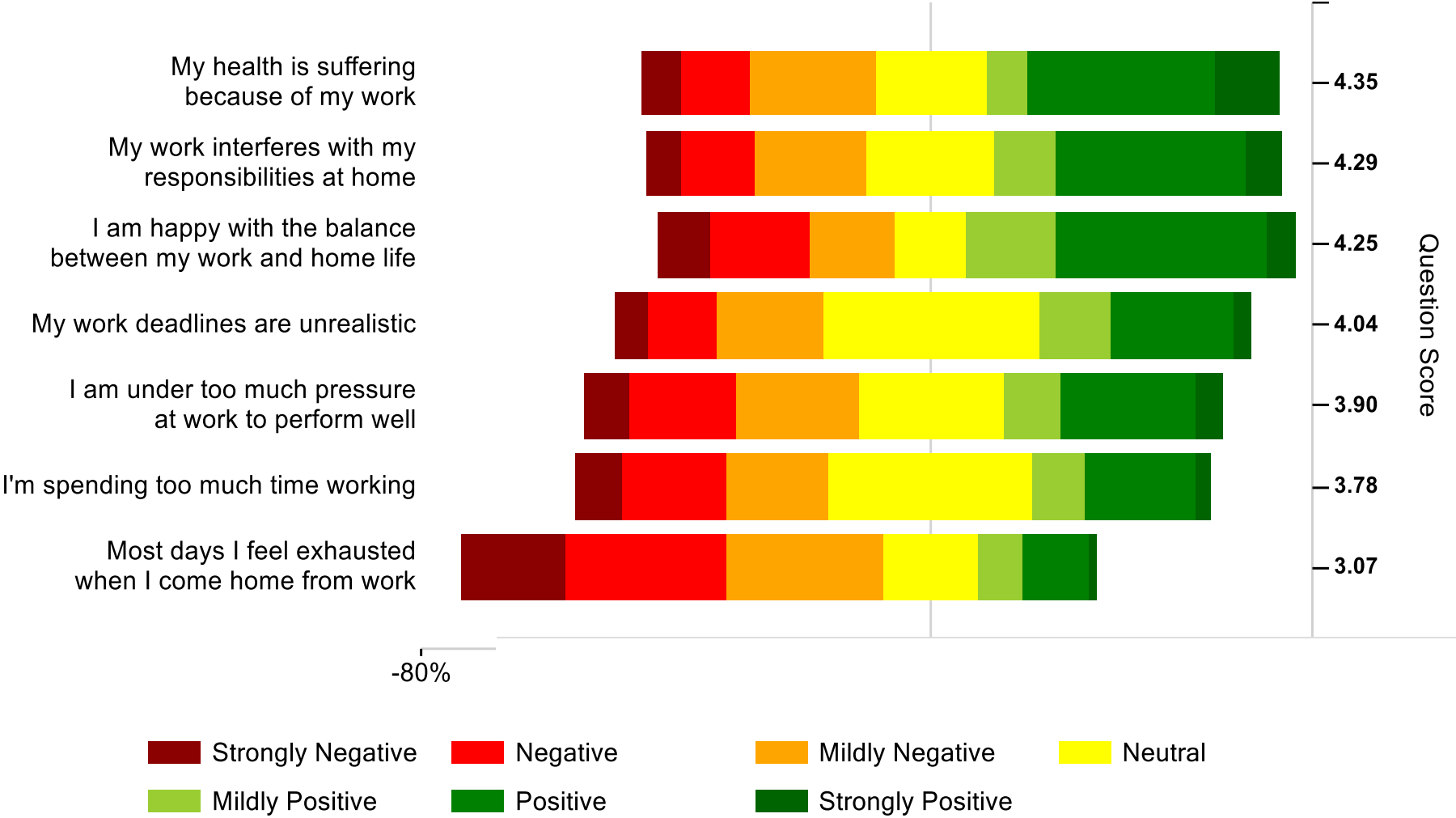


This means many people disagreed with this statement

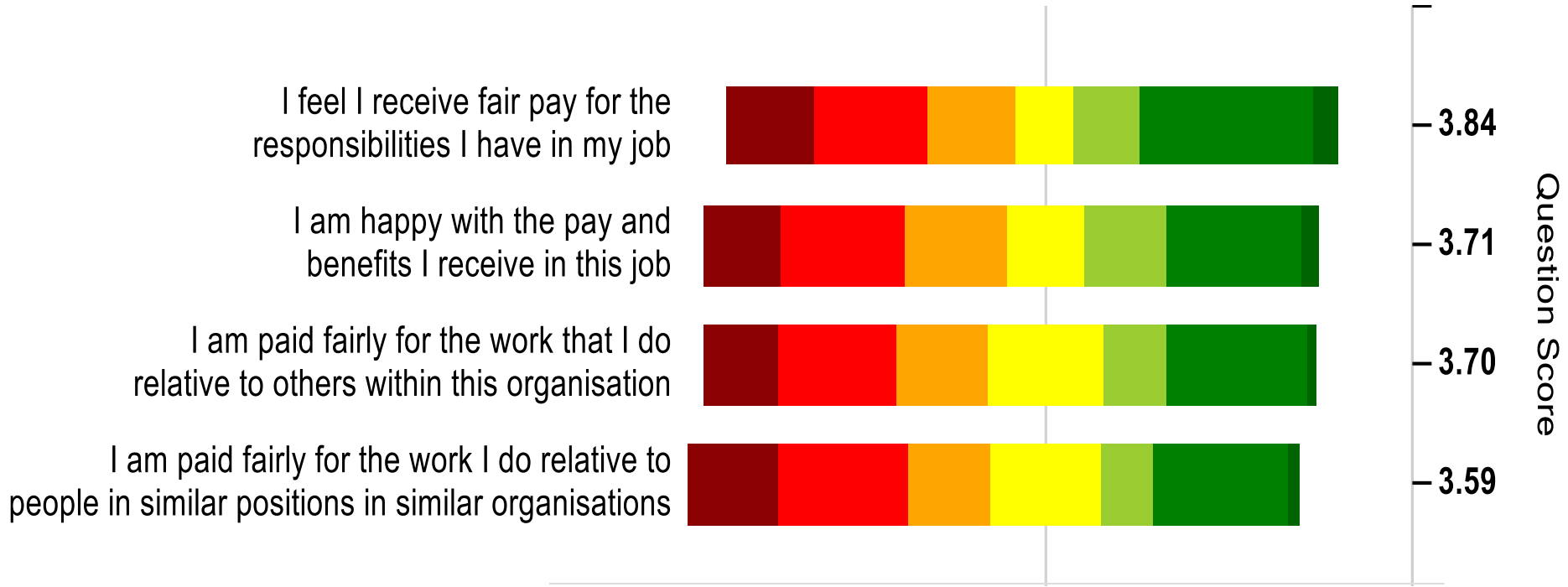


**Remember: green is always positive, even if the question is phrased negatively**

# Our results: Be Heard Survey – Wellbeing

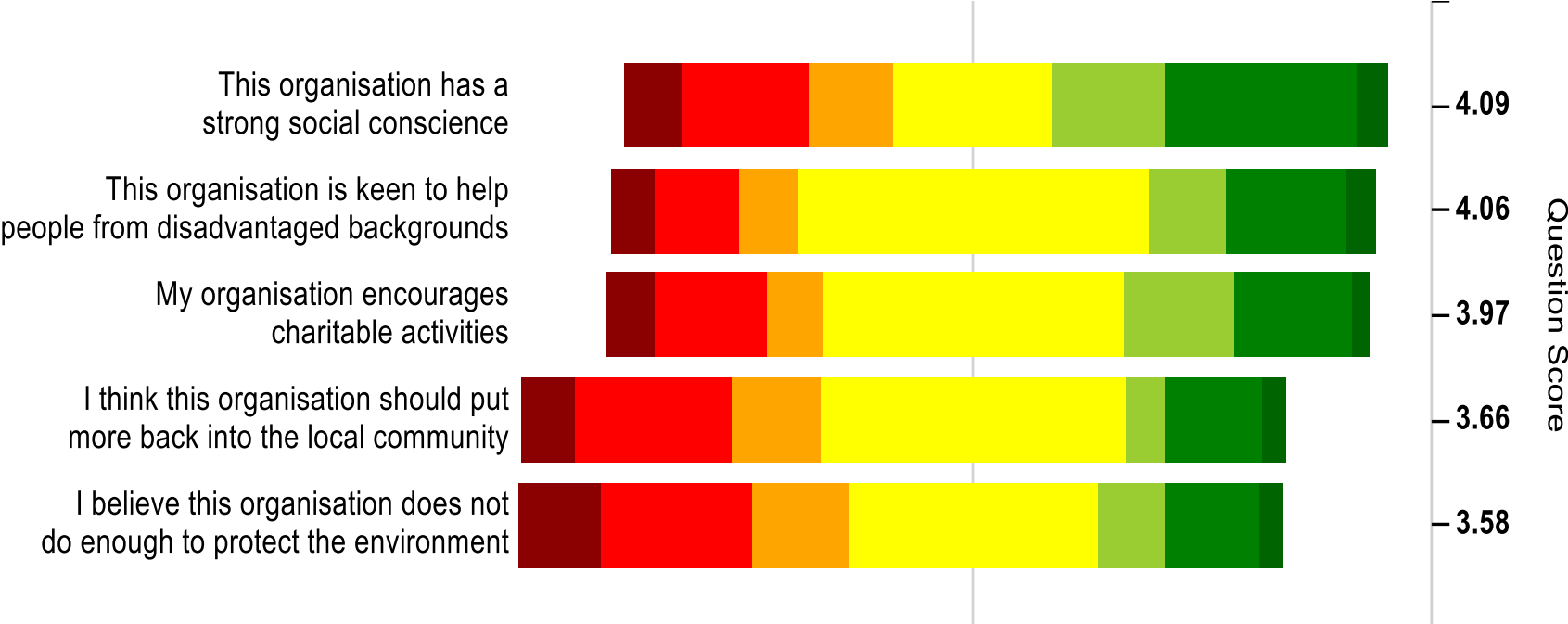


# Our results: Be Heard Survey – Fair Deal



- Strongly Negative
- Negative
- Mildly Negative
- Neutral
- Mildly Positive
- Positive
- Strongly Positive

# Our results: Be Heard Survey – Giving Something back



Strongly Negative    Negative    Mildly Negative    Neutral  
Mildly Positive    Positive    Strongly Positive



**The HR Lounge Ltd**

**States of Jersey Employment Board**

**Final Report  
Review of progress  
Bullying and Harassment**

**The HR Lounge Ltd  
February 2021**

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## Introduction

1. Initially, The HR Lounge was appointed in October 2017 to undertake a review of Bullying and harassment and propose changes to enable you to maintain your position as a good and caring employer. Our report was submitted in February 2018 and contained many proposals and recommendations which were discussed with the Executive team and others charged with overseeing this aspect of your work.
2. In the autumn 2020, The HR Lounge was invited to return to review the progress made since our report was submitted. This latest report confirms our assessment and outlines options for your consideration. It is based on interviews and focus groups conducted with your chief officers, managers, trades unions as well as a desktop assessment of further cases that have arisen in the last 12 months.
3. We believe that we have a good insight into your organisation and hope that we might be commissioned to assist and support you to undertake such further work that you may consider necessary or appropriate.
4. The conclusions reached in this report are based on material presented to The HR Lounge. No additional material has been used, except where specifically mentioned. Any relevant additional material, of which we are unaware, may affect the conclusions reached.
5. We have reached our conclusions and prepared this report in good faith and cannot be responsible for failing to take into account information or evidence that was not available to us at the time of writing this report.
6. Our assessment is based on our best understanding and interpretation of the material presented and reviewed. This report must be considered in its entirety and we are not responsible for omissions in reproduction or amendments made by other parties after its submission.

## The Requirement

7. The States of Jersey Employment Board - at its meeting held on 27 July 2017 - directed that a States wide review of the issue of Bullying and harassment in the workplace should be undertaken in the light of concerns expressed from individuals, trade union representatives and States members and the high number of claims from employees.
8. An extract from the Board minutes stated that *Bullying and harassment could never be considered acceptable in the workplace but acknowledged the difference between unacceptable behaviour and fair legitimate criticism of an individual's performance, which could be used as a management tool to improve effectiveness within the organisation. The Board remained mindful that any strategies employed by management to change or*

*improve the performance of an individual employee should always include appropriate levels of support and training. The Board recalled that guidelines related to Bullying and harassment, supported by codes of practice for employees, had been in place since July 2016 and considered a review at this juncture would be appropriate. The Director of Employment Relations advised that his Department had already considered the matter and recommended that an independent review of Bullying and harassment should be commissioned. It was envisaged that the review would be carried out by an externally appointed consultant, and overseen by Ms. Beverley Shears, Independent Advisor to the Board. The terms of reference included inter alia:*

- a. a review of existing policies and procedures relating to Bullying and harassment; and
  - b. an assessment of the effectiveness of current processes; and
  - c. consideration of the current whistleblowing policy, its rate of use and the suitability of the 'designated persons' nominated therein to receive reports from whistle blowers; and
  - d. the use of employee focus groups; and
  - e. a review of current training around issues such as Bullying and harassment.
9. The review was undertaken by us during autumn 2017 - and reported on - in February 2018. The findings were accepted in full and an implementation plan was devised.
10. For any large employer, it is inevitable that such complaints will be received. But what really counts is how the employer deals and the level of seriousness applied to resolution. It is this latter point upon which you will be adjudged in terms of the level and depth of your commitment to eradicating Bullying and harassment from your workplaces.
11. As a public service, your response is perhaps, even more prominent and under the microscope than it is for other employers. For a community such as that in Jersey, it is really important - in order to sustain your authority and influence as well as competitiveness in the recruitment marketplace - that the issue is taken seriously and dealt with robustly. Aside from your duty as the leading employer on Jersey, you have a duty of care to your employees and a responsibility to set the standard and example to others.
12. In late 2020, The HR Lounge was invited by Mark Grimley, Director of People and Corporate Services acting on behalf of the States Employment Board (SEB), to conduct a re-review into the matter and to look at progress made since our report was first submitted. In particular, the following terms of reference were confirmed:
- a. To conduct a follow-up to The HR Lounge report into Bullying and harassment in the Government of Jersey; and
  - b. To review the actions and efficacy of such actions in building assurance that allegations of Bullying and harassment are addressed appropriately; and

- c. To undertake focus groups to gauge the perception of Bullying and harassment; and
- d. To undertake senior one-to-one interviews, including with elected Members; and
- e. To undertake an audit of a sample of Bullying and harassment cases
- f. To produce a management report for the SEB, if necessary, with further recommendations for improvement; and
- g. To provide evidence of good practice

13. This report is the product of the re-review.

## Executive summary

14. Our original assessment - in 2017/18 - was that you had a level of Bullying and harassment complaints that was significant and required attention. We are pleased to now report that the position has improved. There remain some issues to address and a way to go yet but you should be complimented on the progress made and the way that you have responded to the challenges thus far. We particularly congratulate Mark Grimley, Lesley Darwin and the Case Management Unit for the way that they have overseen and implemented the recommendations put forward in our original report.
15. Of the original 29 recommendations, you have fully implemented twenty and partly implemented or are planning to implement two. Seven recommendations have not been implemented either because you decided against doing so or they remain a matter under consideration.
16. As a large employer, it is inevitable that you will experience a level of complaints. Frankly, if you did not, that would be as worrying as a high level of complaints. The fact that you receive complaints should be viewed positively for it is simply not possible to regulate or control the actions of every single employee. We say this for an organisation that has no complaints at all, is more likely to be one that endeavours to suppress an ability to speak up rather than have a genuinely calm, open and appropriate culture.
17. Much more important than a complaint free environment is the need to compel a position that complaints, once made, are looked into and responded to genuinely and in line with your policy and procedure. In other words, it is the means and quality of response by which you respond to complaints rather than whether or how you receive them that will make you stand you out as an exemplary employer.
18. Our work to carry out this re-review involved an assessment of your case papers, interviews with your senior team, trades unions and some individuals involved in particular cases. In addition, we received email responses from individuals wishing to provide their opinions and we staged a number of focus groups made up of complainants, accused, investigators, HR staff, witnesses, TU representatives and management involved in personally dealing with cases of Bullying.

19. Aside from the positive position that we report, there are some conclusions that we put forward for your consideration and which are added to the recommendations in our original report. We hesitated before making too many more recommendations as the original report was pretty recommendation - rich and we reflected that another long set of recommendations might be unhelpful.
20. And so, we have listed a nominal number of recommendations about which we believe you should take action and then in addition, outlined some further conclusions about which we hope you might also reflect and might trigger discussion about whether any further adaptation of your policy and procedures might be appropriate.
21. Our recommendations in the main relate to some further changes in your policy and processes, in part to reflect further learning from good practice that has arisen since our earlier report. Other recommendations concern investigation, dealing with poor and below par performance and the need to introduce a new *triage system* in order to filter out wasteful and inappropriate counter claims.
22. We also make recommendations about the role of the Case Management Unit – and about which has made significant strides since we last reviewed this matter. We think that your journey about Values is still at a relatively early stage and you need to be robust on dealing with breaches. We rate the work done by Team Jersey and commend it to you for ongoing investment. We think that resources in both Team Jersey and the Case Management Unit needs enhancement in order to continue the progress that has been made to date.
23. We also make recommendations about protective support for witnesses.
24. There is continued work required but progress thus far is good and should be acknowledged. We believe that a further review, in say, two or three years' time might be appropriate.

## Methodology

25. We undertook *five* approaches to our information gathering, namely:
  - a. 24 Structured interviews with selected members of the leadership, and other selected individuals. A summary list of interviewees is attached at **Annex B**; and
  - b. Desktop analysis of your policies and processes as well as case papers and documents in order to understand the nature and causation of underlying complaints as well as the quality of investigation and follow-up action, regardless of fault. In particular, twelve cases were examined; and
  - c. Invitation to employees to make written submissions. In particular, we received fifteen emails from individual staff members and carried out further interviews with selected staff on 10 and 18 December 2020; and

- d. Focus groups with your employees. We conducted seven focus groups on 1, 2, 7 and 11 December 2020; and
  - e. Meetings with the Trades Unions and HR team. A summary list is attached at [Annex B](#).
26. We re-familiarised ourselves with your existing policies and procedures - and updates - in relation to Bullying, harassment and whistleblowing, identifying key procedural components in relation to timelines, responsibility, and deliverables, as well as confirming management and employee expectations.
27. Our desktop analysis was detailed and forensic, reviewing major cases of Bullying and harassment over the last twelve months and such other cases as you handed over to us. We evaluated each component in order to establish common themes and produce and present analytical data whilst looking for evidence of traits, trends, and other key measurements.
28. These included issues of independence, natural justice, transparency, best practice, diversity, organisational climate and culture of fear of reprisal, normalising of Bullying, trust and confidence in management, low moral indicators, zero tolerance of Bullying and harassment, bureaucracy, correlation between complainant and poor performance, absence and resignations, including impact on service delivery and costs, exit interview data, tribunal data including costs and outcomes and reputational damage.
29. A note was circularised as part of your Chief Executive newsletter which invited written responses. We ran several focus groups involving around 50 employees. We carried out individual structured interviews with members of your executive and had detailed meetings with your Trades unions. All in all, we believe that we have had contact with around 100 employees.
30. We took account of staff survey information carried out in 2019/20 and we are satisfied that we have secured good all round information. Overall, we believe that we gathered a good level of evidence and engaged with a sufficient proportion of the workforce to enable us to formulate a good picture and develop a good understanding of the position.
31. We maintained close liaison with the Case Management Unit throughout the period of our fieldwork.

### Overall progress on recommendations from our first report

32. Set out below is a summary of the recommendations made in our first report and a sit-rep on their current status. On balance, we are impressed by how much has been done to implement the findings. It is apparent that more effort is needed in some respects but in all, credit for the progress made should be acknowledged.

33. In sum, 20 recommendations (green) have been implemented and 7 (red) have not. More work needs to take place on 2 (amber).

Reference	Recommendation	Progress
	<b>On Culture</b>	
a.	Refresh the values and standards of behaviours and embark upon a re-launch programme building on the excellent work carried out within H and SD	Agreed. Relaunched in 2018/9
b.	Create a new management tool and discipline for measuring compliance with and action taken regarding breaches of values	Agreed - new surveys and Expo link introduced. New sections to discipline code. Further work to undertake
	<b>On Whistleblowing</b>	
c.	Relaunch and maintain an effective whistleblowing policy	Agreed and relaunched
d.	Set up a new and dedicated <i>whistleblowing line</i> outside of regular reporting lines	Agreed. Expo Link introduced
	<b>On Confusion</b>	
e.	Articulate clear lines of responsibility in your policies and job profiles and descriptions	Agreed
f.	Establish a new and confidential ' <i>Hotline</i> ' for complainants	Agreed and introduced
	<b>On Policy and procedure</b>	
g.	Draft and circulate new policies relating to <i>Bullying, Grievance</i> and <i>Whistleblowing</i> - with proper relaunch and briefing arrangements and which outline clear and specific managerial responsibilities	Agreed. New policies for <i>Bullying</i> and <i>Whistleblowing</i> introduced. New <i>Grievance</i> policy to be launched in early 2021
h.	Utilise more sensitive language in the policy that starts from a ' <i>believe the complainant</i> ' perspective	Agreed
i.	Introduce 'Create a new " <i>friend</i> " system' for complainants and respondents	Not yet introduced.
j.	Introduce a new <i>witness support</i> programme	Not yet introduced



k	Agree in certain circumstances, to accept <i>unwritten complaints</i>	Agreed
l	Undertake a review of how <i>staff promotions occur</i> and what information is taken into account and how such to ensure that negative and damaging information about complaints and the like, is not taken into account	Not yet undertaken
m	Adopt a far more uncompromising stance towards breaches of policy adherence	Agreed. Pushback much more robust
n	Introduce a new <i>early fourteen-day resolution process</i> that places an onus on managers to resolve	Agreed. Progress still to be consistently applied
o	Create a pool of <i>internal mediators</i> , demystify <i>mediation process</i> and promote effectively	Agreed
	<b>On Investigation</b>	
p	Ensure that the CMU do not, other than in the most exceptional of circumstances, carry out investigations to avoid conflict of their function	Agreed
q	Introduce - in the CMU - a new <i>triage, case overview and investigation assessment function</i>	Agreed
r	Create a pool of <i>internal trained investigators</i> and appoint <i>external investigation</i> where serious sensitivities arise	Agreed
	<b>On Resolution</b>	
s	Introduce a system of <i>post incident review</i> in order to take organisational learning and response to all parties	Agreed but not yet implemented
t	Distribute a <i>periodic bulletin</i> on <i>lessons learned</i> from recent (unnamed cases) as a way of advising staff a willingness to learn from past cases	Not yet occurred
u	Seek to close cases formally either by way of confirmed acceptance of resolution or time lapse	Agreed
	<b>On Training/Learning</b>	
v	Introduce new and regular training for managers	Agreed
w	Introduce a new programme of investigative training	Agreed

x	Post report to and support for complainant and/or respondent depending on outcome	Agreed
y	Mentor and support line manager and team facing a particularly demanding case	Agreed
z	<b>On Organisation</b> Redefine role of Case Management Unit and enhance resource, at least for the time being whilst backlog of cases is cleared	Initially resolved but overload situation has now developed again and additional resource urgently required
aa	Refine support for smaller departments and establish how resources might be pooled	Agreed
bb	Redesign the case management systems in order to: <ul style="list-style-type: none"> <li>▪ have an appropriate tracking system; and</li> <li>▪ ensure that all data pertaining to the case is properly secured</li> </ul>	A basic case management system has been put in place
cc	Review the way that the <i>Advice Hub</i> operates and the quality of advice scripts available to Call Centre staff. Seek to establish a much more professional and generic <i>advice line</i> that supports HR across the board rather than simply directing inquiries	Agreed. Advice hub does not deal with cases or any aspect of them

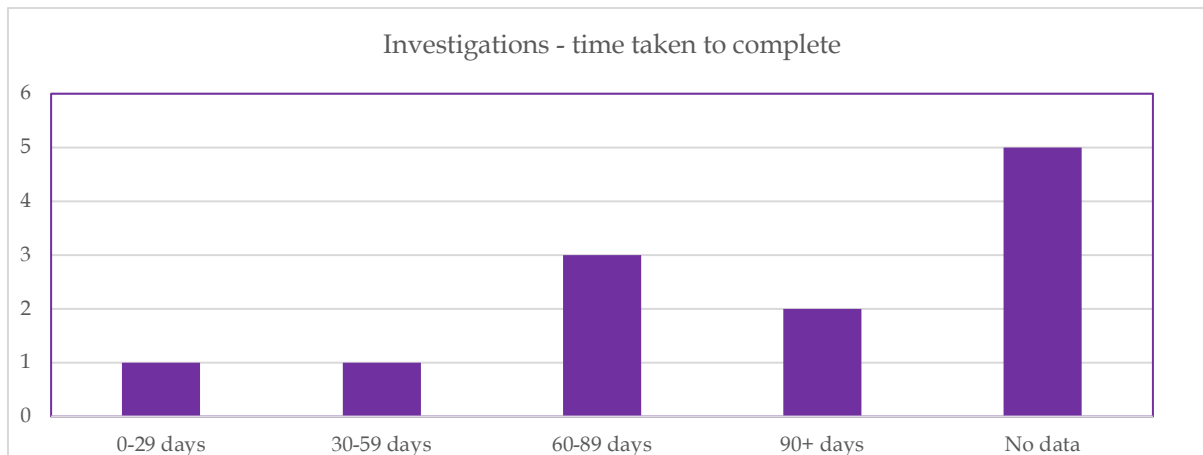
### Fieldwork - desktop analysis

34. The overall purpose of desktop analysis was to review cases that occurred during the last 12 months. In particular, we reviewed case papers for overall response, quality of investigation, general outcome, quality of papers as well as resolution and provide overall commentary. The objective of doing so was to assess how far changes in policy, procedure, training et al had impacted the broad quality of response.
35. At the outset, we should state our view that the view of an organisation is informed not just by the extent, type and causes of Bullying within the workplace but moreover, how such instances were dealt with and regarded. It is inevitable - especially for an employer of your size and scale - that cases will arise.
36. The chief measure is what those concerns are and how you respond to them. In particular, the means by which employees regard how you dealt with them will be a lasting impression of you as an employer.
37. Simply because there may be less claims of Bullying - and the signs are that there are fewer - will not in itself negate its prevalence. In this regard, you show positive signs of progress but we needed to check that behaviour was not going unchallenged.

38. Essentially, when an employee believes that they have been subjected to inappropriate behaviours or significant incidents of Bullying and harassment, they are looking to their employer to manage the process and to provide support for their wellbeing. Anything less runs the risk of undermining the progress that you have made.
39. In other words, how these cases are managed is central to the employee's continued productivity, job satisfaction and retention. If managed well, these cases create a culture of wellbeing and positive morale where there is a sense of shared responsibility, and where employees feel that their personal dignity at work is respected because the employer adopts a zero-tolerance to all forms of Bullying and harassment.
40. In our conclusions, we suggest that a stress audit [www.hse.gov.uk](http://www.hse.gov.uk) might at the appropriate point, provide you with valuable quantitative data and help to pinpoint hotspots of Bullying and harassment.

### Case analysis

41. Compared with the 2017/18 review, it is apparent that there has been some real progress in the management of cases. In particular, we noted that:
- a. The case files are more complete; and
  - b. In the main, cases had been resolved and closed; and
  - c. The use of informal resolution steps had increased; and
  - d. There was improvement in the length of time taken to undertake investigation; and
  - e. There was discernable improvements in the means of keeping parties informed and updated
42. The sample analysed, was relatively small, so it was not really possible to provide any meaningful statistical data to demonstrate trends, and additional key measurements, other than the length of time it took to undertake investigations and provide an overall impression of improvements made.
43. On time taken to investigate, the following table shows the position. This has improved over that noted in 2017/18:



## Case papers

44. When reviewing a case file, we would expect to see the following:

- a. The complaint form, outlining the issue, together with a confirmation of the outcome or remedy sought; and
- b. Evidence or notes of efforts made to resolve the dispute informally - including use of mediation
- c. Confirmation of the formal process and documented agreement of what could be formally shared with the respondent; and
- d. A witness list; and
- e. Formal invite to any investigation meeting; and
- f. The investigation report; and
- g. The investigation evidence and bundle, employer/employee correspondence, witness statements and evidence relied upon; and
- h. Notes of any hearings and meetings; and
- i. The outcome letter with right of appeal outlined; and
- j. The appeal form - process or outcome, or both; and
- k. Notes and outcome of any appeal process

45. From the original case file analysis carried out in 2017/18 - there has been considerable improvement work to ensure a more complete suite of documents. Of the twelve cases reviewed in this latest review, nine were incomplete and required documents to be found. In most cases, the papers existed but had been incorrectly filed. Three case files were incomplete. The importance of good and accurate files cannot be underestimated. Put simply, an Employment Tribunal will adopt the view that *if it is not written down, it didn't happen*.

46. On this principle, we simply suggest that more care is taken to ensure a complete file when a case closes. The administration of a collection of records detailing events as they transpired is in your interests so that it can be relied upon for:
- a. GDPR purposes (as per your GDPR policy)
  - b. Giving direction on how the case should be managed for any potential hearing
  - c. Subject access requests
  - d. Defence against employment tribunals or other legal claims
  - e. Case reviews

### **The informal response**

47. Your approach and description of the way to resolve complaints informally is to be commended for it has multiple layers of choice for the complainant and demonstrates a strong desire on your part to encourage this approach.
48. That said, we offer the following based on the cases we examined:
- a. We found - in more than one case - that the person who committed to mediation was issued with a single line letter stating that mediation could not proceed. No reason or explanation was offered. We do not know whether this was due to one of the parties declining to participate or for some other reason. We think that you should more closely consider when - for whatever reason - mediation cannot proceed and provide feedback as appropriate to the employee.
  - b. In two cases, mediation was not deemed appropriate by the mediator. It might be prudent to list possible reasons why that might be the case in the policy. This will help to manage expectations prior to mediation being offered.
  - c. During the fourteen-day intervention period, it would be beneficial to be clear about what the range of informal options are and who is responsible for coordinating them. In one case, a four-month period was taken to resolve the complaint informally. This is too long whatever the reasons. Regrettably, the case examined, the approach ultimately failed.
49. Training managers on how to spot, intervene and resolve conflict is essential, both to help prevent specific clashes escalating into alleged Bullying and to send signal to staff that conflict will not be ignored and will be dealt with promptly and with sensitivity and skill.
50. Providing the right tools and confidence to de-escalate conflict will pay dividends and ensure that complaints are managed swiftly and effectively.

### **Investigation**

51. Some investigation reports were better than others. Some were thorough and well written. In a few instances though, the investigation appeared superficial, lacked depth and would not, in our view, stand up to scrutiny. Make no mistake, there has been some improvement and the ACAS training has had an effect. But the cases about which we were concerned were more major cases, and the

investigation did not seem to examine all aspects or appear as sophisticated as we might have expected.

52. We were surprised to see no evidence of hearings that had taken place across the twelve cases. We noted that you had created an additional step of clarifying mistake of fact and a desktop appeal process. We are not altogether convinced by this. It was noticeable that in those cases when the complainant was dissatisfied with the outcome of the investigation, the case moved from investigation to a paper-based appeal process in one step. This generated a possibility that parties might suggest that the case had been dismissed or regarded insufficiently serious when our enquiries suggest the opposite to be the case.

53. Further observations concerned:

- a. Handwritten, and in some cases, illegible witness statements. We recommend the use of audio and transcription for interviews, particularly in complex cases, and typed-up notes; and
- b. Three investigation reports were undated; and
- c. Both the complainant and respondent had opportunity to review the investigation report prior to any decision to determine next steps. On the one hand, this is a commendable step in order to agree the facts where possible. On the other hand, and on reflection, it may be unwise and have potential to prolong and become engaged in nit-picking parts of the investigation. It is our view that such comments on the investigation report should take place either in a formal hearing or at the appeal meeting or both; and
- d. HR should not investigate cases other than in the most exceptional circumstances; and
- e. Outcome decisions should not be determined or communicated by HR - who should always act in an advisory capacity; and
- f. Be clearer about the purpose and risks of pre-investigations; and
- g. Incorporate a requirement that group texting or WhatsApp group messaging before or during an investigation is unwise and prone to misunderstanding.

54. We were pleased to learn that there were nineteen trained investigators as follows:

- a. Thirteen x departmental managers
- b. Three x HR practitioners
- c. Three x zero hour contractors

55. Of the twelve cases analysed, these were undertaken or supported by the following:

- a. Eight x HR practitioners
- b. Five x internal or external managers/investigators

56. The HR Lounge would recommend your continued and supplementary use of independent (and wherever possible external), experienced, and trained

investigators on more complex Bullying and harassment cases in order to ensure as speedy and thorough examination of the case as possible, for the following reasons:

- a. The investigator has more awareness that some bullies are particularly good at manipulating and distorting others' perceptions, and in ensuring no one speaks against them - the investigator might need to probe deeper into the circumstances, for example, by looking into the alleged bully's history for signs of previous incidents; and
- b. The investigator should focus on the effect upon the complainant, and not the motive; and
- c. The investigator should readily question how one balances the response *it was never intended* against *this is what I experienced*; and
- d. The investigator's neutral perspective can look independently at patterns of behaviour and incorporate this into the investigation; and
- e. The investigator can explore more readily a list of witnesses proposed without knowing or having to balance internal politics; and
- f. The investigator can produce a professional and comprehensive report that would stand up to examination and scrutiny under the weight of litigation; and
- g. The investigator has likely had more extensive exposure to multiple Bullying and harassment claims across differing sectors; and
- h. The investigator will be able to assess the employer's culpability in the case; and
- i. The investigator, on request, can, with some gravitas and neutrality, offer a perspective on lessons learned.

## Outcomes and solutions

57. Your policy is clear that the Commissioning manager is responsible for the outcome and that *s/he will conclude, on the balance of probabilities, with one of the following three outcomes:*

- a. *There is a case to answer*
- b. *There is no case to answer*
- c. *The complaint was untrue or malicious*

58. This decision should be reached based on a comprehensive and robust investigation report, utilising the statements, evidence, and the investigator's view that on the balance of probabilities - an incident is more likely to have occurred than not.

59. The investigation reports that we reviewed rarely utilised this Employment Law test, and there was nothing to indicate that the investigator had considered such outside of the case evidence presented. Instead, the investigations reached a variety of conclusions ranging from:

- a. unsubstantiated - there is insufficient evidence to prove or disprove the allegation; and
  - b. allegation substantiated; and
  - c. allegation - partially upheld; and
  - d. allegation 1 - false, allegation 2 - substantiated; and
  - e. no evidence to support X having bullied Y - X's grievance is malicious; and
  - f. on balance abused his position; and
  - g. upheld and not upheld - in terms of a range of allegations but not all
60. In all twelve cases, the commissioner of the investigation relied too heavily on the outcomes reached by the investigator, with outcomes that neither followed local policy or ACAS guidance. The commissioner should demonstrate independence of thought, using the material presented to draw his or her own conclusions.
61. It is important that a consistent method is applied in terms of reaching conclusions in an investigation report. According to ACAS, and in line with your local training, the investigator should be given a clear mandate to make recommendations such as formal action, informal action or no further action but not go so far as to determine the level of action or severity as such should be obvious and be the judgement of the Commissioning or Hearing Manager.

### Complaint outcomes

62. There was limited evidence of a clear understanding of what the employee was looking for in terms of outcome and resolution. These should be managed against a backdrop of cultural and internal tensions, but is, nevertheless, important intelligence provided by the complainant and should be identified at or near to the outset.

### Mental Health

63. The impact on an employee in conflict with their employer or colleague should not be underestimated. Creating empathy in these relationships, by both line manager and HR, is vital and a basis for leadership excellence. In particular,
- a. Victims of Bullying may need professional help to deal with the psychological effects of the Bullying, particularly where it has gone on for a long time. They may, for example, experience anxiety, or have depression or post-traumatic stress disorder; and
  - b. There may be anger towards the organisation for not dealing with the problem sooner, and towards the person who caused their suffering
64. This is an important business issue and is increasing in significance for Employers. It is unlikely to be sufficient - in the future - simply to have a wellbeing policy or employee assistance programme. The likelihood of new and dedicated provision



is likely to feature in Employment Law in the very near future - may not prove to be sufficient.

### **Training and development**

65. Values-based leadership training ensures that senior management are setting the right example for the rest of management. The work carried out by Team Jersey has been very impressive in this respect. It may be that timing did not assist as far as these cases were concerned but we observed a need to continue to invest in good quality training to ensure that your managers display the attitude and skills to deal with these matters. The following is a list of lessons learned that we drew from our overview. In particular, we would stress the need to:
- a. have positive and meaningful interaction with individuals in their team; and
  - b. achieve high levels of consultation in day-to-day management activities; and
  - c. provide clarity about what is expected of individuals and teams; and
  - d. model desired behaviours themselves; and
  - e. manage and influence levels of competition between individuals and teams, so that employees are not tempted to bully others to give themselves an advantage; and
  - f. have confidence to and not shy away from managing poor performance, by offering feedback and support to enable employees to meet required standards; and
  - g. discover and deal with conflict - have the confidence to ask how the employee perceives workplace issues; and
  - h. be able to mediate between warring parties and find solutions

### **Review of Bullying and Harassment Policy and Procedure**

66. The States has carefully considered its position and how it responds to claims of Bullying and harassment by its workforce. We mean it when we say that considerable progress has been made. It is apparent that the 2017/18 report was comprehensively considered in the development of your approach and many concerns we had then have either been addressed or are a long way down the path of being tackled.
67. It is our view that you have addressed obstacles that precluded the user from being able to access and understand the detail of the policy and as such, it has become more user-friendly. We commend the clear timetabling of activity and the use of an internally facilitated pause button, which allows all parties to assess and reflect, with a view to early resolution of the conflict, culminating in the fourteen-day intervention period.
68. Equally and worthy of note is the apparent investment in the development of independent investigators to deliver timely and forensic investigations which underpin the whole process and is critical to the employer response.

69. There is evidence in the policy to demonstrate that an increased measure of support has been introduced for all parties, which is clearly mapped out and signposted for the user.
70. That said, we were not altogether persuaded by some aspects contained within the policy and procedure and in particular, the level of responsibility that appears to remain with the Case Management Unit when we believe that their role should be much more about quality, oversight, advice and general co-ordination. We have reviewed your policy at length and at [Annex A](#) is a list of potential amendments that you might wish to consider.

### Fieldwork – focus groups and interviews

71. Both focus groups and interviews were structured and closely scripted. Broadly, the same areas were explored, although identical questions were not asked of every participant.
72. Set out below is a commentary on the issues as we see them.

### Management and leadership

#### Engagement and Confidence of Managers

73. It was apparent that progress had been made on this front. A general impression was formed that those who made complaint were discernably more impressed with the overall quality of managerial response and the way that investigation had been commissioned and undertaken than previously. The impact of this should not be underestimated for the level of cultural adjustment required here was one of the most significant recommendations in our original report.
74. Much that there has been progress though, the journey is - as yet - nowhere near complete and considerable effort and input remains to be given in order to further increase the level of confidence in and from managers.
75. We detected an issue regarding the level of engagement on the part of managers to deal with inappropriate behaviour. We remain a little fidgety that any failure to deal with bad behaviour might be interpreted as either tolerating it or giving license to others to behave in a similar way.
76. We were also concerned that some management might be dealing with the need to adopt a new management approach by way of stealth. In other words, some of the words were right and an action or two had been put in place but the underlying conviction was not so apparent. In other words, there did not always exist, underneath the surface, an understanding of what those words or actions were intended to deal with or why. Or even a view that if the right words or actions were taken, that was all that mattered.

77. As the fieldwork proceeded, this issue became more polarised to suggest that managers might be tardy in accepting responsibility and dealing quickly enough to compel others that such action is genuinely motivated. It was very apparent that too much time could be taken in the early days after a complaint - either not to deal or not to use the fourteen-day intervention period as wisely as it might be.
78. A striking feature of the focus groups and interviews was the level of nervousness brought about by the risk of individuals initiating grievance and complaint - as an issue of Bullying - as soon as capability or conduct had been challenged. Clearly, there is an issue here for we heard the tale too often. The rub of it was the extent to which managers may be deterred from challenging performance issues in fear of the matter then being turned around in the form of a complaint against him or her. Such procrastinates the process as well as discouraging tough conversations to be had.
79. If this had been raised occasionally, we would be less perturbed but it was such a regular issue that we believe that you may need to take action to guard against it becoming a serious impediment to your progress.
80. It would be churlish and probably unlawful to blindly ignore a complaint if it came in once a performance or disciplinary issue had commenced. But we think that there may be benefit in an independent assessment being undertaken by a colleague department in the event that such a situation arises. Such assessment would assess the broad veracity of the capability, disciplinary or performance issues identified and the materiality and scope of that challenge alongside the depth and detail of the counter Bullying complaint.
81. We would suggest that this would be a cost effective and relatively quick way of determining what should take primacy.

## Training

82. We were impressed to learn of the initial training and content of training given to line managers. We heard many good reports about this and the practice it had given to managers in handling difficult situations. We were concerned though to hear that newly appointed managers were not routinely trained or equipped to deal with these situations and also that some of the training had not been followed up either with top-up or to support other policy changes. Leadership Team members readily acknowledged the need to continue with and expand the training to both keep topped up and also to capture newly appointed managers.
83. As a matter of routine, we would suggest that a short day of familiarisation training should be held for all newly appointed managers within a three - month period following appointment, almost in the form of an extended Induction or as part of an on-boarding process. Similarly, we would encourage you to prepare an online module for all managers to dip into and out of to handle these situations with the requirement to confirm completion of this learning.

84. You have made good progress here but the trouble with a *one off* training programme is exactly that. It is *one off* and does not keep those affected up to speed or provide any confirmation that changes in your processes and handling techniques have been properly understood and implemented.

### Tough conversations about performance

85. Tough conversations with individuals about performance and capability failings are never simple or straightforward. They need to be handled with care and sensitivity. To be clear, we heard some instances where this had been well handled but we heard many more cases of either over-bullish approaches to the matter or a reticence to tackle bad performance possibly for reasons already alluded to.

86. There is - on the face of it - a need to instill more confidence in dealing with these situations and to demonstrate to others the standard of performance required. Much that the trades unions highlighted cases of over-zealous performance challenge - which then turned into Bullying complaints, they also exemplified some cases where reluctance on the part of managers to deal had generated poor behaviours in others and been unhelpful.

87. There are pockets of your employment where this issue is more paramount but as an example, we heard from senior managers in *Health* of a real reluctance on the part of middle managers to deal with difficult situations in fear of the criticism that would come their way.

88. This is a really difficult nut to crack but for our part, we would encourage poor performance to be challenged directly and honestly and managers to be backed in their actions so long as their own standing and approach to such matters is in accordance with your processes, is honestly and sincerely based and fair to all.

89. Our recommendation regarding independent assessment would help, we suggest, to give protection in the event of individual challenge. As would an internal *mentorship* or *confidante* process that connects experienced leaders with more junior or inexperienced managers to develop the skill necessary to tackle such matters.

### Who is in charge of a complaint?

90. One negative issue that arose frequently throughout our fieldwork was a perceived confusion of who was in charge of a complaint once lodged. The CMU has a very clear notion of primacy but it was interesting how different managers, trades unions and affected individuals painted a different picture and highlighted a level of confusion about who was in charge.

91. The CMU carries a function in *advice on* and supports the resolution of complaints. They are clear about that role and how it should be enacted. They understand too that the level of support will be greater or lesser depending on where the complaint sits. In the circumstances, we were surprised to hear some senior managers

describe the role much more significantly and either acting in subservience to the CMU or dumping onto them responsibility for cases where such truly sat in the managerial line.

92. We conclude that your policy should be amended to make abundantly clear that the responsibility for resolution sits with line management unless alternative arrangements are expressly and independently agreed. Anything less would seriously impact your defence in any Tribunal proceedings and also allow the parties to wriggle through matters and let resolution fall through the cracks.

### Leadership and Management behaviour

93. In an organisation as large as the States of Jersey, there will - inevitably - be differing standards. Our observation is that you have worked hard to describe your standards and expectations and communicate these across departments and functions. The level of enthusiasm with which they have been adopted and worked through will also inevitably differ but our overall assessment is that you have made progress on this front and continued leadership time and effort will be worthwhile to embed the culture that you desire.
94. Our interviews revealed different levels of understanding though about the centrality of your Values and behaviours. Similarly, the focus groups evidenced some confusion about their coverage with a number of participants suggesting that they either *did not apply to us*, or that *they concerned management only* or in one departments case, *that they do not apply to us and we do our own thing*.
95. Interestingly, the examples given about breaches of your Values sometimes concerned leaders and senior management which made the point well that such behaviour was always under observation and any breach that went unchecked took on significance that could be devaluing of your endeavours to embed the desired culture.
96. We raise this here as it was a matter raised on many occasions. Examples of heated and public arguments, insulting and aggressive behaviour and belittling - all of which are potential incidents of Bullying - were mentioned. We would encourage the top leadership team to discuss these and those of their direct reports' behaviours, in order to determine a code of conduct amongst themselves.
97. We fully accept and understand that there will be differences of opinion and sometimes these spill over into quarrels and the like. But the effect of these if witnessed by others is either to suggest a double standard or to give rise to an accepted pattern of behaviour that lower down the organisation would not be tolerated and would be marked out. Similarly, we would encourage you to take a stricter stance to breaches of your desired culture. If you do not, then their value will be diminished and the progress that you have made will be negated.
98. Overall, we would suggest that leadership needs to be more closely identified with practical ways of championing good management and dealing with inappropriate

behaviour. It is not that we think that they are insincere in their endeavours to represent good behaviour but there was a large body of opinion that did not always associate good behaviour with the leadership. One participant described it as *I wish they would practice what they preach.*

99. This was not consistently expressed in the focus groups and one or two departments in particular, were sharply in focus, when examples were being described. All that we stress, is the importance of representing and being seen to represent good management principles.

## Process

### Safe to make a complaint

100. Undoubted, this is a work in progress. We were pleased to hear from all parties including trades unions, that a better general environment existed in which complaints could be registered and raised. And we were convinced too that - at a strategic and top level - the organisation was far more welcoming and had a preparedness to learn from these matters.
101. There was an exception or two but in general this represented a big advance on the situation that existed previously. Where we were less convinced, was about either a particular department and in instances where managers simply did not have the mechanisms in place to assess the situation or over relied on managers to tell a story without ever validating whether that was an accurate reflection or not.
102. The Jersey factor remains a serious concern. Our understanding of some cases is that - for whatever reason - pressure has been placed on complainants or witnesses which has impacted their own actions. You are aware of this and there is little we can add to it now other than to state that the issue still features.
103. The fact that there is a greater level of confidence and assurance in coming forward is good but it should not be interpreted in a way to suggest that the issue does not exist. It does but all you can do is to continue to promote the policy and to be visible in your endeavours to protect complainants and witnesses who come forward. As one participant described it *this work needs regular conversation and is not a set piece.*
104. The Expo Link was generally well supported and put forward as a good and welcome vehicle for making complaints and contributing to a fairer and safer environment to do so. You can regard this initiative as a success in building a better response.
105. We did hear one or two instances of managers rebelling when complaints were put forward but these were pretty infrequent and we do not think it worthy of further pursuit. Our suggestion is simply that you continue with publicity and statements (from the top) about your encouragement for staff to come forward.

Further, we think that you may wish to contemplate publication, say on a six-monthly basis of a bulletin to report departmental case frequency and outcome.

106. Obviously this should be in numeric and general format but we suggest that such publication might serve a purpose of compelling staff to trust the authenticity of your process and the safety in coming forward.

### **Early resolution and fourteen days**

107. We strongly believe that the best time to resolve and address complaints is in the early days. In our previous report, we proposed that a period of fourteen days was allowed in order to allow manager and complainant to resolve matters. We previously suggested too that this period be put in place and a formal complaint be not recorded as such until this time period had lapsed. We believe the time period should be a strict period and a heavy onus placed on the manager to use every endeavour including mediation to resolve.
108. We heard examples of cases where this period had been used with success but we were concerned that there was also a perceived level of ignorance about it. In particular, some managers denied any knowledge and claimed that any formal complaint automatically meant that a formal investigation and process was required. Interestingly, in a couple of cases, the benefits of informal and quick resolution was doubted.
109. The trades unions were supportive of early resolution so long as such endeavours were sincere, outcome focused and non-process driven. We would agree with that. After all, resolution should be the desired outcome for all.
110. We think that this aspect of your policy warrants reiteration and should feature more in your training of managers in dealing with such matters. We suggest that a short guidance note outlining how such early intervention might take place and outlining tools available to assist, including mediation and support of HR Business Partners would be helpful.

### **Triage**

111. We heard concerns about timescales, investigative process, ability of investigators and timescales generally. We listened too to concerns about different approaches and departmental differences in how such matters are received and dealt with. As the issue always in such cases is the conviction that a complainant has - that the matter will be fairly received - and looked into. Whether true or not, the perception can be that complaints received locally can be dampened and ignored.
112. We think that this might be an area about which you might need to give more attention, at least, until such time, that you believe that managers and the like sustain an attitude and approach to your values that diminishes the need for action. We suggest that all cases of alleged Bullying - that is after the fourteen-day

period has passed - are referred to the CMU for decision on seriousness, route of investigation and timescale. They are then referred back to the department in question with a clear mandate and authority to manage with the help and guidance of CMU.

113. Again, some protocols need to be worked through for this but the wisdom of a properly carried out *triage system* would have many benefits in terms of case oversight, assessment and priority as well as give confidence that a service sitting outside the departmental chain is aware and involved.

### Counter claims

114. This featured heavily in both interviews and focus groups. The concern expressed - and several examples were given about this - concerned the incidence of counter claims and allegations arising out of management pursuit about conduct, capability or performance. This is a tricky area and occurs in many organisations and the law does not really assist at all.

115. Clearly, there may be occasion when pursuit about such matters is insincere and genuine cause to pursue such a route does not exist. But in our experience, the likelihood of such instances is quite rare and much more likely, we believe, that such claims alleging Bullying and the like, are put forward either to discourage such a pursuit, or to procrastinate matters or to cast doubt on the character and validity of the manager. The trades unions - in general - desisted such a claim though confessed that such had occurred on rare occasions.

116. We have not undertaken any examination to research this further. But we do suggest that each case, when it arises, is automatically and independently assessed by the CMU in order to determine what should take primacy. To do this, the CMU will need to devise some criteria that might include a view about history, managerial and individual performance and an assessment about the robustness of the paperwork. But we do suggest that this would be a good way of rooting out endeavours to delay process by counter claiming and to put a good audit trail in place to defend any such decision in the event of external challenge.

### Support for witnesses

117. This relates to one of our recommendations in the original report and about which progress was not noted. We heard several stories of witnesses panicking, pressure being brought to bear, threatened (usually subtly), and being discouraged and persuaded not to come forward - such that we believe this to be an issue.

118. We are mindful that living on an island such as Jersey will bring its own risks when one is involved in these matters, for it is inevitable that work, neighbour, relative and friend issues will overlap and become considerations on whether to speak up. The witness can be placed in an unenviable position and withdraw from or suppress an opinion about what has taken place.



119. Put simply, there needs to be better protection and consideration should be given on how this might be best provided. Else, the situation will continue to arise. We go so far as to suggest that the absence of any support mechanism for witnesses is a serious gap in your policy.
120. The trades unions were particularly concerned about this and understand the predicament. Equally, they regard it as your responsibility to take measures to minimise the effect that pressures placed on potential witnesses bring.
121. In our original report, we proposed that you might introduce a *buddy* system for witnesses in the same way that you do for complainant and person accused. It is not foolproof and will not alleviate the position but it might go some way to providing meaningful support and counsel to witnesses. To overcome any concerns about confidentiality, it would be wise to seek consent from the employee affected and make clear what the purpose of such a role was. We would commend such a scheme to you using staff and the like possibly from colleague departments so as to provide further independence and neutral influence. We would also suggest that you might wish to list a new offence in your list of potential gross misconduct cases to include *interference with or intention to unduly influence witnesses*.

## Communications

122. We identified a concern from both complainants and trades unions of elongated processes and gaps in communications. Essentially, the concern we heard was that once a complaint was made, little was followed up with the complainant all the way through to resolution and outcome. Of course, if the case involved mediation or something similar, the complainant was involved. But the concerns we heard related to other cases in which investigation progress, recommended actions, and outcomes were not communicated.
123. We understand the difficulty in reporting the outcome of disciplinary hearings to those not directly impacted. But similarly, we believe that there are ways in which those involved - the complainant, witnesses included - should have the benefit of knowing at least that action has been taken without necessarily knowing the fine detail of what was involved.
124. The major case in [REDACTED] that we examined was a good case in point. We spoke with those involved. Whatever the rights and wrongs of the case, its handling and outcome, we were concerned that the complainant knew next to nothing about outcome and was left to hear about it by seeing the individual accused back in service.
125. Similarly, witnesses who spoke about the case revealed their own take on the case and speculated. In other words, their grapevine filled the gaps of an information shutdown and probably caused more harm than was necessary. An appropriate attempt to debrief without causing the individual accused any harm should have

been tried - and we suggest - might have allowed a better longer-term mood about the issues to be formed.

126. As it is, we were concerned to learn that complainant and witnesses harbour a long-term doubt about the level of risk to their futures in having become involved in the first place and are doubtful - because of this - that they would participate in a future case.

### Quality of files

127. The desktop analysis identified some gaps. It was a limited analysis and we do not want to overegg the issue but we believe that there is some improvement needed here if you are to create the quality of audit trail required to successfully defend actions in a Tribunal. There has been improvement since the original study but we do conclude that the current situation is not quite as adequate as we would expect it to be.

128. Responsibility for files is in the domain of the manager and investigator. They can be monitored - and are - by the CMU but the chief duty sits with those most closely involved in the case. You have already a file checklist which is helpful and about which we also suggest should be issued *with instructions* to managers and investigators as part of the specifications that outlines what papers should contain and how a file should be maintained.

129. We urge that such a checklist be prepared and circulated and upon return from the manager and investigator, CMU take on a new role to adjudge the file and assess and deal with any gaps as a new piece of follow-up immediately after a case concludes.

### Acceptance of complaint

130. We noted significant progress on this front. It is so important that complainants feel that their concerns will be believed. At least at the point of submitting it. The hotline has helped significantly with this. There will - inevitably - be concern that the assumption of guilt will be a difficult hurdle to overcome but with good *triage* - and we strongly recommend this - and quality investigation, we believe that you will have sufficient in place to overcome that.

131. We heard a couple of sets of concerns regarding papers. Both related to the same case but were different sides of the same coin. One version was concerned that detailed statements were shared with the accused. The other side of the concern was that the explanation was shared with witnesses. Frankly, we regard this as inevitable. It is proper that the person accused has opportunity to cross examine and interrogate what is said and likewise, it is proper that the complainant and witnesses have opportunity to understand the explanation.

132. Indeed, this is the very point made in the foregoing section on *Communications*.

133. We were also concerned to learn of a case in which an individual made a complaint and was suspended for doing so. If true, this would be hugely inappropriate and we suspect that this was how it may be interpreted but the reality was that the individual was *removed* for other reasons and whilst the matter was investigated. Whatever, the damage is - if staff believe that making a complaint might lead to suspension is certain to have a dampening effect on willingness to speak up. Safeguards should exist to protect those who have made a complaint from potential disadvantage or unfair treatment.

### Timescales

134. There is little to say here that the CMU and managers are not already aware about. The need for determining timescales and conducting these matters speedily and thoroughly is paramount. You are not alone that this is a struggle especially with the more complex investigations but you do need to be more robust and rigorous in honouring timescales. We refer to this in the review of your policy by proposing a timescale at the outset that is reasonable, attainable and proportionate.

135. In some cases involving suspension, staff can be removed from duty for such a long period that - in itself causes long-term effects - for the individual accused, for colleagues, for management and for the public and the public purse. Investigations are often carried out as an adjunct to daily duties such that they get carried out on the basis of an hour here, and hour there and can falsely become protected simply due to the weight of other responsibilities.

136. We think that your pool of investigators needs to be extended further but we wondered whether a good way to move forward would be to develop a permanent team, staffed by way of six or twelve-month attachments and secondments drawn from across the States of Jersey that could be dedicated to the completion of more major investigation.

137. That would enable both a resource that might speed things up, a greater managerial awareness of the need for effective investigation as well as an enhanced quality of investigation. Alternatively - or in addition - recruiting a pool of external and independent investigative resources to supplement your internal team.

### Keep in touch

138. The need for follow up is important for it demonstrates a feeling of concern and welfare. We think that there is more that could be done to follow up three and six months after the closure of a case to test the quality of the resolution, to gauge the mood of the complainant accused and witnesses and to draw learning from the information derived.

139. This is not a central feature of your policy but would greatly enhance it - without cost or fuss and demonstrate a commitment to a fair and healthy workplace.

## Investigation

### Investigation quality

140. Your efforts to recruit and train a pool of investigators is to be commended. It has already demonstrated its worth and we were pleased to look at some cases where the experience and know-how of the investigator was apparent. This was a considerable improvement over the position previously noted. That said, we still believe that there is an over reliance on HR and the CMU to investigate or take the lead.
141. At the same time, there was a marked difference between the scope, speed and depth of some investigations and in that respect, and as the desktop analysis revealed, investigation quality was variable. And in one or two cases, the quality of the investigation was poor. In one case, we noted, the investigation was carried out by an individual experienced in criminal investigation and it was apparent that there was little allowance made for the fact that the burden of proof was of a lower standard for employment investigation - as distinct from criminal investigation - and wrong terminology and practice was used. It was reflected in the outcome.
142. The need to top up investigative training and to maintain a fresh and dedicated group of investigators is apparent. This can be topped up as necessary by investigators who undertake this work for a fraction of their working week. The aim must be to recruit a fuller and more skilled pool. We would be delighted to assist with this.
143. We have suggested elsewhere that you might consider a larger and broader team - drawn from different backgrounds and levels but whom might be used in different types of investigation, whether it be Bullying, or discrimination, of fraud, or any other type of complaint - on the basis of secondments and attachments for a confined period of time.
144. We think that such a way forward has considerable merit, adds a dimension to individuals whilst at the same time providing a stronger internal resource to speed up matters.
145. We are all concerned that investigations need to be thorough and involve all lines of inquiry. We heard some details of investigations that were not complete or which had been confined to particular issues rather than all avenues. Stories of witnesses not being interviewed or information going unchecked may or may not be true but if the perception is that investigations can be curtailed or only partially completed, that casts a doubt over the probity of the policy and your commitment to it.

146. One investigation was described as *a paper exchange* whilst another was likened to *a police investigation with the search for irrefutable evidence* and the word *caution* being mentioned several times.

### Return to work after an investigation

147. In our analysis of cases, some investigations were either inconclusive or were considered by a disciplinary panel and not found. In these cases and frankly after any investigation has been concluded, there is a need to manage as sensitively as possible the return to work - as appropriate - of the parties involved. Our observation - and information derived from the focus groups - suggest that this has been found wanting.

148. If a Bullying investigation results in the dismissal of the person accused, it is by comparison to other outcomes slightly easier to deal with. But even in that set of circumstances, the return of the complainant, the issues that arise with witnesses and even those uninvolved or who have a view, there is a need to carefully plan and spend time on the return to work and ensure that appropriate protections are in place.

149. For more complex outcomes including inconclusive investigation or failed discipline charges, that situation is even more delicate and needs a thoughtful and well-planned plan. Interestingly, the cases reviewed also revealed that one or two of those accused had issue with their return to work and it just taking place with little forethought on what measures might need to be put in place. For one individual, the process *'killed my confidence in those appointed to manage these situations.'*

150. Our concerns were highlighted by the major [REDACTED] case that we reviewed. We make no comment on the rights and wrongs of the outcome. But we spoke to many of the parties involved and almost without exception, they commented on the fact that the person accused was returned to duty without any communication or feedback to those who had been involved in the complaint. No slight is intended on the decision taken to return the person accused to [REDACTED] but a lesson might be learned about the handling from the fact that such was only known to the individuals involved when they saw him in the office.

151. The sensitivities are well understood but the upset generated by this reporting is - in itself - an inadequate way to manage a sensitive situation. Aside from the gossip that was generated, it has caused potential long term damage in terms of the likelihood or otherwise of the individuals involved, becoming involved again. It reflected poorly on the management and fed a story of an insipid outcome. I do not doubt that is not right but it is hard to now contemplate how that position might be recovered.

152. We would strongly recommend that a new feature of your checklist in managing these situations is the need to communicate effectively, to not leave matters to chance and to tackle a return to work head on.

## The culture

### Values and behaviours - their impact

153. You have worked hard to introduce a commonly understood set of Values and behaviours that describe your required standard. We were impressed by the work undertaken by Team Jersey and the depth to which they have sought to ensure that the standards are properly understood and embedded. We were reassured that Values were restated in June 2020 and were impressed. It is obvious that the programme is much, much more, than a fashionable and superficial initiative.
154. At the same time, we were struck by many managers who appeared to dismiss the Values as *it doesn't concern us* or who maintained that *they apply only to senior managers* or who dismissed it as *the latest fad that will pass*. It would be regrettable if the work you have undertaken went to waste simply because a broad management level thought that it was not for them. In one department, we consistently heard that they *were exempted as we did our own thing*.
155. Values programmes are, of their very nature, long lasting and slow implementing. They take a long time to embed and we would simply encourage you to continue on the path of what you are doing, to carry on investment in Team Jersey rather than phase it out.
156. We encourage you to invest in a further programme to embed the culture in your middle managers and require each to devise their personal programme to implement the Values in their own spheres of responsibility. We suggest too that the existing measure of Values as part of your performance appraisal - should be re-emphasised and really made to count in terms of demonstrable contribution and commitment.
157. Our observation is that you have made strides at the top and bottom of the organisations but there is a considerable distance still to travel in the lower senior and middle management levels. These are levels that should be interpreting what is required and devising actions to take in their own units and sections. But in general, we were not convinced that they saw this as their lot nor did they really grasp the importance of Values across the States.
158. It is obvious when listening to your Chief Executive that Values are central to what you do. As such, they merit full incorporation into your systems and processes. It follows that breaches of them carry significant implications. If they do not, then staff and others will simply regard them as worthless and meaningless. As one member of your senior team put it *they seem a bit superficial and I don't think that they are truly lived. Our business plans have no reference to them at all*.
159. Two final comments. The pandemic may have stalled the fine implementation of your Values programme but we would urge you to continue with it, to invest in

Team Jersey to assist you and to drive it forward. Second, we were really impressed with some initiatives taken by departments to gauge the opinions of staff. Informal coffee mornings with the boss, departmental blogs, 360-degree feedback, debriefs with the senior teams all featured. It is for each department to work out what is best for them but these and other arrangements are to be commended.

160. By the same token, it is apparent that some departments have little or nothing in place to speak with staff and test the mood, and as indicated elsewhere, the checking systems for picking up on the climate are not robust. We believe that there may be some wisdom in preparing a standard template for such communications and seek each department head to confirm their own arrangements as well as the feedback loop so that the leadership team are able to benefit from this intelligence.

161. We detect a good level of commitment at the top. It would be unfortunate if matters got lost in translation. And the unions need to be brought into the implementation plan - as their ownership of them will be reference and encouragement to others.

### Breaches

162. We hint at this in the foregoing paragraphs. The test of your Values and behaviours is not just the extent to which your staff abide by the code that you have specified but moreover, how you deal with breaches when they occur. It is important that a code of conduct is policed and regulated else it ceases to carry importance and weight. When breaches occur and are dealt with, it is important that there is awareness amongst those impacted about the actions taken to deal.

163. It is for these reasons that we conclude that you will need to firmly establish some precedents and protocols for dealing with breaches and making clear the actions taken across the States so that individuals become aware of the impact of ignoring or failing to practice the right standards. In other words, you need to use the Values as a code of standards and deal with repeated failures to meet those standards.

### Education seems apart

164. This surprised us. We are not saying that Education do not work to a set of standards but we heard repeated representations that States of Jersey Values did not apply to Educational facilities. The reason given was that other audiences - such as parents and students - were impacted and a set of standards that did not incorporate their inputs could not be observed. As a consequence, they had *done our own thing*. The same viewpoint was expressed by other Schools staff that we met and the trades unions.

165. We understand the point being made and we understand why such inputs and contributions to Values would be regarded as important. But we do not agree that

this means that they are different. In the way that it was expressed, it felt dismissive and inappropriate. And the reason given, frankly, is little different from the situation that might apply in *Health* - with patients, or in *Police* - with victims of crime and consultative groups or in general with Service Users and the like.

166. We also understand that different departments might place their own slant on the agreed Values. Indeed, we would encourage this so long as the broad underlay of the Values are satisfied. But we think that there is work, to be done here, to compel Education and any other function that pleaded that they are different to better comply and adapt what you have to fit their circumstances. We conclude that a template across the entire States would assist that allowed local departments and functions to tailor the broad Values to their own sets of circumstances would be much more appropriate. In the way described to us, we did not feel that this was understood. In itself, this was surprising given the history of Bullying and other concerns in that part of the organisation.

## Stress

167. This sits outside of our remit and we hesitate before mentioning it. But it is important enough that we do so and recommend that it is a matter that you give some consideration to. Our observation is of a level of tension and anxiety that is not helped by COVID-19 and temporary working arrangements but not solely confined to it either.

168. In discussion with some senior managers, it was highlighted as a potential concern and our attention was drawn to it in focus groups as participants identified certain tensions with management, absenteeism levels that were rising and a general mood that existed.

169. We have not examined this nor undertaken any research into it. But we would suggest - on the back of the recent Staff Survey that suggested much the same - that you might wish to research this further, carry out some form of stress audit and brush down the type of initiative that might help to scale it back.

170. We say this not to start any sense of panic or rush but simply to suggest that the level of tension apparent - made us feel that not to comment here about it would be - to overlook an issue that seems to be on the rise.

## Structure

### Role and resources of Case Management Unit

171. We were impressed by the work undertaken by the CMU and the changes that they have made in the last three years. They are in tune with the Values, are working hard to upscale the quality of intervention in discipline, grievance and related matters and altogether have repositioned themselves well. We were pleased to hear compliments about them - stated pretty much universally across



the various participants with which we spoke and all consistently mentioned a level of helpfulness and clarity.

172. The trades unions - with one notable exception, were similarly positive and enjoyed a good relationship with the CMU.

173. We are concerned about the level of their workload and in this report, we recommend increasing it further with the introduction of a stronger *triage* and case follow up. Their current workload - even without this increase - is extensive and it would not take long to generate a considerable backlog and bottleneck that might hamper progress and impede delivery of your Values.

174. For the sake of an additional staff member or two, we feel that this would not be a price worth paying and we would strongly commend a notional increase in the level of skilled resources in the team to avoid undue loading and dodge an almost certain backlog of work that is in the process of being formed.

### People Hub

175. A real mixed bag here. It serves no part of the formal response to Bullying though it would be wrong to suggest that the People Hub played no part for they are the overall custodians of process and policy. In that sense, we did not look at their functionality at all but did pick up on perceived concerns about the quality and accuracy of their response insofar that they do - on occasions - give opinion or respond on these matters. It could be seen as an unhelpful cog if the comment about inaccurate and non - speedy information is true.

176. Alongside some very critical comments were also some very complimentary views. We do think that you may wish to satisfy yourselves that the operatives within the People Hub are properly prepared and scripted to deal *with situations that may not be part of the process about Bullying but might be the most obvious first port of call from a member of staff crying out for help.*

## Governance

### Reporting and dashboard

177. We noted good progress on the creation and implementation on a new dashboard. The draft we saw was worthwhile and well thought through and we view it to be a really good basis to better measure progress on various HR and employment fronts. We believe that it should be the subject of a regular discussion with your Leadership Team and each departmental management group. Indeed, in our interviews with Director Generals and other leaders, there was a common agreement and support for the need for meaningful data and substantial debate on the issues that emanate from it.

178. In discussion with Director General's and senior management, we were not altogether impressed that sufficient attention was currently given to data and MI

about the mood of staff. Indeed, a number of senior interviewees indicated that there was no real present discussion about these issues or the learning that should be derived and considered from the data.

179. A regular issue raised was that information about cases and underlying causes and outcomes was not tracked. Each case was examined but the accumulative effect of types of case, their geography or functionality, their management level, et al was not examined with any rigour.
180. Accordingly, it was felt that the results of the Staff Survey would always reveal these matters as if they were a surprise when in fact, clues about the mood and experience of staff were more readily available if one aggregated the information from matters such as complaints, absence and other employment data.
181. Some participants complemented the *Be heard* survey but felt that the leadership needed to prioritise more drilling down into it else it might become a data gathering exercise only. Our own observation of *Be heard* was that it was a well-conceived and administered survey worthy of detailed scrutiny.
182. There were some exceptions but these were few and far between and a much stronger impression was given about the lack of such attention or sufficient doubt generated about the data for it to be relied upon as the basis for any meaningful debate. It should need little persuasion that a trick is being missed and rich information about the mood of the workforce is being overlooked whatever fears there might be about the precision of its accuracy.
183. We would strongly support the work undertaken to bring about improvement and add to it by suggesting that a formal debriefing after each major case about issues generated and lessons learned would be a very helpful adjunct to understanding and gauging the mood at sufficiently early enough stages to intervene and take action. We believe that this should be an essential part of your MI pack and the subject of regular senior review and debate with actions being agreed and communicated.
184. It might be suggested that this is a tactical, rather than strategic matter. We would disagree with that viewpoint. Actions taken in response to discernable employment issues and which concern policy change, further research and other interventions at the level that we contemplate are an important strategic action.
185. Our own work on investigations on the island might suggest that leadership awareness of the concerns of staff and managerial approached may not be as fulsome as it needs to be. And in that sense, it is doubly important that MI is considered and thoroughly examined.

### **Political involvement**

186. I do not raise this in any sense that politicians should not have an awareness of and oversight of these matters. After all, it is an important aspect of their

governance that they contemplate the implications of these cases and their effect on the employment of your staff. It is inevitable too that there will be occasions when an individual politician might - wittingly or unwittingly - become involved in an individual case.

187. It is obvious that there should be no focus for politicians to become so involved other than - occasionally - in any appeal process but it is a fact of life that constituency business, and the like, will occasionally mean that questions are asked.

188. I mention it here as it was a subject raised on a number of occasions in my interviews with senior leaders and trades unions. As part of our research, we did interview two politicians and we were suitably impressed that both of their particular interests were very much about the strategic overview.

189. But the fact that the matter was raised so often suggested that there exists a concern that politicians may sometimes become involved, occasionally campaign or lobby for an individual and as a result, can be seen - or has the potential to be perceived - as a direct result of that inquiry. In other words, it can place pressure to ensure a particular outcome. This has a potential to be a route that could sometimes be used to bring about a different conclusion. Sensitive that this is, you might wish to consider how such impact might be minimised.

## **Other matters**

### **Protected species**

190. We were interested to hear of individuals or categories of staff and for whom a different attitude might be displayed in the event that complaints are received. Recruitment and retention issues featured high here. In other words, if there was difficulty in recruiting a particular skill, there was suggestion from a number of quarters that this might feature in the decision taking in the event that a complaint was received.

191. It is impossible to establish whether this is true. But the perception that such has happened is just as damaging. Whether an individual is treated differently and protected due to their personal value, or a particular group of staff, noted for their skills, is similarly protected, it would be unwise to allow such considerations factor your response however challenging the consequences might be.

### **Communications**

192. Throughout this assignment, we picked up commentary about communications and their quality and frequency. Indeed, the underlying cause of many complaints about Bullying either had this as the central cause or was a major contributory factor. Work carried out by the Executive on this front is extensive and was warmly acknowledged and welcomed as was the efforts by many Director

Generals et al to both relay messages in verbal, written and other ways and just as important hear back on the viewpoints of staff.

193. It is a fact though that communications are not consistently exercised across the States. In some parts, the staging of weekly blogs, 'ask the boss' session, coffee mornings, town hall sessions et al was impressive. It served as a useful temperature gauge and also meant that subordinate managers had to follow up. In other parts though, there was a complete lack of any real endeavours to garner staff opinion and answers given referred to the Staff Survey rather than any local initiative to receive views.
194. We think that you may need to devise a corporate template and set of standards for staff communications and approve a departmental plan for each that reflects their own culture, priorities and structure. Ordinarily, we would not have anticipated need to make such a suggestion but the issue arose in almost every focus group and in that sense has a direct relationship with the way that staff perceive the management and leadership.
195. We are aware of the difficulties posed by split and multi sites but in order to keep good relationships, we do not think that this should be an impediment to a properly maintained and structured communication process across the States. We were interested that senior leaders - almost without exception - talked about the importance of effective communications and the need to test one's perceptions. One person suggested that *the real need was to be curious*. We agree. Simply, we think that there should be more curiosity.
196. It would be a real shame if the value of communications from the top was undermined by a different culture of communications more locally that doubted the sincerity of your corporate priorities and Values.

### Stop, start and continue

197. We carried out an exercise to establish actions that individuals would like to *stop* - because they are inappropriate and impede your approach to Bullying or would *continue* - because it works and is an important component of what you do or would *start* - because your policy lacks this aspect. We asked the question in all interviews and focus groups and what follows is a summary of responses together with the numbers that raised it. The lines highlighted are those raised on the most occasions.

Function	Suggestion	No
STOP		
1	Resorting to use formal process without early attempts to resolve	10
2	Practice of making counter claims	8
3	Procedural pontificating	6

4	Line managers being allowed to opt out	3
5	Accepting all cases on face value and presuming guilt	3
6	Being defensive about survey results. Speaking out gives confidence	1
7	Tolerating poor behaviour or finding reasons not to deal	5
8	Accepting complaints in response to change programmes	4
9	Promoting values and being so directive about culture	1
10	All forms of Bullying and tolerating poor management	6
11	Dealing with complaints within same department. Need better independence	2
12	Inconsistent response to complaints	2
13	Ignoring complaints and not taking risks with handling	4
14	Bullying the underdog or those who do not answer back	3
15	Being secret about what is taking place	3
16	Management using this process to deal with broader concerns	2
17	Use of poor and offensive language	2
18	Using mediation in all cases	1
19	Managers damaged as a result of the process	1
20	Heavy-handed behaviours (one-stop short of Bullying)	1
21	Defending and not calling out someone who makes knowingly false allegations	1
<b>START</b>		
22	More training for line managers	10
23	More emphasis on informal resolution	6
24	Holding managers to account for the way that they deal with complaints	3
25	Support staff and create the means to make them feel safer	1
26	Managers intervening more	2
27	Support witnesses and help them	6
28	Recruit and train more investigators	1
29	Position investigation as a good skill to secure promotion	1
30	Looking at and analysing data on these matters and take proper action	4
31	Better prepare new managers	1
32	Being honest and straightforward about poor performance	5
33	Address corporate leadership style - some can be perceived as Bullying	1
34	Prioritising better and stop taking on new work	1
35	Judging our management performance better	3
36	Review our communications and strengthen face to face contact.	2
37	Call bad performance out	5
38	'Friend' system for complainants - not HR staff	1
39	Believe the complainant	2
40	Reduce timescale for resolution	1
41	Respect the role of the TU more	1
42	Better and transparent communication about progress	2
43	Confront bad behaviour	1
44	Recognise difference between Bullying and performance management	3
45	Thinking about mental wellbeing on all parties involved	1
46	TU's should be better balanced on their approach	1
47	Using mediation more	3
48	Person who makes knowingly false allegations should be called out	1
49	Push Expo line more	1
50	Support managers to manage performance	2
51	Support complainant more	2
<b>CONTINUE</b>		
52	Mediation	6
53	Quality investigations	5
54	Encouraging staff to speak up and out	8
55	Training managers to better deal	6
56	Promoting better behaviours and be public with unacceptable standards	3
57	Expo Link	13

58	With culture change programme and value of good relationships	1
59	Promoting anti-Bullying	2
60	Team Jersey	6
61	Cooperation and role of CMU and HR BP's	6
62	14 day resolution period - informal	5
63	Independent case management	1
64	Independent investigation	3
65	Keep policy refreshed and up to date	4
66	Thorough investigation	1
67	Confront bad behaviour	1

198. There is some consistency in the highest scores related to:

- a. The need to call out and deal with performance; and
- b. The view that a stronger means of desisting wasteful counter claims should be introduced; and
- c. Ceasing to use process as a way of avoiding difficult decisions or as an excuse not to take action; and
- d. Ongoing training for managers; and
- e. Support for witnesses, complainants and targets; and
- f. Value of the Expo line, Team Jersey, Mediation and the CMU/HR BP's; and
- g. Encouraging staff to speak up and out

## Conclusions and recommendations

199. Bullying and harassment should not be tolerated at any time. At the moment, it would be easy to unintentionally sanction activities that could easily be interpreted as acts of bullying. For example, matters such as micromanaging, deliberately omitting someone from email chains or calendar invites, or insisting an employee has their video on for a Teams or Zoom call even after s/he has asked not to, can be indicative of larger issues at play - shifts in organisation wide attitudes from the top-down drive positive behaviours.

200. The impact must be mitigated by meaningful steps to provide a safe working environment - being bullied or harassed is a very traumatic experience - and if not managed well, can lead to unintended consequences included stress-related mental health issues, impact productivity, as well as generate high levels of absenteeism, negativity and low morale.

201. It is advisable to act promptly in dealing with any complaint of Bullying and to be seen to do so. Apart from the obvious detrimental effect upon morale and performance, failure to respond appropriately to a genuine complaint could lead to a claim being brought in an employment tribunal.

202. Anti-Bullying measures should focus on prevention, which requires everyone in the organisation to be committed to creating a culture of dignity and respect. A management style that is collaborative, communicative, and consultative, is conducive to promoting a positive workplace culture and behaviours.
203. The employer that takes the social climate of the workplace seriously, and takes steps to eradicate this type of behaviour, will benefit from the best of the available talent. Research shows that collaborative and democratic work environments, and employers that demonstrate an awareness to connect with employees in an open and transparent way, are the most productive. Clear and accessible policies, and the handling of complaints, whether informally or formally, go a long way to achieve this.
204. We break this section down into two sections. The first concerns specific recommendations. But we are concerned that the progress that you have made may be impeded if we simply add many more recommendations and so we have listed those that we consider essential and then added some more general paragraphs related to areas about which we think you might give some additional consideration and decide upon a direction of travel.
205. In particular, we acknowledge the good progress that you have made and in addition, recommend that:
- a. You consider changes to your Bullying policy and procedure as outlined in [Annex A](#) (paragraphs 66 to 70 refer); and
  - b. Consider changes to the way that Bullying complaints are received and responded to by introduction of a separate departmental assessment (paragraphs 73 - 81 refer); and
  - c. Relaunch the benefits of early resolution and the benefits of a fourteen-day resolution period. As part of this, prepare guidance notes and the like, on how best to prepare managers for dealing with complaints within this period and promote the benefits of mediation (paragraphs 107 - 110); and
  - d. Implement a new assessment within the CMU designed to assess the situation when counter claims are submitted (paragraphs 114 - 116 refer); and
  - e. This was suggested in our original report, but we strongly recommend a new Witness Support programme (paragraphs 117 - 121 refer); and
  - f. Further expand the team of Investigators drawing on independent and external investigative resources as required (paragraphs 51 - 56 and 140 - 146 refer); and
  - g. Introduce a new *triage* system within the CMU (paragraphs 111 - 113 refer); and



- h. The resources of the CMU be increased in order to deal with workload and avoid build up and backlog which might be harmful to your policy (paragraphs 171-174); and

206. Set out below are some additional areas about which we think you should consider what steps you might take.

#### **Values and behaviours - paragraphs 93 - 99 and 153 - 163**

207. You have done well with this programme and we respect the work undertaken by Team Jersey. We think you should invest further in it and continue with what you have set in train. But we also think that you need to invest rather more at middle management levels and try and grab their hearts and minds. We detect some cynicism at this level and believe that you might want to work hard to both eradicate this and bring this level onside to deliver the practicalities of your Values programme.

208. We think that you should be firm on breaches of your Values and highlight instances when they are breached and what happens, not as a threat but as an example of how central you regard these to the achievement of your aims.

209. We believe that one or two departments - either by way of diffidence or organisational snobbery - might regard themselves separate. We do not agree and think that all parts of the States should be brought into a common set of Values.

#### **Stress - paragraphs 34 - 40 and 63 - 64**

210. Much that the incidence of cases has reduced and your quality of response has increased, we did detect some sensitivities that suggest that there are some stresses that in turn might lead to Bullying. We would encourage you to undertake a Stress Audit. This need not be yet another survey but moreover an assessment of the causation of absences, the backdrop to discipline and general grievance issues and the level at which pressure and stress is featuring in employee decisions to move on.

211. A short Stress Audit would help to pull these pieces of data together and to determine a programme of health and wellbeing initiatives that might yield particular benefits. The timing of this would be key. To undertake such an exercise during a period when stress levels are likely to be pronounced as a result of the pandemic would, we suggest, be a very pertinent time.

#### **Training - paragraphs 48 - 50, 65 - 70 and 82 - 84**

212. We suggest that you consider the frequency and content of Training in two or three ways. There is a need to better anticipate and read the signs of Bullying and know how best to intervene. We suggest the solution to this rests in a training solution or better still, incorporation into your overall management development training. We believe too that there is a significant training piece concerning your



Values at middle management level and also that the Bullying programme should be the subject of regular top up and new manager training.

#### **Below par performance - paragraphs 73 - 81 and 85 - 92**

213. As a general observation, we identify a reluctance to deal with below par performance. The reasons may be varied but are almost certainly likely to involve a reticence in fear of counter complaint or becoming embroiled in a long and drawn-out process. The existence of poor performance carries significant implications for many parties and it is our experience, left unchecked, that a position becomes ever so worse and resented. For our part, we think that this is an issue that you need to consider and contemplate ways in which your management might feel more encouraged and supported to tackle below par performance where it exists and in an appropriately speedy and effective way.

#### **The lead on complaints and timescales - paragraphs 90 - 92 and 134 - 137**

214. The CMU carries a significant and essential role but we noted instances when they were very much in the lead and accountable when the line management should be driving the resolution albeit with CMU input. We believe that the CMU has a more vital function and, other than in the most extreme circumstances, should be involved in particular cases in a more arm's length way and in support rather than holding the baton to drive cases ahead.

#### **Encouragement about coming forward - paragraphs 100 - 106**

215. The Expo Link has been a significant improvement and was popularly regarded as opening a door to complaints being made. The publicity to announce the line should continue and further effort made to encourage take up and use of it.

#### **Dashboard and data - paragraphs 177 - 185**

216. We commend the work undertaken to develop a new dashboard. We simply stress the need for the data derived to be considered and act as the basis for short and long term actions to overcome issues that emanate from it.

#### **Communications and keeping in touch - paragraphs 122 - 126 and 138 - 139**

217. The issue here is the need to keep complainants, accused and witnesses abreast of progress. This was identified in many focus groups as an issue. Similarly, there is the need to debrief effectively. Clearly, action taken about an individual is confidential but a way needs to be found in order to debrief in a way that does not breach confidence yet instils confidence that the issue has been addressed, confirms that action has been taken and altogether serves to bring closure on the episode.

218. We believe too that a follow up telephone call or mini case conference at three or six month anniversaries would act as a review mechanism and demonstrate interest and commitment to sustained change and improvement.

#### **Communications more generally - paragraphs 192 - 196**

219. This falls outside the brief but related to some intelligence that we picked up and which bears an indirect relationship to the subject matter. The quality of communications appears to be sound in many parts. But not all. We were impressed to hear about the quality of some endeavours to secure and gauge staff opinion. But we learned about the paucity of such in one or two other major departments. This impacts staff mood considerably and we would commend production of a central template or standard so that a communications structure is built and maintained in all parts of your services.

#### **Quality of files - paragraphs 44 - 47 and 127 - 129**

220. We do not repeat here what the above paragraphs describe other than to stress the need for effective and accurate record keeping.

#### **Closing of an investigation and returning to work - paragraphs 147 - 152**

221. An important aspect is to not leave the closing of a case to chance and instead to manage the process of return to work and relationships of the parties. We think it vital that a case is formally closed and a proper debrief process take place. We were concerned in the major [REDACTED] case of the potential for wounds to be reopened and a significant and damaging grapevine to take hold. Put simply, our observation in this case and one or two others is that consideration seems to have stopped after the case itself has been opened upon.

### **Acknowledgements**

222. We are grateful for the help and support given to The HR Lounge during the term of this assignment by Lesley Darwin and Dorothy Brown in particular. Both were exceptionally helpful, the former for her openness and willingness to listen to and respond to challenge and the latter for her endless patience and good humour in setting up logistical arrangements and the like. We are also grateful to members of staff who participated in the interviews and focus groups and corresponded and generally and willingly assisted us with our inquiries.

223. All worked respectfully and courteously and in a balanced way too and represented and gave a good impression of the States of Jersey.

Final report prepared by The HR Lounge  
Martin Tiplady OBE and Evelyn Fearon  
February 2021

## Annex A – comments and suggested amendments to your policy

### Construct of the policy

- a. Consider renaming the current policy - Anti-bullying and Harassment policy.
- b. The policy is overly long, in best practice terms (21 pages) - this could be addressed by breaking the document down into two component parts of a policy and procedure.
- c. There is unnecessary duplication in its messaging - this could be simplified and transformed with the use of a toolkit that clearly defines the process and 'action points' by careful examination of the detail in each section. For example, at point 18, there is a useful chart depicting the timescales, and at point 23, this is further emphasised within a flow chart which could easily be combined.
- d. There are multiple references to other policies - an effective tool would be to introduce hyperlinks to enable the user to easily navigate to alternate policies, for example, to the investigation guidelines.
- e. It would be helpful for the service user and management to have a document where there are clear navigational hyperlinks to be able to proceed to various sections easily without having to scroll up and down - the contents page is a good example of how this document could be improved to better transform the user's experience.
- f. The governance of a policy is key information - it is referred to twice and could be contained in a footnote with more information retained by HR for reference purposes.
- g. Be clear about the language used, for example, the policy switches between the term 'concerns' and 'complaints' - this has the capacity to not only create confusion but change the emphasis of the process. For example (8.2) sits in a section 'Making a formal complaint' however it references a 'formal concern'.

### Section (3) Policy Principles:

- h. At 3.1 'We do not tolerate bullying or harassment' - this could be enhanced to state that you have a zero tolerance.

### Section (6) How do I raise a bullying & harassment concern informally?

- i. 6.10 refers to a 'strong emphasis in this policy to resolve concerns' - this is an excellent statement and should be reflected in section 3 'Policy Principles' or be the leading statement at section 6.
- j. At 6.8 the line manager is expected to facilitate an 'intervention' - what support and development do they receive to undertake this task?
- k. At 6.8, call the parties by the correct names - complainant and respondent
- l. At 6.11 you refer the employee to the line manager or HR, either the HRBP or Case Management - offer one route to HR for consistency and simplicity.

## Section (8) Making a formal complaint

- m. At 8.6 the line manager is responsible for the 'intervention' and should that not be successful, they could become the commissioning manager - this is challengeable in terms of independence and neutrality as they ultimately become the 'hearing officer' on receipt of the report.
- n. Also, at 8.6, it states that the commissioning manager 'will be more senior than the other person involved in your concern' - how can this be delivered if it is the line manager?
- o. At 8.8 it refers to the terms of reference [TOR] and whose responsibility it is to prepare in preparation for the investigation - the TOR should be directly lifted from the employee's complaint and reflective of the Expo link document that they have prepared, using their language wherever possible.
- p. Also, at 8.8 it would be helpful to explain what the TOR is, and how they will be utilised to shape the context of the investigation.
- q. AP 8e is the first mention of a 'Formal Bullying & harassment Form' - this is the first mention of this document and could be referenced much earlier in the policy, plus this is not attached as an appendix.
- r. At AP 8g HR Case Management issue a letter to confirm the next steps - this could be undertaken by the Commissioning manager using a standard proforma letter.
- s. Finally, it is unclear how the policy diverts to the disciplinary process, and at what point this will happen, given that suspension is utilised in some cases, for example, should it be determined that based on the complaints, suspension is warranted, and a sanction of gross misconduct and ultimately dismissal may be applied.

## Section (9) Investigation

- t. At 9.2 it states 'In cases involving sexual harassment, we will ensure that one of the investigators is the same gender as you' - this is too simplistic a statement to make given that the term is used more broadly to denote a range of identities that do not correspond to established ideas of male and female. The HR Lounge would advocate that you review this section of the policy.
- u. At 9.3 it refers to the standard of proof in a workplace investigation - 'Balance of Probability'. The explanation provided does not entirely accord with that of ACAS, which states, 'they could justifiably prefer one version of the matter over another.' Whereas the policy states 'investigators will weigh up the evidence and make their decision based on which version is most probably true'. The HR Lounge would advocate that you review this section of the policy.
- v. At 9.4 it states 'that you would usually expect an investigation to take four to six weeks' - this sets a clear expectation, and on examination of data shared with the HR Lounge, that time frame is invariably not being achieved. It would therefore be advisable to remove or extend the timeframe to something more realistic.
- w. At 9.5 HR Case Management take 'approximately one week' to quality assure the investigation - the overall timeframe should be extended to embrace this additional element, and the policy should clearly state the purpose and parameters of this exercise so that both complainant and the respondent understand and accept this as a legitimate part of the process.
- x. At 9.6 it states that 'both parties will be given the opportunity to review the investigation report in order to confirm that there have been no mistakes of fact' - the HR Lounge would strongly

advocate that this step be removed from the policy and allow both parties to use the appeal process to complain about process, 'mistakes of fact' and outcomes, in the standard way.

- y. In addition, HR Case Management should not be involved in the re-examining of an independent investigation report, otherwise the neutrality of the process is called into question. This task should sit with the hearing or appeals Chair.

### **Section (10) Outcomes**

- z. At 10.1 the policy is clear about how the outcomes of the investigation will be framed utilising on the balance of probabilities - 'There is a case to answer, there is no case to answer, the complaint was untrue or malicious' - the Commissioning manager, based on the report content, will determine the outcome - in reality, (based on a desktop case analysis) this does not appear to happen.
- aa. Also, at 10.1 it references should the case be upheld, it is likely that disciplinary action will follow, and suggesting, at AP 10d, that line managers are responsible for carrying out this action - there is no reference to how this will be managed, and by who, should the line manager be a part of the complaint.

### **Section (11) Appeals**

- bb. At 11.2, the policy asks the appellant to 'set out in writing the ground of your appeal' - provide a proforma to do this, ensuring that the employer has a complete understanding of the rationale for the appeal.
- cc. Also, at 11.2, it states you should send your appeal to HR Case Management - the outcome letter should state specifically which manager the complainant should lodge their appeal with, making it management's responsibility to keep HR updated.
- dd. At 11.4 the appeal process is no more than a paper exercise - during the formal process, apart from the investigator, neither party is heard by a manager, and this would appear to be unreasonable that they are not allowed to present their case, evidence, and mitigation, in a hearing setting.
- ee. At AP 11b, the appeal manager is expected to, within two weeks, confirm the outcome in writing - to whom do they seek advice and guidance from in making their decisions?

### **Section (13) Confidentiality**

- ff. At 13.3, it references 'confidentiality and discretion can safeguard this procedure' - consideration should be given to enhancing this section to reference sanctions where discussion with others has a detrimental impact on the parties and the process.

### **Section (15) A concern has been raised about me**

- gg. AP 15.b acknowledges that 'this may be a stressful time' and refers the reader to section 12 for guidance of the support available - there is insufficient guidance on repairing the relationship once the matter has been concluded. This should include support to both parties, teams, and those managers involved in the process. A 'lessons learned exercise' should be conducted after each case by both local management with the support of the HRBP.

## Section (19) Withdrawal of a concern

- hh. AP19a states that 'if a concern is withdrawn, notify HR Case Management, who will confirm whether we will continue to investigate the concern' - the emphasis and narrative should be on local management making decisions such as these and not HR.

## Section (20) Roles and responsibilities

- ii. At 20.3 states that HR are responsible for overseeing the quality and timescales of investigations - the emphasis and narrative should be on local management managing cases, and being responsible for all steps, with support from HR.

## Additional comments

- jj. How the organisation moves from a complaint to the suspension of the respondent - some cases clearly are so serious that they have disciplinary implications - the HR Lounge recommends that it follows the Disciplinary procedure.
- kk. Clarity is required around the use of suspension, at what stage it can be implemented? Who makes the decision - and its impact on the process?
- ll. There is no reference to the process that would be adopted if there is sufficient evidence or on the balance of probability, it is the assertion of the decision maker that the complaint was malicious.
- mm. More guidance should be given to the repair of the relationships post the complaint process being concluded - for all parties, including witnesses and the team - brief mention at (10.1).
- nn. The use of the word 'concern' could be deemed as undermining the importance, impact, and gravitas when the complaint makes an informed decision to proceed to the formal stages - at section 8 its header is 'Making a formal complaint' and then persists in the term 'concern' to describe the complaint.

## Annex B - List of Interviews

a. 24 interviews were conducted as follows:

Member - States Employment Board x 1  
States Member x 1  
Director General, Senior Management, Group Directors x 9  
People Services x 3  
Employees x 8  
Teams x 2

b. Meetings with Trades Unions representatives were held with:

Prospect on 30 November 2020 and 18 December 2020  
NASMWT on 18 December 2020  
Trades Unions - attended by Unite, National Education Union, NASMWT, RCN, Firefighters Union and  
Prison Officers - on 1 December 2020.

c. Meetings with the Case management Unit and Business Partners

Case Management Unit HR - 23 November 2020