

# **Dealing with unacceptable behaviour towards FSS staff**

Revision History

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| Version | Date | **Author (s)** | **Reason for Amendment** | **Summary of key changes** | **Reviewed by** |
| 1 | April 2015 | David Wilson | Initial FSS document | n/a | OMT |
| 2 | February 2021 | David Wilson | Overall review to ensure it is still in line with FSS policies | New FSS template & minor other changes. | OMT |
| 3 | March 2021 | Elena Gafenco | Following feedback from SMT | Minor wording changes | OMT |
| 4 | July 2021 | David Wilson | Following feedback from SMT | Minor wording changes | OMT |
| 5 | November2021 | Steve Lomas | Feedback from SAMW and SG Legal Dept | Retained application for FSS staff and minor word changes  | SGLD |

1. **Purpose**

All Food Standards Scotland (FSS) staff should be treated with respect and have the right to a working environment which is free from all forms of bullying & harassment. These rights are expected by FSS staff in their relationship with industry, and are set out in the Scottish Government’s Fairness at Work policy. We are therefore committed to ensuring that all employees have a respectful and supportive working environment, which is free from all forms of harassment, discrimination, bullying and intimidation (hereinafter referred to as unacceptable behaviour).

The purpose of this policy is to summarise the types of behaviour which are unacceptable if displayed towards FSS staff and their Authorised Officers or representatives. It is not an exhaustive list, and Food Business Operators (FBOs) or any other stakeholder should consider that any situation which may lead to FSS staff being unable to fulfil their required official function due to the behaviour or deliberate action towards them, may constitute unacceptable behaviour.

In parallel, FBO staff should not be subjected to unacceptable behaviour and our staff are trained and signed up to follow strict professional standards under the civil service code of conduct and the FSS internal values. FBO complaints against FSS staff behaviour should be first raised with the relevant FSS management representative or the FBO may choose to make formal complaint via the FSS Complaints Policy, which can be found at the link below:

[​Complaints handling procedure - A guide for customers | Food Standards Scotland](https://www.foodstandards.gov.scot/publications-and-research/publications/complaints-a-guide-for-customers)

# **Scope**

This policy and procedure will apply to all FBOs, their employees and/or representatives and any other stakeholder, irrespective of their employment status or position. All mentioned are personally responsible for their behaviour towards FSS and will be expected, through their behaviour, to demonstrate an active commitment to this policy and its aims.

# **Key Principles**

Examples of unacceptable behaviour are outlined below although it should be noted that the impact of unacceptable behaviour on an individual may vary and therefore such examples may be cited as serious, particularly if they occur on a regular basis or form a pattern of sustained behaviour. In addition, the behaviours need not be directed to the individual concerned to be considered unacceptable; statements made outside the work environment, or directed towards friends or family of a staff member, may constitute unacceptable actions in the terms of this policy, on which FSS will act. It is the overall context of the behaviour that is important.

**Examples of unacceptable behaviours** *(this is not an exhaustive list)***:**

* Insults, shouting, swearing
* Making a person the butt of jokes, spreading rumours or ridiculing of an individual
* Comments regarding an individual’s age, sex, sexual orientation, religion, race, or any protected characteristic under the equality legislation
* Isolating or ignoring an individual
* Offensive gestures
* Behaving in a physically obstructive or threatening manner.

No level of unacceptable behaviour will be permitted and FSS Authorised Officers will be instructed to withdraw and report the instance to line management for instructions.

The types of unacceptable behaviour set out above may result in the following possible outcomes (not an exhaustive list):

* a documented meeting with FSS management, followed by acceptance of guarantees or assurances from FBO management concerning ongoing / future behaviour.
* the inclusion of an additional member of official controls staff in order to provide support to an FSS representative(s), for which FSS will recover the full cost from the FBO.
* the relevant Health & Safety incident reporting documents completed, acted on and held on the plant file for future reference.

It may be appropriate or necessary for FSS to temporarily redeploy an FSS representative(s) until such time as the facts of an issue can be established, in order to eliminate any risk to the injured party. Any redeployment of an individual will only be considered as a temporary measure and reinstatement would be made upon conclusion of the matter and at the discretion of FSS.

FSS has a responsibility to act promptly on receiving any formal complaint of unacceptable behaviour towards FSS staff. All complaints will be handled with sensitivity and confidentiality, and care will be taken throughout the investigation to protect the interests of both the complainant and the person subject to the complaint.

FSS recognises the possibility that complaints may be brought with malicious, vexatious or spurious intent. Where either party is able to demonstrate that allegations have been made either maliciously or with vexatious intent, disciplinary action should be considered against the complainant in line with the relevant organisations Disciplinary Policy.

More serious examples of unacceptable behaviour are given below, and these may warrant a formal FSS and / or Criminal Investigation following a case conference with FSS Senior Management.

Outcomes of a case conference will be recorded in writing, and a formal/criminal investigation may also be commissioned in appropriate cases, such as circumstances of physical assault.

**Examples of serious unacceptable behaviours** *(not an exhaustive list)***:**

* Physical Assault, violence
* Racial or sexual discrimination
* Intimidation

Continued or persistent cases of lesser serious unacceptable behaviour (e.g. insults, shouting, swearing, verbal harassment, discrimination under the equality legislation)

The types of unacceptable behaviour set out above may result in the following possible outcomes, which again, is not an exhaustive list:

* The inclusion of an additional staff member, for which FSS will recover its costs from the FBO
* The temporary suspension of Official Controls until matters are satisfactorily addressed
* The withdrawal of the affected FSS and/or FBO team member until matters are resolved or controlling actions are put in place by either or both parties.

Where issues of unacceptable behaviour arise, these will be resolved through informal procedures wherever possible. However, it may be necessary on occasions for either party to resort to formal procedures. This policy will allow FSS to make judgement on the merits of the case and where an issue is upheld, action may follow which can include the temporary suspension of service.

All organisations have legal obligations both under Health and Safety and employment law. Failure to recognise or investigate incidents of unacceptable behaviour which affects the health and safety of individuals, or does not take steps to prevent staff or contractors from being exposed to risks to their health and safety, could have serious legal consequences for an organisation.

FSS has an obligation to ensure (so far as is reasonably practicable) the health, safety and welfare at work of all its employees, and or its contractors under the Health and Safety at Work Act (1974). This obligation extends to the provision and maintenance of a working environment which is safe, without risks to health and adequate as regards facilities and arrangements for the individual’s welfare at work.

This means that where FSS has determined that an aspect of an employee/contractor’s working environment would present a known/clear risk to their health, safety or welfare, it is not entitled to expose the employee or contractor to these risks without risking criminal or civil liability.

FSS’ obligation to protect staff from unacceptable health and safety risks will prevail over its obligation under the law to provide Official Controls services on demand and allow a Food Business to conduct their operations. This means that, where FSS considers that unacceptable behaviour by an FBO, their management, employee or representatives may present a serious risk to the health and safety of FSS staff or contractors (including their physical safety, their mental and psychological health or their welfare in general), action will be taken to remove the member of staff or contractor from their workplace, which may amount to a temporary suspension of inspection and veterinary services. In addition, any conduct that could amount to a criminal offence such as an assault will be reported to the Police for further investigation.

Due to the significant effect that such a step will have upon the commercial operation of an FBO, the temporary suspension of inspection and veterinary services from an approved establishment would only be a measure of last resort, where other options would be insufficient to protect the health and safety of FSS staff. It will only be considered where a single incident is considered to be of a serious nature, or where evidence of continued or persistent unacceptable behaviour have been established to an extent which may pose a risk to health and safety.

Finally, temporary suspension of inspection and veterinary services will only be undertaken where necessary and proportionate to the risk faced by staff, taking into account previous history and specific circumstances, and only for as long as necessary until matters are satisfactorily addressed.

# **Informal procedure for addressing unacceptable behaviour**

There are a number of ways in which FSS may deal with the problem of unacceptable FBO behaviour which will range from a verbal warning that someone's behaviour has been unacceptable and asking them to stop, to the temporary suspension of FSS inspection services.

Incidents of alleged unacceptable behaviour are often effectively resolved in an informal manner and this approach will be encouraged wherever possible. A person who is causing an individual distress may be unaware that their behaviour is offensive or upsetting and therefore a simple explanation may be sufficient to resolve the matter.

In the event that FSS considers an informal approach is appropriate, discussion and mediation between the parties will be promoted and facilitated by FSS and FBO jointly. Upon conclusion of these discussions, the FSS will send a letter detailing a written summary of the allegation and the outcome of any agreements reached between the parties, in order to re-establish a positive working relationship for the future.

All such letters will remain on file for future reference, and may be considered or cited at a later date if further allegations of unacceptable behaviour are made, particularly if these are thought to form a pattern. Continued or numerous reports of unacceptable behaviour may therefore trigger a formal approachto be taken by FSS.

# **Formal procedure for addressing unacceptable behaviour**

If FSS considers an informal approach is unlikely to resolve an issue of unacceptable behaviour, or the behaviour is of a more serious nature, FSS will follow a formal procedure. Alternatively, incidents may move from the informal to the formal procedure in cases where informal action proves ineffective.

It is accepted that FSS staff operate in geographically remote locations and in some cases out of normal working hours, therefore at the time of an incident, should an employee feel that there is an imminent risk to their health, safety or wellbeing exists, they have the autonomy to withdraw to a safe environment until such a time as an FSS management representative or other suitably designated individual can be contacted.

In such circumstances, an appropriately designated individual will ensure that a preliminary investigation is carried out so that the facts can be established.

FSS accepts that the gathering of accurate information is both important and time critical. To allow FSS officials the necessary time to establish the facts, FSS may consider the temporary redeployment of the complainant until such a time as the facts have been established. Any redeployment of an individual will be considered as a temporary measure and reinstatement would be made upon conclusion of the matter and at the discretion of the agency.

In the most exceptional of circumstances FSS may consider it inappropriate to allow the supply of veterinary and inspection services to be continued during the course of establishing the facts. Such circumstances which may warrant this course of action are where an individual has been the victim of an alleged physical assault or verbal assaults where the FBO has a documented history of similar behaviour.

In circumstances where the veterinary and inspection services have continued throughout the gathering of information, FSS may also consider the application of an additional control in order to support the existing FSS officials. Any additional control will be chargeable through the existing charging mechanism.

Where the FSS considers an issue to be of a more serious nature and where the health, safety and or wellbeing of an individual may be compromised - for example an act of aggression or violence - the FSS will ensure that the FBO is given the opportunity to respond to the allegation. Although an FBO is not obliged to cooperate with such an investigation, should they not do so, FSS is entitled to take action based upon the known facts at the time.

Once the facts of the allegation have been established, the FSS designated authority for the case will instigate a case conference with another FSS Senior Manager of a similar or more senior grade in order to review the available information and to agree a course of action which is deemed acceptable to FSS and proportionate in protecting the health, safety and wellbeing of FSS staff. The range of available actions by FSS at this stage will include the possible suspension of inspection and veterinary services for a period of time.

In the event that FSS determines that suspension of services is not actually necessary, FSS may require a formal guarantee from the FBO that unacceptable FBO behaviours have been addressed before service is re-commenced. The FBO may also be asked to attend a formal meeting with FSS senior officials to provide such guarantee. These guarantees may also require additional FSS staff being put in place to support the work of existing FSS staff until full confidence in FBO behaviour is restored.

1. **FBO Rights of Complaint**

If the FBO is unhappy with a particular aspect of an FSS decision made, they have the right to make use of the FSS Complaints Policy, which can be found at the link below:

[​Complaints handling procedure - A guide for customers | Food Standards Scotland](https://www.foodstandards.gov.scot/publications-and-research/publications/complaints-a-guide-for-customers)

FSS aims to resolve complaints within 20 working days, although sometimes they may take longer. Contact FSS at openness@fss.scot.