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**From:** Richards N (Nicola) <[Redacted]@gov.scot>  
**Sent:** 23 November 2017 11:18  
**To:** Mackinnon J (Judith) <[Redacted]@gov.scot>  
**Subject:** Sitrep on harassment position

Hi there

This was the last update on the situation for Perm Sec. If we can develop updates under the various headings that would be helpful and we can put forward today.

Nicky

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**From:** Richards N (Nicola)  
**Sent:** 10 November 2017 13:24  
**To:** Permanent Secretary; Hynd JS (James); Mackinnon J (Judith)  
**Cc:** [Private Secretary 1]  
**Subject:** RE: For today

Thanks [Private Secretary 2]

James has sent the complaints process and suggested names. So complete there.



For today

Attachment of this document below

All staff message draft is here, with comms input. It is also with Gillian for review (we've spoken). If Leslie has time to look at this we can share with Unions and comms can get ready for issue on Monday. Suggest all staff message because it is personal and reaches everyone. Question about whether to cover press contact or not. I'll check that with Comms.



Perm Sec: all staff message 16...

Attachment of this document below

Communications plan outline is here. Perm Sec may not need to see this and I have asked Comms to work with the teams to develop and deliver. But perhaps helpful for her to be aware that it exists and she may want to review messages.



Revised Harassment Ca...

Attachment of this document below

Notes for GR and BA below. Gillian and I have spoken. I've done them from Perm Sec - perhaps you could just send from the box if Leslie doesn't need to clear?

Gillian

Thank you for agreeing to take on this role. I understand that you have now had a chance to discuss with Nicky. We see the role as follows:

- To provide a further choice for staff as a confidante and sounding board (in addition to established mechanisms such as HR / TUs / EAP etc) to help them consider options. If they want to take things forward more formally then you would pass to Judith and team.
- To keep this manageable the focus in on those who have had experiences of sexual harassment.
- To act as a sensitive conduit through to other sources of support or process as appropriate, such as:
  - o professional support and counselling
  - o internal complaint structures
  - o mediation
  - o mentoring
  - o police
- Judith and team will work with you to:
  - o provide the contacts / sources / processes for each of these and options for ongoing care and recovery.
  - o arrange for legal advice around the limits to confidentiality, process for note taking and when you would need to pass on information to Police / People Directorate.
  - o how best to establish and agree expectations and exit points
- It would be helpful if you could give regular updates to Nicky/Judith if issues are raised with you - anonymised if that is the person's wish. They will then provide me (Perm Sec) or the relevant DG with updates as required.

In the early period, I would suggest you take stock weekly with Nicky and Judith to review how it is developing, emerging themes and to check that the level of contact is manageable. I will speak to [Redacted] to let him know that you have taken on this responsibility and you may want to think with him about whether there are ways to free up your time if that becomes necessary.

For Barbara

We discussed how you might provide some pastoral care to staff, particularly in private office and communications, at this time. This may also help inform any work that might be required to set standards of behaviour and culture in these areas in the future.

We are aware that staff past and present are being approached by the press and that individuals have expressed concern and worry about this intrusion. If this is causing them anxiety they may need signposting to professional support or they may simply appreciate a listening ear and advice.

We also want to be sure that anyone with experiences that wants to come forward, including previous members of staff, feels able to do so and has a supportive route to do so. This is not designed to replace established mechanisms such as HR, TUs, EAP etc and if the individual wants to take things forward formally or needs ongoing support then you would pass to People Directorate.

Judith and team will work with you to provide the details for sources of support etc so that you can feel able to signpost people. They will also arrange for legal advice around the limits to confidentiality and when you would need to pass information directly to Police / People Directorate.

It would be helpful if you could give regular updates to Nicky/Judith if issues are raised with you – fully anonymised if that is the person's wish - and to review any emerging themes. They will then collate and provide me with updates as required. We may also want to consider with [Redacted] if there are ways to free up your time if that becomes necessary.

**From:** [Private Secretary 2] **On Behalf Of** Permanent Secretary  
**Sent:** 10 November 2017 13:11  
**To:** Richards N (Nicola); Hynd JS (James); Mackinnon J (Judith)  
**Cc:** Permanent Secretary; [Private Secretary 1]  
**Subject:** RE: For today

Small update – in blue highlight

And including [Private Secretary 1] in just these exchanges – given really helpful for sit rep.

[Private Secretary 2]

**From:** [Private Secretary 2] **On Behalf Of** Permanent Secretary  
**Sent:** 10 November 2017 12:40  
**To:** Richards N (Nicola); Hynd JS (James); Mackinnon J (Judith)  
**Cc:** Permanent Secretary  
**Subject:** RE: For today

Thanks Nicky – Updated in blue from this side.

**From:** Richards N (Nicola)  
**Sent:** 10 November 2017 10:28  
**To:** Permanent Secretary; Hynd JS (James); Mackinnon J (Judith)  
**Subject:** For today

Hi all

Just confirming we know what's needed for today and who's leading on what. Perhaps [Private Secretary 2] could confirm and add anything I've missed? I've used the headings from yesterday's sitrep.

- Process for former ministers (NR / JH)
  - JH has final draft, seeking legal input.
  - James / [Private Secretary 2] seeing if they can contact [Redacted] so we can consider in line with Whitehall practice.
  - options for nominated officer
  - Process will be with Perm Sec today. **[IS THIS NEEDED FOR FM BOX CLOSURE OR JUST FOR PERM SEC REVIEW/AWARENESS?]** Process note not needed for FM box. Be aware FM may ask Perm Sec for confirmation / understanding of this process in writing next week.
- Communications plan (JMck / [Redacted] / Corp comms)
  - to continue conversation with organisation and develop this as part of our early intervention / positive and inclusive cultures change process
  - 6 week plan as a basis for fleshing out with Comms – NR - will share copy today

- draft letter for Monday – required today [NR - could you confirm that Perm Sec wants this to be an all staff message?] Draft letter not needed for FM box and Perm Sec will be able to look at first thing on Monday am if that extra time helps. Checking want as all staff message – any advice on if that is best route? It is consistent and ensure reaches all?
- outline for Gillian and Barbara on what is asked of them [NR – required today] To bear in mind that outline may become public. There is a phrase Perm Sec thought good for BA role that I'm double checking. – It's "pastoral care" Perm Sec doesn't need to see/clear.
- Policy review (JMck / [Head of Branch, People Directorate 2])
  - Work underway on Fairness at Work and conduct policy.
  - Early milestones
    - route map to clarify complaint handling
    - engagement with unions
    - development with EAP of options for bespoke confidential offer
  - material to be shared as part of comms and engagement plan – including updated Standards of Behaviour.
  - Outline of work undertaken to date and plan forward required in form of short briefing note for Perm Sec to share with FM [JMck - next week – IS THAT OK FOR TIMING?] Sounds fine for timing
- Engagement on culture (NR/JMck – linking with [Redacted], [Redacted] and [Redacted] amongst others)
  - analysis and action on back of Survey results
  - engagement with interested parties (e.g. DG ally / other hosted staff sessions)
  - review interventions underway with DGs
  - DQ session on building positive team cultures
  - planning for wider interventions with managers
- Live issues (NR / JMck / [Head of Branch, People Directorate 3])
  - Reports to HR:
    - one issue – confirmed against a [Redacted] member of staff in [Redacted], individuals affected determining if they wish to pursue
    - one reflection on response to message
  - Reports to others:
    - 2: 1 to [Redacted] / 1 to BA



Nicola Richards | Director, People Directorate |[Redacted]

Attachment 1

**From:** Hynd JS (James) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>  
**Sent:** 10 November 2017 12:31  
**To:** Permanent Secretary <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>  
**Cc:** Richards N (Nicola) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>  
**Subject:** FW: For today

[Private Secretary 2]

I attach a draft of the process for taking forward a complaint against a former Minister. Nicky has seen and is content, as is SGLD [Redacted].

Perm Sec is also looking for names of potential candidates to fill the senior nominated officer role set out in the process. Possible candidates might be:

- [Redacted]
- [Redacted]
- [Redacted]

James

James Hynd  
Head of Cabinet, Parliament and Governance Division  
[Redacted]

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**Sent:** 10 November 2017 10:28  
**To:** Permanent Secretary; Hynd JS (James); Mackinnon J (Judith)  
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**Nicola Richards** | Director, People Directorate | [Redacted]

SP SGTHC

## **Handling of sexual harassment complaints against former Ministers**

1. The Scottish Government's commitment, as an employer, to provide a workplace free from discrimination and to ensure the fair treatment of staff is covered by our policies on Fairness at Work and expectations of conduct. These policies and associated procedures are being reviewed to ensure that they provide the necessary assurance to staff that complaints of any sort, including complaints of sexual harassment, will be given full and fair consideration. This review sits alongside the longer term action we are taking to ensure we have consistently positive and inclusive cultures and are able to take early action to prevent negative behaviours before they escalate.

2. The policies flow from the actions that the SG, as an employer, can take (including applying sanctions such as dismissal) and in the case of complaints about current Ministers, the First Minister's responsibility for the behaviours and actions of Ministers as set out in the Scottish Ministerial Code.

3. These existing arrangements do not deal directly with the handling of complaints raised by staff in relation to former Ministers. This note sets out how complaints of this sort should be handled. In doing so, it acknowledges that these complaints are likely to be historical; that the nature of the relationship between the civil service and the former Minister will have changed (for example, former Ministers are no longer covered by the terms of the Scottish Ministerial Code); and the sanctions open to the First Minister (such as removal from office) would be no longer applicable. These factors place significant limitations on how a complaint of this nature may be considered and resolved. However, it remains important that issues of this type receive equal consideration and that all necessary support is provided to the staff member.

4. Within the context set out above, the following process will be used as a guide where a member of staff wishes to make a complaint against a former Minister.

### **Initial contact and establishing desired outcome**

5. An individual may choose to raise an issue through a number of mechanisms. These may include a trusted senior manager, direct to HR or a Trade Union representative. If the approach is made through these routes it should be escalated to the Director of People for consideration and so that sources of support can be offered to the individual.

6. When an issue is raised involving a former Minister, the Director of People will designate a senior civil servant as the senior nominated officer to deal with the issue. We will ensure that that person has had no prior involvement with any aspect of the matter being raised. The role of the senior nominated officer will include the following:

- Ensuring that the member of staff can access any necessary support;
- Ensuring the staff member understands the process and the choices available to them;



- Determining from the staff member how far in the process they wish to proceed;
- Preparing, as required, a record of the complaint raised by the staff member;
- Undertaking, as necessary, an impartial collection of facts from the parties involved;
- Providing reports to the Permanent Secretary and First Minister as required.

7. A key early role of the senior nominated officer will be to support the individual to consider the outcome they are seeking. At this point the staff member's choices include:

7.1 Asking that their complaint is recorded without further action, in order to recognise their experience and to assist our organisational commitment to help prevent the circumstances arising again; or

7.2 Indicating that they wish the complaint to be put to the former Minister and for that person, and any witnesses, to be interviewed.

8. Throughout the process we will take all available steps to support the staff member and ensure they are protected from any harmful behaviour. However, if at any point it becomes apparent to the SG that criminal behaviour might have occurred the SG will bring the matter directly to the attention of the Police. Also, if it becomes apparent that the matter being raised is part of a wider pattern of behaviour it may be necessary for the SG to consider taking appropriate action in light of the information provided. Should either of these steps be necessary the staff member will be advised.

### **Making a Complaint**

9. Where the staff member wishes to pursue a formal complaint they should provide the senior nominated officer, in writing, with as much information as possible about the matter, including details of potential witnesses.

10. The Permanent Secretary will be advised at that point about the nature of the complaint and that the matter is being taken up with the former Minister in question. If the former Minister is a member of the Party of the current Administration the First Minister will also be advised.

11. The former Minister will be approached by the senior nominated officer and provided with details of the complaint. If the former Minister agrees to cooperate:

- 11.1 They will be interviewed by the senior nominated officer;
- 11.2 Any witnesses identified by the staff member and the former Minister will also be invited to be interviewed at this time;
- 11.3 A report will then be prepared for the Permanent Secretary setting out the information that has been obtained during the above process. The Permanent Secretary will consider the report from the perspective of ensuring the welfare and support arrangements for the staff member;

- 11.4 If the former Minister is a member of the Party of the current Administration the First Minister will consider the report from the perspective of the actions of the former Minister;
- 11.5 The report will be shared with the staff member and the former Minister.

12. If the former Minister declines to engage with the process the matter will be investigated as far as possible without their involvement. They will be advised that a complaint against them in the terms set out by the complainant and the outcome of any investigation undertaken will be recorded within the SG.

13. The Permanent Secretary will be advised of this outcome and will consider appropriate action, including the necessary steps to ensure the welfare and support arrangements for the staff member.

14. Where the former Minister is a member of the Party of the current Administration the First Minister will be advised and will consider the matter from the perspective of the actions of the former Minister.

**NOTE:** At all times the staff member is free to make a complaint directly to the Police. Any Police investigation or criminal proceedings will take priority over any internal SG process, although we will continue to offer support to the staff member. If at any point it becomes apparent to the SG that criminal behaviour might have occurred, the SG will bring these matters directly to the attention of the Police.

## Attachment 2

### SG's Ongoing message on Sexual Harassment at Work

#### Perm Sec all staff message – 13 November

I wrote to you recently about the media reports alleging sexual harassment in Westminster and the Scottish Parliament and to reinforce that there is no place in the Scottish Government for such behaviour.

I highlighted the range of support available for staff and methods for raising issues. I also committed to reviewing our internal policies and procedures, and this work has already begun.

Press coverage continues and events of the past week emphasise the need for openness in our workplace cultures and for complaints to be addressed in a balanced and sensitive way which ensures all parties are treated with dignity and respect.

I write again today because I feel that it is important to keep talking about this issue and to draw on it as a way of reinforcing our wider commitment to consistently positive and inclusive cultures across the Scottish Government. What you permit, you promote - we must see this moment as an opportunity to effect real cultural and societal change in relation to acceptable behaviours in the workplace.

Some colleagues have come forward to discuss their experiences with colleagues, managers and the HR team, and I would encourage you to keep doing that. Similarly, we have had feedback from some areas that people think we risk an over-reaction to office banter, which doesn't mean any harm. It is important to be clear that low level, 'everyday' discriminatory language and banter, if allowed to continue or become normalised, can still leave people feeling uncomfortable, belittled and unsafe. As your employer we have a duty of care for everyone to ensure the working environment and culture reflects our values as civil servants.

I would encourage you to keep talking to your colleagues and managers and take this opportunity to reflect on your own team's culture and behaviours towards each other so that this is an opportunity for progress.

In addition to the support outlined previously (repeated below), I thought it might be helpful to have someone to speak to who can act as confidential sounding board for those who have experienced sexual harassment, whether current or in the past. I am pleased to say that Gillian Russell has offered to take this role. This is not to replace the responsibilities of our professional structures in People Directorate or the role of Trade Unions and other formal support structures. It is simply to provide another option for those who would like a private, informal and supportive space to consider what they would like to do. Gillian will be able to signpost you and guide you in accessing other support or move to more formal action if required. Gillian can be reached confidentially via text on her [blackberry].

We are also aware that some members of staff have been contacted directly by the press. If this is causing you concern then please contact [Barbara?] and in line with standard practice please redirect journalists to submit their requests through Corporate Communications.

I will ensure that this issue stays at the top of my leadership team's agendas and that we are regularly updated on progress.

Formatted: Highlight

### Reminder of Contacts/sources of support

- Either [Head of Branch, People Directorate 4] or [Head of Branch, People Directorate 3] [Redacted]. [Head of Branch, People Directorate 4] and [Head of Branch, People Directorate 3] [Redacted].

### Support

- The [Employee Assistance Programme](#) (EAP) can provide emotional and practical support on a range of issues through trained welfare and counselling practitioners offering confidential, independent and unbiased information and guidance. Call free on [Redacted] The helpline is open 24 hours a day, 365 days a year. The EAP can refer staff to 1-2-1 counselling support, this would be accessed through the member of staff calling the EAP helpline.

We have in-house access to a Counselling and Wellbeing Officer, [Redacted] who can be contacted on ext. [Redacted].

If you are a member of a trade union you can seek support from your local trade union representative.

- The [Employee Assistance Programme](#) also provides support for line managers who are dealing with sensitive or traumatic situations. This is available through the EAP Helpline on [Redacted].

# Attachment 3 There are 3 levels/types of communications

Global communications: 'crisis' management.

I feel that senior leadership recognises and deeply cares about this situation

The timing should be based on the scale of the issue and the information that we need to convey.

At a maximum fortnightly

- Lead in as a Perm Sec message
- But with a follow up blog from an appropriate 'other' voice and promotion of factual guidance or information on procedures or support
- And be complimented by local engagement activity rooted in the diversity outcome/positive inclusive culture narrative and work priorities

Targeted communications: 'case' management

I feel that I/others affected are being professionally supported

I want to know where to go, what I can expect and how big the scale of the issue is in the organisation.

- Individuals can approach Gillian Russell in confidence if they wish to talk through experiences and consider what they would like to do
- Nicky Richards and Judith Mackinnon are leading our professional response and they and the team can be contacted directly
- Focus on the professional service, on our policy and standards.
- Lead into our story of shifting to early intervention and supporting people before issues becomes serious

Strategic communications: 'culture' development

I feel that we all take responsibility for our culture and are active in shaping the positive and inclusive culture

This is the day to day, week to week work to open workplace dialogue and challenge around how we treat each other and enable positive and inclusive cultures

- Lead voice from [Redacted] and DGs (as DGs and champions), also would expect unions to be visible

# Key messages to draw on in communications

- We will not tolerate unacceptable behaviour - of any kind, by anyone. 'What you permit, you promote' – important that unacceptable behaviour is challenged and addressed before it takes hold.
- Our professional support and procedures are effective in identifying, addressing and responding to instances in the workplace
- Our culture is one in which people are able to raise concerns, check in on each other and reflect on their behaviours and practices and how they may impact (advertently or inadvertently) on others
- Important to be open and share experiences, although difficult. We know colleagues are doing that and we'd like to enable that to continue if there is more we need to know and talk about.
- Given the above and in light of what we know [i.e. the 'new' information you want to tell people which may come all in one message or be spread out]
  - We want to ensure people are appropriately supported at every stage of raising a concern. So we have established a confidante role (Gillian Russell), clarified HR contacts (Judith Mackinnon, [Head of Branch, People Directorate 3], [Head of Branch, People Directorate 4]) and highlighted sources of advice and support (Welfare Officer, EAP).

(We can follow up on the detail in Judith Mackinnon blog piece and then plan future communications that eventually take this into early intervention agenda and plans more generally on any issues affecting wellbeing/performance)
  - We will share the insights from work on specific interventions and organisational activity to enable positive and inclusive cultures flowing from last year's People Survey results into this years.

(Follow up in [Redacted] blog on bullying and harassment and then plan future communications that would take us into engagement activity through networks and Directors on diversity outcomes and embedding that/making it real locally)
  - We've fast tracked a review of our [fairness at work/conduct & discipline] to ensure sexual harassment and all other unacceptable behaviours are explicitly referenced and standards are accessible and clear to everyone.

(Follow up through the saltire page update and then lead into future communications on policy and process changes and support, education and advisory routes to enable and support consistently good people management)

# 6 week communication plan that integrates these

Please note that this looks like a lot of activity, but it is multi channel activity that is reinforcing whatever message is going out by Perm Sec – bringing in another ‘voice’ alongside hers and linking blog/stories to factual guidance or support routes

## w/c 13 Nov

- [Perm Sec All Staff message #2](#) - follow up to previous message, announcing Gillian in confidante role, reinforcing commitment
- Entry in [Perm Sec Weekly Look Back](#) **if** weekend coverage you want to acknowledge
- Potential [Blog piece on ‘why diversity matters?’](#) – personal story of a colleague’s transgender experience to link with external transgender communications so you could include message about how we support and value differences and treat people with respect
- Ask [Directors to engage their senior teams](#) to ensure that everyone feels able to speak up. With [proactive engagement from Comms, Ministerial Offices \(Barbara Allison\)](#) specifically around private offices (current and former) and other areas of concern.

## w/c 20 Nov

- [Perm Sec](#) - reference developments in weekly look back – e.g. relevant discussions/sessions (or as below if Perm Sec Weekly Look Back is replaced by Economy Blog)
- [Blog from Head of Professional Advice](#) (Judith Mackinnon) – could cover drop in sessions if people want to talk to our professional advisors or reinforce opportunity to raise and share experiences as a saltire piece in 22/11 Or 2) on yammer and linked to from Perm Sec Weekly Look Back if it goes ahead on 20/11)
- Link to [updated saltire pages on standards of conduct \(e.g. leaflet\)](#) from blog and/or saltire home page box

## w/c 4 December

- [Perm Sec All Staff message](#) **if** something new to say/otherwise reference in weekly look back
- [Blog from Bullying and Harassment Champion](#) ([Redacted]) on targeted interventions/response to last year’s People Survey (Slot on Saltire held for 6/11)
- Link to update / in depth information on external advice and/or support services from the blog and/or saltire home page
- DG Allies to host drop in sessions of mixed groups (i.e. specifically not gender or diversity characteristic specific audiences, but mixed audiences reflecting the fact that anyone may be affected by sexual harassment) – using DG Allies as you want to set this in the context of wider work on inclusivity and our equality improvement journey