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Sent: 03 November 2018 03:08

To: Richards N (Nicola) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>

Subject: Material to FM - FYI

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27 November 2017

09:16

Subject	Material to FM - FYI
From	[Redacted Private Secretary 1]
To	Richards N (Nicola)
Sent	24 November 2017 18:05
Attachments	<<Draft process for handling of sexual or physical harassment complaints involving current or former Ministers - Note to FM.docx>> <<Handling of complaints against current and former Ministers- Final Draft v5 0.docx>>

Hi Nicky

This is what went to FM. Hope that you manage to get some respite over the weekend!

[Redacted Private Secretary 1]

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Handling of Sexual or Physical Harassment Complaints Involving Current or Former Ministers

Background

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 or physical 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. These policies flow from the actions that the SG can take as an employer (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. This note sets out how complaints about current, as well as former, Ministers will be handled. It recognises that the existing arrangements do not deal directly with the handling of complaints raised by staff in relation to former Ministers. This note addresses that position by setting out an approach for how such complaints will 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 Ministerial 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 any concerns of this type that are raised receive equal consideration and that all necessary support is provided to the staff member.

Initial contact

4. An individual may choose to raise an issue involving a current or former Minister 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.

5. At this early point it will be important to support the individual to consider the outcome they are seeking. At this point the staff member's choices include:

5.1 Asking that their concern is acknowledged but without further action being taken, in order to recognise their experience and to assist our organisational commitment to help prevent the circumstances arising again (although, as set out at note ii below, the SG may require to take follow up action where deemed necessary in light of the concern being raised). The

details of the concern, along with the staff member's decision not to proceed with a formal complaint, will be held on file; or

5.2 Indicating that they wish to make a formal complaint.

Current Scottish Government Ministers

6. The Scottish Ministerial Code sets out the general principle that Scottish Ministers are expected to behave in a way that upholds the highest standards of propriety. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Ministers can only remain in office for so long as they retain the First Minister's confidence.

7. Where a sexual or physical harassment complaint is raised about the conduct of a current Minister, the Permanent Secretary will inform the First Minister. In line with her responsibilities under the Ministerial Code, the First Minister has instructed the Permanent Secretary that complaints of this nature should be investigated using the process set out at paragraph 15, and to provide a report of the facts as provided by those concerned, or to establish if it is possible to seek a mutually agreed resolution between the parties involved. Current Ministers will be expected to cooperate fully with such an investigation. It will be for the First Minister to decide the appropriate response to any complaint about a Minister in light of the report produced following an investigation.

8. In situations relating to complaints against a current Minister, the Permanent Secretary will also take appropriate steps to (1) ensure that the member of staff making such a complaint receives the necessary support throughout the process, and (2) put in train any further action that might be required within the civil service as a result of the issues raised by any complaint.

9. Where a complaint concerns the conduct of the First Minister, the First Minister may refer the matter to the Independent Advisers on the Ministerial Code (the Rt. Hon. Dame Elish Angiolini QC DBE or James Hamilton). It is the role of the advisers to provide advice to the First Minister on which to base a judgement about any action required in respect of Ministerial conduct.

Former Scottish Government Ministers

10. In the event that a formal complaint about sexual or physical harassment is received against a former Minister, the Director of People will designate a senior civil servant as the senior officer to deal with the issue. That person will have had no prior involvement with any aspect of the matter being raised.

11. At this point in the process, the role of the senior officer will be to prepare a record of the complaint raised by the staff member.

12. Where the staff member has indicated that they wish to pursue a formal complaint against a former Minister they should provide the senior officer, in writing, with as much information as possible about the matter, including details of potential witnesses.

13. 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, as described in paragraph 15 below. If the former Minister is a member of the Party of the current Administration the First Minister will also be informed. The First Minister will take any steps necessary to ensure that the former Minister cooperates with the investigation.

14. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will advise the relevant Scottish Party Leader about the nature of the complaint and the process being undertaken (as described in paragraph 15).

Investigation, Reporting and Follow Up

15. The current or former Minister will be approached by the designated senior officer and provided with details of the complaint. If the current or former Minister agrees to cooperate:

15.1 They will be interviewed by the senior officer, whose role will be to undertake an impartial collection of facts from the parties involved and provide a report to the Permanent Secretary and First Minister.

15.2 Any witnesses identified by the staff member and the current or former Minister will also be interviewed (this may include interviews with other current or former Ministers and Special Advisers);

15.3 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 and will the steps set out below, as well as any take appropriate action within the civil service as required;

15.4 For complaints involving a former Minister who 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;

15.5 Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party leader of the outcome of the investigation and any action taken;

15.6 The report will be shared with the staff member and the current or former Minister.

16. If the current or former Minister **declines to co-operate** 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.

17. The First Minister will be advised where a current or former Minister who is a member of the Party of the current Administration has declined to cooperate and will be responsible for any further action.

18. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party Leader of the outcome of the investigation, that the former Minister has declined to cooperate – and passing responsibility for any further action to the Party.

NOTE:

(i) 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.

(ii) 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.

Scottish Government
November 2017

Draft process for handling sexual or physical harassment complaints involving current or former Ministers

- A draft process is attached for comments. This has been considered and commented on by Liz Lloyd. We can discuss at our meeting on Tuesday.
- Key points to consider/decide:
 1. The process applies only to sexual or physical harassment complaints. Other complaints (eg bullying, discrimination) will continue to be dealt with as now. The rationale for that approach is that complaints of a sexual and physical nature are so serious they need to be handled apart. However, it may be difficult to sustain a justification for that separation especially given the complexity and interconnectness of this kind of behaviour – bullying and discrimination often accompany sexual harassment. We can agree to err on the side of caution in implementing this approach but **I would welcome your thoughts on whether you are content to keep the focus limited in this way?**
 2. The process envisages that an investigation into a complaint against a current Minister is taken forward by me automatically (para 7). You will be informed at that point but will not have a role in deciding if an investigation should proceed. The same automatic approach would apply to former Ministers. **Are you happy to delegate to me responsibility to initiate an investigation into a current Minister for sexual and physical harassment complaints?**
 3. You will remain the final arbiter of what action should be taken against a current Minister, or a former SNP Minister.
 4. If you agree with point 2 above, we will apply the same automatic approach to investigations against a former Minister of another Party. In those circumstances I would engage with the relevant Party leader of the former Ministers. You would have no involvement. We will need to confirm with lawyers the balance between the privacy rights of former Ministers with the duty of care to protect others from harm.
 5. You will want to consider how the new process should link to the Ministerial Code. You might include a brief mention in the Code to refer to the fact that you have asked me to investigate complaints of this type and that Ministers (past and present) will be expected to cooperate. We understand that the UK Ministerial Code will be amended to underline the standards of behaviour of UK Ministers, although we are not aware that they are developing any additional process for past Ministers in the way we are. **If you are content, I can offer some suggestion on revisions to the Scottish Code?**
 6. Any changes to your Ministerial Code will be published and may generate calls for the new process to be published. We can anyway expect the SG Unions to ask to see it.
 7. Depending how the new process develops following our further discussions, it would probably make sense for me to meet the other Party leaders to set out the approach, although strictly speaking it is only Labour and the Lib Dems who would have any former Ministers in scope of the new process.