

From: Richards N (Nicola)
Sent: 06 December 2017 15:18
To: Hynd JS (James) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; [\[Redacted - Lawyer 1\] <\[Redacted - Lawyer 1\]@gov.scot](mailto:[Redacted - Lawyer 1] <[Redacted - Lawyer 1]@gov.scot)>
Subject: RE: Handling of complaints against current and former Ministers- revision

Thanks James – thought it was unusual not to have heard from you!

I've reviewed that section in the latest version based on your comments. As you say, we will need to draw this to the attention of the FM but I don't think we have a choice but to make clear that the employer's duty of care to staff is as significant – more so perhaps in legal terms – in this instance than the ministerial code.

It feels like there needs to be a conversation early on in an administration that sets out the reference points about these kinds of things which can then be used as a yardstick if required further down the line.

cheers
Nicky

From: Hynd JS (James)
Sent: 06 December 2017 14:59
To: Richards N (Nicola); Mackinnon J (Judith); [Redacted - Lawyer 1]
Subject: RE: Handling of complaints against current and former Ministers- revision

My system is playing up – this was meant to have gone a couple of hours ago. Hopefully will come through now.

James

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

From: Richards N (Nicola)
Sent: 06 December 2017 14:43
To: Hynd JS (James); Mackinnon J (Judith); [Redacted - Lawyer 1]
Subject: RE: Handling of complaints against current and former Ministers- revision

Thanks James – could you re-attach it doesn't seem to be coming through?

cheers
Nicky

From: Hynd JS (James)
Sent: 06 December 2017 14:38

To: Richards N (Nicola); Mackinnon J (Judith); [Redacted - Lawyer 1]
Subject: RE: Handling of complaints against current and former Ministers- revision

Nicky

Thanks for this.

I have confined myself to thinking about the Ministerial Code aspects. HR colleagues and [Redacted - Lawyer 1] are far better placed than me to offer advice on whether the recast process satisfies best HR practice and our legal obligations.

My main point is around paragraph 9 dealing with the handling of complaints against the FM. I have marked up the text with some points and am happy to discuss these as necessary.

James

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

From: Richards N (Nicola)
Sent: 05 December 2017 23:34
To: Mackinnon J (Judith); Hynd JS (James); [Redacted - Lawyer 1]
Cc: Richards N (Nicola)
Subject: RE: Handling of complaints against current and former Ministers- revision

All

As discussed today I've made some revisions to the process so we can more clearly define the current / former minister processes. The piece on current ministers can then be extracted and referred to more fully in our wider policies. I've also tried to give more of a role to Perm Sec if the issue is with a current FM and to draw out the organisational duty of care role. Hopefully this also provides more of a steer on when FM would be informed and in what capacity they would be acting.

I've abandoned tracked changes because it was getting messy as pieces moved about.

Very grateful for views.

Nicky

SP
SGTHC

Handling of Sexual Harassment Complaints Involving Current or Former Ministers

Initial contact

1. 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.
2. 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:
 - 2.1 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
 - 2.2 Indicating that they wish to make a formal complaint.

Formal complaints against current Scottish Government Ministers

3. 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, including in their interactions with civil servants, 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.
4. Alongside Ministerial responsibilities under the Code, the Scottish Government as an employer has a duty of care to staff. Where a formal sexual 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 paragraphs 6-8, 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.
5. 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.
6. In the event that a formal complaint about sexual harassment is received against a current 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. The role of the senior officer will be to undertake an impartial collection of facts from the parties involved, including the minister and any witnesses, and prepare a report for the Permanent Secretary. The report will also be shared with the staff member and the Minister.

7. The Permanent Secretary will inform the First Minister of the outcome of the 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 the investigation. The Permanent Secretary will also consider the report and take any actions required within the civil service to safeguard staff and ensure a positive working environment.

8. Current Ministers will be expected to cooperate fully with such an investigation. If the Minister declines to co-operate with the process the matter will be investigated as far as possible without their involvement. They will be advised of the complaint against them in the terms set out by the complainant and that the outcome of the investigation undertaken will be recorded within the SG. The First Minister will be advised where a current Minister has declined to cooperate and will be responsible for any further action.

9. Where a formal complaint of sexual harassment is raised against the First Minister, the Permanent Secretary will instigate an investigation as set out above in line with the employer's duty of care to its staff and to assist the First Minister in discharging their responsibilities under the Code. The Permanent Secretary may draw upon the Independent Advisers on the Ministerial Code (the Rt. Hon. Dame Elish Angiolini QC DBE or James Hamilton) to reach a view on whether the First Minister has been in breach of the Code. The Permanent Secretary would take action as necessary to fulfil their duty of care to protect staff from a known or foreseeable risk.

Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint about sexual 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. The role of the senior officer will be to undertake an impartial collection of facts, including written statements from the complainant and any witnesses, and to prepare a report for the Permanent Secretary.

11. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister may wish to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.

12. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this

capacity and in their capacity as Party Leader, of the outcome of the investigation. In their First Ministerial role they will wish to take steps to review practice to ensure the highest standards of behaviour within their current Administration.

13. 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.

14. The final report will be provided to the staff member and the former Minister.

15. If the 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 of the complaint against them and the outcome of any investigation undertaken. This will be recorded within the SG.

16. 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.

17. 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 that the former Minister has declined to cooperate. It will be the responsibility of the Party to consider any further action.

NOTE:

(i) At all times the staff member is free to make a complaint directly to the Police. SG will co-operate fully with any Police investigation or criminal proceedings and may continue to investigate the complaint without awaiting the outcome of criminal proceedings. 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 may 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 involving the Police in light of the information provided. Should either of these steps be necessary the staff member will be advised and supported throughout.

Scottish Government
December 2017