
From: [Redacted Private Secretary 1] <[Redacted Private Secretary 1]@gov.scot>

Sent: 20 December 2017 16:49

To: [Redacted Head of Branch, People Directorate 2] <[Redacted Head of Branch, People Directorate 2]@gov.scot>; Hynd JS (James) <[Redacted]@gov.scot> **Cc:** [Redacted Head of Branch, People Directorate 1] <[Redacted Head of Branch, People Directorate 1]@gov.scot>; Mackinnon J (Judith) <[Redacted]@gov.scot>; Richards N (Nicola) <[Redacted]@gov.scot>; Permanent Secretary <[Redacted]@gov.scot>; [Redacted Private Secretary 2] <[Redacted Private Secretary 2]@gov.scot>

Subject: RE: Complaints against ministers - harassment

Importance: High

Thanks [Redacted Head of Branch, People Directorate 2]

This is the final version gone to FM for approval. It reflects our earlier discussion. For the benefit of colleagues, we agreed your points a, b, c below but decided not to include a reference to the ombudsman (para 12/13 in your tracked version).

Grateful if you would let us have an early readout from further conversation with trade union colleagues and in particular confirmation that we have reached the position described in the highlighted section below.

[Redacted Private Secretary 1]

[Redacted Private Secretary 1] | [Redacted] | [Redacted] | [Redacted] | [Redacted]



From: [Redacted Head of Branch, People Directorate 2]

Sent: 20 December 2017 13:38

To: [Redacted Private Secretary 1]; Hynd JS (James)

Cc: [Redacted Head of Branch, People Directorate 1]

Subject: Complaints against ministers - harrassment

<< File: Complaints against ministers - harrassment.docx
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James / [Redacted Private Secretary 1]

To see attached which:

- a) incorporates the changes we noted yesterday (strengthening language around perm sec's role and FM's role in particular)
- b) re-instates references to harassment – so the policy will apply to “harassment” cases rather than all cases (although I can't see any other type of case that might occur – and as we don't define harassment unions will simply construe this as an unnecessary narrowing)
- c) minor textual changes to reflect HR language and ensure consistency of process between investigation of ministerial complaints and complaints against former ministers]

NB – I've left one question in at para 12/13 – can you consider this.

We will try and position things with the unions that this reflects on their comments but that the intent now is to sign off on a process for investigation of harassment complaints in of itself, and that we will consider (with your input) their further comments (such as comments about wider applicability in the new year).

As discussed, as we currently have a fairness at work policy which has been agreed through collective agreement (and which includes a separate process for investigation of complaints), we need to approach matters sensitively with the unions as any suggestion that we are not open to extending this process in the new year could simply result in unions seeking to enforce the collective agreement agreed in 2010 for all matters, including matters in relation to harassment.

Give me a call if you want to discuss any of this,

[Redacted Head of Branch, People Directorate 2]

CONTENTS OF ATTACHMENT BELOW:

First Minister

HANDLING OF HARASSMENT COMPLAINTS

You wrote to me on 22 November regarding the review of the Scottish Government's policies and processes on sexual harassment. As we have discussed, we have a shared commitment to ensure that the arrangements that are in place are effective and contribute to the work already in hand to promote an inclusive and respectful culture across the Scottish Government.

Your letter, in particular, asked me to consider as part of the review ways in which any concerns raised by staff about the conduct of current or former Ministers could be addressed. I have developed, for your agreement, a process for how complaints of harassment, including sexual harassment, might be taken forward. This is set out in the annex.

This new process aims to ensure that I am able to fulfil my duty of care to staff by taking the necessary steps to support the member of staff and to put in train any further action that might be required within the civil service as a result of the issues raised. As far as current Ministers are concerned, the process will also assist you in taking forward your responsibilities under the Scottish Ministerial Code. It also sets out how complaints against former Ministers will be handled. Given that the process engages the responsibility of the First Minister for the application of the Ministerial Code, we will seek approval for the ongoing application of the process on each occasion the Ministerial Code is updated.

I should be grateful to learn if you are content to adopt the process set out in the annex. As you have requested, I am happy to update Cabinet about the outcome of review whenever you wish.

LE

December 2017

Handling of 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 senior manager of your choosing, 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 how best to resolve the issue. At this point options available to the staff member 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 within People Directorate; or

2.2 Indicating that they wish to make a formal complaint.

NOTE: At all times the staff member is free to make a complaint directly to the police – see Para 19 onwards for further information.

Formal complaints against current Scottish Government Ministers

3. The Scottish Ministerial Code¹ sets out the general principle that Scottish Ministers are expected to behave in a way that upholds the highest standards of propriety, including in their interactions with Civil Servants. 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, however, has ultimate responsibility to judge 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.

Role of Permanent Secretary

4. Alongside Ministerial responsibilities under the Code, the Scottish Government as an employer has a duty of care to staff. The Permanent Secretary exercises day to day responsibility for civil servants working for the Scottish Administration. Where a formal complaint of harassment 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

¹ <https://beta.gov.scot/publications/scottish-ministerial-code-2016-edition/>

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 staff member making such a complaint receives the necessary support throughout the process (including support after conclusion), 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 of harassment is received against a current Minister, the Director of People will designate a senior civil servant as the Investigating 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, the member of staff 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. 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 protect staff, including staff wellbeing, 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 and the outcome of the investigation undertaken. This 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 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 will take any action necessary to protect staff.

Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from, the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member.

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 will be invited 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 and share with the staff member. 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 when the investigation is complete. In their capacity as First Minister, 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.

COMPLAINTS AND ENGAGEMENT WITH POLICE

18. 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 throughout to the staff member.

19. Throughout the process, all available steps will be taken 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