

**From:** Mackinnon J (Judith) [REDACTED]@gov.scot>  
**Sent:** 25 May 2020 13:24  
**To:** Mackinnon J (Judith) [REDACTED]@gov.scot>  
**Subject:** RE: Complaints against ministers - harassment

## RE: Complaints against ministers - harassment

11 January 2018  
06:30

<b>Subject</b>	<b>RE: Complaints against ministers - harassment</b>
<b>From</b>	[Head of Branch, People Directorate 2]
<b>To</b>	[Private Secretary 1]; Hynd JS (James)
<b>Cc</b>	[Head of Branch, People Directorate 1] ; Mackinnon J (Judith); Richards N (Nicola); Permanent Secretary; [Private Secretary 2]
<b>Sent</b>	10 January 2018 14:55
<b>Attachments</b>	<<2018 01 09 Complaints Against Ministers Tracked version which shows union comments and final version which went to FM.docx>>

[Private Secretary 1]/ James,

Cc [Private Secretary 2] for info.

Looking forward to catching up tomorrow on next steps.

I've now taken the final version which was signed off by FM and I've reflected on the comments which unions shared, and how we addressed them and provided this in tracked. We will need to be able to speak to this when we next meet with the unions in any case to explain how we took on board their thoughts to date on the policy.

As you know, the main focus of union attention will now be looking to widen the scope of the policy to include complaints other than harassment complaints. We could potentially accommodate this by building in some additional content in the new process to provide for a triage role where HR / your office would take an initial view on the appropriate route for complaints which were not related to harassment. We can discuss tomorrow.

As you know, the current FAW process (which was agreed through collective agreement with unions) allows for all complaints to be dealt with through the deciding committee process. Unions have agreed that should any complaints be made (other than sexual harassment complaints which will go through the new process) at present that we would take a pragmatic view as to how they could be dealt with, while we continue our discussions about next steps with the new policy approach. We will need to handle this sensitively however as unions could seek to rest upon the existing collective agreement for all cases in the event that discussions did not progress productively.

[Head of Branch, People Directorate 2]

[Head of Branch, People Directorate 2] | [REDACTED]  
[REDACTED] | [REDACTED] | [REDACTED]  
[\[REDACTED\]](#) [REDACTED]  
[REDACTED]  
[REDACTED]

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From: [Private Secretary 1]  
Sent: 20 December 2017 16:49  
To: [Head of Branch, People Directorate 2] Hynd JS (James)  
Cc: [Head of Branch, People Directorate 1] ; Mackinnon J (Judith); Richards N (Nicola); Permanent Secretary; [Private Secretary 2]  
Subject: RE: Complaints against ministers - harassment  
Importance: High

Thanks [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.

[Private Secretary 1]

[Private Secretary 1] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED]

<< File: Handling of harassment complaints - 20 December 2017.docx >>

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From: [Head of Branch, People Directorate 2]  
Sent: 20 December 2017 13:38  
To: [Private Secretary 1]; Hynd JS (James)  
Cc: [Head of Branch, People Directorate 1]  
Subject: Complaints against ministers - harassment

<< File: Complaints against ministers - harassment.docx >>  
James / [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,

[Head of Branch, People Directorate 2]

Created with Microsoft OneNote 2016.

**CONTENTS OF ATTACHMENT BELOW:**

**Handling of Harassment Complaints Involving Current or Former Ministers**

Commented [u1]: Preserved refs to harassment

**Initial contact**

1. An individual may choose to raise ~~an issue~~ ~~an issue~~ involving a current or former Minister through a number of mechanisms. These may include ~~a a trusted~~ 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.

Commented [u2]: Can we be consistent with the language of fairness at work i.e raise a grievance

Commented [u3]: [Head of Branch, People Directorate 2]- Reject change to complaint Reference to "Issue maintained"

Commented [u4]: I think we are all trusted!

Commented [u5]: [Head of Branch, People Directorate 2]- Accept change to delete trusted

Commented [u6]: [Head of Branch, People Directorate 2] - Accept change to insert "of your choosing"

2. ~~At this early point it will be important to support the individual to consider the outcome they are seeking how best to resolve their grievance~~ ~~issue~~. At this point the ~~options available to the staff member might want to consider possible resolutions such as:~~ ~~s choices~~ include:

Commented [u7]: [Head of Branch, People Directorate 2] - Textual change for reading consistency.

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

Commented [u8]: Who's file, how do we ensure that patterns are monitored (and confidentiality is respected)?

Commented [u9]: [Head of Branch, People Directorate 2] - These are valid points. It will be held on the HR file and normal process around data protection / handling will be respected. Reference to "people directorate" included here.

Commented [u10]: This feels awfully vague. There must be a process for review. Is it held by HR professionals (DD People Advice)?

Commented [u11]: [Head of Branch, People Directorate 2] - As above – reference to people directorate included

2.2 Indicating that they wish to make a formal complaint.

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

Commented [u12]: under the Fairness at Work policy.

Commented [u13]: [Head of Branch, People Directorate 2] - No – formal complaint will follow process set out below.

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**Formal complaints against current Scottish Government Ministers**

3. The ~~Scottish Ministerial Code~~<sup>1</sup> 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 is, however, ~~the ultimate~~ ~~has ultimate responsibility to 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.

Commented [u14]: [Head of Branch, People Directorate 2] - included this text to pick up on comments later in document to make sure route to police is clearly noted at outset.

Commented [u15]: Expand upon what this means

Commented [u16]: [Head of Branch, People Directorate 2] - Have inserted a footnote / link to Ministerial code

Commented [u17]: [Head of Branch, People Directorate 2] - included this wording to reflect on discussion at meeting.

Commented [u18]: [Head of Branch, People Directorate 2] - Reflected on union changes to wording wording and noted FM's responsibility to judge

Commented [u19]: Drop sentence? Not necessary, and as we see at Westminster just now, not always the case!

**Role of Permanent Secretary**

Commented [u20]: [Head of Branch, People Directorate 2] - have maintained this as it Sets our expectation so have maintained this.

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

Commented [u21]: As discussed, include something here confirming Perm Sec's role?

Commented [u22]: [Head of Branch, People Directorate 2] - Inserted heading and some further explanatory wording

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~~ 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 provided by those concerned, or to establish if it is possible to seek a mutually agreed resolution between the parties involved.

Commented [u23]: [Head of Branch, People Directorate 2] - Preserved refs to harassment

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) ~~including consideration of aftercare~~, 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.

Commented [u24]: [Head of Branch, People Directorate 2] - Included this wording to reflect union comments.

6. In the event that a formal complaint of harassment ~~of harassment~~ is received against a current Minister, the Director of People will designate a senior civil servant as the ~~senior officer~~ 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.

Commented [u25]: [Head of Branch, People Directorate 2] - Preserved refs to harassment.

Commented [u26]: Isn't this the role of the senior officer in this case? If so, then why not imbed it in existing procedures and language?

Commented [u27]: [Head of Branch, People Directorate 2] - This sits apart from the ordinary Fairness at Work processes however the role of an "Investigating Officer" is commonly understood so accept change here.

Commented [u28]: Is this just collecting facts or is it aligning/ relating facts to the code of conduct? Need to clarify further, including the likely engagement with the complainant.

Commented [u29]: [Head of Branch, People Directorate 2] - No, it is collecting facts – this is consistent with the role of an IO under the separate fairness at work process.

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 protect staff, including staff wellbeing, ~~wellbeing~~ and ensure a positive working environment.

Commented [u30]: Included reference to member of staff for clarity

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. The Permanent Secretary will take any action necessary to protect staff.

Commented [u31]: [Head of Branch, People Directorate 2] - It isn't just wellbeing, it is to protect staff in exercising the legal duty of care the FM has

Commented [u32]: As we discussed, helpful to see potential response of Perm Sec bolstered here to better reassure staff.

Commented [u33]: [Head of Branch, People Directorate 2] - As discussed, we don't want to specify actions which might be taken – better to leave this broad as it enables perm sec to take all and any action required.

Commented [u34]: [Head of Branch, People Directorate 2] - Need to keep this language in – it is making it clear that our expectation is that they will cooperate.

9. Where a formal complaint ~~of harassment~~ 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.

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Commented [u35]: Preserved reference to harassment



## Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the senior Investigating Officer to deal with the issue complaint grievance. That person will have had no prior involvement with any aspect of the matter being raised. The role of the senior Investigating Officer will be to undertake an impartial collection of facts, from including, written statements from the complainant 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.

**Commented [u36]:** [Head of Branch, People Directorate 2] Again, referred to Investigating officer role as commonly understood.

**Commented [u37]:** [Head of Branch, People Directorate 2] Complaint rather than grievance

**Commented [u38]:** [Head of Branch, People Directorate 2] -

As above. Investigating Officer role. **Commented [u39]:** Conduct interviews?

**Commented [u40]:** [Head of Branch, People Directorate 2] Amended to make process the same as above

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 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.

**Commented [u41]:** "should/will be invited to"?

**Commented [u42]:** [Head of Branch, People Directorate 2] - changed to will

**Commented [u43]:** Should refer back to the process in 6-7

**Commented [u44]:** [Head of Branch, People Directorate 2] - I've compared and made sure this is comparable

**Commented [u45]:** Should the complainant be informed at this stage? Right of reply recourse especially if new "facts" emerge.

**Commented [u46]:** [Head of Branch, People Directorate 2] - noted to share with the staff member

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.

**Commented [u47]:** Parties have their own processes so next steps will vary, but this feels very loose.

**Commented [u48]:** Is there scope for referral to parliamentary ombudsman / commissioner for ethical standards here?

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

**Commented [u49]:** As above

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.

**Commented [u50]:** [Head of Branch, People Directorate 2] - to consider ombudsman points at later date with input from cab secretariat.

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: 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 including aftercare 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. SG as employer will not refer specific cases to the police without the knowledge / consent of the employee. Should either of these steps be necessary the staff member will be advised and supported throughout.

Scottish Government  
December 2017

**Commented [u51]:** Rather than notes at the end, shouldn't the legal points on potentially more serious matters be in their own section, or at least advice provided at the outset advising staff to contact the police if merited.

**Commented [u52]:** I've left this here for the moment but put a reference at the top so staff know where it is

**Formatted:** Justified

**Commented [u53]:** Picking up on Judith's comments re: engagement with Police Scotland. Need to pick up specifically with James H etc and include.

**Commented [u54]:** What is HR's role?

**Commented [u55]:** Actually, we cannot notify the police if the victim/staff member doesn't want us to. The best we could do is pass on some intelligence to the police, especially if there is a pattern of behaviour becoming apparent and SG thinks others could be at risk.

**Commented [u56]:** See above.

**Commented [u57]:** Do we include link to whistleblowing too?

**Commented [u58]:** Not in this context as whistleblowing isn't appropriate for an individual HR matter, unless there are concerns of a wider nature. The whistleblowing policy refers.