

Handling of Sexual 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 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 former, as well as current, 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of the Scottish Ministerial Code); and the sanctions open to the First Minister (such as removal from office) would be no longer applicable.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

Commented [u1]: Perm Sec thought it would be important to note that depending on the nature of the complaint it might be necessary for it to be investigated/reported in order to fulfil the SG's responsibility/obligations as an employer – cross reference footnote i and ii below?

Response: Footnote now referenced

Commented [u2]: Perm Sec thought that it would be helpful to distinguish more clearly between expressing a concern/making a formal complaint

Response: New wording to address this point

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

5-6. 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 complaint is raised about the conduct of made against a current Minister, the Permanent Secretary will advise inform the First Minister that a complaint has been received and inform her of its terms.~~ In line with her responsibilities under the Ministerial Code, the First Minister will then determine how to address the complaint matter against the Minister.

8. The First Minister has the option of asking the Permanent Secretary to carry out an investigation along the lines set out at paragraph 147, 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.

6-9. ~~However, n~~No matter which type of process is followed, it will be for the First Minister to decide the appropriate response to any complaint about a Minister.

7. ~~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. 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.~~

10. In situations relating to complaints against a current Minister, the Permanent Secretary will 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 as a result of the issues raised by any complaint.

11. ~~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 BE 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

Commented [u3]: Do we need to add something to be consistent with how a complaint against a former Minister might progress from concern to formal complaint – see para 9 and 10 comments

Response: Former para 10 has now been moved to new Para 5. The effect of this is that the same 'concern to formal complaint' approach applies both current and former Ministers.

Commented [u4]: Can they be named in parenthesis) Maybe move to after para 8 to improve flow?

Response: Done

12. When a concern is raised involving 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.

8-13. The role of the senior officer will include the following:

- Ensuring that the member of staff can access any necessary support and;
- Ensuring the staff member understands the process and the choices available to them;
- Determining from the staff member whether they wish to make a formal complaint;
- 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.

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

Asking that their complaint concern 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

9.1 Indicating that they wish to make a formal the complaint which would trigger an investigation and would include informing to be put to the former Minister and for that person, and any witnesses, to be interviewed.

10-14. Where the staff member wishes 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.

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Commented [u5]: Perm Sec thought that we should make clearer how these bullets read across to the steps set out in paragraph 10. (i.e. that the first three bullets refer to 10.1 and the second three to 10.2

Response: With the relocation of former para 10 to new para 5, we can remove the bullets that deal with the informal stage

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[Option A

44-15. 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 44-17 below. If the former Minister is a member of the Party of the current Administration the First Minister will also be informed.

OR

Option B

42-14. The Permanent Secretary will be advised at that point about the nature of the complaint. If the former Minister is a member of the Party of the current Administration the First Minister will be informed and will decide how to address the complaint against the former Minister.]

[Option A

16. 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 174 below).

OR

Option B

15. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will discuss the complaint with the relevant Scottish Party Leader and agree the appropriate process to be undertaken to investigate it. This may involve the process as described in paragraph 17 below.)]

Commented [u6]: Option A and Para 13 are consistent. But if we go with option B we create an inconsistency – i.e. that while FM decides on the approach in relation to a former Minister from her party we prescribe the approach to a former Minister from another party. So option A would be better from that perspective. But more thought needed

Response: a new Option B has been introduced which allows for the Perm Sec to meet and agree with the relevant Party leader how to take the complaint forward. This would allow for an equality of arms between the Government Party and an Opposition Party.

Investigation, Reporting and Follow Up

42-17. The former Minister will be approached by the senior officer and provided with details of the complaint. **If the former Minister agrees to cooperate:**

[NB: the introductory wording of this section will need to reflect the final decision on whether the Option A or Option B approach is taken.]

42-17.1 They will be interviewed by the senior officer;

42-17.2 Any witnesses identified by the staff member and the former Minister will also be interviewed;

42-17.3 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 take appropriate action, ~~including ensuring the welfare and support arrangements for the staff member;~~

42-17.4 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;

42-17.5 Where 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 [u7]: Already in place, bullet point 1 in para 9?

Response: Now deleted

Commented [u8]: Is this just a record of information gathered from the interviews – or conclusions and recommendations?

[Redacted]

Commented [u9]: Perm-Sec unclear about what action she could take. Isn't the point that we have investigated it as far as we can and the report and responsibility for actions are handed to FM or party leader to consider further action available to them in the non-government (i.e. party/public space)?

Response: possible actions might include referral to the Police, seeking an apology from the former Minister.

~~12.6~~17.6 The report will be shared with the staff member and the former Minister.

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 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

~~13.18.~~ Where the former Minister is a member of the Party of the current Administration the First Minister will be advised that the former Minister has declined to cooperate and will consider the matter from the perspective of the actions of the former Minister – and will be responsible for any further action.

~~14.19.~~ 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