

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of the Scottish Ministerial Code); and the sanctions open to the First Minister (such as removal from office) would be no longer applicable.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

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 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 will then determine how to address the matter.

8. The First Minister has the option of asking the Permanent Secretary to carry out an investigation along the lines set out at paragraph 17, 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.

9. 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.

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 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

12. In the event that a formal complaint 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.

13. 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.

14. 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.

[Option A

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 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

15. 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. The First Minister may ask the Permanent Secretary to prepare a report following the process outlined at paragraph 17.]

[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 17 below).

OR

Option B

16. 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.)]

Investigation, Reporting and Follow Up

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.]

17.1 They will be interviewed by the senior officer, whose role at this point will include: undertaking an impartial collection of facts from the parties involved; and providing reports to the Permanent Secretary and First Minister.

- 17.2 Any witnesses identified by the staff member and the former Minister will also be interviewed (this may include interviews with serving Ministers and Special Advisors);
- 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;
- 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;
- 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;
- 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

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.

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
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