

**From:** Hynd JS (James) [REDACTED]@gov.scot>  
**Sent:** 10 November 2017 12:31  
**To:** Permanent Secretary [REDACTED]@gov.scot>  
**Cc:** Richards N (Nicola) [REDACTED]@gov.scot>; Mackinnon J (Judith) [REDACTED]@gov.scot>  
**Subject:** FW: For today

[Private Secretary 2]

I attach a draft of the process for taking forward a complaint against a former Minister. Nicky has seen and is content, as is SGLD [Lawyer 1].

Perm Sec is also looking for names of potential candidates to fill the senior nominated officer role set out in the process. Possible candidates might be:

- [REDACTED 3 BULLET POINTS]

James

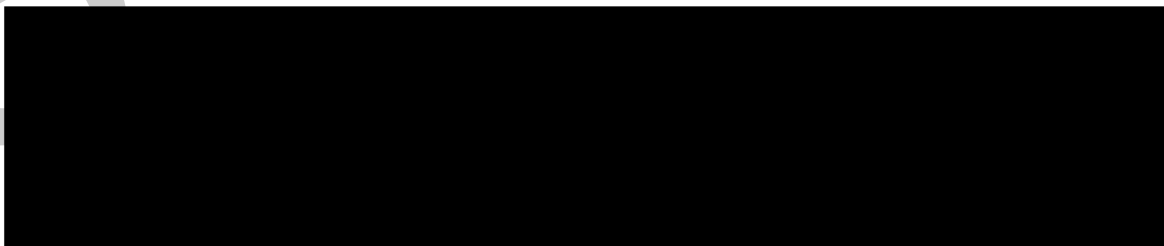
James Hynd  
Head of Cabinet, Parliament and Governance Division  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** Richards N (Nicola)  
**Sent:** 10 November 2017 10:28  
**To:** Permanent Secretary; Hynd JS (James); Mackinnon J (Judith)  
**Subject:** For today

Hi all

Just confirming we know what's needed for today and who's leading on what. Perhaps [Private Secretary 2] could confirm and add anything I've missed? I've used the headings from yesterday's sitrep.

- Process for former ministers (NR / JH)
  - JH has final draft, seeking legal input.
  - James / [Private Secretary 2] seeing if they can contact [REDACTED] so we can consider in line with Whitehall practice.
  - options for nominated officer
  - Process will be with Perm Sec today. [IS THIS NEEDED FOR FM BOX CLOSURE OR JUST FOR PERM SEC REVIEW/AWARENESS?]
- Communications plan (JMck / [REDACTED]/ Corp comms)
  - to continue conversation with organisation and develop this as part of our early intervention / positive and inclusive cultures change process
  - 6 week plan as a basis for fleshing out with Comms – NR - will share copy today
  - draft letter for Monday – required today [NR - could you confirm that Perm Sec wants this to be an all staff message?]
  - outline for Gillian and Barbara on what is asked of them [NR – required today]
- Policy review (JMck / [Head of Branch, People Directorate 2] )
  - Work underway on Fairness at Work and conduct policy.
  - Early milestones
    - route map to clarify complaint handling
    - engagement with unions
    - development with EAP of options for bespoke confidential offer
  - material to be shared as part of comms and engagement plan – including updated Standards of Behaviour.
  - Outline of work undertaken to date and plan forward required in form of short briefing note for Perm Sec to share with FM [JMck - next week – IS THAT OK FOR TIMING?]
- Engagement on culture (NR/JMck – linking with [REDACTED], [REDACTED] and [REDACTED] amongst others)
  - analysis and action on back of Survey results
  - engagement with interested parties (e.g. DG ally / other hosted staff sessions)
  - review interventions underway with DGs
  - DQ session on building positive team cultures
  - planning for wider interventions with managers
- Live issues (NR / JMck / [Head of Branch, People Directorate 3] )
  - Reports to HR:
    - one issue – confirmed against a [REDACTED]member of staff i[REDACTED], individuals affected determining if they wish to pursue
    - one reflection on response to message
  - Reports to others:
    - 2: 1 to PJ / 1 to BA



## **Handling of sexual harassment complaints against former Ministers**

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. The policies flow from the actions that the SG, as an employer, can take (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. These existing arrangements do not deal directly with the handling of complaints raised by staff in relation to former Ministers. This note sets out how complaints of this sort should 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 issues of this type receive equal consideration and that all necessary support is provided to the staff member.

4. Within the context set out above, the following process will be used as a guide where a member of staff wishes to make a complaint against a former Minister.

### **Initial contact and establishing desired outcome**

5. An individual may choose to raise an issue 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.

6. When an issue is raised involving a former Minister, the Director of People will designate a senior civil servant as the senior nominated officer to deal with the issue. We will ensure that that person has had no prior involvement with any aspect of the matter being raised. The role of the senior nominated officer will include the following:

- Ensuring that the member of staff can access any necessary support;
- Ensuring the staff member understands the process and the choices available to them;

- Determining from the staff member how far in the process they wish to proceed;
- 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.

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

7.1 Asking that their complaint 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

7.2 Indicating that they wish the complaint to be put to the former Minister and for that person, and any witnesses, to be interviewed.

8. 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.

### **Making a Complaint**

9. Where the staff member wishes to pursue a formal complaint they should provide the senior nominated officer, in writing, with as much information as possible about the matter, including details of potential witnesses.

10. 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. If the former Minister is a member of the Party of the current Administration the First Minister will also be advised.

11. The former Minister will be approached by the senior nominated officer and provided with details of the complaint. If the former Minister agrees to cooperate:

- 11.1 They will be interviewed by the senior nominated officer;
- 11.2 Any witnesses identified by the staff member and the former Minister will also be invited to be interviewed at this time;
- 11.3 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 from the perspective of ensuring the welfare and support arrangements for the staff member;

- 11.4 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;
- 11.5 The report will be shared with the staff member and the former Minister.

12. If the former Minister declines to engage 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. The Permanent Secretary will be advised of this outcome and will consider appropriate action, including the necessary steps to ensure the welfare and support arrangements for the staff member.

14. Where the former Minister is a member of the Party of the current Administration the First Minister will be advised and will consider the matter from the perspective of the actions of the former Minister.

**NOTE:** 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. If at any point it becomes apparent to the SG that criminal behaviour might have occurred, the SG will bring these matters directly to the attention of the Police.