

From: Evans L (Leslie)
Sent: 17 November 2017 17:44
To: [Private Secretary 1]
Cc: Permanent Secretary; [Private Secretary 2]
Subject: Re: Revised sexual harassment policy - update

That's fine to go for her to consider L

Sent from my BlackBerry 10 smartphone.

From: [Private Secretary 1]
Sent: Friday, 17 November 2017 17:30
To: Evans L (Leslie)
Cc: Permanent Secretary; [Private Secretary 2]
Subject: Revised sexual harassment policy - update

Leslie

A revised version of the policy is in your OneNote. We have put aside some time to discuss with James on Monday afternoon. I've discussed with Liz Lloyd. She thinks that it helpfully distinguishes between expressions of concern/formal complaint and properly emphasises the FM's responsibilities under the code and yours as Perm Sec – with appropriate provision for FM to ask you to investigate matters on her behalf. She knows that you plan to discuss aspects with FM.

Liz is keen to put the draft text below to FM for consideration this weekend – she and I have worked this up. James is content. It will be made clear to FM that you are considering in parallel and nothing will issue from FM's office until you are content. It's in OneNote but pasted below in case you want to see it before you return to Edinburgh.

[Private Secretary 1]

Permanent Secretary

At Cabinet on 31 October I asked you to review the Scottish Government's policies and processes on sexual harassment so that we could be reassured that we have effective arrangements in place in light of justifiable concern about the recent examples of misconduct across public life.

You have kept me closely briefed on these issues. I know that work is moving forward quickly and that you have already put arrangements in place to ensure that any member of staff who has concerns about the way they have been treated has the support and advice they need. You have also advised me that the review is considering how best to build on the work already being done to create an inclusive and respectful culture across the organisation.

As is clear from the continued media focus on cases of sexual harassment, in many instances, people are now making complaints about actions that took place some time ago. I wanted to make clear that in taking forward your review, and the new arrangements being developed,

you should not be constrained by the passage of time. I would like you to consider ways in which we are able to address concerns from staff – should any be raised – about the conduct of current Scottish Government Ministers but also former Ministers, including from previous administrations regardless of party. While I appreciate that the conduct of former Ministers would not be covered by the current Ministerial Code, I think it fair and reasonable that actions taken while they held office are considered against the standards expected of Ministers. I would be grateful for confirmation that this particular aspect is being included as part of the review you are leading.

As you complete your review I believe it would be helpful for you to update Cabinet on the conclusions you have reached and the actions the Scottish Government has taken to provide reassurance that policies and processes within the civil service are both robust and provide the necessary support to individuals who may wish to raise concerns.

First Minister
November 2017

[Private Secretary 1]

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 11 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 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

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.

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

- Ensuring that the member of staff can access any necessary support and understands the process;
- 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.

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.

[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

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 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;

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