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From: Mackinnon J (Judith)
Sent: 30 December 2018 15:20
To: [Redacted]
Cc: [Redacted - Lawyer 4]; [Redacted]
Subject: FW: OFFICIAL SENSITIVE: Complaints against Ministers and former Ministers

Importance: High

9/36

From: [Redacted - Head of Branch, People Directorate 1] <[Redacted Head of Branch, People Directorate 1@gov.scot]>
Sent: 14 December 2017 12:04
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Subject: OFFICIAL SENSITIVE: Complaints against Ministers and former Ministers
Importance: High

All

As discussed at PWC yesterday, I am now sharing with you in confidence the process for complaints against Ministers (now including former Ministers as well) which we have been working on with FM and Perm Sec in light of the request to carry out initial reviews of our policies and procedures in relation to the issue of sexual harassment.

While the driver for producing this process has been in response to the developing issue in society and media reporting on sexual harassment, you will see that the process is intended to cover all complaints against Ministers (and former Ministers) and not just potential sexual harassment complaints. In that regard, it is our intention that this process would replace the current arrangements set out in the Fairness at Work policy for complaints against Ministers.

As Nicky explained yesterday, we have sought to develop the process in order to more clearly set out and establish the roles, responsibilities and authority of all involved. This reflects that FM ultimately is accountable for Ministers who are required to conduct themselves in accordance with the Ministerial Code. It also reflects that Perm Sec has the responsibility to exercise her duty of care to staff. Our view is that what we have developed provides a number of significant improvements on the arrangements currently set out in the Fairness at Work policy while at the same time retaining our position of having a formal and published process that allows our staff to take forward a complaint against Ministers.

It would be useful if we could meet next week to discuss the complaints against Ministers process specifically as well as to provide us the opportunity to review where we have got to with our Stage 1 review of our policies and procedures in terms of their effectiveness for dealing with any sexual harassment complaints that we might get. At the moment Tuesday looks good for us and we will take a look at calendars and issue a meeting invite. In the meantime happy to receive initial comments by e-mail.

[Redacted - Head of Branch, People Directorate 1]



Complaints
against Minister...



[Redacted - Head of Branch, People Directorate 1] | [Redacted] | [Redacted] |
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Handling of Harassment Complaints Involving Current or Former Ministers

Initial contact

1. 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.
2. 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:
 - 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; or
 - 2.2 Indicating that they wish to make a formal complaint.

Formal complaints against current Scottish Government Ministers

3. 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, 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.
4. Alongside Ministerial responsibilities under the Code, the Scottish Government as an employer has a duty of care to staff. Where a formal complaint 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.
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, 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.

6. In the event that a formal complaint of harassment is received against a current 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. The role of the senior officer will be to undertake an impartial collection of facts from the parties involved, including the Minister and any witnesses, and prepare a report for the Permanent Secretary. The report will also be shared with the staff member and the Minister.

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 and ensure a positive working environment.

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.

9. Where a formal complaint 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.

Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment 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. The role of the senior officer will be to undertake an impartial collection of facts, including written statements from the complainant and any witnesses, and to prepare a report for the Permanent Secretary.

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 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. 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.

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.

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

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.

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:

(i) 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 to the staff member.

(ii) Throughout the process, 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 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. Should either of these steps be necessary the staff member will be advised and supported throughout.