

Scottish Government response to the reports by Laura Dunlop QC, James Hamilton, Independent Adviser on the Scottish Ministerial Code, and the Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints

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Foreword

Today the Scottish Government sets out its response to the recent review by Laura Dunlop QC, James Hamilton's Ministerial Code inquiry and the Scottish Parliament Harassment Committee's report.

The Scottish Government has welcomed all three reports and together they inform the actions being announced today. Our goal is to embed a culture where bullying and harassment is not tolerated and where there is trust in how matters will be handled if things go wrong. This work is informed by engagement with our recognised trade unions and by staff, including those with lived experiences of bullying and harassment.

At the heart of the three reports are the complaints from two women who spoke of unacceptable behaviour in the course of performing their duties as civil servants. These complaints could not be ignored. Everyone should be able to expect a respectful and safe working environment. This is both a legal right and core to the values of the organisation.

It was right that these complaints were taken seriously and investigated. However, it is clear that the complainers have been let down. Their testimony included within the Committee's report is particularly upsetting and raises important issues that we must reflect on within the Scottish Government, the Parliament and across wider society. The Scottish Government apologises unreservedly to the two women – we let them down.

Tackling allegations of sexual misconduct, particularly when these are historical and where there is an imbalance of power, is and will remain challenging. The Scottish Government put a process in place and implemented it. The lessons to be learned from that implementation are clear and will be applied. The actions set out here, drawing on the insights from the three reports, aim to ensure that change happens. We have made that commitment to staff, to Parliament and to the public and it is absolute.

The implementation plan annexed to this response sets out actions, including:

- Establishing an external and independent procedure for investigation and adjudication of complaints about Ministers' or former Ministers' behaviour;
- Creating a team within Government with responsibility for propriety and ethics, to provide oversight and coordination on sensitive issues; and
- Taking action to improve how we use, store and retrieve information and records, learning the lessons from our internal review of information management.

The implementation plan gives timescales for this work – and we know that it cannot and should not be rushed – but it is important that we can provide reassurance to employees now. We are working with the Trade Unions to ensure that clear and agreed mechanisms exist for issues to be raised and addressed in the interim.

Our aim is to ensure a culture of high performance and mutual respect between Ministers and civil servants, where productive working relationships are valued and nurtured, and bullying or harassment in any context is not tolerated. This is embedded in the organisation's new vision, 'In the service of Scotland', which is underpinned by five core values of integrity, inclusion, collaboration, innovation and kindness. These values guide how we act, the decisions we take, and how we work together across all parts of Government, to achieve our purpose to serve people in Scotland.

We are determined to learn from and apply the insights from these reports to build a culture where concerns are addressed early, and where all those involved with a complaint have confidence and can engage constructively and fairly in the process.

Nicola Sturgeon MSP,
First Minister

Leslie Evans,
Permanent Secretary

Executive summary

1. The publication in March 2021 of the reports by Laura Dunlop QC, James Hamilton and the Scottish Parliamentary Committee on the Scottish Government Handling of Harassment Complaints followed a series of events in which the Scottish Government acknowledges failings. We let down two women who came forward with complaints.
2. The Scottish Government is fully committed to eliminating bullying and harassment, promoting diversity and inclusion, respecting the rule of law, acting in an open and transparent way, and treating all our people with kindness, dignity and compassion.
3. This document marks the point at which we formally respond to the recommendations and set out the path we will take to ensure that our processes and cultures improve for those who may need to make complaints in the future.
4. The Scottish Government will focus on three areas for improvement:
 - Rebuilding confidence in our complaints process;
 - Improving the robustness of and compliance with our document management and storage processes; and
 - Improving the effectiveness of our internal arrangements for managing issues involving propriety and ethics.
5. Much of the work in relation to these matters is already underway:
 - An exercise was established to gather our internal lessons, from the broad range of initiatives that exist within the Scottish Government to actively promote the positive values, culture and behaviours we want to see across Government and in our relationships with stakeholders.
 - A new Ministerial induction programme was developed for Ministers appointed following the 2021 Scottish Parliamentary elections.
 - Alongside this response, we are publishing our information management report as part of our commitment to openness and transparency.
 - Within Scottish Government a substantial programme of work with appropriate external advice and governance has commenced, to take forward the implementation plan set out in this document as well as manage the changes that will be required internally.
 - A permanent appointment to the new post of Director General Corporate has taken place to strengthen support to the Permanent Secretary.
6. The key future aspects of our implementation plan are:
 - We will, by the end of 2021, introduce an external and independent procedure for the investigation and adjudication of complaints about Ministers' or former Ministers' behaviour. This will be carried out in partnership with the recognised trade unions. We are also working with them to ensure issues can be raised and responded to appropriately in the interim.

- We will continue work to implement the recommendations of our information management review and will set out more detail of specific actions by September 2021, based on lessons from implementing the first phase of the plan.
- We will, by September 2021, bring together our key Propriety and Ethics functions under a single point of leadership within DG Corporate.
- As is usual following an election, the First Minister will give consideration to the publication of a revised Scottish Ministerial Code. Relevant comments made by Mr Hamilton, Ms Dunlop and the Committee will be considered during this process.

7. Care must be taken when developing a new policy and procedure of this type. To be effective the policy will depend upon wide acceptance: individuals need to have confidence to come forward and all parties need to engage in good faith. We will endeavour to get a new procedure in place as quickly as possible and, at the latest, by the end of this calendar year. In the event that a complaint of harassment is raised between now and then, we will be guided by the 2017 procedure. However, in applying that procedure, we will take account of the comments and recommendations made in the three reports we are responding to – in particular in relation to the correct interpretation of section 10. We will also liaise closely with recognised trade unions and draw on external advice as appropriate. The provisions for handling complaints about ministers – other than harassment – within Fairness at Work will also remain in place.

8. We will update the Scottish Parliament on progress before the end of 2021.

Background

9. The Scottish Government developed the ‘Handling of Harassment Complaints Involving Current or Former Ministers’ procedure (“the procedure”) in the context of the #metoo movement and a strong cross-party agreement that more needed to be done to tackle harassment in the workplace.

10. In developing the procedure, the Scottish Government drew upon legal and HR advice, and had a number of underpinning objectives:

- The procedure had to be lawful;
- It had to reflect best HR practice;
- It had to be fair and balance the interests of all parties involved; and
- It had to respect the responsibilities of the Permanent Secretary and the First Minister.

11. In creating a procedure of this sort, the Scottish Government was motivated by doing the right thing – creating a workplace and culture where harassment is not tolerated and where complaints are taken seriously. We welcome the Committee’s acknowledgement of this point.

12. Complaints were received which had to be taken seriously. The Scottish Government had a duty to investigate the complaints and it was right and proper to do so. Decisions were taken transparently, informed by professional advice, and made in good faith.

13. The Scottish Government has been clear throughout that the outcome of the judicial review arose from a collective Scottish Government failure and that actions have been and are being taken to learn lessons, in particular to revise the complaints procedure and to strengthen how documentation is stored and retrieved.

Review of the Scottish Government procedure for handling harassment complaints involving current or former Ministers

14. Following the Scottish Government’s concession of the judicial review court proceedings raised by the former First Minister Alex Salmond, the Permanent Secretary issued a public statement¹ on 8 January 2019 committing that the Scottish Government would learn lessons, and that she had commissioned an internal review of the application of the procedure. We confirmed the review would be externally led and would examine the first application of the procedure to ensure that lessons are captured and applied for any future complaints that may be brought forward.

15. The review was not progressed immediately to avoid creating any risk of prejudice to live criminal proceedings. Laura Dunlop QC was appointed to lead the review, with the following remit:

¹ [Statement from Permanent Secretary at the Scottish Government Leslie Evans - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/Press/Statements/2019/01/08/2019010801)

1. Draw out the lessons from the first application of the procedure as followed through to decision. In particular, this will include the application of paragraph 10, and provide advice on any changes required to strengthen the content and future operation of the procedure.
2. Identify how best to support complainers in future without undermining the integrity of the process.
3. Consider what further steps could be taken to improve the procedure to meet its intention, including maintaining the confidence of Scottish Government staff in the approach which will be taken to handling such issues in future.

16. Ms Dunlop's report was published on 16 March 2021².

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister

17. On 13 January 2019, the First Minister announced that she had referred herself to one or both of the Independent Advisers on the Ministerial Code in relation to the questions that had arisen about her contact with Mr Salmond during the Government's investigation into the complaints that had been made against him. In order to avoid any risk of prejudice to the then ongoing criminal proceedings, the Scottish Government paused the First Minister's self-referral.

18. Following the conclusion of the criminal proceedings on 23 March 2020, we were able to recommence the referral process and the remit for the referral was set out by the Deputy First Minister in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020³.

19. The investigation was led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

20. Mr Hamilton's report was published on 22 March 2021⁴.

The Committee on the Scottish Government Handling of Harassment Complaints

21. On 5 February 2019 the Scottish Parliament established the Committee on the Scottish Government Handling of Harassment Complaints. The remit of the Committee was agreed as follows:

To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "Handling of

² [ReportLauraDunlopQC.pdf \(www.gov.scot\)](#)

³ Full remit for the referral under the Ministerial Code: [Motions, Questions and Answers Search - Parliamentary Business : Scottish Parliament](#)

⁴ [Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters](#)

*harassment complaints involving current or former Ministers” procedure and actions in relation to the Scottish Ministerial Code*⁵.

22. The work of the Committee was also paused in order to avoid a risk of prejudice to live criminal proceedings. At its meeting on 22 June 2020, the Committee members agreed the Committee’s approach to its inquiry⁶ and published a written statement on handling of information and evidence⁷.

23. Following its conclusion of consideration of information and evidence the Committee reported on 23 March 2021⁸.

⁵ [SGHHCapproach.pdf \(parliament.scot\)](#)

⁶ [SGHHCapproach.pdf \(parliament.scot\)](#)

⁷ [Written statement on handling of information and evidence \(parliament.scot\)](#)

⁸ [Report of the Committee on the Scottish Government Handling of Harassment Complaints](#)

Responding to the three reviews

24. This publication is a collective Scottish Government response to the three reports which were published in March 2021:

- The review of the Scottish Government procedure for handling harassment complaints involving current or former Ministers – the externally-led review by Laura Dunlop QC;
- The report by James Hamilton, Independent Adviser on the Scottish Ministerial Code, into the self-referral by the First Minister; and
- The report of the Committee on Scottish Government Handling of Harassment Complaints.

25. As the Deputy First Minister noted in his letter to the Committee Convener dated 24 March 2021, given the publication dates of the three reports, it was not possible for the Government to respond in full before the Parliamentary recess ahead of the election.

26. As would be expected, there is significant overlap in the focus and recommendations of all three reports. **We have, therefore, decided to cover the key themes and findings of the three reports in one overarching Scottish Government response, setting out clearly the actions which we propose to take.**

27. In a letter to the Committee Convener dated 16 March 2021, the Deputy First Minister undertook to consider the reports of the three reviews and work with the recognised trade unions to develop and publish an implementation plan.

28. The Annex to this response contains the implementation plan. This sets out the high-level actions and outcomes that the Scottish Government will take forward, with indicative timescales. Further detail of implementation will be designed in partnership with our trade unions and others, drawing in appropriate evidence and expertise. These are important issues and there will be no unnecessary delay. However, it will not be rushed. The Committee's report was critical of the fast pace at which the original procedure was developed. The Scottish Government will take the time needed to ensure procedures and policies are robust and effective, and are understood and trusted by staff. This approach has been agreed with the trade unions. We continue to work with trade union colleagues, using our published procedures and informed by the learning set out here, to ensure that any concerns raised by staff now can be addressed appropriately while we develop a new external procedure.

Scottish Government responsibilities as an employer

29. The Scottish Government will make changes to improve its employee processes as a result of the learning from the three reports and our internal lessons. Our implementation plan reflects the duties and obligations of the Scottish Government as an employer.

30. This employer responsibility is complicated by the fact that civil servants engage with a number of parties – including Ministers – who are not Scottish Government employees. The Scottish Government as an employer does not have direct authority over Ministers, and neither do Ministers have line management authority over civil servants. Nonetheless, the shared commitment to a productive and respectful working relationship is clearly set out in the Scottish Ministerial Code and Civil Service Code, so there should be no barrier to fulfilling the employer and civil service obligations. Good relationships are important to the smooth and effective running of any government and also in ensuring that the Scottish Government as employer can discharge its duty of care to its staff and act lawfully.

31. As an employer, the Scottish Government has a responsibility to ensure that it has the appropriate guidance, processes, policies and governance in place to:

- Meet its legal duties to provide employees with a safe workplace;
- Protect employees against harassment; and
- Ensure that employees are able to raise concerns in the context of their employment.

32. Scottish Government employees have terms and conditions of appointment reflecting this relationship. They have recourse to normal routes for raising and resolving disputes and to challenge their employer, including via the Employment Tribunal.

33. The Scottish Government's employer obligations sit within a civil service framework, reflecting the obligations flowing from the Constitutional Reform and Governance Act 2010 and the Civil Service Management Code. The Permanent Secretary has delegated responsibility for actions and decisions of the civil service serving the Government of the day, including overall delegated responsibility for discharging the employer duty of care towards staff. In discharging this responsibility, it is important that there is assurance that appropriate policies and procedures are in place and followed.

Updated and single process for complaints

34. Ms Dunlop recommended that there should be a single process governing the raising of a complaint against a Minister by a civil servant, whether within the Scottish Government policy 'Fairness at Work' or separate to it. The Scottish Government accepts this recommendation. We recognise the need and benefit of having an effective grievance policy for staff which signals the routes for raising concerns which occur in the workplace, whether about Ministers, staff or others. **An updated and single procedure for complaints about a Minister's behaviour will be developed.**

35. The updated process will provide for the handling of formal complaints made by civil servants about alleged bullying or harassment by a current or former Minister. The process will also address the following related points observed by Ms Dunlop and the Committee.

Historic complaints

36. Ms Dunlop recommended that there should be no time limit for complaints of sexual harassment against serving or former Ministers. Ms Dunlop suggested a time limit could be considered for other types of complaints, with provisions for this to be overridden. The Committee was also of the view that policies must allow for historic complaints.

37. **The Scottish Government agrees that there should be no time limit for making a complaint of sexual harassment and this will continue to be reflected in our policy and practice.** We will carefully consider, engaging external expertise, the concept of a time limit with an override provision in relation to other types of complaints, and make distinctions as required. In the spirit of clarity and simplicity, ideally this position would align across processes for bringing other complaints such as about other civil servants or third parties. We will also take full account of the Scottish Government's legal obligations as an employer under the Equality Act 2010 to ensure that our staff are protected from all types of harassment in the workplace.

Support for the Minister during the process

38. Ms Dunlop recommended that support for a Minister subject to a complaint should be set out as a clear obligation. The Scottish Government accepts this. **We will offer advice on process and wellbeing support to all parties involved with a complaint. The support available will be set out clearly in guidance.**

39. Ministers are expected to cooperate fully with investigations, in common with the expectation that already exists for direct employees. In order for the Scottish Government to fulfil its employer obligations, it is important that clear standards are set for Ministerial behaviour and a clear expectation is articulated that – in the event of any complaints received – Ministers will engage positively with the agreed

process. The Ministerial Code (section 6) sets out the obligations on current Ministers in regard to their dealings with the civil service, principally the obligation to “*treat all those with whom they come into contact with consideration and respect*”, and to “*observe the conditions of a good employer with regard to the terms and conditions of those who serve them*”⁹. **The expectation of cooperation with the established process will be included in consideration of any revision to the Ministerial Code and will be made explicit in the updated procedure. It also forms part of the Ministerial induction programme. Former Ministers are not currently bound by the Ministerial Code, but we will consider making it explicit in the Code that there is an expectation of current ministers (which they accept as current ministers) that they will co-operate with any investigation that begins or continues after they leave office.**

Guidance

40. The Committee highlights the level of detail in the existing procedure and calls for guidance to be put in place to support any updated procedure, including for witnesses. The Committee points to the materials produced by the Ethical Standards Commissioner for Scotland as an example of good practice in this area.

41. **The Scottish Government agrees that there should be guidance associated with the updated procedure and this will be put in place.** It will draw on the existing guidance for investigations available within ‘Fairness at Work’¹⁰ and the guidance available from ACAS. We will benchmark our guidance, including with the Ethical Standards Commissioner.

42. Initial learning from the application of the procedure in 2018 highlighted areas for further explanatory notes and guidance material and these will also be considered in the new guidance to be produced. These include:

- Exploring initial contact, including the form of the contact, the sources of advice and the scenarios where external advice may be sought;
- Examples of mutually agreed resolution;
- Guidance on managing the movement of parties between different roles;
- Further clarity about the meaning of ‘no prior involvement’ in the formal complaints process, and options for sourcing and supporting an Investigating Officer;
- Guidance on the role of witnesses;
- Communication scenarios and process flows including keeping people informed of progress and ability for parties to access information about the complaint and other documentation (in line with data and privacy obligations); and
- Timescales adopted and monitoring for timely resolution.

43. The Committee suggests that changes should already have been made to the procedure, or additional guidance produced, to clarify the interpretation of paragraph 10.

⁹ [Scottish Ministerial Code](#) paragraphs 6.1 and 6.2

¹⁰ [Phase1FN16.pdf \(parliament.scot\)](#)

44. The Scottish Government's conclusion was that making piecemeal updates to the procedure in advance of the various reports was not the best approach. However, it is clear that all parties need to have confidence in the process should a complaint be raised ahead of an updated procedure being in place. We will endeavour to get a new procedure in place as quickly as possible and, at the latest, by the end of this calendar year. In the event that a complaint of harassment is raised between now and then, we will be guided by the 2017 procedure. However, in applying that procedure, we will take account of the comments and recommendations made in the three reports we are responding to – in particular in relation to the correct interpretation of section 10. We will also liaise closely with recognised trade unions and draw on external advice as appropriate. The provisions for handling complaints about ministers - other than harassment – within Fairness at Work will also remain in place.

45. Working with recognised trade unions and external advice, our practice would apply the lessons from the judicial and other reviews, to maximise trust in the process and to minimise any risks. **Alongside the updated procedure, associated guidance will be explicit and clear on separation of roles, and that appropriate guidance and support must be provided for all parties.**

Alternative resolution

46. Ms Dunlop suggested that mediation, while it could not be compulsory, has potential for use in some complaints of harassment. The Committee noted Ms Dunlop's comments on mediation but suggested that mediation could be problematic in cases between a civil servant and a former Minister. Mr Hamilton similarly questioned whether a relatively informal resolution procedure would be appropriate or effective in protecting the rights of all parties.

47. The fact that the three reports offer differing opinions on mediation for dealing with harassment complaints about Ministers illustrates the sensitivity required in positioning this within a procedure. Whilst alternative resolution exists as an option currently, it was not felt to be appropriate in the case of the complaints against the former First Minister Alex Salmond. The reasons for this have been given in evidence and recognised by the Committee. Those reasons include the wishes of the complainers. We are committed to a person-centred approach and exploring all options with staff who raise concerns. **Alternative resolution including mediation will continue to be available, and we will give further consideration to how best to reference these options in the updated procedure and associated guidance.** Mediation will only take place if all parties are willing to engage voluntarily.

48. Ms Dunlop recommended that consideration be given to introducing a process of "censure with consent", to denote an acceptance that there has been unacceptable conduct on the part of a Minister towards a civil servant. She added that if this was put in place, there should be a post-outcome review of any early application. While potentially this could be one of the penalties applied if a complaint was upheld, it requires careful consideration as there are implications for the operation of Government and the appointment of Ministers by the First Minister. **We will consider this matter in the development of the updated procedure.**

49. The Committee expressed a view that Ms A and Ms B should be given an opportunity to comment on Ms Dunlop's recommendations. **We will seek the views of Ms A and Ms B on the recommendations and our wider organisational response.**

Updated and single process for complaints: Scottish Government actions

We will:

- Develop an updated procedure for complaints about a Minister's or former Minister's behaviour;
- Produce guidance to support the procedure, which will be explicit and clear on separation of roles, and that appropriate guidance and support must be provided for all parties;
- Continue to apply no time limit for making a complaint of sexual harassment in policy or practice;
- Make explicit in the procedure the expectation of cooperation;
- Offer advice on process and the appropriate support offer to all parties involved;
- Give further consideration to referencing alternative resolution options (including informal routes and mediation), in the procedure and associated guidance;
- Consider the introduction of a process of censure with consent; and
- Engage with a range of interests as we develop the procedure, including offering Ms A and Ms B an opportunity to comment on Ms Dunlop's recommendations and our wider organisational response.

Independent handling of complaints

50. Ms Dunlop recommended that formal complaints against a former Minister should be investigated and adjudicated independently. The Committee welcomed this recommendation and added that it believed an independent process for complaints against current Ministers should also be considered. The Committee suggested that something similar to the independent systems in place in the Scottish Parliament and the House of Commons might be considered.

51. **Together with our recognised trade unions, we are developing a proposal for an external process, independent of the Scottish Government, for the investigation and adjudication of formal complaints about a Minister's or former Minister's behaviour.** The proposal will be informed by external professional perspectives, including options for the appointment of an external provider.

52. The Scottish Government's role as employer requires us to have a process in place which fulfils our obligations to our employees and also aligns with the (reserved) position of the civil service as set out in the Constitutional Reform and Governance Act 2010 and the Civil Service Management Code. Like the Scottish Parliament and the House of Commons, it will be important for us to consider our distinctive context in designing a new approach to independent investigation and adjudication.

53. In an independent investigation of a complaint, the Scottish Government would continue to be responsible to its employees for ensuring an effective investigation and for the manner in which it was conducted. In whichever way complaints are investigated, the Scottish Government has an ongoing obligation as an employer to ensure that all staff have access to an effective process to raise complaints about harassment by anyone, including Ministers and former Ministers.

54. As the employer, the Scottish Government would remain legally responsible for any decisions reached about an employee, even if these decisions had been passed to and made by a third party. Employer responsibilities cannot be delegated.

Initial assessment

55. Ms Dunlop recommended that an initial assessment or screening process should be undertaken to decide whether a complaint by a civil servant against a Minister should be handled under the Ministerial Code or follow the process of 'Fairness at Work', and that this screening process should be confined to an initial report of the complaint with a brief account of facts alleged by each person, noting evidence potentially available, any areas of agreement on facts, and what resolution the complainer is seeking, but not offering any views as to credibility or reliability. Ms Dunlop also commented that the person conducting the screening process should have access to legal advice.

56. **The proposal for external independent handling of formal complaints about a Minister's or former Minister's behaviour will consider the option of an initial assessment.** Any initial screening would need careful handling so as not to

create unnecessary delay, deny access by either party to a full investigation, or lead to conclusions being reached on the basis of partial facts.

57. The Committee called for clarity on what information will be shared and when for the complainers and the person against whom a complaint is made, and set out their belief that the information available to both the complainer and the subject of a complaint should contain a comparable level of detail. The Committee expressed a view that a key principle of any complaints process is that the complainer and the person being complained about should each receive all the necessary information to set out their accounts of events, and should be provided with the same opportunity to comment on the information being provided to the person deciding on the complaint. **The proposal for external, independent handling will include this as the default position, with scope to make judgements informed by external professional perspectives should the risks of the case require caution.**

Support services

58. The Committee highlighted that it can be very difficult for people to come forward with complaints and called for the introduction of an independent support service for complainers, giving the example of the service currently provided by the Scottish Parliament.

59. The Scottish Government has existing arrangements in place through the Employee Assistance Programme and trade unions for staff to discuss issues in confidence with someone outside of the organisation should they wish. These are regularly promoted to staff and will be highlighted as part of our ongoing work to provide a more inclusive organisational culture. **The supporting guidance for the updated procedure will sign-post the pathways into raising a formal complaint, the support available, and the options for alternative resolution.**

Independent handling of complaints: Scottish Government actions

We will:

- Work with recognised trade unions and engage with a range of interests to develop an external, independent process for the investigation and adjudication of formal complaints about a Minister's or former Minister's behaviour;
- Consider the option of an initial assessment as part of this external independent handling;
- Include a default expectation that both parties would receive all the information necessary to set out their accounts of events and the same opportunity to comment on the information, with scope for exceptions should the risks of the case require caution; and
- Produce guidance setting out the pathways into raising a formal complaint, the support available, and options for alternative resolution.

Separation of roles when dealing with complaints

60. Ms Dunlop recommended that anyone involved in any factual investigation of a complaint against a Minister should be free of prior involvement with any aspect of the matter being raised, and should have no close association with either party before or during the investigation. The Committee went further, noting that both the Investigating Officer and the person making the decision on the complaint should have had no prior involvement with the complaints. The Committee highlighted multiple roles of the Permanent Secretary in the development and the implementation of the procedure and suggested this could lead to a perception that there was not sufficient distance and independence in the decision making process. **The proposal for an external and independent process will address this issue and allow roles to be clearly delineated.**

61. **Guidance will acknowledge that senior colleagues may be involved, making clear that anyone involved in the investigation or decision making should have no prior involvement with the matter being raised or close association with either party.**

62. The Committee noted the role of line managers in provision of support. Whilst it is entirely appropriate and current good practice in the Scottish Government for line managers to support staff with complaints if that is what the complainer wishes, we must recognise that complainers may wish to seek support from someone outside of their management chain. Historical complaints may also mean that the current line manager has no basis for being informed about a complaint (both from the perspective of the confidentiality afforded to all parties and – as is noted elsewhere in Committee’s report – complainers may feel uncomfortable if they believe a number of people in an organisation are aware of their personal circumstances). **The supporting guidance for the updated procedure will address the routes to raising a complaint, the support available, and the role of line managers.**

Role of the Permanent Secretary

63. The Committee noted the two decision points for the Permanent Secretary under the current procedure, and stated that it does not believe it is appropriate for both decisions to rest with the Permanent Secretary. The Committee expressed sympathy with the idea that contact with complainers and former Ministers should be delegated to a senior member of staff who does not hold a formal role within the procedure.

64. The Permanent Secretary role has delegated responsibility for actions and decisions of the civil service serving the Government of the day, and within this overall delegated responsibility for discharging the employer duty of care towards all staff. However, **the commitment to develop an external independent process of investigation and adjudication will address issues arising from the Permanent**

Secretary being required to undertake a range of roles in regard to the procedure.

The creation of the DG Corporate role

65. The Director General Organisational Development and Operations role held by Sarah Davidson at the time of the judicial review has since been altered to lead change in the Government, to reflect new responsibilities, and to avoid the situation highlighted by the Committee where the Permanent Secretary held “multiple roles” throughout the process.

66. Lesley Fraser was appointed to the new DG Corporate role in March 2021. DG Corporate is part of the Permanent Secretary’s Executive Team, allowing the Permanent Secretary to delegate responsibility of corporate matters to this Director General, with agreement from the First Minister, where necessary.

67. The aim of this new business structure is to improve organisational capability and capacity, overseeing core corporate services, including Ministerial support, internal and external communications, commercial and procurement strategy, legal services and financial and people management.

68. DG Corporate will also include the Propriety and Ethics function which is expected to be one of the routes of entry into making a formal complaint, and will also be the interface between the external, independent investigation and adjudication and the Scottish Government. A core team will be able to draw on staff with the necessary skills and who are not associated with the subject of the complaint. This function is expected to be fully established by autumn 2021.

Potential criminality

69. Ms Dunlop recommended that consideration should be given to whether to include a provision allowing a complainer’s wish to avoid police involvement to be respected in any policy about complaints against Ministers.

70. The Committee invited the Scottish Government to reflect carefully on the process of making a referral to the police and the decision points leading up to a referral, and commented that more guidance could have been in place to support early identification of potential criminality and to support and manage complainers’ expectations around possible referrals to the police. The Committee also suggested that specialist support could have been useful to Ms A and Ms B, rather than such support being filtered through HR.

71. The Scottish Government will engage directly with and learn from the evidence provided by Ms A and Ms B and will **ensure that guidance material will include direct access to specialist support**. We will also consider what further assurance can be offered as part of the updated procedure.

Separation of roles: Scottish Government actions

We will:

- Address concerns about multiple roles in the investigation process through clearly delineated roles in the external, independent process for investigation and adjudication;
- Provide information on the routes to raising a complaint, the support available, and the role of line managers through supporting guidance; and
- Ensure complainers have direct access to specialist support where potential criminality is identified.

Culture and behaviours

72. The Committee noted the difference between informal resolution as part of workplace policies and senior staff addressing concerns outside of a policy in an informal way. The Committee called on the Scottish Government to reassure staff that matters of bullying and harassment will be dealt with properly, fairly and robustly.

73. **The Scottish Government welcomes this recognition of the importance of informal resolution as a valid and equally important route in many situations.** The updated procedure for handling formal complaints will recognise the routes in and the options for informal resolution in line with the principles set out currently in 'Fairness at Work'.

74. The Committee noted that the culture and leadership of any organisation is as important as having robust policies and procedures in ensuring that people feel able to come forward, and stated that the Scottish Government must be clear about what behaviour is acceptable and not acceptable in the workplace and make sure people feel able to call out inappropriate behaviour, knowing that their complaints will be dealt with seriously and sensitively.

75. **The Scottish Government agrees that culture and leadership are crucial.** Prevention is key, and will be achieved by creating a positive culture, that values diversity and where staff have confidence in the process if raising concerns or complaints. We are making progress on this, as evidenced in the our most recent staff survey results¹¹, where we have achieved improvements on leading and managing change, our highest ever score on inclusion and fair treatment, and our lowest ever proportion of colleagues responding that they have been bullied or harassed at work.

76. Ministers and civil servants work together to deliver a programme for Government. The context is however different. Ministers are politicians and elected representatives, while civil servants are employees who serve the Government and Ministers of the day. Good relationships between Ministers and the civil service are at the heart of an effective Government. It is, therefore, vital that from the outset there is a shared understanding of the standards of behaviour expected of one another. **A refreshed Ministerial induction programme covers the Scottish Ministerial Code, the Civil Service Code and the core values of the civil service and the Scottish Government.** As part of this process, incoming Ministers have also received fresh guidance on the role of their Private Offices and expectations around working effectively together in a culture of mutual support and respect.

77. Part 6 of the Scottish Ministerial Code sets out the general principle in working with civil servants:

Ministers must uphold the political impartiality of the civil service, and not ask civil servants to act in any way which would conflict with the Civil Service Code and the requirements of the Constitutional Reform and Civil Governance Act 2010.

¹¹ [Civil Service People Survey: 2020 results - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

*Ministers should be professional in their working relationships with the civil service and treat all those with whom they come into contact with consideration and respect.*¹²

78. The Civil Service Code sets out the core values of the civil service – honesty, integrity, objectivity, and impartiality – and the standards of behaviour expected of all civil servants. Our values within Scottish Government, alongside the shared civil service values, further guide how civil servants act. The Code of Conduct for Special Advisers working in the Scottish Government is clear that Special Advisers are bound by the standards set out in the Civil Service Code.

79. Combined, these codes form the foundation of working relationships between Ministers and civil servants, relationships which are on the whole professional and respectful of differing roles. **We will continue to work to ensure a fair and respectful working environment for all and to create the conditions where bullying and harassment is prevented or tackled at the outset.**

80. This can only be done with an appreciation of how difficult it can be for an individual to come forward with a concern or complaint. **Our work on organisational processes and culture, therefore, also seeks to ensure that anyone in that position feels sufficiently empowered, confident, informed and supported, knowing who they could approach at any stage.**

81. As part of this, it's important that civil servants understand that the lessons from the scrutiny of the handling of the complaints from Ms A and Ms B have already been learned. Decisions on handling of a complaint, even before a revised procedure is in place, would apply the lessons from the judicial and other reviews.

82. An exercise was established to gather our internal lessons, looking at the broad range of initiatives that exist within the Scottish Government in actively promoting the positive values, culture and behaviours we want to see across Government and in our relationships with stakeholders. This rests on the values and principles which guide our ongoing activity:

- The civil service values of honesty, integrity (personal, professional and organisational), objectivity and impartiality;
- The values at the heart of the National Performance Framework:
 - treating all our people with kindness, dignity and compassion;
 - respecting the rule of law;
 - acting in an open and transparent way.
- The five core values that underpin the Scottish Government's new vision, 'In the service of Scotland': integrity, inclusion, collaboration, innovation and kindness;
- Ensuring the safety and wellbeing of individuals in the organisation; and
- Professionalism including good governance and strong risk management.

¹² Scottish Ministerial Code paragraph 6.1

83. In our ongoing work we will continue to implement these lessons and in particular address:

- The need to strengthen the commitment between Ministers and civil servants to prevent inappropriate behaviour, to address any concerns, ensuring that policies and procedures have the acceptance of all parties involved;
- The manner in which local cultures can develop under pressure, outside the prevailing norms. A shared understanding of the signs that we need to look out for, the importance of early intervention and clear responsibilities for taking action, will help us to develop the skills of our leaders and work locally to provide extra support; and
- The need to continually promote the importance of speaking up, and to provide effective systems and procedures for those who do speak up. That will help ensure concerns are handled promptly and with compassion, and that informal and formal processes are fair – and seen to be fair – to all parties.

Culture and behaviours – Scottish Government actions

We will:

- Use the lessons from the three reports as well as internal reflection to strengthen our ongoing and ambitious work to improve a culture of openness and inclusion;
- Continue to implement the refreshed Ministerial induction programme which covers the Scottish Ministerial Code, the Civil Service Code and the core values of the civil service and the Scottish Government;
- Embed the new Scottish Government vision, 'In the service of Scotland' and its five core values: integrity, inclusion, collaboration, innovation and kindness; and
- Continue our work create an ever more diverse and inclusive Scottish Government and to prevent and tackle bullying and harassment.

Record keeping and information management

84. The Committee report included a number of comments related to record keeping and information management. This included a recommendation that the Permanent Secretary should publish a statement setting out the requirements for record keeping under the Civil Service Code, and how the Scottish Government will improve its performance in meeting these requirements.

85. The Civil Service Code applies to governments across the United Kingdom and its statutory basis is set out in Part 1 of the Constitutional Reform and Governance Act 2010.

86. It sets out four civil service core values which civil servants are expected to uphold in supporting the Government of the day: integrity, honesty, objectivity and impartiality. It is part of the contractual relationship between an individual civil servant and their employer.

87. As part of the “integrity” core value, the Code states that civil servants must “*keep accurate official records and handle information as openly as possible within the legal framework*”¹³. The Code does not require that all meetings and conversations should be minuted.

88. Scottish Government officials have upheld the Code both during the period under scrutiny by the Committee and in the work to support the Committee’s inquiry.

89. Like many governments and large organisations across the world, the Scottish Government currently has a significant programme of work in train to evaluate and improve its information management processes across the range of its corporate activities.

90. The Committee specifically called for the Scottish Government review of information management to be published and also for the Scottish Government to review its compliance with its duty of candour and reflect on how a Commission and Diligence came to be required, how the Government responded to it and its governance arrangements.

91. The review of information management in the Scottish Government, which was commissioned by the Permanent Secretary in August 2020, is published alongside this response. The report makes clear that, like many organisations and institutions in this digital age, Scottish Government has reached a strategic tipping point in its approach to information management.

¹³ [Civil Service Code - gov.scot \(www.gov.scot\)](http://www.gov.scot)

92. The review's findings included:

- There is a compelling case for the Scottish Government to re-evaluate and reset its approach to information management, to take advantage of new technology in order to support its business and minimise risk.
- Information should be afforded equal strategic priority to other corporate assets such as people, infrastructure and finances.
- The organisation's information includes its record of work and should be protected by disciplined information and records management. Further action is required to ensure that policies and guidance, in compliance with information law, are fully implemented.
- Whilst the eRDM (electronic records and documents management) system is used widely as the corporate solution for managing documents and records, there is also widespread use of alternative processes and systems for creating, storing and managing information. A change in culture is required in order to address this.
- The Scottish Government has recently invested in its information management infrastructure by upgrading the eRDM system, acquiring new digital information management tools and developing a new model of blended training resources. These are strong foundations upon which to improve information management capability and reduce risk but they must be backed up by best practice and the right behaviours at all levels in the organisation.

93. The review also highlighted the need for improved information governance to enhance the Scottish Government's capability and performance around compliance with information law, creating a more consistent and corporate approach to managing information and records, enhancing the security of information, reducing inefficiency and unnecessary costs and enabling future business and technology strategies.

94. The key recommendations of the review were to:

- Raise the corporate priority and strategic profile of information and records management to better reflect its business value and encourage improved behaviours and culture;
- Implement a corporate whole-of-government information management strategy;
- Establish a corporate information governance model;
- Implement a corporate information management performance framework;
- Manage down the availability and use of unstructured information repositories and develop clear criteria, guidance and policy for the management of information outside of the corporate eRDM system;
- Deliver a corporate improvement programme to address key risks and gaps in the short to medium term whilst building a sustainable and responsive business model for best practice digital information management in the future;
- Embed lessons learned in the implementation of new digital information systems; and
- Review resourcing of information management within local, directorate and corporate functions.

95. The internal review reported its findings and recommendations to the Scottish Government Executive Team in January 2021. **The Executive Team accepted the findings in full and a programme has been established to take forward the review's eight recommendations. Work on each of the recommendations has already commenced.**

96. In 2017, a major programme to modernise and transform our information infrastructure and systems began. This three-year programme has delivered significant benefits and implemented a number of improvements:

- Modernising the infrastructure supporting corporate information systems;
- Modernising the electronic records and documents management system (eRDM), increasing automation and reducing inefficiency improved training offered to staff;
- Introducing an eDiscovery solution, which can search information across digital storage platforms and systems;
- Introducing a new corporate cloud collaboration platform to enable safe and controlled sharing of documents with stakeholders and partners;
- Digitising and preserving over 200,000 legacy paper records and files both created and inherited by the Scottish Government and its predecessors over many years; and
- Strengthening the leadership and management in information governance.

Record keeping and information management: Scottish Government actions

We will:

- Make changes to implement the recommendations in 'A Review of Information Management in the Scottish Government' including:
 - The setting up of a new Information Management Governance structure (already delivered);
 - New roles and responsibilities, dedicated to enhancing information governance at DG, Directorate and Divisional level;
 - A review of all information and records management training, guidance & policy;
 - Information Management Strategy in progress; and
 - Strategy for eDiscovery and legacy data management under development.

Governance, oversight and accountability

97. In addition to issues relating to the procedure and handling of complaints covered earlier in this response, the Committee report included comments on governance and oversight of decision making and processes at various points, including in relation to the Permanent Secretary. The Committee suggested that the multiple roles being fulfilled by the Permanent Secretary constituted an organisational risk that should have been identified and mitigated as part of a risk management approach.

98. As described at paragraphs 65-68 of this response, a new DG Corporate role has been established as part of a restructuring in order to improve organisational capability and capacity, and will oversee core corporate services, including Ministerial support, internal and external communications, commercial and procurement strategy, legal services and financial and people management. The DG Corporate role includes the role of Senior Information Risk Owner (SIRO) for the Scottish Government.

99. **The Propriety and Ethics functions within DG Corporate will allow us to better manage organisation-wide risks.** To ensure the timely delivery of objective and impartial advice and effective management of relevant documentation, a clearer distinction will be made between the function coordinating the advice and information for judicial or parliamentary inquiries and those staff involved in the events under review (the 'havers' of information).

100. As already noted earlier in this response, an updated procedure for handling complaints about Ministers will be clear on the roles and responsibilities of all parties, including those involved in the administrative and decision-making process.

101. The Committee report made comments about the Permanent Secretary's personal responsibility and accountability.

102. The Permanent Secretary has always accepted her responsibility for the performance of the Scottish Government at official level. She accepted that there had been a failure in the Scottish Government's approach to the provision of documents for the judicial review, as did the First Minister and the Lord Advocate. This response sets out the improvements already taken and planned by the Scottish Government to address the issues identified.

103. The Committee's report also acknowledged the challenges faced by many organisations in responding to issues of sexual harassment and the additional complexities of applying this in the context of Government with the relationship between civil servants and politicians.

104. The Committee report included comments on the powers of Parliament and its Committees to scrutinise Government and hold it to account. The Government is

accountable to Parliament and its Committees. Establishing and setting the remit of Committees is the responsibility of the Parliamentary Bureau.

105. The final chapter of the Committee's report covers "wider reflections". Several Committee members including the Convener disagreed with the inclusion of this section on the grounds that "*it is not in the Committee's remit, there was no evidence to draw on, and it detracted from the overall conclusions*". The issues raised in this section are significant and far-reaching and would require more serious consideration and evidence before conclusions could be made.

The role of the Lord Advocate

106. The "wider reflections" chapter of the Committee's report includes comments about the dual role of the Lord Advocate.

107. As covered in evidence to the Committee, the Lord Advocate has been a Government Minister and head of the independent system of prosecution and investigation of deaths in Scotland since long before devolution. This dual position was carried into the devolution arrangements reflected in the terms of the Scotland Act 1998.

108. The Lord Advocate and the Solicitor General for Scotland fulfil their prosecutorial functions with integrity and completely independently of any other person, including other Ministers within the Scottish Government. This is enshrined in section 48 of the Scotland Act 1998 and reflected in the Scottish Ministerial Code (para 2.42). The Law Officers are accountable to the Scottish Parliament for their prosecutorial functions under section 27 of the Scotland Act.

109. The Committee report and the recent Legacy report of the Justice Committee have indicated an interest within the Parliament in exploring the dual role of the Lord Advocate. **Notwithstanding the strengths of the current arrangements, the Government has committed to consulting on the dual role and Ministers will set out proposals for this later this year.**

110. Given their significance for the rule of law in Scotland, any change would require very careful consideration. The role of the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland cannot be changed without UK Parliament legislation.

Governance, oversight and accountability: Scottish Government actions

We will:

- Further strengthen the new Director General Corporate business structure by consolidating Propriety and Ethics functions within it;
- Ensure a clearer distinction is made between the function coordinating the advice and information for judicial or parliamentary inquiries and those staff involved in the events under review; and
- Consult on the dual role of the Lord Advocate.

The Scottish Ministerial Code

111. Mr Hamilton is an Independent Adviser to the First Minister on the Scottish Ministerial Code. In this role, he was asked by the Deputy First Minister to investigate whether there had been any breach of the Ministerial Code by the First Minister, the nature of any such breach and, if a breach had occurred, to advise on the appropriate remedy or sanction.

112. Mr Hamilton submitted his report to the Deputy First Minister on 22 March 2021. It was published on the Scottish Government website the same day¹⁴.

113. Mr Hamilton found no breach of the Ministerial Code by the First Minister.

114. Mr Hamilton was asked in his remit *“to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the procedure”*¹⁵. He noted in his report that he had decided to defer consideration of this element, in view of the urgency of addressing the alleged breaches of the Code. He suggested that this consideration be taken forward jointly with the other independent adviser, after any changes are made to the procedure, and that this might also include matters relating to special advisers referred to in Chapter 16 of his report.

115. The Scottish Government accepts Mr Hamilton’s proposal for further consideration of the Ministerial Code following the current work on the amended procedure, and will cooperate with the Independent Advisers on this. We will keep both advisers informed on work on an updated procedure to allow them to plan how to take this forward.

116. The Committee’s remit included consideration of actions in relation to the Scottish Ministerial Code. However, the Committee’s report states clearly that the investigation undertaken by James Hamilton was the most appropriate place to address the question of whether or not the First Minister breached the Scottish Ministerial Code, and that the Committee did not consider there would be merit in attempting to replicate this work.

117. The Committee nevertheless did make some comments inviting the First Minister to review the content and application of the Ministerial Code, suggesting specifically that paragraph 1.7 could be revised and strengthened, and arguing that future referrals to the Independent Advisers should invite them to review the referred actions under the Code as a whole rather than specific parts.

¹⁴ [Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters](#)

¹⁵ James Hamilton report page 6

118. Ms Dunlop's report also makes some comments relating to the Scottish Ministerial Code. Her report provides a comparative analysis of the requirements under the Scottish Ministerial Code, as compared with equivalent provision in the UK, Welsh, and Northern Irish Governments.

119. She highlights that the definition of an MSP includes a former MSP, as a result of the Scottish Parliamentary Standards Commissioner Act 2002, and compares this with the Ministerial Code, which only applies to serving Ministers. She comments that alignment of the position under the Ministerial Code with the position under the Code for MSPs appears desirable.

120. The First Minister will, as is usual following an election, give consideration to the publication of a revised Code. The timing of that revision will reflect further consideration by the independent advisers proposed by Mr Hamilton. **This consideration will take account of the comments made by the Committee and by Ms Dunlop.**

The Scottish Ministerial Code: Scottish Government actions

We will:

- Cooperate fully with the Independent Advisers on the Ministerial Code in their proposed further considerations and keep them informed about work on the updated procedure; and
- Ensure that the comments from the Committee, Ms Dunlop and the Independent Advisers are considered as part of any revision to the Ministerial Code.

ANNEX

Implementation Plan

This implementation plan sets out the high-level actions and outcomes that the Scottish Government will take forward.

Activity	Date
Continuing work with recognised trade unions to ensure issues can be raised and responded to appropriately in the interim	Immediate
An updated Ministerial induction programme has been designed to support the incoming administration. One of the key aims of the programme is to support Ministers to work effectively with the civil service in a culture of mutual support and respect.	May – September 2021
Partnership working with recognised trade unions on taking forward the implementation plan	May – December 2021
Develop an updated procedure and guidance material for handling formal complaints about Ministers which will include consideration of: <ul style="list-style-type: none"> • A single process for both bullying and harassment; • Introduction of external, independent investigation and adjudication; • Separation of roles; • Benchmarking; • Time limits; • Initial assessment; • Criminality and police involvement; • Support for all parties including Ministers; • Further consideration to referencing alternative resolution options (including informal routes and mediation); and • Censure with consent. 	May – December 2021
External advisory group for the oversight of the implementation plan	June 2021 – June 2022
A staff engagement plan on an updated procedure	July – October 2021
Bring together key Propriety and Ethics functions into DG: Corporate	July – September 2021
Set out the specific actions we will take to implement our information management review and improve the quality of our digital storage and retrieval processes	May 2021 – December 2021

Activity	Date
Alignment to wider culture and behaviour initiatives, including organisational vision and values, with engagement with staff to: <ul style="list-style-type: none"> • Build consensus on values; • Encourage staff to speak up; and • Pay attention to local cultures, early intervention and local support. 	May – December 2021
Development and Implementation of Governance structures including reviewing risk management procedures	July – December 2021
Update to the Scottish Parliament on progress	Before the end of 2021
Launch of updated policy for handling formal complaints about Ministers	Before the end of 2021