

# Response to Committee on the Scottish Government Handling of Harassment Complaints

## Introduction

1. This statement is provided by the Scottish Government in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee"). Specifically, in its letter of 30 April 2020<sup>1</sup> the Committee asked for a statement from the Scottish Government about the development of its procedure entitled *Handling of Harassment Complaints Involving Current or Former Ministers*<sup>2</sup> ("the procedure") which should cover the following points:

1. How the policy was developed, including
  - a. why the policy review was ordered in the first place
  - b. how the task was approached
  - c. the steps taken during the development of the policy
  - d. what testing was conducted to make sure the policy was robust before it was implemented;
2. Who was involved in the development process;
3. How decisions were taken in the process;
4. How the consultation was carried out; and
5. How implementation of the policy was planned, resourced and communicated.

2. The Committee's letter of 30 April indicated that their request focussed on the period October to December 2017.

3. This statement responds to the questions asked by the Committee and is supported by key documents relating to the actions described in this statement.

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<sup>1</sup> <https://www.parliament.scot/HarassmentComplaintsCommittee/20200430ConvenertoPermSec.pdf>

<sup>2</sup> <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>

## 1 – How the policy was developed

### 1a - Why was the policy review ordered in the first place?

4. Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement. This commitment was reaffirmed in 2015 as part of the "SG2020" improvement programme and through the identification of diversity and inclusion as a key corporate risk to be managed by the People Board on behalf of the Executive Team and the Scottish Government Audit and Assurance Committee. During 2016, the Permanent Secretary met with all Deputy Directors in the Scottish Government to discuss organisational culture and consider what was required to address bullying and harassment scores reported in the annual People Survey. The 2016 People Survey<sup>3</sup> continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised<sup>4</sup>, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.

5. A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during

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<sup>3</sup> <https://www2.gov.scot/Topics/Research/by-topic/public-services-and-gvt/Employee-Survey/People-Survey-2016>

<sup>4</sup> <https://www.gov.scot/publications/foi-17-02235/>

October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.

6. It was against this backdrop of concern that the First Minister wished to be assured that all available steps were being taken within government to protect staff. The First Minister wanted reassurance that the Scottish Government's internal policies and procedures remained fit for purpose in this context. Many other private and public organisations were similarly committing themselves at the time to reviewing their own internal processes and procedures.

7. On 30 October 2017, the First Minister wrote to the Presiding Officer<sup>5</sup> setting out her concerns about the reports of sexual harassment and other inappropriate conduct alleged to have taken place by elected office holders at Westminster. In her letter, the First Minister suggested cross-party talks might be held with a view to strengthening the relevant policies and procedures within the Parliament. Specifically, the First Minister commented:

*“We cannot and must not be complacent about the position at Holyrood, we need to do everything in our power to make sure that the Scottish Parliament is a workplace where there is zero tolerance of such unacceptable behaviours. As part of that it is vital to ensure that robust procedures are in place so that individuals who raise concerns have confidence that they will be fully investigated in an appropriate manner. Indeed we should expect a similar standard of protection to exist in every place of work across Scotland.”*

8. The Presiding Officer responded on the same day<sup>6</sup> to note that he and the then Chief Executive had that day written to all who worked in the Parliament to reassure them about the importance that the Parliament attached to the reporting

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<sup>5</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/98af-bbf3-84a6-444b-b9b7-ff10-fd93-365c>

<sup>6</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/2aa9-5fd5-3b52-4c52-a453-9242-ad77-2096>

and investigation of incidences of sexual harassment. The Presiding Officer also confirmed that cross-party talks were being arranged for the following day.

9. On 31 October, the First Minister informed the Scottish Cabinet of her correspondence with the Presiding Officer and that she had asked the Permanent Secretary to undertake a review of the Scottish Government's policies and procedures to ensure that individuals who raised concerns would have confidence that those concerns would be investigated fully and addressed in an appropriate manner<sup>7</sup>. The Cabinet noted these actions and agreed that the Deputy First Minister, as the most senior male Minister in the Government, should respond to a topical Parliamentary Question that afternoon about the actions which the Scottish Government was taking to deal with sexual harassment. In his answer to this topical Question<sup>8</sup> the Deputy First Minister said that the Scottish Government would work closely with the Parliament to ensure zero tolerance of harassment in respect of Parliament as a workplace, and also that the Permanent Secretary would take action on this basis within the Scottish Government.

10. On 3 November 2017, the then Head of the UK Civil Service, Sir Jeremy Heywood, wrote to all Permanent Secretaries<sup>9</sup> making clear that it was essential that all staff felt safe to speak up, that they had the support necessary and safe channels to raise concerns, and that they were confident that their concerns would be listened to and dealt with, including where appropriate investigation and action to address any misconduct or misbehaviours. He asked in his letter that all departments satisfy themselves that their arrangements were working well and known by staff and that they covered staff interaction with each other, Ministers, Special Advisers and the full range of stakeholders.

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<sup>7</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/814d-9291-73c3-4253-9a9f-d207-e4cb-7138>

<sup>8</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/8e9c-7944-428e-418e-8f50-fa64-e888-0114>

<sup>9</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/c31a-da72-c624-47a5-828f-fb9a-f873-23e8>

## 1b - How was the task was approached?

11. Following the commission from the First Minister to the Permanent Secretary, the Scottish Government's People Directorate commenced an internal assessment of processes and policies<sup>10</sup>, building on previous work already undertaken within the organisation.

12. That assessment sought to determine the most effective way to deliver the principles that the First Minister had set out in her letter to the Presiding Officer, especially:

- zero tolerance of unacceptable behaviours;
- having robust procedures in place; and
- giving individuals confidence that concerns raised would be fully investigated in an appropriate manner.

13. Initial assessments<sup>11</sup> identified a number of areas for action which included: work to review the existing Fairness at Work and disciplinary procedures through the lens of sexual harassment; a review of processes for handling complaints against Ministers or former Ministers; development of the support offer for staff; and a programme of staff communications, including through all-staff messages from the Permanent Secretary, to reaffirm the ongoing commitment to address bullying and harassment and to reassure employees that meaningful processes were in place should they need support or wish to raise issues.

14. This work therefore included an assessment of the available mechanisms for individuals to raise concerns about sexual harassment<sup>12</sup>. This resulted in the

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<sup>10</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/a455-a3e9-03d6-4eee-a101-8b12-2ad0-4175>

<sup>11</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/93a7-87ac-8d50-4047-af1d-8a73-c7d5-a137>

<sup>12</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/6dc6-b516-fb79-4609-b897-4425-3834-01fb>

production of a “route map”<sup>13</sup> which described how complaints of sexual harassment might be raised. The route map sought to identify the various routes that complaints at that time could come through, and which policies and procedures were in place to deal with them.

15. Development of the route map included consideration of the procedures applying to the conduct of Ministers. As things stood at that time, matters relating to the conduct of Ministers could be addressed in two ways.

16. First, the 2016 Scottish Ministerial Code<sup>14</sup> set out the standards of behaviour and propriety expected of all Ministers. (As described later in this paper, the references to Ministerial conduct regarding bullying, harassment and other inappropriate conduct were strengthened in a new version of the Code published in February 2018<sup>15</sup>). The 2016 Code provided at paragraph 1.5:

*1.5. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial 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. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.*

17. Second, the Fairness at Work policy, that had been in place since 2010<sup>16</sup> also addressed the issue to some extent. This policy set out the Scottish Government’s commitment as an employer, and provided that:

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<sup>13</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/887b-2026-0127-4ff6-9f40-6a85-d4b7-ceec>

<sup>14</sup> <https://www.gov.scot/publications/scottish-ministerial-code-2016-edition/>

<sup>15</sup> <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

<sup>16</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/8873-9093-2c77-4b19-84e6-1a53-57af-8c12>

*1.1 As an employer, we are committed to providing a workplace free from unfair discrimination and to ensuring the fair treatment of staff. But we also recognise that you may at some time have a problem or concern about your work, working conditions or your relationship with colleagues. You may feel that a certain management action or decision is unfair and has affected you adversely. In these circumstances, it is right that you are able to raise your concerns without feeling intimidated or concerned that the matter will not be given fair consideration. Or, that you may be treated less favourably or victimised in some way for making a complaint.*

*1.2 We are committed to dealing with staff grievances fairly, consistently, quickly and no-one will be penalised for raising a complaint in good faith. We aim to ensure that the outcome of any complaint will always be based on reasonable and balanced judgement following full consideration of the facts of the case.*

18. The Fairness at Work policy provided for a range of circumstances in which it might be applied. One of those was in relation to complaints against Ministers and the policy set out a process under which such complaints can be considered. That policy remains in place.

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified<sup>17</sup> that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

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<sup>17</sup> See footnote 12

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it, consistent with the principles as outlined at paragraph 12. As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process<sup>18</sup>. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers<sup>19</sup> so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment<sup>20</sup>.

22. The Permanent Secretary kept the First Minister briefed on the review of Scottish Government policies. In a letter to the Permanent Secretary of 22 November 2017<sup>21</sup> the First Minister acknowledged this and observed that in many instances the complaints being made about misconduct and sexual harassment in public life were concerned with events that had taken place some time before. On that basis, the First Minister indicated that the review being taken forward by the

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<sup>18</sup> See footnote 23

<sup>19</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/8a6f-68e1-b8b4-41c7-a936-2a01-8aa7-57ea>

<sup>20</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/e6e3-41bf-1320-4cf0-94de-6702-045d-7286>

<sup>21</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/da84-cec6-becd-403e-8c57-f5b6-a201-068c>

Permanent Secretary should ensure arrangements were in place to address concerns raised by Scottish Government staff about the conduct of both current and former Ministers. As noted at paragraph 19, the internal review had already anticipated the need to consider the handling of historical complaints.

23. This work culminated in the new procedure: *Handling of Harassment Complaints Involving Current or Former Ministers*<sup>22</sup>. The specific work on the new procedure was undertaken alongside the wider review work, which also resulted in refreshed Fairness at Work procedures and the new route map for sexual harassment complaints.

#### 1c. The steps taken during the development of the policy?

24. The part of the Scottish Government which is responsible for offering advice on the operation of the Scottish Ministerial Code and matters of propriety and ethics (the Cabinet, Parliament and Governance Division) took the lead on the development of the procedure, working closely with colleagues in Directorate for People and the Scottish Government's Directorate for Legal Services (SGLD). The approach set out in the procedure is consistent with the necessary legal requirements and HR best practice to ensure that it is fair and equitable to all those who may become involved in its operation.

25. The development of the procedure evolved through multiple iterations as it was refined by Scottish Government officials with relevant expertise<sup>23</sup>.

#### 1d. What testing was conducted to make sure the policy was robust before it was implemented?

26. Testing and checking of the procedure was done through the close involvement of officials with relevant expertise within the Scottish Government, as

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<sup>22</sup> See footnote 2

<sup>23</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/5f0b-f81e-7a63-497f-85e5-6ef0-a0b2-f205>

well as appropriate external engagement including trade unions, as described in paragraphs 32-37 of this statement.

## 2. Who was involved in the development process?

27. The development of the procedure was informed by professional advice from a number of people from the relevant areas within the Scottish Government. The principal officials involved at Senior Civil Service level were: James Hynd (Deputy Director, Head of Cabinet, Parliament and Governance Division); Nicola Richards (Director for People); and Judith Mackinnon (Deputy Director, Head of People Advice). As well as the external engagement described in paragraphs 33-34, other individuals within the Scottish Government were involved in the development process or offered comments on drafts of the procedure. This included Scottish Government trade union officials, HR professionals, and lawyers. The Committee requested the name of any Special Advisers involved. The only Special Adviser involvement was by Liz Lloyd, Chief of Staff and Special Adviser to the First Minister. She was consulted on the appropriate allocation of responsibilities between the First Minister and the Permanent Secretary, and provided comments on a draft of internal correspondence between the First Minister and the Permanent Secretary.

## 3. How decisions were taken in the process?

28. Issues relating to the conduct of serving Ministers are a matter for the First Minister, as noted at paragraph 16 of this statement.

29. The Permanent Secretary to the Scottish Government is responsible for ensuring the health and safety and well-being of Scottish Government staff.

30. Both the First Minister and the Permanent Secretary therefore had decision-making roles in terms of ensuring that the new procedure appropriately

reflected their respective responsibilities. The Permanent Secretary commented on a draft of the procedure on 15 November 2017<sup>24</sup>.

31. On 17 November 2017 the Permanent Secretary indicated that she was content for a draft of the procedure as it existed at that point to be sent to the First Minister on the basis that they would consider it in parallel for their respective responsibilities<sup>25</sup>. A version of the draft procedure was sent to the First Minister on 24 November 2017<sup>26</sup>. The First Minister and Permanent Secretary discussed a hard copy of the procedure at a meeting on 12 December 2017<sup>27</sup>. The Permanent Secretary wrote to the First Minister on 20 December 2017 formally seeking her agreement to adopt the procedure<sup>28</sup>. The First Minister approved the procedure on the same day<sup>29</sup>.

#### 4. How was consultation carried out?

32. The development of the procedure was the subject of ongoing consultation within the relevant areas of the Scottish Government, as set out in paragraph 24 of this statement.

33. The Cabinet Office was advised about the proposal to develop the procedure and a draft version was shared with them<sup>30</sup>.

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<sup>24</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/784e-273b-80a1-49cf-89be-72f3-54a7-5ad4>

<sup>25</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/22d9-01d4-443d-479e-b9d9-33e5-d02f-827d>

<sup>26</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/476e-0184-822e-4503-a92e-270e-fd99-c46a>

<sup>27</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/e606-49da-782c-42d8-bbc9-1e4a-6038-c0f8>

<sup>28</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/2ae1-749c-71d1-4f30-84af-0581-ec7f-43c1>

<sup>29</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/c45f-ff84-e243-42ac-a066-18f8-1a35-e60c>

<sup>30</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/27d7-f8a5-add3-4276-be32-89fc-25d1-9791>

34. The procedure was also shared in draft with the Scottish Government trade unions. There had been ongoing engagement with the trade unions – particularly FDA – building on discussions from earlier in 2017 about a potential refresh of the ministerial complaints section of Fairness at Work. Those discussions continued following the commission from the First Minister with a focus on the development of the new procedure. A draft of the new procedure was shared with the Council of Scottish Government Unions in mid-December 2017 and an additional meeting held with trade union representatives on 19 December to discuss TUS comments on the procedure<sup>31</sup>.

35. Other engagement was undertaken in relation to the wider review of Fairness at Work and handling of harassment issues<sup>32</sup>, including officials from Directorate for People liaising with HR colleagues from the Scottish Parliament during November 2017<sup>33</sup> to share the initial approaches which both were taking in response to sexual harassment concerns and agree to stay in touch regularly while the work was ongoing. Through email communication, Police Scotland provided information on advocacy and support services<sup>34</sup>.

36. During this period the Scottish Government also participated in an Equality and Human Rights Commission survey on employers' obligations to prevent and respond to sexual harassment in the workplace<sup>35</sup>, and received new guidance on sexual harassment in the workplace published by the Advisory, Conciliation and

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<sup>31</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/7419-3724-7a14-4eee-8bcb-bb39-03e6-0a8c>

<sup>32</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/37e0-47d7-4f03-45a8-9e4a-cc94-5d31-0783>

<sup>33</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/2da4-40ee-8580-40e4-9e24-c805-683c-bbde>

<sup>34</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/4649-9c9d-6120-4c09-aaa0-1e47-b7fa-ac4c>

<sup>35</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/8cff-8562-d102-4fc8-a003-a969-4296-022c>

Arbitration Service (ACAS)<sup>36</sup>. At this time the FDA were also conducting a union survey on bullying and harassment at work, which led to a recommendation on 1 January 2018 that the civil service do “more than just talk about being an excellent employer” on these issues<sup>37</sup>. After the procedure had been finalised but during the wider engagement on Fairness at Work, the Scottish Government contributed to a review of arrangements for tackling harassment and misconduct across the UK Civil Service<sup>38</sup>, which was received on 29 January 2018.

37. Officials also received a draft copy of guidance on handling of historic allegations of harassment developed by the UK Government Civil Service Employee Policy team on 17 November and a later copy with Frequently Asked Questions (FAQ) on 12 December<sup>39</sup>, during the period of development of the procedure. This UK Government guidance is mainly focused on complaints by and against civil servants, but it does advise in the FAQ that where there are complaints against Ministers or former Ministers, the department’s HR Director should be contacted immediately to liaise with the Propriety and Ethics team in Cabinet Office, who normally investigate any complaints against Ministers or Special Advisers. It also noted that in complex and sensitive cases of historical allegations, it is advisable to appoint either an experienced investigator or refer the case to the HR Director, who may handle the investigation within HR. The lack of a published process for handling complaints about current or former Ministers in the UK Government confirmed to the Scottish Government that it had been the correct course of action to have started to develop its own procedure.

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<sup>36</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/4d6e-2592-41d5-412e-bf31-a7ae-0735-52fa>

<sup>37</sup> <https://www.fda.org.uk/home/Newsandmedia/News/Survey-flags-real-concern-over-workplace-harassment-bullying.aspx>

<sup>38</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/c71f-8ead-26d1-4356-aef3-faba-fb48-075b>

<sup>39</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/1d75-11d7-70f3-4d0c-8f9d-1f11-8621-6e20>

## 5. How implementation of the policy was planned, resourced and communicated.

38. Internal communication with Scottish Government staff was a consistent and important element of the review process throughout. The Permanent Secretary issued all-staff messages and intranet articles on the initiation of the process and related issues on 2 November<sup>40</sup>, 6 November<sup>41</sup>, and 13 November 2017<sup>42</sup>. Officials in Directorate for People developed a communication plan on related issues<sup>43</sup>, and published an intranet article on workplace culture on 22 November<sup>44</sup>.

39. The Permanent Secretary's messages to staff included the offer that staff could raise related issues with herself, with staff in the Directorate for People, or with a named Director, outside People Directorate, who had agreed to act as a "confidential sounding board"<sup>45</sup> for any member of staff who asked to discuss an issue of concern. This led to some communication with members of staff, including with "Ms A", who would later lodge a formal complaint against the Former First Minister, Alex Salmond. In this communication Ms A was sent a draft of the procedure for information and she replied without offering comments on the draft<sup>46</sup>. It should be noted that "Ms A" is a designation assigned by the Scottish Government in responding to the issues raised and is unrelated to any other designations used in any other proceedings.

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<sup>40</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/0162-4063-5dbb-467e-b085-ae8-9941-58f1>

<sup>41</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/ff1d-7966-ce51-49b6-a4ab-f5c7-1350-6a54>

<sup>42</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/35af-d288-cfce-4f32-b7c4-1d5f-2af4-b3e7>

<sup>43</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/b57e-50f0-8d5c-4f12-9a00-cf80-978a-a2c5>

<sup>44</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/e69f-9f71-a4eb-4640-9a42-9004-5eef-272d>

<sup>45</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/d692-0af7-2916-46ea-ade9-7e4f-18a3-e8a6>

<sup>46</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/461c-4954-2ab2-4af1-a74d-5215-cfdf-192d>

40. By mid-December the procedure had been agreed by relevant interests across Scottish Government, including the trade unions. The First Minister confirmed her approval of the procedure on 20 December 2017. This formed the culmination of the process and from that point the procedure was in effect and available for use for any complaints that fell within its scope.

41. The procedure was not published immediately on the Scottish Government intranet because of other relevant work that was ongoing. This included revision of the Scottish Ministerial Code<sup>47</sup>, which was published on 8 February 2018. The revisions to the Code included a number of changes concerned with clarifying the expectations of Ministerial conduct with regard to civil servants and others. Parallel changes were made to the UK Ministerial Code<sup>48</sup>. Specifically, the changes made to the Scottish Code which are relevant to the operation of the new procedure were made to the following paragraphs, with paragraph 1.2 below being a completely new addition:

*1.1. Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety.*

#### *Ministerial Conduct*

*1.2. Ministers should be professional in all their dealings and treat all those with whom they come into contact with consideration and respect. Working relationships, including with civil servants, Ministerial and Parliamentary colleagues and Parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour, wherever it takes place, is not consistent with the Ministerial Code and will not be tolerated.*

## **6 MINISTERS AND CIVIL SERVANTS**

### *General Principle*

*6.1 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*

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<sup>47</sup> <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

<sup>48</sup> <https://www.gov.uk/government/publications/ministerial-code#history>

*Service Code<sup>49</sup> and the requirements of the Constitutional Reform and Civil Governance Act 2010.<sup>50</sup> 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.*

42. Further review of the wider Fairness at Work procedure, including discussion with trade unions, also continued during January 2018, and the updated Fairness at Work material and route map summarising the Scottish Government’s approach to sexual harassment complaints generally were published on the Scottish Government’s intranet alongside the procedure on 8 February 2018<sup>51</sup>.

43. On 12 February 2018 the Permanent Secretary’s weekly blog for all staff on the Scottish Government intranet site<sup>52</sup> highlighted the new Procedure, and provided a link to it and to the route map. In this blog the Permanent Secretary promoted an “open, inclusive and positive workplace culture,” and invited staff to contact HR Professional Advisers with any questions about the new guidance or suggestions for further improvement.

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<sup>49</sup> See <https://beta.gov.scot/publications/civil-service-code/>

<sup>50</sup> See [www.legislation.gov.uk/ukpga/2010/25/contents](http://www.legislation.gov.uk/ukpga/2010/25/contents)

<sup>51</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/folder/8149-0909-ae87-40cf-b19c-85ed-8f35-9564>

<sup>52</sup> <https://secure.objectiveconnect.co.uk/share/9456-dd30-0a6c-46a6-bf88-64e2-fb7a-9ff9/document/67aa-6949-e9fb-4b48-a612-9b26-46ab-5343>