

---

**From:** Hynd JS (James) <[REDACTED]@gov.scot>

**Sent:** 08 November 2017 12:33

**To:** Richards N (Nicola) <[REDACTED]@gov.scot>; Mackinnon J (Judith)

<[REDACTED]@gov.scot>

**Subject:** doc



Handling of  
usual business...

James

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

## CONTENTS OF ATTACHMENT BELOW:

### Handling of sexual harassment complaints against former Ministers

1. The Fairness at Work policy sets out the Scottish Government's commitment, as an employer, to provide a workplace free from unfair discrimination and to ensure the fair treatment of staff. The policy and associated procedures are being reviewed to ensure that they provide the necessary assurance to staff that complaints of any sort, including complaints of sexual harassment, will be given full and fair consideration.

2. The Fairness at Work policy does not deal directly with the handling of complaints raised by staff in relation to former Ministers. This note sets out how complaints of this sort should be handled. In doing so, it acknowledges that these complaints are likely to be historical and that the nature of the relationship between the civil service and the former Minister will have changed (for example, former Ministers are no longer covered by the terms of the Scottish Ministerial Code). While these factors may place limitations on how a complaint may be considered or resolved, it remains important that complaints of this type receive equal consideration and that all necessary support is provided to the staff member.

3. Where a member of staff wishes to make a complaint against a former Minister the following process will be used as a guide to take the issue forward:

#### 4. Sources of Advice

4.1 In considering how to proceed, the staff member may wish to speak to a senior line manager, up to and including their DG. The HR[PA] can also be consulted and advice can also be sought from a Trade Union, if a member.

#### 5. Making a Complaint

5.1 At all times the staff member is free to make a complaint directly to the Police. Any Police investigation or criminal proceedings will take priority over any internal SG complaint handling process, although we will continue to offer support to the staff member. [If at any point it becomes apparent to the SG that criminal behaviour might have occurred, the SG will bring these matters directly to the attention of the Police.]

5.2 Where the staff member wishes to make a complaint they should provide as much information as possible about the matter to the [Director, People Directorate], including details of possible witnesses. The [Director, People Directorate] will either:

5.2.1 nominate a member of the SCS who has had no prior involvement in any aspect of the complaint, or

5.2.2 [If the member of staff prefers, pass the complaint to the SG's external complaint procedure.]

5.3 The role of Senior Civil Servant or external complaint service will be to review the circumstances of the complaint and to discuss with the staff member how they wish the complaint to be handled. Any serving SG members of staff identified as possible witnesses will be interviewed at this stage.

6. Following this stage, the Senior Civil Servant/external complaint service will discuss their findings with the staff member. At this point their choices include:

6.1 Asking that a formal note of the complaint is recorded without further action. The SG may, however, decide that some form of follow up action requires to be taken:, or

6.2 Indicating that they wish the complaint to be put to the former Minister and for interviews to be held with any witnesses no longer in the SG.

7. The Permanent Secretary will be advised at that point about the nature of the complaint and whether the matter is being taken up with the former Minister in question. If the former Minister is a member of the Party of the current Administration the First Minister will also be advised.

8. If the former Minister agrees to cooperate, they will be provided with details of the complaint and interviewed by the Senior Civil Servant/external complaint service. Any non-SG witnesses will also be invited to be interviewed at this time.

9. A report will then be prepared for the Permanent Secretary setting out the information that has been obtained during the above process. The Permanent Secretary will consider the report from the perspective of ensuring the welfare and support arrangements for the staff member.

10. If the former Minister is a member of the Party of the current Administration the First Minister will consider the report from the perspective of the actions of the former Minister.

*issues:*

- *Sharing of report with complainant and former Minister?*
- *Will complainant/SG be advised of any action against former Minister?*
- *An appeal by complainant to a DG?*

11. If the former Minister declines to engage with the process they will be advised that a complaint against them in the terms set out by the complainant will be formally recorded within the SG. Where the former Minister is a member of the Party of the current Administration the First Minister will be advised and will consider the matter from the perspective of the actions of the former Minister.