

Handling of sexual harassment complaints against former Ministers

1. Scottish Government's commitment, as an employer, to provide a workplace free from [REDACTED] discrimination and to ensure the fair treatment of staff are covered by our policies on Fairness at Work and expectations of conduct. These policies and associated procedures are being reviewed to ensure that they provide the necessary assurance to staff that complaints of any sort, including complaints of sexual harassment, will be given full and fair consideration. This review sits alongside longer term action to ensure we have consistently positive and inclusive cultures and are able to take early action to prevent negative behaviours before they escalate.

2. These policies flow from the actions that can be taken as an employer (including applying sanctions such as dismissal) and in the case of complaints about current Ministers the policies would look to support the First Minister to discharge responsibilities arising from the Ministerial Code. These policies do 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; that the nature of the relationship between the civil service and the former Minister will have changed (for example, former Ministers are no longer covered by the terms of the Scottish Ministerial Code); and the sanctions open to the First Minister (such as removal from office) would no longer apply. These factors place significant limitations on how a complaint may be resolved but it remains important that issues 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. Initial contact and establishing desired outcome

4.1 An individual may choose to raise an issue through a number of mechanisms. These may include a trusted senior manager, direct to HR or a Trade Union representative. If the approach is made through these routes it should be escalated quickly to Director of People for consideration and so that sources of support can be offered to the individual.

4.2 For current purposes, we are also proposing that [REDACTED] is highlighted to staff as a confidential [REDACTED] sounding board: the confidante [REDACTED]. In addition the confidante would be able to signpost the individual to sources of support. We will

take stock as to whether this should be a standing role in due course. [REDACTED]

4.3 Whatever the point of initial contact, whether to People Directorate or through the confidante, the key early role is to support the individual to consider the outcome they are seeking. This might include action which respects their wish to retain anonymity and which does not involve contact with the former minister. These outcomes might include:

- validation and recognition of their experience;
- securing organisational commitment to help prevent the circumstances arising again;
- a personal apology from a senior representative of the organisation for the distress that they experienced at that time.

[REDACTED 1 PARAGRAPH]

The desired outcomes may extend to engagement with the former minister through a wish for:

- an apology from the individual;
- public awareness of the unacceptable behaviour.

If the individual wants to go beyond relaying their experience then the confidante would need to secure their agreement to engage with the organisation via Director People so the complaint can be taken forward.

5. Investigating a complaint

5.1 Where the staff member decides they wish to have a complaint recorded they should provide as much information as possible about the matter to the People Director including details of possible witnesses. The People Director will:

- 5.1.1 Notify the Permanent Secretary; and

5.1.2 In discussion with the Permanent Secretary, nominate a member of the SCS [REDACTED] to conduct an investigation, supported by a scribe provided from People Directorate.

5.2 Any serving SG members of staff identified as possible witnesses will be interviewed at this stage and a short report prepared [REDACTED]

5.3 Following this stage, the Senior Civil Servant/confidante will discuss their findings with the staff member. At this point their choices include:

5.3.1 Asking that a formal note of the complaint is recorded without further action; or [REDACTED]

5.3.2 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. It will need to be explained carefully to the complainant that there is no power to compel the former Minister or external witnesses to co-operate.

6. Outcomes

6.1 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 that the duty of care to the employee is fulfilled and will consider whether the matter now needs to be taken up with the former Minister.

7. 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. [REDACTED]

7.1 If the former Minister agrees to co-operate:

7.1.1 They will be provided with details of the complaint [REDACTED] and interviewed by the Senior Civil Servant/confidante, supported by the scribe. [REDACTED]

7.1.2 Any non-SG witnesses will also be invited to be interviewed at this time. [REDACTED]

7.1.3 A further report will be compiled drawing together the wider evidence and set out any recommendations. [REDACTED] The recommendations may include outcomes such as: an apology; a retraction of the complaint; suggestions for changes in practice or training etc.

7.1.4 This report would be shared with the Permanent Secretary, complainant and former minister.

7.1.5 If accepted the recommendations would then be enacted and the complaint closed.

7.2 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.

7.3 [REDACTED]

[REDACTED]

NOTE: 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, 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.