

From: Hynd JS (James) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Sent: 08 February 2019 14:41
To: Hynd JS (James) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>
Subject: EMAIL 16 FW: Official sensitive - policy on complaints against ministers

James

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

From: Hynd JS (James)
Sent: 16 November 2018 12:05
To: [Redacted - Private Secretary 1] <[\[Redacted - Private Secretary 1\]@gov.scot](mailto:[Redacted - Private Secretary 1]@gov.scot)>
Subject: FW: Official sensitive - policy on complaints against ministers

[Redacted - Private Secretary 1]

as requested.

James

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

From: Hynd JS (James)
Sent: 14 December 2017 11:32
To: [Redacted - Private Secretary 2] <[\[Redacted - Private Secretary 2\]@gov.scot](mailto:[Redacted - Private Secretary 2]@gov.scot)>; Richards N (Nicola) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)> **Cc:** Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; [Redacted - Head of Branch, People Directorate 1] <[\[Redacted - Head of Branch, People Directorate 1\]@gov.scot](mailto:[Redacted - Head of Branch, People Directorate 1]@gov.scot)>
Subject: RE: Official sensitive - policy on complaints against ministers

Dear all

With sincere and deepest thanks to [Redacted - Private Secretary 2], here is another 'final' version.

James

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

From: [Redacted - Private Secretary 2]
Sent: 14 December 2017 11:20
To: Hynd JS (James); Richards N (Nicola)
Cc: Mackinnon J (Judith); [Redacted - Head of Branch, People Directorate 1]
Subject: RE: Official sensitive - policy on complaints against ministers

Nicky and [Redacted - Head of Branch, People Directorate 1]

I've just spoken with James H about another few small adjustments – just to ensure using consistent terms throughout. Nothing substantive. James is kindly making those adjustments and will circulate final version shortly so [Redacted - Head of Branch, People Directorate 1] you may wish to hold off your prep for version for Unions in meantime.

In terms of timing to FM we will put to FM once have green light from Nicky? If we want to appraise Perm Sec of timings and sharing with Unions, she is tied up in interviews today till 15:00 and then on leave till Tuesday - but contactable.

[Redacted - Private Secretary 2]

[Redacted - Private Secretary 2]

From: Hynd JS (James)
Sent: 14 December 2017 10:43
To: Richards N (Nicola); [Redacted - Private Secretary 2]
Cc: Mackinnon J (Judith); [Redacted - Head of Branch, People Directorate 1]
Subject: RE: Official sensitive - policy on complaints against ministers

Nicky

Thanks for this. Some formatting wrinkles had crept in which I have now sorted in the attached version ('final'). Other than the removal of references to 'sexual', the text remains the same as that which went to FM and on which she commented.

James

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

From: Richards N (Nicola)
Sent: 14 December 2017 08:41
To: [Redacted - Private Secretary 2]; Hynd JS (James)
Cc: Mackinnon J (Judith); [Redacted - Head of Branch, People Directorate 1]
Subject: RE: Official sensitive - policy on complaints against ministers

Both

I've amended the letter and policy in line with our exchange. If this looks OK I'd like first for us to run this past the unions before the final exchange with FM. I think I would just share the part about current ministers because that is what would form part of our revised F@W policy.

I think the former ministers process is more for us to know what we would do rather than to have out there as a published policy. Although we would share it if asked.

I've copied in [Redacted - Head of Branch, People Directorate 1] and Judith because I'll be on leave from close today. It would be good to get this tied up quickly.

[Redacted - Head of Branch, People Directorate 1] – in preparation for sharing this with the unions could you abstract the current ministers part?

cheers
Nicky

First Minister

HANDLING OF HARASSMENT COMPLAINTS

You wrote to me on 22 November regarding the review of the Scottish Government's policies and processes on sexual harassment. As we have discussed, we have a shared commitment to ensure that the arrangements that are in place are effective and contribute to the work already in hand to promote an inclusive and respectful culture across the Scottish Government.

Your letter, in particular, asked me to consider as part of the review ways in which any concerns raised by staff about the conduct of current or former Ministers could be addressed. I have developed, for your agreement, a process for how complaints of harassment, including sexual harassment, might be taken forward. This is set out in the annex.

This new process aims to ensure that I am able to fulfil my duty of care to staff by taking the necessary steps to support the member of staff and to put in train any further action that might be required within the civil service as a result of the issues raised. As far as current Ministers are concerned, the process will also assist you in taking forward your responsibilities under the Scottish Ministerial Code. It also sets out how complaints against former Ministers will be handled. Given that the process engages the responsibility of the First Minister for the application of the Ministerial Code, we will seek approval for the ongoing application of the process on each occasion the Ministerial Code is updated.

I should be grateful to learn if you are content to adopt the process set out in the annex. As you have requested, I am happy to update Cabinet about the outcome of review whenever you wish.

LE

December 2017

Handling of Harassment Complaints Involving Current or Former Ministers

Initial contact

1. An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a trusted senior manager, direct to HR or a Trade Union representative. If the approach is made through these routes it should be escalated to the Director of People for consideration and so that sources of support can be offered to the individual.
2. At this early point it will be important to support the individual to consider the outcome they are seeking. At this point the staff member's choices include:
 - 2.1 Asking that their concern is acknowledged but without further action being taken, in order to recognise their experience and to assist our organisational commitment to help prevent the circumstances arising again (although, as set out at note (ii) below, the SG may require to take follow up action where deemed necessary in light of the concern being raised). The details of the concern, along with the staff member's decision not to proceed with a formal complaint, will be held on file; or
 - 2.2 Indicating that they wish to make a formal complaint.

Formal complaints against current Scottish Government Ministers

3. The Scottish Ministerial Code sets out the general principle that Scottish Ministers are expected to behave in a way that upholds the highest standards of propriety. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister, including in their interactions with civil servants, and of the appropriate consequences of a breach of those standards. Ministers can only remain in office for so long as they retain the First Minister's confidence.
4. Alongside Ministerial responsibilities under the Code, the Scottish Government as an employer has a duty of care to staff. Where a formal complaint of harassment is raised about the conduct of a current Minister, the Permanent Secretary will inform the First Minister. In line with her responsibilities under the Ministerial Code, the First Minister has instructed the Permanent Secretary that complaints of this nature should be investigated using the process set out at paragraphs 6-8, and to provide a report of the facts as provided by those concerned, or to establish if it is possible to seek a mutually agreed resolution between the parties involved.
5. In situations relating to complaints against a current Minister, the Permanent Secretary will also take appropriate steps to (1) ensure that the staff member making such a complaint receives the necessary support throughout the process, and (2) put in train any further action that might be required within the civil service as a result of the issues raised by any complaint.

6. In the event that a formal complaint of harassment is received against a current Minister, the Director of People will designate a senior civil servant as the senior officer to deal with the issue. That person will have had no prior involvement with any aspect of the matter being raised. The role of the senior officer will be to undertake an impartial collection of facts from the parties involved, including the Minister and any witnesses, and prepare a report for the Permanent Secretary. The report will also be shared with the staff member and the Minister.

7. The Permanent Secretary will inform the First Minister of the outcome of the investigation. It will be for the First Minister to decide the appropriate response to any complaint about a Minister in light of the report produced following the investigation. The Permanent Secretary will also consider the report and take any actions required within the civil service to protect staff and ensure a positive working environment.

8. Current Ministers will be expected to cooperate fully with such an investigation. If the Minister declines to co-operate with the process the matter will be investigated as far as possible without their involvement. They will be advised of the complaint against them and the outcome of the investigation undertaken. This will be recorded within the SG. The First Minister will be advised where a current Minister has declined to cooperate and will be responsible for any further action.

9. Where a formal complaint of harassment is raised against the First Minister, the Permanent Secretary will instigate an investigation as set out above in line with the employer's duty of care to its staff and to assist the First Minister in discharging their responsibilities under the Code. The Permanent Secretary may draw upon the Independent Advisers on the Ministerial Code (the Rt. Hon. Dame Elish Angiolini QC DBE or James Hamilton) to reach a view on whether the First Minister has been in breach of the Code. The Permanent Secretary will take any action necessary to protect staff.

Formal complaints against former Scottish Government Ministers

10. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the senior officer to deal with the issue. That person will have had no prior involvement with any aspect of the matter being raised. The role of the senior officer will be to undertake an impartial collection of facts, including written statements from the complainant and any witnesses, and to prepare a report for the Permanent Secretary.

11. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister may wish to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will

be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.

12. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in their capacity as Party Leader, of the outcome when the investigation is complete. In their capacity as First Minister, they will wish to take steps to review practice to ensure the highest standards of behaviour within their current Administration.

13. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party leader of the outcome of the investigation and any action taken.

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

15. If the former Minister **declines to co-operate** with the process the matter will be investigated as far as possible without their involvement. They will be advised of the complaint against them and the outcome of any investigation undertaken. This will be recorded within the SG.

16. The First Minister will be advised where a current or former Minister who is a member of the Party of the current Administration has declined to cooperate and will be responsible for any further action.

17. Where the former Minister was a member of an Administration formed by a different Party, the Permanent Secretary will inform the relevant Scottish Party Leader of the outcome of the investigation and that the former Minister has declined to cooperate. It will be the responsibility of the Party to consider any further action.

NOTE:

(i) At all times the staff member is free to make a complaint directly to the Police. SG will co-operate fully with any Police investigation or criminal proceedings and may continue to investigate the complaint without awaiting the outcome of criminal proceedings. We will continue to offer support to the staff member.

(ii) Throughout the process, all available steps to support the staff member and ensure they are protected from any harmful behaviour. However, if at any point it becomes apparent to the SG that criminal behaviour might have occurred the SG may bring the matter directly to the attention of the Police. Also, if it becomes apparent that the matter being raised is part of a wider pattern of behaviour it may be necessary for the SG to consider involving the Police in light of the information provided. Should either of these steps be necessary the staff member will be advised and supported throughout.