

From: Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)> Sent: 25 May 2020 13:35
To: Mackinnon J (Judith) <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)> Subject: 14 Dec - Personal [Redacted]

14 Dec - Personal [Ms A]

15 December 2017
13:58

Subject	Personal
From	Richards N (Nicola)
To	[Ms A]
Cc	Mackinnon J (Judith); Richards N (Nicola)
Sent	14 December 2017 13:41
Attachments	<<Complaints against Ministers and former Ministers Dec 2017.docx>>

Hi [Ms A]

I hope all is OK with you. We wanted to follow up on our conversation of last week.

We have now spoken to two other people who are also considering their position. We have also done more work on the policy since our discussion – in particular around the approach to complaints against an incumbent FM - and I attach that here for your interest. Grateful if you could treat in confidence for the moment given it is still in draft.

I'm not sure if you've had a chance to do any further thinking on your position? Given the time of year, we're wondering if it may be best to take stock and reconvene on decisions in the new year. How does that sound to you? We can get a date in the diary?

We also thought that it might be helpful to set out the options around these next steps for you to consider. These draw upon our policy so apologies that they are set out quite formally. In the case of it being a formal process then it is likely that Judith would take the role of the 'senior officer', given she had no involvement at the time and her professional experience.

The options could include:

Notify us that you would like to submit a formal complaint, with disclosure of your name.

You would be interviewed to take a formal statement, and other individuals you may name in your statement. You would have an opportunity to review the statement.

Once we have all the statements these would be put into a report for Perm Sec. The former Minister would then be provided with details of the complaint, including names, and given an opportunity to respond.

At this point 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. They may also decline to take part in the process.

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.

In line with our usual policy, the SG would not disclose details of the case publically.

There is a risk that your name could find its way into the public domain – the SG would not comment or confirm (but would offer you the support and protection within our power).

The outcome of the investigation would be passed to the leader of the appropriate party, to consider any further action.

2. Notify us that you would like to submit a formal complaint, without disclosure of your name. We would proceed as above but withhold your name. There is a risk that from the nature of the complaint, you may still be identifiable to the individual.

3. You may conclude that you do not wish to submit a formal complaint, and if this is the case, your wishes will be respected.

It's important that you don't feel that no action will be taken unless you take a personal decision to pursue this. In addition to agreeing the policy we will be taking forward work on the lessons learned – particularly your points about the way a culture builds up over time to such a point that reference points for standards of behaviour seem lost. We are looking at addressing that through sessions with senior staff and through setting out the conversations and standard setting that needs to be put in place early in an administration, and at regular points through it. Also the responsibilities of key roles such as the SCS positions within the [Redacted] line to have regular check ins around culture and behaviour so they can intervene quickly and early – rather than relying on individuals to have the courage to come forward. We will need to look back in order to shape the way ahead on this.

Thanks for your engagement with this so far and for stepping forward – this is a moment when we can take action to reset the culture and expectations of behaviour in the workplace and we're grateful to you for helping inform and shape that response.

I'm on leave from close today, returning on 9th Jan but Judith is very happy to be contacted if you want to talk at any time. Her personal mobile is - [Redacted]

with best wishes for a good break over Christmas and new year,

Nicky

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.