



Baroness Helena Kennedy, QC

By email: [REDACTED].

15 December 2020

Dear Baroness Kennedy,

### **WORKING GROUP - MISOGYNISTIC HARRASMENT/ MISOGYNY**

I am delighted that you have agreed to Chair a Working Group appointed to consider misogynistic behaviours in Scotland and the criminal law. This was announced by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 29 November 2020 and has since been welcomed by the Justice Committee as part of the parliamentary processes associated with the Hate Crime and Public Order (Scotland) Bill.

I understand that work is already underway and that you have met with officials and are now considering the membership of a core group who will assist you in this work. I thought that it would be helpful to confirm in writing the arrangements you have discussed with [REDACTED] and [REDACTED].

#### **General**

The Working Group remit, which will be finalised in discussions with members of the group, is included at Annex A. The remit outlines key deliverables, including published review of evidence at the end of Phase One.

I understand that the Group will also consider whether sex should be included within the hate crime framework to be introduced at a later and appropriate date, following passage of the hate crime legislation that is currently before the Scottish Parliament.

We will work with you to establish the membership of the working group, along with stakeholders to input to the wider reference group. [REDACTED] from Scottish Government Criminal Justice Division will provide the secretariat, supported by [REDACTED] and [REDACTED].

#### **Expenses**

You will receive a daily fee of £1000 for work carried out for the Misogynistic Harrasment Working Group. The fee will be paid to you on receipt of an invoice from you. All necessary travel and accommodation expenses will be met by the Scottish Government.

Travel and accommodation should, wherever possible, be planned in advance so that bookings can be made by the secretariat using the Scottish Government travel booking service. This will minimise paperwork for you in relation to claiming back expenses. All reasonable out-of-pocket incidental expenses will also be reimbursed when invoiced by you and with copies of receipts provided.

### **Time commitment**

It is expected that the time commitment will be between 2 and 3 days per month, to be agreed with Scottish Government if exceeded. We expect that the working group will be convened for a duration of 12 months (or less), with further timescales to be agreed with Scottish Government.

### **Data protection**

All personal and private information received by the Review will be stored electronically on the Scottish Government's electronic filing system.

All records and personal data handled by you and your team as part of the Review will be handled in accordance with the Scottish Government Information Security Policy, the Data Protection Act 1998 and any statutory successor, and the General Data Protection Regulation (GDPR).

Please do not hesitate to contact me or the secretariat team ([██████████@gov.scot](mailto:██████████@gov.scot); [██████████@gov.scot](mailto:██████████@gov.scot); [██████████@gov.scot](mailto:██████████@gov.scot)) if we can be of further assistance at this stage.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Willie Cowan  
Deputy Director  
Criminal Justice Division

## Remit for the Misogynistic Harrasment Working Group

**PHASE ONE:** Build a picture of the experiences of women and girls in Scotland and internationally, applying a gendered analytical lens, through the consideration of existing data sets, literature reviews and lived experience. Set out the principles which will support a shared understanding of how these experiences are influenced and/or driven by misogynistic behaviour and/or attitudes and where this behaviour is, or should be, a criminal offence. This phase will be delivered through a core working group, comprised of representatives from feminist organisations, the legal sector, CoSLA and academia. The core working group will be supported by a wider membership.

The group will produce the following during Phase 1:

- Discussion and agreement of the analytical Project Initiation Document (**PID - Annex B**)
- **Draft report on review of evidence** and identified gaps (given the sensitivity and profile of this work a rapid evidence assessment may be the best approach).
- **Published final review** with plans for addressing research gaps.
- **Options paper** leading to a plan for commissioning.

The core group will meet as required throughout Phase One, with an invitation to the wider reference group to meet towards the end of the phase.

**PHASE TWO:** Consider the outputs of Phase One and map these onto the criminal law in Scotland as it stands. Identify whether there are gaps in the existing law and/or where there is a failure to implement existing legislation in a way that protects women and girls. Consider the legal practice in Scotland and internationally that offers the best protection for women and girls and examine how misogyny may be best tackled through a legal lens.

In addition, the Group will consider whether sex should be included within the hate crime framework to be introduced at a later and appropriate date, following introduction of hate crime legislation.

The group will produce the following during Phase 2:

- An agreed definition of misogyny/misogynistic harassment.
- **Draft and final reports mapping the outputs of phase one onto Scottish criminal law**

The core group will meet as required throughout Phase Two, with an invitation to the wider reference group to meet towards the end of the phase. Legal expertise will be commissioned as required to support decisions by the core group on the intended function and operation of any relevant laws/ legal protections.

**PHASE THREE:** Both the core working group and wider reference group will work in partnership to develop a specific definition of misogyny within a Scottish legal context, taking account of behaviours that already fall within criminal law and actions that can be taken out with the criminal law to address women's experiences relating to misogynistic behaviour or inequality, challenge men's behaviour and wider societal attitudes.

[REDACTED]

Cabinet Secretary for Justice

## **DAILY FEE PROPOSAL- MISOGYNISTIC HARASSMENT WORKING GROUP CHAIR**

### **Purpose**

1. To provide advice to the Cabinet Secretary to agree a remuneration proposal for the Chair of the Misogynistic Harassment Working Group.

### **Priority**

2. **URGENT:** Ministerial approval to be obtained as soon as possible, Baroness Helena Kennedy QC was announced as the Chair of the working group at the Justice Committee on 24 November.

### **Background**

3. Cabinet has made a commitment to take forward work to consider how misogynistic harassment is addressed in Scotland, including through the legal system, alongside the consideration of whether the Ministerial power to add sex as a characteristic within the Hate Crime Bill should be used. Cabinet agreed: *“When the Bill was introduced, the Government should also announce a firm commitment to developing a separate offence of misogyny, which would be informed by the work of the proposed Misogynistic Harassment Working Group.”*

4. Baroness Helena Kennedy QC was announced as the preferred Chair of the Misogynistic Harassment Working Group by the Cabinet Secretary at the Justice Committee on 24 November 2020., and Baroness Kennedy QC has confirmed in discussions with officials that she is content to accept the role. Discussions are still ongoing regarding the membership of the group, and will be decided shortly, however proposals for a smaller core working group with a wider reference group which captures all key stakeholders are being put forward to Baroness Kennedy QC. Timings for the group are still to be confirmed, however we expect the first meeting of the group to be held at the first opportunity in January 2021.

### **RATIONALE AND PROPOSAL**

5. We are seeking to establish a rate for the Chair of this group. As extensive legal experience and a strong understanding of the Scottish legal landscape is required, a daily fee above the top tier in the Public Sector Pay Policy Technical Guide is being sought. The Chair of this group will also require skills from a range of disciplines including: law, gendered violence, violence reduction, and equality issues. The candidate must have previous experience as a Chair of a high profile review or working group and be able to command the confidence of Ministers and a diverse and vocal set of stakeholders. Current input from stakeholders has been polarised.

[REDACTED]

You have already announced Baroness Helena Kennedy as the Chair of the Misogynistic Harassment Working Group, and Baroness Kennedy has extensive experience in the above range of disciplines. Baroness Kennedy has undertaken judicial reviews, public inquiries and sex discrimination work, and has extensive experience in the public sector and Scots Law. Key work has included the 2004/5 Inquiry into Sudden Infant Death for the Royal Colleges of Pathologists, Chair of the Human Genetics Commission, and Vice President of the Campaign for Homosexual Equity. She is a strong advocate of women's and equal rights, and has lectured in human rights and criminal justice.

6. Given the current media interest in the Hate Crime Bill, the Misogynistic Harassment Working group is likely to be subject to intense media scrutiny. Currently, no country has a legal definition of misogyny and this group may also attract international press coverage. [REDACTED]

[REDACTED]

[REDACTED] The Chair will need to keep progress at a pace, whilst handling potentially strong dissenting views in and out of the Working Group.

7. A recent consultation period drew around 2000 views, demonstrating the contentious nature of the bill. The Chair will need to have the credibility and experience to successfully work in that context.

#### *Role and Remit*

8. The Chair will be commissioned by Scottish Government and report to the Cabinet Secretary for Justice, and will be involved in deciding the membership of the working group. Given the level of Parliamentary interest in this area there is a significant possibility that the Chair may be called to give evidence to a Parliamentary committee on the work of the group. The group will also be required to engage with ministers with a portfolio interest, including the Cabinet Secretary for Justice and the Minister for Older People and Equalities. A diverse [REDACTED] range of stakeholders, including key representatives from women's organisations; members of the Equally Safe Joint Strategic Board on violence against women and girls; and representatives drawn from justice statutory organisations and the legal sector: academia; as well as other relevant equality interests will follow the group's work closely.

8. We expect that Baroness Kennedy will wish to review the terms of the remit and we have set an inception meeting with officials to finalise both the remit and membership of the group, taking into account the need for balanced representation from stakeholders.

#### **CHAIR REMUNERATION**

8. Taking into account all of the above, and considering similar working groups examples, we have identified that a remuneration of £1000 per day would be suitable for the preferred candidate. This rate is above the Public Sector Pay Policy

[REDACTED]

Technical Guide, however it is consistent with remuneration provided recently by the Scottish Government to candidates undertaking similar roles. For example, under the [REDACTED], in which the Chair was a QC, legal issues were fundamental and the issue was high profile the remuneration fee was £1000 a day.

## **AFFORDABILITY**

9. The working group will be delivered jointly by both Justice and the Local Government and Communities Directorates. It has been agreed a budget will be made available for group given the Cabinet agreement and priority given to this by Ministers, however the final amount will be very much dependent on the final remit of the group and if any commissioned expertise is required as part of the working group's activities. To ensure that value for money is applied to each spending decision, the funding will be monitored by Scottish Government officials who will also provide secretariat support to the group.

## **FINANCE PAY POLICY AND REMUNERATION GROUP ADVICE**

10. Finance Pay Policy have been consulted on these proposals and comment as follows: The Misogynistic Harassment Working Group has been determined as a Tier 2 *ad hoc* group, using the creation reason, interaction with Ministers, knowledge and experience required, and the public profile of the group as comparators in line with the updated policy. The proposed daily fee for the chair is above the maximum and also above the ceiling of the framework for a Tier 2 member, which has a maximum daily rate of £369 and a ceiling rate of £438. The expectation is that the daily fee should lie between the minimum and the maximum of the appropriate tier of the Daily Fee Framework. The daily fee should only exceed the maximum if it is demonstrated that this is required to recruit and retain chairs and members with the necessary skills, knowledge, experience or calibre for the role they are to undertake. The daily fee should not exceed the ceiling.

11. Following on from the views by the Finance Pay Policy team, the Remuneration Group has reviewed the evidence given above, and the group is not able to approve daily fees that lie out with the Public Sector Pay Policy daily fee framework. The proposed daily fees for the Chair therefore require direct Ministerial approval. A key point raised by the Members is that, should Ministers approve daily fees at this level, this might risk 'raising the bar' of daily fees more widely and setting a precedent for future working groups, boards etc. The letter setting out the views of the Remuneration Group is contained at **Annex A**.

## **ASSOCIATED COSTS**

12. At this stage we expect Secretariat support to include and be limited to 2 members of dedicated SG staff with support from Units within Equalities and Criminal Justice Division.



## **RECOMMENDATION**

**13. The Cabinet Secretary approves the proposed remuneration for the Chair of the Misogynistic Harassment Working Group, at a daily rate of £1000 per day.**



**Criminal Justice Division**

**Directorate for Justice**

**09 December 2020**



Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Justice	X				
Cabinet Secretary for Finance					X
Minister for Community Safety			X		
Minister for Older People and Equalities			X		

Directors Justice

- [Redacted]

Finance Pay Policy Team

- [Redacted]

To: [REDACTED], Equality & Human Rights Division

Copy to: Remuneration Group Members

[REDACTED]  
[REDACTED]  
Finance Pay Policy  
Corporate Business Inbox

## REMUNERATION GROUP SIGN-OFF LETTER: MISOGYNISTIC HARASSMENT WORKING GROUP – DAILY FEES FOR CHAIR

1. Thank you for your submission of 2 December 2020 (RG(20)30), in which you set out proposals and rationale for a daily fee rate for the Chair of the Misogynistic Harassment Working Group. The following sets out Remuneration Group members' collective comments, and the advice that follows should be used to inform your Ministerial submission.
2. You propose a daily fee for the Chair of the Misogynistic Harassment Working Group of £1,000, which is above the ceiling (of £438) set in the Pay Policy daily fee framework for Tier 2 bodies. Paragraph 6.14 of the Public Sector Pay Policy technical guide states that: *"The pay policy expectation is that a daily fee should lie within the minimum and maximum of the relevant assessed tier in the daily fee framework. The daily fee should only exceed the maximum if it is demonstrated that this is required to recruit or retain chairs and/or members with the necessary skills, knowledge, experience or calibre for the role they are to undertake. Daily fees are limited to and must not exceed the ceiling of the relevant assessed tier."*
3. Group members made the following observations:
  - The Group noted that the appointment of the chair, and subsequent announcement, were made prior to having approval for a daily fee rate of £1,000, and that this can influence decisions;
  - The case you cited as a comparison (the [REDACTED]) had a similar daily fee of around £1,000. This rate is outwith Pay Policy and did not go through the prescribed approval channels prior to that (advice was not sought from the Finance Pay Policy team, and nor was the Remuneration Group given the opportunity at the time to review the role profile for this case, comment on the proposed level of daily fees, or provide advice to Ministers). For this reason, Group members concluded that appointments to the [REDACTED] cannot be used to set a precedent. The Group also felt the historical nature of the review was another reason why it was an unsuitable comparison;
  - Members took into consideration the public interest in this high profile new group, the high potential for national and international interest, and the possibility of contentious discord and decisions;

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- Members advised that there was insufficient evidence in the paper on which to form a judgement as to whether the Chair's rate is necessary or not, particularly for such a significant amount above the established rates, as set out in the Pay Policy daily fee framework;
  - Members noted their concern about the lack of clarity on costs and that the proposals have not yet been deemed affordable by the relevant policy team, specifically the number of days required, and over what timescale the group will meet, and if there is sufficient budget to cover this;
  - The wider economic and fiscal context makes daily fees so far above normal Public Sector Policy Pay levels difficult to justify on the basis of the evidence presented in the paper;
  - Members commented that, should Ministers approve daily fees at this level, this might risk 'raising the bar' of daily fees more widely and setting a precedent for future working groups, boards, etc.;
  - The relevant policy team may also wish to consider the presentational issues associated with exceeding Pay Policy, given the wider debate about pay in the public sector;
  - Members requested that the Cabinet Secretary for Finance be copied into the Ministerial submission;
  - The Remuneration Group does not have the authority to approve the daily fee proposed for the Chair as it sits above the ceiling set out in Pay Policy.

4. In summary, the Remuneration Group is not able to approve daily fees that lie outwith the Public Sector Pay Policy daily fee framework, and the proposed daily fees for the Chair will therefore require direct Ministerial approval. The case included as a comparator is outside the limits set in Pay Policy, and the Group did not consider that it set a precedent.

5. Finally, the Group requests that this response be annexed to the final Ministerial submission and that the submission should be copied to the Cabinet Secretary for Finance and the Finance Pay Policy team.



Acting Chair, Scottish Government Remuneration Group  
4 December 2020