Standards, Procedures and Public Appointments Committee

Inquiry into sexual harassment and inappropriate conduct at the Scottish Parliament

Written submission from Professor Nicole Busby, School of Law, University of Strathclyde

What are the key principles and essential elements of a reporting, investigation and sanctions framework for use by the Scottish Parliament to deal with sexual harassment and inappropriate conduct that would inspire confidence in those engaging with the process and the public in general?

Key Principles

Sexual harassment is a form of sex discrimination. Although it does require a specific policy and procedures, the underlying principles are the same as for sex discrimination more generally:

- Fostering an inclusive workplace culture including gender mainstreaming and effective monitoring
- Visible support for policies and procedures from management and leaders
- Investment in education and awareness raising for all who work in the Parliament
- Robust and accessible policies on sexual harassment reporting and dignity and respect at work which are effectively implemented and regularly monitored and reviewed
- Consistent and reinforced gender equality messaging
- Ensuring that adequate support networks are available for those reporting sexual harassment and that, where it does occur, unacceptable behaviour is dealt with appropriately.

Written Policy

International research on gender-sensitive parliaments conducted in 2011 found that sexual harassment policies are the least common form of gender policy implemented in parliaments, with less than 20 per cent of responding parliaments claiming they had one (Inter-parliamentary Union, 2011). This betrays an alarming lack of commitment to raising awareness of sexual harassment, including its legal definition and of instilling confidence in those experiencing it and ensuring that it will be reported and effectively dealt with. A Dignity and Respect Policy should exist in addition to, not in place of, specific Sexual Harassment policies and procedures.

A written policy on sexual harassment should apply to MSPs and staff, as well as to third parties including visitors, lobbyists and service providers. It should contain:

1. A statement of commitment to a zero tolerance approach by the Parliament to tackle sexual harassment which is recognised as a serious problem. It should spell out the right of all staff to be treated with dignity and respect at work. The statement should emphasise that complaints will be taken seriously, will be dealt with quickly
and, where sexual harassment is found to have occurred, it will be treated as a serious disciplinary offence with reference made to the existing disciplinary policy. This statement must be endorsed by those at the top of the organisation if it is to be taken seriously.

2. A clear definition of ‘sexual harassment’ which encapsulates the legal definition under the Equality Act 2010, i.e. unwanted conduct of a sexual nature which has the purpose or effect of violating someone’s dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

3. An explanation of the way in which sexual harassment is deemed to have occurred, i.e. that it is the effect of the unwanted behaviour on the individual that is relevant, not the intention or belief of the perpetrator. One-off or ongoing unwanted behaviours can be experienced as sexual harassment.

4. Examples of the types of behaviours that constitute sexual harassment under the legal definition and, more broadly, actions and behaviours which are less clearly associated with the legal definition but which could be covered by that definition and are, thus, considered inappropriate in the workplace.

Examples (From TUC 2016)

- indecent or suggestive remarks
- questions, jokes, or suggestions about a colleague’s sex life
- the display of pornography in the workplace
- the circulation of pornography (by email, for example)
- any unwelcome and inappropriate touching, hugging or kissing
- requests or demands for sexual favours
- any unwelcome behaviour of a sexual nature that creates an intimidating, hostile or humiliating working environment.

5. Guidance on reporting including a diversity of contacts within the Parliament to whom sexual harassment can be reported, allowing the complainant to bypass reporting unwanted conduct to his or her line manager or supervisor if necessary. Examples could include members of Human Resources with specialist training, named ‘dignity and respect contacts’, trade union representatives.

6. A clear statement prohibiting retaliation or victimisation for the reporting of any claim or for supporting or assisting a claimant to make such a claim.

7. A statement providing that any report of sexual harassment will be treated confidentiality for all parties involved.

8. An appropriate grievance procedure which is specifically designed to ensure that all complaints of sexual harassment are dealt with sensitively and subject to full investigation – see Acas Guidance on Sexual Harassment and Acas Code of Practice on Discipline and Grievance.

9. Specific examples of potential disciplinary actions that may be taken against any perpetrator of harassment or of any retaliation taken against a complainant.
10. The possibility of involving parties outside the Parliament to assist in the investigation, if it is warranted or requested.

11. An appeals procedure.

**Effective Implementation**

Written policy alone is not enough – effective implementation must occur in order to build confidence in the framework and to encourage timely reporting of sexual harassment. This requires investment by the Parliament in terms of adequate resources for training, education and awareness-raising and a full and effective investigations process with clear potential outcomes which are instigated where sexual harassment is found to have taken place.

**What features of reporting and investigation frameworks can act as barriers to reporting and a lack of action on undesirable behaviours? Please provide examples.**

Research, including that conducted by the TUC (2016), indicates that the following can act as barriers to reporting and action:

- Procedures that require reporting to be to a narrow set of individuals, for example, line managers only, overlook the fact that harassment is often related to power within organisations making it very difficult for those who are harassed to come forward.

- A lack of awareness and understanding of what sexual harassment is among both perpetrators and those who experience it as well as among those with responsibility for dealing with it. This is not simply about legal compliance, however greater awareness of the legal definition and its focus on how the recipient of unwanted behaviour feels and the irrelevance of the intention of the perpetrator would greatly assist in establishing and affirming the appropriate boundaries relating to behaviours.

- A lack of confidentiality – real or perceived.

- Fear of being disbelieved or of being perceived as humourless or as overreacting to workplace ‘banter’.

- A perception that no action will be taken and/or that nothing will change.

- A lack of recognition that sexual harassment is a serious problem from the whole organisation including senior managers.

- Mismatch between the policy and effective implementation and action.

- A lack of support for complainants, fear of recriminations.

- Feelings of shame and humiliation. This is endorsed by the legal definition which focuses on the degradation and humiliation of the individual
experiencing the harassment. Social change is necessary to shift the ‘shame’ to the perpetrator.

**How can positive changes to workplace culture be achieved that lessen the prevalence of sexual harassment? What examples of best practice are there from which the Scottish Parliament could learn?**

As stated above, sexual harassment is a form of sex discrimination and is closely related to power within organisations and a sense of male entitlement which is reinforced by organisational structures and practices. To deal effectively with sexual harassment, organisations have to deal with the causes of sex discrimination by ensuring that women are treated as equal to men in all respects. Specific examples would include:

- Equal gender representation in all Parliamentary structures and departments, including committees, boards, working groups, etc.
- Less occupational segregation (horizontal and vertical) so that men and women work together at all levels and in all activities across the Parliament.
- Equal pay for women and men.
- An avoidance of informal/social networking and formalisation of inclusion in any processes which result in recruitment to committees, working groups, etc. as a means of challenging existing gendered power structures.
- The proactive promotion of positive actions such as the Dignity and Respect at Work Policy, although this should be in addition to a specific written policy on sexual harassment.
- Messaging about sexual harassment which avoids an overemphasis on the humiliation and shame of the ‘victim’ as this can have a negative effect on reporting rates. The aim is to shift the perception of shame onto the perpetrator rather than the individual experiencing sexual harassment.

Examples of good practice that are often cited in international comparisons are the policies and procedures implemented by the Parliaments of Canada and Denmark.

**Do you have any comments on how effective and clear the current arrangements are in the Scottish Parliament for reporting sexual harassment? Do you have any suggestions for changes to improve the current rules and procedures?**

The recent actions taken, reported widely in the press, to introduce a confidential phone line for reporting of sexual harassment and to undertake a survey among parliamentary staff are to be commended as they have the potential to identify the nature and extent of incidents of sexual harassment within the Scottish Parliament and to provide a baseline of data so that effective further action can be taken.

I am unable to comment specifically on current arrangements for reporting sexual harassment within the Parliament as it is not clear from the information publicly
available what those arrangements are. A search of the Parliament’s website identified the Dignity at Work Policy and Complaints Process as the appropriate framework for reporting sexual harassment. This is quite a general policy and, whilst it does refer to sexual harassment in a few places, in my view it is not specific enough about the types of behaviours that constitute sexual harassment (see above). It is also unclear as to the what the reporting arrangements are and what the process is with regards to investigation of reports of sexual harassment and what actions will be taken if sexual harassment is found to have occurred. It is also impossible to tell from the outside how effectively the policy is implemented across the Parliament.

I would suggest the adoption of a specific policy and clear procedures on sexual harassment accompanied by a clear commitment at the highest level to invest in effective implementation and monitoring as outlined above.

References

Acas Guidance on Sexual Harassment

Acas Code of Practice on Discipline and Grievance.


Inter-parliamentary Union (2011) Gender Sensitive Parliaments: A Global Review of Good Practice written by Dr. Sonia Palmieri


PROFESSOR NICOLE BUSBY
STRATHCLYDE UNIVERSITY LAW SCHOOL
25 JANUARY 2017