



The Scottish Parliament
Pàrlamaid na h-Alba

COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

AGENDA

2nd Meeting, 2019 (Session 5)

Thursday 14 March 2019

The Committee will meet at 3.00 pm in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 2 in private.
2. **Approach to the Committee's inquiry:** The Committee will consider briefings relevant to the inquiry.
3. **Approach to the Committee's inquiry:** The Committee will announce any decisions taken under item 2.

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The papers for this meeting are as follows—

Agenda item 2

PRIVATE PAPER

SGHHC/S5/19/2/1

(P)

SPICe Briefing

SGHHC/S5/19/2/2

Committee on Scottish Government Handling of Harassment Complaints

2nd Meeting, 2019 (Session 5), Thursday 14 March 2019

Briefing note

Introduction

1. The purpose of this paper is to provide Committee Members with background information in relation to its inquiries in to the Scottish Government's Policy on Handling of harassment complaints involving current or former ministers and the Scottish Ministerial Code.

Background

2. As Members will be aware, the Committee's remit is to consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "*Handling of harassment complaints involving current or former ministers*" procedure and actions in relation to the Scottish Ministerial Code.
3. At its meeting on 20 February, the Committee agreed to consider the policies and procedures within the Scottish Government relevant to the Committee's inquiry at its next meeting.
4. Attached to this paper is a SPICe briefing which sets out details of both the harassment complaints procedures and the Scottish Ministerial Code.

Recommendation

5. Members are invited to note the contents of the briefing.

Clerk to the Committee
March 2019

SCOTTISH GOVERNMENT PROCEDURES ON BULLYING AND HARASSMENT AND THE SCOTTISH MINISTERIAL CODE

This paper was written in response to a request from the Committee on the Scottish Government Handling of Harassment Complaints as background to the inquiries set out in its remit.

Specifically, this paper sets out information on the policy and procedures in place for civil servants in Scotland in relation to bullying and harassment, including details of the procedures for the *Handling of Harassment Complaints Involving Current or Former Ministers* and details of the complaints procedures open to civil servants in the Scottish Government.

The paper also sets out the Scottish Ministerial Code since 1999 and how breaches of the code are investigated.

WORKPLACE BULLYING AND HARASSMENT

Bullying and harassment is behaviour that makes someone feel intimidated or offended. Harassment is unlawful under the Equality Act 2010, which defines three types of harassment:

1. unwanted conduct which is related to a relevant protected characteristic (see below) and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity [applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership]
2. sexual harassment, which is unwanted conduct of a sexual nature where this has the same purpose or effect as the first type of harassment
3. treating someone less favourably because he or she has either submitted to or rejected sexual harassment, or harassment related to sex or gender reassignment.

The protected characteristics are: age, sex, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation.

Employers' responsibilities

Employers are responsible for preventing bullying and harassment, and are liable for any harassment suffered by their employees.

Anti-bullying and harassment policies can help prevent problems. Acas has produced a [booklet for employers](#), including advice on setting up a policy as well as how to recognise, deal with and prevent bullying and harassment.

UK Government

The standards expected of Civil Servants in the UK is governed by the [Civil Service Code](#). Civil servants working for the Scottish and Welsh Governments have their own versions of the code. As the Civil Service Code is about the core values of the Civil Service it does not cover areas outside of that remit, such as personnel management and grievances. The Civil Service Management Code states that departments and agencies must have their own procedures in place for handling complaints of unfair discrimination and harassment.

Scottish Government

The [Scottish Civil Service Code](#) sets out the standards expected of Scottish civil servants. The latest version of this was issued in 2010.

The [Scottish Government Staff Handbook](#) is a statement of the terms and conditions of service for staff in the Scottish Government and a summary of its employment policies and procedures that form part of those terms and conditions.

It sets out detail of the Scottish Government's policy in relation to discrimination and harassment and commits to the expectation that all staff should treat each other with dignity and respect in an environment free from harassment, victimisation, discrimination and/or bullying.

In the [equality statement](#), accompanying the draft budget for 2018-19, the Scottish Government stated:

"We will tackle any bullying, harassment and victimisation and have set core priorities of consistent good people management and wellbeing. We have also appointed a senior director to the role of Bullying and Harassment Champion to provide visible leadership in this area."

COMPLAINTS PROCEDURES

SUMMARY

In summary, the Scottish Government bullying and harassment policies have developed recently as follows—

- 2005 – Dignity at Work policy introduced.
- 2007 – Dignity at Work policy revised to incorporate new employment duties under the Equality Act.
- 2010 – Fairness at Work policy introduced, superseding the Dignity at Work policy. Minor amendments were made to this in 2017 to provide greater clarity on what constitutes harassment.

- December 2017 - Internal procedure on handling of harassment complaints involving current or former ministers agreed and published on the Scottish Government intranet.
- Current – Fairness at Work policy deals with all other complaints (excluding harassment) against current Ministers.

Fairness at Work Policy

The Scottish Government's [Fairness at work policy and procedures](#) sets out behaviour standards and procedures for staff to raise a complaint (including complaints of bullying and harassment).

The document sets out the Scottish Government's commitment as an employer:

“1.1 We are an equal opportunities employer, committed to treating every employee with dignity and respect. It is our policy to ensure, as far as reasonably practicable, that all staff have equality of opportunity in their terms and conditions of employment and are able to work, and undertake work related activities, in an environment free from harassment, victimisation, discrimination and/or bullying.

1.2 We believe that all of our employees should be treated with respect, regardless of sex, marital/civil partnership status, age, race, ethnic origin, sexual orientation, gender identity, disability, religion or any other irrelevant difference, e.g. social background, working pattern or trade union activity. This can only happen if every member of staff is aware of the standards of behaviour that we expect from them and behaves accordingly.

1.3 This policy statement is endorsed by the Permanent Secretary and applies to all staff including members of the Senior Civil Service and those in the agencies and associated Departments of the SG's Main Bargaining Unit. This policy also applies to Civil Servants in Non-Ministerial Departments and NDPBs who have chosen to take a shared service from the Scottish Government, where applicable. We also expect Scottish Ministers to behave acceptably and to act in the spirit of this policy statement.”

This document includes information on how Scottish Government civil servants may make a complaint against a Minister on a matter unrelated to harassment.

It notes that a separate process applies in relation to harassment complaints against current and former Ministers.

Handling of harassment complaints involving current or former ministers

In December 2017, an internal procedure, on handling of harassment complaints involving current or former ministers, was agreed and published on the Scottish Government intranet.

In August 2018, the [procedure](#) was made publicly available on the Scottish Government website.

Prior to the introduction of this procedure, all complaints (including harassment) about current Ministers were handled under the Fairness at Work policy.

Any harassment complaints against both current and previous Ministers are now handled under this new procedure.

The Fairness at Work policy now addresses all other complaints (excluding harassment) against current Ministers.

The new procedure (paragraphs 10-12) states, that in the event of a formal complaint of harassment being received against a former Minister:

“the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. The role of the Investigating Officer will be to undertake an impartial collection of facts, from the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member.

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 will be invited 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 and share with the staff member. 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.

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.”

The procedure states that at any point the staff member is free to make a complaint directly to the Police. The Government 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.

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Throughout the process the Government will continue to offer support to the staff member.

Information on sexual harassment

In September 2018, in response to PQ S5W-18396:

“To ask the Scottish Government whether it will provide the information that it holds on how many complaints it has received relating to sexual assault or sexual harassment by (a) Ministers, (b) Special Advisers and (c) its staff since 1999; how many complaints have been upheld; how many cases have been referred to the police, and whether anyone has been disciplined or dismissed following these complaints”

the Scottish Government responded:

“As an employer, the Scottish Government does not make determinations about whether the nature of a complaint constitutes a sexual assault as that is rightly a matter for Police Scotland to determine. We do not therefore have a record of any complaints that have been recorded as “sexual assault”.

In response to part (a) between 1999 and the end of 2017 the Scottish Government holds no recorded complaints of this nature against Ministers.

In January 2018, the Scottish Government received two harassment complaints relating to the former First Minister, Alex Salmond. These complaints were considered under a Scottish Government procedure for Handling Harassment Complaints Involving Current or Former Ministers

<https://beta.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/> [link dead February 2019]. For legal reasons the Scottish Government cannot provide further information.

In response to part (b) a system to report aggregated data about formal employee relations cases and complaints was introduced in 2007. The Scottish Government has no recorded complaints in relation to Special Advisers in the period from 2007 to the present.

In response to part (c) a system to report aggregated data about complaints recorded against employees was introduced in 2007. Since 2007, a total of 11 formal complaints of this nature have been received by the Scottish Government. Given the statistically low number, the supplementary information requested cannot be provided as this may risk disclosing personal information. However we can confirm that these cases were dealt with in line with the relevant internal procedures.

Note:

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This covers staff employed on Scottish Government Main and Scottish Government Marine terms and conditions of employment and senior civil servants in the following areas:

Scottish Government Core Directorates

Accountancy in Bankruptcy

Disclosure Scotland

Education Scotland

National Records of Scotland

Office of Scottish Charity Regulator

Scottish Housing Regulator

Transport Scotland.”

SCOTTISH MINISTERIAL CODE

The Scottish Ministerial Code

The [Scottish Ministerial Code](#) sets out guidelines for Government Ministers for living up to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In its foreword, the First Minister confirms that all Scottish Ministers, including the First Minister, are bound by its terms.

By convention, the Scottish Ministerial Code is revised and re-issued at, or soon after, the commencement of each new Parliamentary Session, taking account of changes made to the equivalent UK Ministerial Code and any other changes which might be relevant.

The Code has also been revised when a new First Minister comes into office, for example, in February 2002, following the appointment of Jack McConnell as First Minister in November 2001.

Generally, no more than minor factual changes are made between complete new editions.

Editions of the Scottish Ministerial Code

The text of the Scottish Ministerial Code aims for consistency with the UK Ministerial Code, although it is tailored for the Scottish context.

There have been eight editions of the Scottish Ministerial Code published to date:

- August 1999 (first edition) (no longer on website, but available in hardcopy in SPICe) (scanned copy attached)
- February 2002: www.scotland.gov.uk/Resource/Doc/158641/0043036.pdf this edition updated the code to reflect a number of developments since 1999. The changes included: the addition of the Seven Principles of Public Life set out by the Nolan Committee; revised guidance on the procedure for discussion of private interests with incoming ministers; arrangements for appointing Ministerial Parliamentary Aides, and revised guidance on contact with commercial companies.
- August 2003: <https://www2.gov.scot/Publications/2003/08/17996/25267>
- June 2008: <https://www2.gov.scot/Publications/2009/06/18095600/16> this edition drew on changes made in the 2005 and 2007 UK Codes and introduced a provision for referral to independent advisers
- December 2011: <https://www2.gov.scot/Publications/2011/12/01141452/15> the text was revised to take into account changes made in the 2010 UK Ministerial Code (the text of which was significantly more concise than its predecessor, making it a more readable document).

- June 2015: <https://www2.gov.scot/Publications/2015/06/2562/downloads#res478172>
- August 2016: www.gov.scot/About/People/14944/684. As well as some minor updates the revised code provided that Parliamentary Liaison Officers could not serve on Parliamentary Committees which scrutinise the Cabinet Secretary to whom they are appointed.
- February 2018: www.gov.scot/isbn/9781788515757. As well as minor updates, the Code was amended in line with the January 2018 edition of the UK Ministerial Code. There are explicit references to: inappropriate bullying or harassing behaviour; the requirement on Ministers to report meetings to their Private Offices, including meetings held overseas; and the role of the Advisory Committee on Business Appointments. In addition, a new paragraph 4.25 reflects the provisions of the Lobbying (Scotland) Act 2016.

Scottish Ministerial Code and behaviour

From 2018, the Code has included a statement on how ministers should behave in their dealings with civil servants (Section 1.2):

“Ministers should be professional in all their dealings and treat all those with whom they come into contact with consideration and respect. Working relationships, including with civil servants, Ministerial and Parliamentary colleagues and Parliamentary staff should be proper and appropriate. Harassing, bullying or other inappropriate or discriminating behaviour, wherever it takes place, is not consistent with the Ministerial Code and will not be tolerated.”

The 2018 version of the Code goes on to state:

“1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial 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 and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.

In April 2008, in response to a PQ (S3W-11866) asking:

“whether any minister has been disciplined under the Scottish Ministerial Code since May 2007 and, if so, what the circumstances were in each case”

The Scottish Government stated that:

“The Scottish Ministerial Code details the arrangements for the conduct of affairs by ministers and provides guidance by listing the principles and the precedents which may apply. The code is not a rule book, nor does it include or imply a complaints process. However, where a member, or any other party, writes to the First Minister to draw his attention to matters relating to the code, they will receive a formal reply from him or his office. The First Minister has received six letters since May 2007 which make reference to the code and are expressed in terms that make clear the correspondent wishes to draw his attention to matters of ministerial conduct. All have been received from members of the Scottish Parliament. After proper consideration of each case the First Minister has confirmed that he considers ministers had acted appropriately.”

In response to a [PQ in December 2007 \(S3W-06789\)](#), the Scottish Government stated that:

“The Scottish Ministerial Code is the First Minister’s document and it sets out the standards of conduct which he expects of government ministers. The First Minister is the ultimate judge of the standards of behaviour expected of a minister and the appropriate consequences in the event of a breach of those standards. Ministers will only remain in office for as long as they retain his confidence.”

This is also confirmed in the Code at paragraph 1.5 which states that—

“Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial 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 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”

Complaints against the First Minister: Panel of Independent Advisers

In a previous PQ ([S3W-05914](#)), when asked who is responsible for supervision of the Scottish Ministerial Code in respect of the conduct of the First Minister, the Government responded that:

“As with all members of the Scottish Government, the First Minister is ultimately accountable to the Scottish Parliament for his conduct in carrying out his responsibilities.”

At a [debate on 28 February 2008](#), Scottish Labour called for the establishment of an independent advisor to investigate alleged breaches of the Scottish Ministerial Code. This was in line with changes introduced at the UK level.

In June 2008 following a review of the 2003 code by civil servants (which began in May 2007), the First Minister announced, in a [statement to the Parliament](#), the publication of a new edition of the code, with:

“much of the substance of the ministerial code remain[ing] unchanged.”

The First Minister also announced that:

“We—that is, the Prime Minister and I—are wrestling with the notion that the guardians of public accountability must always be the Prime Minister, in the case of Westminster, or the First Minister, in the case of this Parliament. The issue of how advice can be truly independent, especially when the adviser has been appointed by a Prime Minister or a First Minister, has proved to be a ticklish problem to solve—indeed, for some time, I thought that it was an impossible problem to solve.

However, I think that I have a solution that will provide some satisfaction. For the first time, there will be a panel of past Presiding Officers to guide the First Minister on the application of the code. I am delighted to announce that Lord Steel and George Reid have agreed to serve as members of that panel of independent advisers. Their integrity is beyond reproach, and their knowledge of ministerial and parliamentary procedures is unrivalled. Further, they are undoubtedly independent.”

The code now states:

“1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.”

The current independent advisers are:

- Rt Hon Dame Elish Angiolini QC DBE (since August 2011)
- James Hamilton, former Director of Public Prosecutions at the Irish Office of the Director of Public Prosecutions (since January 2013).

Previous advisers are—

- Rt Hon Sir George Reid and Rt Hon Lord Steel of Aikwood KT KBE (June 2008 to August 2011)
- Rt Hon Lord Fraser of Carmyllie QC (August 2011 to June 2013)
- Sir David Bell KCB (October 2012 to January 2013)

Prior to the current inquiry, six complaints have been referred to the independent advisers. In all cases investigated, the independent advisers concluded that no breach of the code had occurred. The Scottish Government’s website includes details of the [reports](#) of the investigations by the independent advisers.

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Francesca McGrath
SPICe Research
8 March 2019

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