



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

MEETING DETAILS

18th meeting 2017, Session 5

Thursday 9 November 2017 at 10.30am
in the Sir Alexander Fleming Room (CR3).

COMMITTEE PAPERS

Agenda

**Sexual harassment and inappropriate
conduct paper**

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NOTICES

Next meeting:

16 November 2017

Future Meetings:

30 November 2017

14 December 2017



The Scottish Parliament
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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

AGENDA

18th Meeting, 2017 (Session 5)

Thursday 9 November 2017

The Committee will meet at 10.30 am in the Sir Alexander Fleming Room (CR3).

1. **Sexual harassment and inappropriate conduct:** The Committee will consider a note by the clerk.

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The papers for this meeting are as follows—

Agenda item 1

Note by the clerk

SPPA/S5/17/18/1

Standards, Procedures and Public Appointments Committee

18th Meeting 2017 (Session 5), Thursday 9 November 2017

Sexual harassment and inappropriate conduct

Introduction

1. Holyrood has recently been the subject of media reports regarding sexual harassment in the workplace.
2. Since the stories were published, the Parliamentary authorities have responded by seeking to clarify and review the various policies and procedures governing this type of misconduct.

Background

3. Daniel Johnson wrote to the Convener on 30 October seeking support for examining a range of issues associated with support for those who find themselves victims of sexual harassment. His letter is attached at Annexe A.

4. The Presiding Officer, following a conversation with the Convener, wrote to the Standards, Procedures and Public Appointments Committee on 1 November to formally request that the Committee examines the provisions of the Code of Conduct which relate to MSPs to ensure the procedures remain fit for purpose and are as clear as possible. It is intended that this work will sit alongside a range of other measures that the Presiding Officer agreed with the party leaders. His letter is attached at Annexe B and sets out the strands of work which have been initiated. These are:

- The Parliament's Diversity and Inclusion Board will revisit the SPCB's procedures for reporting and investigating harassment with a view to identifying any changes needed to strengthen processes.
- All political parties are looking at their own internal procedures for reporting and dealing with cases.
- All parties have agreed to an anonymised survey covering all building users at Holyrood, to help to understand the extent of the problem, cultural issues and to identify any barriers that exist to reporting and challenging such behaviour. It will also provide an opportunity for Members and staff to contribute their ideas to creating a positive workplace for everyone. The results of that survey will inform the next steps the Parliament will undertake.
- In taking forward these initiatives, a range of relevant external organisations will be involved.

5. Members will also be aware of the range of questions, published in the Business Bulletin, which will be put to the SPCB on Thursday 9 November.

Roles and responsibilities

6. Annexe C sets out the roles and responsibilities of those within and outwith the Parliament in relation to the protection of individuals from sexual harassment and the broader legal landscape in which they sit.

7. To date, the Commissioner for Ethical Standards in Public Life in Scotland has not handled any complaints about sexual harassment by MSPs and the Committee, since its inception, has not considered any from any other source.

The Behaviour of MSPs' Staff members

8. The rules and processes governing the behaviour of MSPs' staff or members of the Parliamentary service are, primarily the responsibility of other authorities within the Parliament. However, when acting on Members' behalf, MSP staff are governed by the Code of Conduct.

Extract from Section 7 of the Code of Conduct: MSPs General Conduct

Awareness of MSPs' staff

Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises.

Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff.

The Committee's Remit

9. The Committee's remit, set out in Standing Orders, is as follows—

Rule 6.4 Standards, Procedures and Public Appointments

1. There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) the practice and procedures of the Parliament in relation to its business;

(b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;

(c) the adoption, amendment and application of any Code of Conduct for members;

(d) matters relating to public appointments in Scotland; and

(e) matters relating to the regulation of lobbying.

2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

10. As members are aware, the Committee's remit is concerned with practice and procedures in relation to parliamentary business and Members' conduct and are therefore able to examine any matters relating to the conduct of MSPs and are able to recommend changes to the Code of Conduct for MSPs.

11. The rules and processes governing the behaviour of members of the Parliamentary service are primarily the responsibility of other authorities within the Parliament and are therefore outwith the scope of the Code of Conduct.

Recommendation

12. The Committee is invited to consider, in the context of the other various strands of work underway, what steps it would like to take next. Possible options for consideration are—

- To agree the parameters of an inquiry that may look at processes, procedures and rules relating to this matter including whether there is sufficient clarity about the recourse and support available for anyone affected.
- Agree a timeframe for the conclusion of any such piece of work.
- To await the conclusion of the various strands of work set out at paragraph 4 and then consider any necessary changes to the Code of Conduct.
- In the meantime, the Committee could invite representatives of the Political Parties and the Parliamentary authorities to give evidence in order to establish what work they plan to undertake to address inappropriate behaviours and to support those affected by it.

**Standards Clerks
Standards, Procedures and Public Appointments Committee
November 2017**

Annexe A – Letter from Daniel Johnson to Convener, 30 October 2017

I know you will have seen the press stories over the weekend regarding sexual harassment at Holyrood. Clearly sexual harassment at work is unacceptable, and it is incumbent upon everyone in the Scottish Parliament to create a safe and appropriate working environment for all of its staff.

I would be interested to explore what actions the Standards Committee can take on this issue and I would be grateful for your support to examine the following:

- First, what the correct process is for MSP staff who find themselves victims of sexual harassment. I would also be keen to see whether we can work with the Scottish Parliament so that this can be sent to all MSP staff, in order to reassure and potentially provide the correct route for those affected to seek support and action.
- Second, to formally consider an enquiry or other formal session on this matter to look into the culture, processes and rules of the Parliament.
- Third, to examine and if necessary change the Rules and Code of Conduct for members, to ensure that there can be no tolerance of sexual harassment.

I believe it is important that we discuss these issues at our next meeting, and I look forward to your response. I am also sending a copy of this letter to the Standards Clerks.

Kind regards,

Daniel Johnson
MSP for Edinburgh Southern

Annexe B – Letter from Presiding Officer to Convener, 01 November 2017

Thank you for taking the time to discuss with me the steps being taken by the Scottish Parliament to ensure we provide a safe and secure working environment for all who work here and to support anyone who might have experienced sexual harassment or inappropriate behaviour to come forward.

As discussed, I am now writing to formally ask the Standards, Procedures and Public Appointments Committee to look again at those aspects of Code of Conduct relating to complaints about MSPs, to ensure the procedures remain fit for purpose and are as clear as possible. I am sure you will agree that the Committee's open and transparent consideration of these issues is key to encouraging confidence in the procedures and processes we have in place.

This step is an important one which sits alongside a range of other measures that I agreed with the party leaders yesterday, including:

- The Chief Executive and I have asked the Parliament's Diversity and Inclusion Board to revisit the SPCB's procedures for reporting and investigating harassment, and we will be quick to make any changes needed to strengthen our processes.
- In tandem, all political parties are looking at their own internal procedures for reporting and dealing with cases, which is a welcome step forward.
- All parties have agreed to an anonymised survey covering all building users at Holyrood, to help us to understand not only the extent of the problem but the barriers that exist to reporting and challenging such behaviour. It also provides an opportunity for members and staff to contribute their ideas to creating a positive workplace for everyone. The results of that survey – which we will progress urgently - will inform our next steps and action plan.

As you know, our immediate objective is to ensure that anyone suffering from harassment has the advice and support they need and I hope the dedicated confidential phone line being introduced this week will help ensure people do feel able to come forward.

I welcome the clear support shown across parties to offer support and assistance to anyone who has experienced inappropriate behaviour and I am grateful to you for agreeing to begin considering the relevant procedures in the Code of Conduct as early as next week.

Yours sincerely

Rt Hon Ken Macintosh MSP

Annexe C – paper on roles and responsibilities in relation to the protection of individuals from sexual harassment

1. This note sets out the how provisions in the Code of Conduct sit alongside employment and equality law to protect individuals from sexual and other forms of harassment. The conduct of parliamentary staff and contractors is regulated under the application of SPCB equality policies, including a dignity at work policy, through contracts of employment or contracts with suppliers. Such conduct is not regulated by the Code and falls outwith the scope of this note.

Code of Conduct – scope and procedure

2. Section 7.1 of the Code requires Members to comply with the requirements of the Code as regards their conduct. The Code requires Members to comply with the SPCB's Dignity at Work and Complaints Policy. Sections 7.5 and 7.6 of the Code also specifically provide as follows:

- Members must treat other MSPs with courtesy and respect.
- In addition, Members must treat parliamentary staff (which includes contractors providing services to the Parliament) together with the staff of MSPs with courtesy and respect. Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated.

The process for investigation of complaints raised is set out below.

3. These provisions cover the conduct of MSPs towards:

- Each other;
- Parliamentary staff (including contractors);
- The staff of other MSPs.

4. Complaints about the standard of the conduct of an MSP is generally within the remit of the Ethical Standards Commissioner in accordance with the Scottish Parliamentary Standards Commissioner Act 2002. However, the Act also provides that the Parliament may identify types of complaint which are to be excluded from the automatic jurisdiction of the Commissioner and for which the Parliament can set its own process for investigation in Standing Orders or the Code of Conduct. The procedure for taking forward a complaint about conduct in the circumstances set out in paragraph 3 differs according to the situation because some have been specified as excluded complaints.

5. Complaints about the conduct of an MSP towards another MSP which takes place otherwise than in parliamentary proceedings follow the normal process set out in the 2002 Act. They are initially investigated by the Ethical Standards Commissioner. If the Commissioner determines the complaint is admissible he will investigate and report his findings of fact and conclusion to the SPPA. Following consideration of this report the SPPA then reports to the Parliament.

6. Complaints about the conduct of an MSP towards another MSP which take place in parliamentary proceedings are excluded complaints and are referred as follows:

- To the Convener where the conduct takes place at a meeting of a committee
- To the PO where the conduct takes place at a meeting of the Parliament or where a complaint arising from a meeting of a committee concerns the conduct of the Convener;
- After consideration such complaints may be referred to the SPPA

7. The following situations are also excluded complaints. Complaints about the conduct of an MSP towards parliamentary staff are to be made to the Parliament's HR office for investigation. Complaints about the conduct of MSP A towards a staff member of MSP B is to be made to the Business Manager of MSP A. A joint investigation by HR and the Business Manager is possible if considered appropriate. In either case if, after conciliation, the matter cannot be resolved it is reported to the SPCB. The SPCB may then refer the complaint to the SPPA.

8. Under section 7.17 of the Code Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises. Under section 7.18 of the Code Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other Members, other Members' staff, and parliamentary staff.

9. The Code does not regulate the conduct of MSPs towards their own staff which involves a particular relationship - that of employer and employee. Regulation of this legal relationship and the employment rights that flow from it cannot be superceded, impinged or diminished by the Code. Details of the most relevant legal provisions are set out below.

Code of Conduct - sanctions

10. If having investigated a complaint the SPPA concludes that a Member's conduct has not met the standards set by the Code the committee's report may include a recommendation on sanctions. The decision on whether to apply sanctions is a matter for the Parliament. Sanctions that can be imposed through this procedure concern the withdrawal of the rights and privileges enjoyed as MSPs. They do not extend beyond this to disqualification of MSPs or sanctions or protections which can be imposed under the civil or criminal law.

Protection of MSP staff - Employment law rights

11. The SPCB's standard employment contracts for MSPs make reference to the appropriate procedure to be followed in the case of a complaint. Where an MSP fails to deal with a grievance appropriately or if the dispute remains unresolved this could result in an application to the employment tribunal.

12. Part 5 of the Equality Act 2010 protects employees from harassment in the course of their employment. Section 40 states that employers must not harass their employees in relation to their employment. The employment tribunal has jurisdiction over complaints of a breach of this duty. Where an employee has resigned as a result of alleged harassment they may raise the complaint in the course of unfair dismissal proceedings.

13. Section 108 of the 2010 Act also protects employees from harassment occurring after the employment has ended in some circumstances.

14. The remedies which can be granted by the employment tribunal include making:

- A declaration of the rights of each party
- An order for compensation including an award for injury to feelings
- An appropriate recommendation as to the steps to be taken by the employer to address the impact of the harassment.

Ministers

15. Members who are also Ministers carry out both ministerial functions and the functions of representative MSPs. The conduct of Ministers when exercising their functions as a member of the Scottish Government is regulated under the Ministerial Code. Operation of the Ministerial Code is the responsibility of the First Minister.

16. The Code of Conduct applies in the usual way where a Minister is not exercising a function which is regulated by the Ministerial Code.

Civil law remedies

17. A person who alleges that they have been subjected to harassment may also pursue the following remedies in the civil courts.

- An action for damages for any personal injury which it is alleged resulted from conduct amounting to harassment
- An action of harassment where the conduct has occurred more than once seeking damages or a non-harassment order or interdict to prevent the repetition of particular conduct.

Criminal law

18. Various forms of sexual conduct are prescribed as a criminal offence under statute and under the common law. The Sexual Offences (Scotland) Act 2009 covers a range of conduct from sexual assault to communicating indecently with the intention of humiliating, distressing or alarming the recipient. Other forms of harassing behaviour may also amount to a breach of the peace at common law. The full details of such offences are beyond the scope of this note. Conduct which amounts to a criminal offence is a matter for the police to investigate and it is for the

procurator fiscal to determine whether or not to bring proceedings in any particular case.