



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 22 February 2018

Session 5



The Scottish Parliament
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Thursday 22 February 2018

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
3rd Meeting 2018, Session 5

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Patrick Harvie (Glasgow) (Green)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

Elaine Smith (Central Scotland) (Lab)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Nicole Busby (University of Strathclyde)

Amy Johnson (Zero Tolerance)

Kirsty Thomson (JustRight Scotland and Scottish Women's Rights Centre)

Caroline Thomson (Scottish Women's Convention)

CLERK TO THE COMMITTEE

Joanna Hardy

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 22 February 2018

[The Convener opened the meeting at 10:00]

Sexual Harassment and Inappropriate Conduct

The Convener (Clare Haughey): I welcome members to the third meeting in 2018 of the Standards, Procedures and Public Appointments Committee. We have received apologies from Elaine Smith MSP.

Our first agenda item is an evidence session on the committee's inquiry into sexual harassment and inappropriate conduct. We are joined by Professor Nicole Busby, professor of labour law at the University of Strathclyde, and Kirsty Thomson, solicitor from JustRight Scotland and the Scottish women's rights centre. Thank you for coming along.

I ask Professor Busby to expand on what she said in her submission about the visibility of policies on sexual harassment and the importance of support for them by the leadership.

Professor Nicole Busby (University of Strathclyde): It is important because a lot of policies lack a name for sexual harassment and lack identification of what it is. I have looked at policies not just in relation to the Parliament but in workplaces generally and in other parliamentary contexts. There are a lot of misunderstandings and misconceptions in relation to issues to do with reporting and responses to allegations, which are unnecessary because sexual harassment is clearly identified in law. The legal definition is quite broad, and it could be used very specifically in a policy. Sexual harassment needs to be named—it is no use hiding it away or dealing with it under a general dignity at work policy, which is what tends to happen in lots of organisations.

Sexual harassment is specific and it is pernicious—we have seen that with everything that has come into the public domain. The problem is widespread and it is very difficult to deal with. A lot of the difficulties are to do with the fact that it is often quite hidden in policy terms. Sexual harassment should be named and identified and the behaviour that it covers should be made very clear, in order to raise awareness of it and to take ownership of responding to and dealing with it adequately.

The Convener: In preparation for today's session, I take it that you looked at the Scottish Parliament policies. Do you feel that they meet the standard that you have talked about?

Professor Busby: To be honest, I do not. I tried to identify from the parliamentary policies how sexual harassment would be dealt with in different contexts, and found it quite difficult. I had wondered whether it was just me, but when I looked at the evidence submitted by other organisations, that was a common finding that ran through the evidence—it is difficult to identify the reporting procedures and where individuals who face difficulties can go. Some information in the policies is quite misleading. The current policies and procedures definitely need to be looked at in detail.

The Convener: That concern about how to navigate a way through the policies has certainly been raised by the committee and by other witnesses.

In your written evidence, you gave examples of good practice from Parliaments in Canada and Denmark. Could you expand on that and give us some more information? The committee is interested in examples of other areas or even industries that have good policies that we can learn from.

Professor Busby: Sure, but before I do that, I should say that when I did a general search for examples of good practice, particularly in Parliaments, I found such examples very difficult to find. When you start to dig around, you uncover a widespread problem. Most Parliaments in all parts of the world have faced sexual harassment issues, and the problem is not unique to any particular culture, country or part of the world.

The Inter-Parliamentary Union produced a very interesting study in 2011 that I referenced in my submission. The study looked at not just sexual harassment but gender-sensitive Parliaments. For that study, the IPU carried out lots of surveys and looked at more than 70 different parliamentary institutions across the world, and it found that sexual harassment policies are the least common form of gender-related policy that Parliaments across the world have. I thought that that finding was quite interesting.

Examples of good practice are difficult to find; the problem is endemic, and I do not think that any Parliament can hold itself up as an example and say, "We are dealing with this," or, "We have dealt with this perfectly well." We are talking about a learning curve for countries around the world. The two examples that have come up and which I think bring different things to the landscape are Canada and Denmark. I will talk about Canada first, because what has been done there is more

closely related to the sort of parliamentary procedure that you might be looking for.

The Canadians spent two years developing and implementing what they call a preventing and addressing harassment policy. Although it is more general, it clearly specifies sexual harassment and identifies, in a useful way, what it is and what sorts of behaviour would be covered. In 2014, they issued a policy document that was 19 pages long and quite detailed; interestingly, as well as covering specific harassment issues, it mentions abuse of authority in relation to harassment. It therefore brings in the sort of power dynamic that has been made very clear in all the written evidence received by the committee that I have seen, and it makes it clear that this is an abuse of power issue. That point is missing in a lot of organisational policies, and framing it in that way—as the Canadian House of Commons policy does—is very helpful.

The policy was introduced in 2014 and is still, I think, a work in progress. As you will have seen, the Prime Minister of Canada has given some very high-profile speeches and statements about sexual harassment in society in general and in the context of the Parliament, and real leadership is being shown in implementing the detailed policy. As for whether it has been effective, it is really difficult to tell. As far as I can gather, there is quite a high incidence of reporting, which, in this context, might be taken as a success as far as the policy is concerned.

Indeed, with regard to underreporting, I would be suspicious if no such issues were being reported in our parliamentary structure, because it might well indicate problems with the Parliament's policies and procedures. After all, we know that this sort of thing happens everywhere. The Canadian example is interesting and worth looking at; as I have said, it is detailed, and I really like the clear link that it makes between abuse of authority and harassment, as well as the leadership that has been shown by Prime Minister Justin Trudeau and others with regard to ownership of the policy and awareness raising.

The Denmark case is different. The Danes have a very interesting approach to sexual harassment issues that comes from a wider concept of the Nordic working environment. Harassment in Denmark and indeed other Nordic countries is seen—as I think it should be—as a health and wellbeing issue, and it is placed in that broad context. That said, I am not sure that the Danish Parliament has strong practices and procedures on this, and there have been problems with sexual harassment, which again have been reported and are in the public domain. The issue is placed very broadly in the context of national measures that

include a very proactive approach and which are very widely scoped.

The measures cover public authorities and all employment in the private and public sectors and are all about taking steps to avoid sexual harassment. The onus is placed on the employer, the person responsible, or the party responsible, and sexual harassment is defined as injury to the recipient. There is a compensation scheme in place that deals quite speedily with the matter once the case is proved and provides compensation to the victim.

That arrangement is part of a much broader national strategy on the elimination of gender inequality in general that covers all aspects of public and private life. I made this point in my written evidence but I stress again that we cannot just pick out sexual harassment and deal with it in isolation; it is part of a much broader structural and societal problem. It impinges on all aspects of working, public and private life and must be understood in that broader context of power imbalance.

The Danish example is different from the Canadian one. It is not quite as specific—it is more general and is really to do with the Danes' holistic approach to gender equality in general.

The Convener: Thank you very much. I am sure that the clerks will find both of those policies and share them with the committee. It would be really interesting to consider them in the context of the work that we are doing.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I thank the witnesses for giving evidence. I will ask briefly about implementation. It is one thing to draft good policies that instil trust but there is sometimes a gap between such policies and their implementation. A victim's or survivor's first port of call is normally their line manager. What should be done to ensure that line managers are properly equipped to assist them and to understand how best to support the person who has come to them with information?

Professor Busby: It is about training and awareness raising, and it is about naming sexual harassment and explaining clearly what it is. Anyone who is in a supervisory or management capacity has to have some form of equalities training in which that is central. It is definitely about ensuring that everyone in an organisation knows what sexual harassment is. They need to know more than just the legal definition because we want to be much broader than that in day-to-day life, but the legal definition is a pretty good starting point. It is fairly comprehensive. People also need to be given examples.

Policies can help but you are right that implementation is key. Policies can be left on

paper and not put into action at all. It is about awareness raising and leadership at the top of the organisation to show the seriousness with which the issues are taken. The matter must also be constantly reviewed and monitored. Information that arises from that process must be made publicly available in statistical form so that we know what we are dealing with and so that everyone in the organisation is aware of the extent of the problem.

Kirsty Thomson might want to say more about implementation.

Kirsty Thomson (JustRight Scotland and Scottish Women's Rights Centre): Thank you for having me today. I can speak about the matter from the perspective of women who contact the Scottish women's rights centre and the issues that they bring up.

It is a common complaint that although there are very good policies that tick all the boxes, there have been failures in implementation. My perspective on the matter is that those failures come from the same failures that face the complainant. If there is a lack of clarity about what we are naming, what requires to be done and how, that will impact on the person who is meant to deal with the issue because they will suffer from that same lack of clarity about what should happen, when and how, and what other service they should refer the woman to. That lack of clarity leads to a lack of confidence about how to respond. It comes back to the need for clarity in procedures and the need for training and leadership.

10:15

Kate Forbes: My other question is around support for the complainant and for the perpetrator, in terms of either counselling or walking with them through the process and ensuring that there is some sort of support available. What are your views, first, on what support should be available to both parties and, secondly, on whether you see the fact that such support is not currently available as a failing?

Kirsty Thomson: Due to the complexity of sexual harassment and of the processes and procedures that apply, and the potential consequences for everyone, it is essential that some kind of support is available. I will speak primarily from the complainant's point of view. More often than not, that is why they contact the Scottish women's rights centre; they are looking for access, information and impartial advice. It would be my position that some kind of independent specialist support is required. It is about help with navigation, advocacy and having a point of communication through that process.

Likewise—again, I can speak more from the complainant's point of view—if a woman requires a response, she also wants her complaint to be handled in line with the principles of natural justice so that when there is a decision, that decision is robust and can lead to a robust sanction. That in turn will mean that there is access to support for the other person in the process.

Professor Busby: I completely agree with what Kirsty Thomson has said. I will just add that we know that sexual harassment is a specific problem and the person who is making an allegation should be dealt with sensitively and in line with the specific policy. I stress that point.

If someone has been accused of an action or behaviour, generally speaking things such as dignity and respect policies are quite good. They usually have support mechanisms and procedures built into them for dealing with people who are accused of particular behaviours, whether it is in this context or in a broader context. I am not sure that much needs to be added. If you have a good dignity and respect policy in place, with procedures attached to it, that will usually suffice.

However, when we are talking about the people who are making allegations in this context, it really should be dealt with under a specific policy because of the nature, the severity and the extent of the problem.

Kate Forbes: How do gagging clauses, with their requirement for confidentiality, help or hinder the softer support for both the complainant and the perpetrator?

Kirsty Thomson: Again, from our experience at the Scottish women's rights centre, that is the key cause for complaint from women. Gagging clauses tend to arise through an employment tribunal procedure, where—for a variety of reasons—a settlement is reached after negotiation. A woman often feels that she has not got the remedy that she wished for in that regard. Often, she will have to leave her position but the perpetrator will stay so she feels that there has been no access to justice and that nothing has really happened.

In the context of what you are looking at regarding members of the Scottish Parliament, employment law can cover it but if we are naming something and there is an independent investigation that reveals conduct issues, which are then brought to the committee for consideration, confidentiality would not be appropriate. That would not send the right message; that would not be robust.

From the perspective of my regulatory body, if a solicitor were to do something that amounted to professional misconduct, the body could ultimately name and shame or remove them. That is a robust sanction, which is its aim. That is the difference

between looking at an employment tribunal process and looking at an investigation into conduct.

Patrick Harvie (Glasgow) (Green): I want to ask about sanctions, so I will follow on from Kirsty Thomson's points with a question for both witnesses. What issues should we consider in relation to the range of sanctions?

I will tease out the issue a little bit. We have a complex landscape here. For example, there might be a situation that involves staff of the Scottish Parliamentary Corporate Body, in which case the sanctions would be comparable to those in any other big organisation. However, there might also be a situation that involves a contractor, a third-party organisation, a member of the media or a member of the public.

Furthermore, there might be a situation that involves MSPs only—either as those complaining or those being complained about—and the matter might be dealt with internally by a parliamentary group or it might be escalated to a formal complaint to the Commissioner for Ethical Standards in Public Life in Scotland and to this committee as an alleged breach of the “Code of Conduct for Members of the Scottish Parliament”. In that case, there could be low-level sanctions or, at the other extreme for the most severe behaviour, there could be criminal charges. In the middle, there might be a gap when it comes to behaviour that in other workplaces might be seen as requiring dismissal for gross misconduct but for which no comparable penalty or sanction can be issued against an MSP.

Can you help us to cut through any of that? I am sorry—that is quite a lot to throw at you at once.

Professor Busby: It is all very difficult—we even hit a difficulty in how the law operates in relation to employment. Kirsty Thomson mentioned the difficulties that complainants can have when they enter the employment tribunal system and are asked to sign confidentiality agreements on settlements and so on.

Where there is a staff issue and it is a matter of employment law, which, I suppose, is my specialist area, robust disciplinary and grievance procedures should be able to deal effectively with such a situation. Again, however, those procedures must run alongside robust and clear specialist policy on sexual harassment.

There is a lot of guidance on the employment relationship and what should happen with regard to sanctions. As you said, in that context, the sanction goes up to gross misconduct and dismissal. The position becomes much muddier when we start to talk about third parties, although those could—and should—be covered by policies. However, although actions against third parties

were part of the original plan and included under the Equality Act 2010, an element was repealed and an action can no longer be taken under the act against a third party for harassment. The law may need to be looked at in that regard, but equality policy is a reserved matter.

You mentioned the code of conduct for MSPs. If something is outside the employment relationship and the activity or behaviour relates to MSPs solely, that is a really difficult area of regulation. What should the sanctions be in that case? I am all in favour of a sanction that is parallel to dismissal for MSPs in the most severe cases. I do not see why that should not be an option—it certainly could be built into a policy or procedure.

On the issue of codes of conduct generally, there would be a danger in just leaving this area to be dealt with as an ethical matter or as something pertaining to good behaviour. There is an assumption there that everyone knows what those things are. We have spoken about the specificities, and the need to name and specify that type of behaviour. If we talk about perceived or established good behaviour, we are moving into a normative framework, which can be confusing. Around the world—not just in the context of the Scottish Parliament or Westminster—normative behaviour is not necessarily the best basis on which to frame good practice. Something definitely needs to be specified.

I cannot see why you cannot build in a sanctions framework similar to that which would pertain to employment. I am talking not about the legal context, but about good, robust, in-house workplace policies and disciplinary and grievance procedures, as recommended by the Advisory, Conciliation and Arbitration Service. Kirsty Thomson might want to say more.

Patrick Harvie: I will ask Kirsty Thomson about that in a moment, but can I check that I have understood something that you said? You mentioned the code of conduct. I was not sure whether you were saying that the issue of sexual harassment and inappropriate behaviour should be more clearly defined in the code of conduct so that action can be taken against breaches, or that it should be dealt with outside that context, in a different way from the code of conduct, breaches of which go to the Commissioner for Ethical Standards in Public Life in Scotland and then to this committee for a decision.

Professor Busby: I do not have a clear view on either, if I am honest with you, although I think that the issue has to be specified. When we start to get opaque about this, and say that everyone knows what the standards are for ethical behaviour and good practice, there is a danger that in fact everyone does not know what the standards are. We have to specify what behaviours we are talking

about. I am not really in a position to advise whether that should be within the framework of the existing code of conduct or in a separate policy, but it should probably be looked at in detail.

Patrick Harvie: I put the same issues to Kirsty Thomson.

Kirsty Thomson: Sanctions are very important, as is clarity about sanctions. From our perspective, when a woman is deciding whether to engage on any route or process, what she can expect is an important part of that. Is she prepared to risk X, Y and Z for whatever the sanction is? If a woman was to approach me from the Parliament or via the procedures and process that you have in place, I would probably find it quite difficult to provide information that would allow her to navigate through what process would result in what sanction. I guess that it comes down to the complexities of the spectrum of sexual harassment, which we have mentioned, and the number of actors that are involved in the different legal areas and processes that that links to.

When I looked at the issue, I thought that there required to be one clear policy that all actors in the Parliament—members and so on—would sign up to, and that the code would refer to that. For me, there are too many actors—too many parts in play. I am not saying that this will be easy, but what is demanded for a woman in this situation is a clear policy for everyone involved, in which we name what sexual harassment is and give it some practical life. By that, I mean that we would set out the point of contact and how the issue would be investigated, then describe how the decision arising from that process would go to X, Y and Z and the range of sanctions that could apply. Those sanctions would be robust, albeit that different parts of the Parliament as a whole might need to take different decisions.

Patrick Harvie: Even if the decision-making process or the experience of what practically happens might be different in different scenarios, it would relate to a single document, I guess—a single, stated, black-and-white position on how Parliament culturally wishes to deal with those issues. That could relate to contractors, to organisations that were running an event here, to Parliament staff and to MSPs, and it would somehow be hooked into the code of conduct.

10:30

Kirsty Thomson: Looking at it from a woman's perspective, it would set out clear expectations and then get buy-in from each other aspect. Other processes or procedures might then need to be amended, but there are so many moving pieces and actors that some clarity requires to be put in

place, especially if one part has clarity but the other two parts do not.

Patrick Harvie: Thank you. That is helpful. Could I follow up with each of the witnesses on the point that I raised about dismissal? In the case of MSPs, unless someone has been convicted of a qualifying offence and sentenced, there is no facility for behaviour that falls short of that standard resulting in dismissal. At Westminster there is facility for recall. I am not sure how familiar you are with that process, but it requires a petition to be signed by 10 per cent of the MP's constituency electorate; if that threshold is reached, there will be a by-election.

It seems to me that putting an issue such as sexual harassment to a public contest in that way would be not only unseemly but quite risky, as in effect it means asking the public, "Is this one all right?" or, "Is that one not all right?" There is a lack of clarity for a person complaining about what would happen as a result of that process, and what would happen if different decisions were made in different circumstances. That mechanism might be appropriate for a political breach of trust, such as breaking a manifesto promise that people are angry about, but not necessarily for something such as this.

Is that a view that you share? Is there another way of reaching a similar type of ultimate sanction for something that is short of criminal conduct?

Professor Busby: I agree with you. I do not think that the recall procedure at Westminster would work in this context, for the reasons that you have given. As for suggesting something that could be used in its place, it is difficult, because the existing context for dismissal is a person's conviction for a criminal offence, and I do not think that we should say in this context that someone has to go through a court or a tribunal procedure or another civil action, because that would put the onus on the individual complainant. It would involve party-party litigation, and you would be asking that person to go through that process to get some sort of legal adjudication. I think that that is wrong, although it may happen in this context as well.

It comes back to having robust procedures and being responsible for regulating behaviour within the Parliament. If you have procedures on which these sorts of judgments can be made, after full investigation and in line with timely procedures, I do not see why dismissal should not be an option for someone who has committed a serious offence of sexual harassment. That could lead us into quantifying—if that is the right word—different types of behaviour, which is difficult to do because, as we know, even the legal standard is based on the impact felt by the recipient, so it would be difficult to have gradations of behaviours.

Nevertheless, something in line with dismissal is an option that has to be looked at as part of a robust procedure and process.

Kirsty Thomson: I did not know that fact about 10 per cent of constituents that Patrick Harvie mentioned, but it would not be appropriate to put, say, the most serious sexual harassment action to constituents. It just seems at odds with the desire to take leadership.

As for robust sanctions, I think that there should be an ultimate sanction equivalent to dismissal, however that is arrived at or achieved. That said, I think that the rule that has been referred to is there for reasons of democracy and so on. For someone who is dismissed through an employment process, there is a whole structure available. They can go to tribunal, there are review processes and so on. I agree that there should be an ultimate ultimate sanction, but the procedure leading up to its being utilised must be robust with opportunities for procedural justice, equality of justice and so on to be shown and with in-built review and appeal mechanisms.

Patrick Harvie: Thank you.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have a couple of questions, the first of which is a supplementary to Kate Forbes's earlier question about support for the complainant. I take it that any such support, albeit provided by an independent organisation, would be funded by the Parliament and would continue after the case was resolved, regardless of whether it had been resolved in the complainant's favour.

Kirsty Thomson: I would say so. There is a need for support from independent specialists before the complaint is made, during the investigation and post the resolution, but there must also be access to independent legal information and advice. I would also point out that, unlike the situation in England and Wales, the Scottish Government funds the Scottish women's rights centre, and we can provide legal information and so on. As a result, not only advocacy support but access to legal information is available.

Professor Busby: I do not have anything to add to what Kirsty Thomson has said. I endorse her comments.

Jamie Halcro Johnston: The issue of the terminology associated with sexual harassment has been highlighted in previous evidence sessions. I appreciate that the definition is in the Equality Act 2010, but I imagine that most people are probably not au fait with it. Is the term "harassment" ideal in this context, or does it suggest multiple incidents over a prolonged period? Is there a better term that would ensure that people did not look at a complaint and think, "It was a one-off, so it's not covered"? Anecdotally

speaking, I have discussed this issue with female friends, a number of whom have said that the term does suggest multiple incidents or something happening over a prolonged period. I would just like to hear your thoughts on the wording.

Kirsty Thomson: This issue comes up in a lot of areas of women's rights. You might have a concept or definition, but when you look at the explanation in law, you find that it does not mean much in practical terms.

My usual response when people talk about changing definitions is no. After all, this is the term that is used in the 2010 act, and it should continue to be used in order to promote clarity. That said, I think that we should be doing far more work to break it down. That is difficult to do, which is why it is not often done, and the same is true not just in this context but in many contexts. There is a need to make this real and to make it clear that we are not necessarily talking about just one act.

I would caution against changing well-used terms, but work is definitely needed, including by lawyers. It is easy to go back to the Equality Act 2010 definition, but I had to read it a few times and break it down. That takes work, but it is necessary work, and we should not shy away from it.

Professor Busby: I agree. That is why some examples are needed in any policy that you have, and in the promotion of that policy, as well as reference to the legal terminology. I would use that terminology, because it is easier to have a clear link with the legal obligations, duties and so on, but you also need to specify some good examples. Again, this is included not just in my written evidence but in other submissions. The TUC report includes examples of the types of behaviour that we are talking about when we talk about sexual harassment, and the message needs to be given loud and clear to all parts of any organisation that that is what the terminology encapsulates.

Jamie Halcro Johnston: If we are trying to make women in particular aware that incidents are not okay, using posters or other methods to raise awareness, we should break it down and use examples, and we should not necessarily rely on the legal terminology.

Professor Busby: Absolutely.

Kirsty Thomson: We should all be doing that, including through the Scottish women's rights centre. Nearly always, when a woman phones or gets in touch with us, they will say, "I'm not sure what this is; I really don't think it's this." It is not something that just affects sexual harassment; it applies across the board.

Jamie Halcro Johnston: Thank you.

Tom Arthur (Renfrewshire South) (SNP): Good morning. My question follows on from Patrick Harvie's question about MSPs being subject to the same terms and conditions of employment as anyone else, with the ultimate sanction of dismissal. I am keen to hear your views on whether the option of dismissal should be available for other breaches of what we would regard as correct conduct, which would be gross misconduct in any other employment situation. I am thinking of things that, while not constituting harassment, might be commensurate in their severity, such as persistent bullying, intimidation or assault. If we were to look at the matter in more detail, we would have to look more widely than only at harassment.

Professor Busby: I agree. It is difficult to look only at harassment. We have said all the way through that we have to look at sexual harassment in isolation, as a particular problem, but when we start to think about sanctions and changing the way in which MSPs' behaviour is regulated—if that is the right way to put it—we probably have to look at it within a broader context of behaviours.

Kirsty Thomson: I think that the evidence has been saying to the committee that there is a need for clarity and coherence, and I guess that that would not exist if there was an ultimate sanction only for one piece of misconduct. In that regard, a broader review will be required to ensure that there is coherence.

Tom Arthur: Thank you.

Alexander Stewart (Mid Scotland and Fife) (Con): We have touched on the problem and you have identified that, in lots of cases, there may be underreporting because of the individual's fear about reprisals, revictimisation or recrimination arising from reporting the behaviour. It is important for there to be reassurance within organisations so that individuals feel more confident. I think that the recent campaign has given people that chance to feel more confident, but there are still people out there who think, "If I do this, what will be the repercussions for me?"

Professor Busby: That is very true. The public profile—if that is the right phrase to use—that the issues have had recently is useful, but it is just a starting point. Everyone is asking, "Is this the moment of change?" I really hope that it is, but we are beginning to see how widespread and pernicious these issues are and how difficult they are to deal with, so I wonder whether we might have just touched the tip of an iceberg here.

10:45

Your point is well made that we have to be careful in any procedures or processes to minimise fear of repercussions for the individual

who comes forward and reports harassment. There are certain steps that could be taken. Good workplace policy on sexual harassment could be used as models of good practice on that. You would avoid making the only line of reporting a line manager, for example. You would also ensure that a woman is available to deal with complaints or issues that might be raised—I think that Engender's evidence speaks about that—because individuals might find it much easier to report to a woman than to a male colleague or manager.

Examples of good practice can come from good workplace policies and such examples exist. However, the underreporting is not only to do with fear. It is also to do with a lack of knowledge, a worry that nothing will happen and a perception that no suitable sanction is available. If we are going to build and inspire confidence in women in workplaces and other contexts, we must look at the full range, not just to whom people report and the fear of intimidation or victimisation occurring.

Kirsty Thomson: To look at it from the perspective of women who contact us, there is fear about what could happen—the repercussions for them and for others around them—but underreporting also comes from a lack of information and knowledge. There is a fear of the unknown. If an individual is going to instigate a process or procedure, they wish to know what their rights are, at what point they can withdraw and what control they have, particularly over information and the direction of the process. If that is not clear, a woman will, for valid reasons, tend not to enter into the process.

If sexual harassment is a cause and consequence of the power imbalance and the process to address it causes such an imbalance, it is not working. Often, women will embark on something and say, "I did not know that that was going to happen. I did not know that my information was going to be shared that way. I did not understand that." That is when people become more than dissatisfied and it puts other women off. There is a need to make it clear what is expected, what level of control the person who reports has and what rights are available.

Confidentiality is also very important. We talk about matters being confidential but there is sometimes a slight fudging on that. Are we talking about all aspects for all levels of contact? Are we saying that there are some exceptions—and, if so, what are they—or that there are none? That needs to be made clear at the start.

If someone has all that information, knows what is going to happen, knows the potential negatives at each stage, evaluates all that and does not decide to report personally, there should be access to a third-party reporting mechanism.

Alexander Stewart: The idea of having a third party—an independent person—gives people more confidence and the assurances that they are looking for. As you rightly identified, a person's line manager might not be the best person for them to go to. They might not have confidence that the case will proceed in the right direction or might feel that they could be challenged or put in a worse situation by reporting to their line manager.

Bringing in an organisation or individual who can consider the matter objectively and from outside might ensure that more people have the confidence to come forward and might make the situation clearer. Individuals might have seen that things were not so well managed in their organisation in the past through a lack of training and understanding of the situation, which is not being given the gravitas that it needs to be given.

The Convener: I thank Kirsty Thomson and Professor Busby for their evidence. I am sure that the committee has found it really valuable.

10:49

Meeting suspended.

10:52

On resuming—

The Convener: I welcome our second panel. Joining us are Amy Johnson, who is a policy and research officer at Zero Tolerance, and Caroline Thomson, who is a consultant at the Scottish Women's Convention. Thank you very much for coming along to share your expertise with us.

I will kick off by asking a little bit about positive culture and how to achieve that in the workplace and more broadly. I also want to touch on a subject that the previous panel talked about, which is areas of good or best practice that you can share with the committee.

Caroline Thomson (Scottish Women's Convention): Thank you for giving the Scottish Women's Convention this opportunity.

We organised a conference on sexual harassment that was held on 20 January, and about 150 women registered for it. The weather was awful that morning, but because it was extremely important to them, those 120 women turned up. We were delighted by the turnout. We had three speakers at the conference, who were very interesting, but more interesting was what happened when we split up for round-table discussions at the end of the conference.

We talked about sexual harassment and what it means to the women. The outcome that I think is interesting is that many of the women wondered what, if sexual harassment is happening in the

Scottish Parliament, is happening in ordinary workplaces. They felt that the Scottish Parliament needs to be a role model—it has a role in leading the way and creating a healthy culture for MSPs, staff and visitors.

The message was that culture change has to come from the top and that all the political parties should come together on the matter and show unity. The Scottish Women's Convention, after hearing all the information, suggests that there should be a recruitment exercise for a person, or that a person or persons should be identified within the Scottish Parliament, whom individuals can approach. Such people will eventually be experts in the field. Training should definitely be involved and, possibly, accreditation. In addition—as was said earlier—such people definitely need to work with external partners to get legal advice and further support.

In addition—this was covered earlier in great detail—after speaking to the women at the conference and taking in all the information that they have given us, it looks to us as though a code of conduct and some sort of statement should be created. Rules on standards and conduct should be in place, covering how people should behave, and they should include the definition of sexual harassment.

There should be a separate policy on sexual harassment—I endorse what was said earlier about the need for that. It should explain the expectations, the process, and the procedures that should be followed, and it should be agreed with trade unions, if necessary. It should include appeals, disciplinary procedures, grievances, confidentiality and reporting arrangements: the list goes on. Having all that written down would be a great base from which to expand and to improve the culture.

The Convener: You talked about having a specific person to go to. Were you talking about the same thing as the previous panel?

Caroline Thomson: Yes. I am talking about having someone who is identified as being the contact in sexual harassment cases—not the line manager, because the line manager could be the issue. It is about there being someone internal in the organisation who can be approached. That person does not necessarily need to be aware of all the legalities of a situation, but they could give comfort and support and lead an individual to where they should be going. The person should also be knowledgeable about process, policy and procedures.

Amy Johnson (Zero Tolerance): Thank you very much for inviting me to be here this morning.

The first step is to acknowledge—as has been discussed previously—that sexual harassment

does not occur in a vacuum: it is part of a continuum of inequality and violence that women face. Therefore, if we are to eradicate or prevent it, we need to examine that entire continuum—every aspect of how a place of work operates, including issues such as the pay gap and leave for new parents. We need to consider the induction processes for staff when they first arrive, and the culture and what people experience in informal settings around the workplace. Every single aspect should be considered—it cannot be about having just one excellent policy.

To build on Caroline Thomson's point about having one individual who can be approached for help in sexual harassment cases, I say that I think that the person needs to be trained in all equalities issues. That training needs to be publicised and communicated clearly to everyone in the workplace so that they all know that that person has the relevant experience and will approach the situation respectfully, with the safety of anyone who comes to them for advice at the forefront of their minds.

I can give you an example of something that Zero Tolerance is doing in partnership with Rape Crisis Scotland on culture change in schools. It is about taking a whole-school approach; within that, we are working with young people to examine every single aspect of the school. It is not just about having a policy: a policy can be great, but something that is happening within the curriculum can be problematic. That full approach needs to be taken here—a whole-Parliament approach is needed. You need high-profile ambassadors who are willing to speak out on the issue, who are willing to talk about bystander intervention, and who can be clear focal points for everybody else in the Parliament. The ambassadors should be from different departments and from different walks of life within the Parliament.

11:00

Finally, a holistic approach to tackling sexual harassment needs to consider the fact that it is based on power. Inequalities between genders are not the only power imbalance that exists: other power imbalances result from discrimination that is based on race, gender identity, sexual orientation, migrant status or disability. Those can compound experiences of sexual harassment. There is not enough evidence on that: not enough data has been collected on the experiences of people who have multiple protected characteristics, but those characteristics should be considered when changing and improving a whole culture, so we should make sure that they have a voice in the process.

I will share two statistics from Zero Tolerance's 2016 survey on women's experience of sexual

harassment in the workplace. First, 42 per cent of respondents said that they were experiencing negative gender stereotyping daily, which is huge, and that negative gender stereotyping plays straight into sexual harassment. Secondly, 77 per cent of respondents thought that employers could and should influence the culture in order to improve it. The appetite definitely exists for that and, as Caroline Thomson said, the approach should probably be top down.

Kate Forbes: You mentioned the wider culture and context. I return to a question that was asked earlier about having and implementing clear policies. What restricts that? What are the major challenges in implementing clear policies? Is it a cultural issue, is it because we have not tackled the problem properly in the past, or is there a third reason?

Amy Johnson: Are you asking about the challenges of implementing clear policies?

Kate Forbes: It is fairly straightforward, perhaps, to sit round a table and draft a really nice-sounding policy, but it is much more difficult to implement it. We heard from the earlier panel about failures in implementation. What, in your view, drives that failure to implement?

Caroline Thomson: I can give an example from our conference. A person works in a large Scottish organisation where policies are implemented by video. For each policy, the staff have to watch the video and sign off that they have seen and understood it. They have to do that annually. That, to me, is clear implementation. The organisation knows that everybody has seen the video and staff are told that if they do not understand any part of it they should go and see their line manager, who will contact the human resources department. That is one way of ensuring implementation.

Amy Johnson: I think that communication and training are needed to make sure that policies are communicated clearly and accessibly. In the setting of the Parliament, all the complexity of policy that might exist would no longer be the responsibility of the person who wishes to report sexual harassment, but would be absorbed by Parliament as an employer that makes the policy as clear as possible, acknowledges the complexity and ensures that the case will be handled adequately.

Training for the people who will implement the policy is absolutely key. It is also key to ensure that the training is articulated to everybody, so that they know that the people who will respond to them have been trained in equalities issues and will acknowledge that other forms of discrimination might interplay with the reported sexual harassment. They should also be trained in disclosure and confidentiality. We should make

sure that the training is robust and comprehensive, and that it has been communicated to people so that they trust the policy and the process.

Patrick Harvie: I will move on to sanctions. I know that you were both in the room during the previous panel discussion, so I will not go through the whole run-up again, but there is a complex landscape that includes Parliament's corporate staff, third-party organisations, visitors, MSPs, political parties and MSP staff. There might be different approaches to the different scenarios that might arise, and we MSPs are a particular category of people for whom there is a separate code of conduct and complaint procedures.

Do you want to respond to the issues that I discussed with the previous panel? Do you have different or additional views to the issues that came up there?

Caroline Thomson: I have a short statement from experience. Policies say that behaviours that do not adhere to the policy may lead to dismissal. Such statements exist. There are obviously lots of layers before dismissal is reached, but dismissal is included.

Amy Johnson: I recognise the complexities, especially in respect of third parties or contractors. If the harasser works in the Parliament and the person who has been sexually harassed will have to interact with them again in any way, shape or form, if dismissal is not an option, the person who has been sexually harassed is being sanctioned by having to interact with that person and by not feeling safe. If the harasser cannot be dismissed, you must be very aware of the question how the Parliament is keeping the person who was sexually harassed safe. Can they still come to work? Are they able to remain in employment? We have repeatedly heard evidence about women having to leave employment and the person who sexually harassed them still being in employment. That is something to grapple with.

The word "sanction" is important. If you do not sanction the person who has done the sexual harassing, are you sanctioning the person who was sexually harassed and has had to come forward and go through the entire process? That person might be working—probably under a power imbalance—with the person who sexually harassed them, or be having to see that person and hear gossip.

Patrick Harvie: That is a powerful way of describing the problem. Westminster has tried to find a solution with the power of recall, but that is probably not designed specifically for this situation and not the right solution for this issue. The previous panel shared the view that turning a situation that includes a complainant about sexual harassment into a public campaign would be

inappropriate and could lead to inconsistency in results and a lack of clarity for somebody who is making a complaint in the first place.

If a very serious incident took place that might result in dismissal in other workplaces, for MSPs there is the court of public opinion and the light of media scrutiny. If there was a breach of the code of conduct, which has to be well defined, a complaint could be investigated by the commissioner, then come to this committee and, ultimately, go to the whole Parliament for a vote. Again, that is a very different process than would be expected in other workplaces.

Can either of you boil down to the core principles what procedure is necessary if that ultimate backstop is to be used? It seems to me that the process is not consistent with the code of conduct that we have at the moment, and not consistent with the only other option that Westminster has explored so far. How should the process happen in order for it to be a legitimate part of a response to that kind of situation?

Amy Johnson: The process needs to be very robust and relatively independent. The body would probably need to be in at the beginning of the process, to support the process, to support the person who has reported, and to do an investigation. The checks and balances would need to be in place to make sure that the decision that resulted from the process was secure and correct.

Caroline Thomson: We are talking about a robust and sound grievance appeals process and the ultimate outcome.

Patrick Harvie: Would either of you like to say anything else about the range of sanctions that we have available that might be short of that ultimate backstop? With regard to that, are any changes to the code of conduct necessary?

Amy Johnson: Prevention has to be at the forefront of all the sanctions. If the person is dismissed, it is to prevent them from harassing someone sexually again, and to prevent further harm to the person who experienced it.

Prevention should also be at the forefront of any lesser sanctions. If the person remains in work, they should be required to go through an education process that explains why their actions were not okay. The Parliament, as an employer, should have the opportunity to say that such behaviour is not okay, and the people who experienced the harassment should be able to see that their employer acknowledges that such behaviour is not okay. Having a clear line for what is acceptable is part of prevention.

Alexander Stewart: We have touched on culture, which is a difficult thing to manage. There

are low-level examples of harassment, which might be a joke or a comment. There are medium-level examples, which might be a little bit more discriminatory. Then, there are examples at the highest level. Some individuals go through that journey, in which they start experiencing low-level harassment before it progresses. They think that behaviour is okay at one level, but then it moves to another level and the individual is victimised. What are your views on that process? Have many people said that it is a journey? Is there a means to that process or a means to that end?

Amy Johnson: We have evidence that it is a journey. The same person might not be harassing the person at each stage. However, there are also cases in which a journey does not happen and the first stop is a very significant experience of sexual harassment. When a person has been on a journey—most women in Scotland will have experienced some form of harassment based on their gender—it is hard because they will have normalised, accepted and internalised that behaviour.

It should not always have to be up to the person who is experiencing whatever form of discrimination to say that it is not okay. In the culture of the Parliament, as a workplace, and in Scottish culture, there needs to be much more emphasis on the people who see such harassment to say that it is not okay, and they should be able to step to de-escalate the situation in a way that respects the person who is experiencing the harassment—not necessarily by yelling at the person who is doing the harassing, but by saying, “That is unacceptable. Are you okay? Can we do something for you?” That approach needs to be built on and developed further.

Caroline Thomson: One of the questions that we asked women at our conference was: “What does sexual harassment mean to you?” The responses were night and day, depending on which round-table discussion we were at. Some women considered the low-level examples that Alexander Stewart described as sexual harassment, and others did not, which must also be considered. However, the overall message that came over was that all inappropriate verbal and physical abuse is not acceptable and that women want it to stop now.

Alexander Stewart: Does having some visible symbols, such as campaign posters and advertisements in lifts or wherever, create a better culture in which people when they first arrive in a building, and those who are already in it, feel that the issue has been identified and considered?

Caroline Thomson: Absolutely. It gives people a safe environment from which to speak out, and it reassures them that something will be done with

that information and that there is a path that can be followed.

Jamie Halcro Johnston: In the previous session, we talked about the terminology. I was going to ask about practical impacts and practical solutions, whether we need to change how we look at the term “sexual harassment” and how we ensure that people feel that they are in a safe environment where they can report such harassment. A lot of that has been covered, but feel free to add anything.

I also wanted to ask about the point of contact. You are looking for somebody who has ability and an understanding of or training in a wide variety of equality issues, such as disability issues. People need to feel comfortable when they are reporting. Do you envisage that we would need a woman and a man to be the point of contact, so that people could report issues regardless of their gender, or might we be able to have just one person?

11:15

Caroline Thomson: When we discussed this in the Scottish Women’s Convention, we thought about it from the point of view of persons rather than person. Do we give certain policies to one person and certain policies to another, or do they all know everything about each policy? We are not talking about one individual here, and possibly not even a team. I agree that we have to consider diversity. When we strip everything back, we are talking about the sexual harassment of women, but both parties must be protected. What support will the man who has been accused be offered by the process? All that has to be considered.

Amy Johnson: I agree that a woman has to be one of the first points of contact for reporting. For cultural or religious reasons, a woman should have a woman to approach to discuss issues such as sexual harassment.

I also agree that it should not necessarily be just one person—it would be a good idea if there was a woman and a man. They should also be really well trained. They are there to advise, and this issue should be their focus and their priority. I am not sure whether this person should be the initial point of contact and the provider of advice and communication, or whether they should be empowered to take the investigation further. That would be another discussion. However, the team or individual should be very well trained, and the fact that they have had that training should be communicated to anybody who might want to report an incident of sexual harassment.

The ways in which harassment can be reported should also be inclusive and accessible. Face to face would work for a lot of people and would

make them feel safer, but some people would prefer to do it by email and others by phone. It might also depend on what a person can do at the time—where they are when they report the sexual harassment, for example. There should be a variety of ways to make first contact.

Jamie Halcro Johnston: The first point of contact could have a wider role and could act as a support throughout the process. You suggested that they might take the process on, too, so it would not just be somebody to signpost better advice or more sustained support.

Amy Johnson: They should be the point of communication throughout the process. At every stage of the process they should communicate what can happen if a person wants to take the next step. They should set out the timescale involved and the stages at which certain points of the process will occur. Communication about the investigation is more of a priority than the investigative process.

Caroline Thomson: I am thinking of one more tier of support.

The Convener: I thank Amy Johnson and Caroline Thomson for coming today. I am sure that members have found your evidence very interesting, and it will feed into our report.

11:19

Meeting continued in private until 11:34.

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