

# Standards, Procedures and Public Appointments Committee

Thursday 29 March 2018



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# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE 6<sup>th</sup> Meeting 2018, Session 5

#### **C**ONVENER

\*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)

#### THE FOLLOWING ALSO PARTICIPATED:

Susan Duffy (Scottish Parliament) David McGill (Scottish Parliament) Vicky McSherry (Scottish Parliament)

#### CLERK TO THE COMMITTEE

Joanna Hardy

#### LOCATION

The James Clerk Maxwell Room (CR4)

<sup>\*</sup>attended

## **Scottish Parliament**

# Standards, Procedures and Public Appointments Committee

Thursday 29 March 2018

[The Convener opened the meeting in private at 09:30]

10:08

Meeting continued in public.

## Decision on Taking Business in Private

The Convener (Clare Haughey): Our second item of business is a decision on taking in private item 4, which is discussion of standing order rule changes in relation to the budget process. Do members agree to take item 4 in private?

Members indicated agreement.

The Convener: Thank you.

# Sexual Harassment and Inappropriate Conduct

10:08

The Convener: Agenda item 3 is evidence for our inquiry into sexual harassment and inappropriate conduct. We have been joined by our witnesses from the Scottish Parliament. Susan Duffy is group head of committees and outreach, David McGill is assistant chief executive and Vicky McSherry is culture of respect team leader.

Thank you for joining us. I will start by asking some questions about the action plan. When will the final action plan be published? What will the implementation look like?

Susan Duffy (Scottish Parliament): We have set up a joint working group, and the three of us are on it with representatives of all the political parties. We will be talking to them about how we are going to implement a more detailed action plan. We set out the broad thrust of what we want to do in our next steps document. Vicky McSherry would probably like to say a bit more about some of the detail. We are looking at some priority areas that we want to take forward.

Vicky McSherry (Scottish Parliament): In the next steps document that we published, we set out an outline timescale, if you like. That was agreed by the most recent meeting of the working group. We have set out the priorities, and one of the main priorities that we are looking to deal with first is to look at the reporting procedures. It is obviously really important that we tackle that first.

However, before we get to reviewing the procedures, we want to take a wee bit of time to gather more information from people who work in the building, and one of the first things that we are going to do is to hold focus groups. We are going to invite people to come along to them so that we can get further qualitative information on what they want the reporting procedures to look like. We will then take that forward a wee bit further in looking at our policies.

We have the broad timescales in place and we have priorities in place. Off the top of my head, I think that the timeline is looking like several months. As I said, we want to take the time to get it right. We also have training outlined in that, which will take us up to later in the year.

**The Convener:** I have some specific questions about the working group. How regularly is it meeting?

**Susan Duffy:** We are set up to meet every fortnight, although we cancelled the meeting this week. We are meeting regularly on a Wednesday

morning. We want to be very transparent about everything that happens, so we have a page on our website where we publish the agendas, papers and minutes of the meetings.

**The Convener:** Vicky, you mentioned the focus groups. Will they be open to all passholders? Will attendance be by invitation? How will that work?

Vicky McSherry: The focus groups will be open to all passholders. We will put out a call for people who are particularly interested to come along and input to our next steps and what the procedures will look like.

The Convener: How will the action plan address the underreporting? In the survey results, the most common response to experiencing sexual harassment or sexist behaviour was to do nothing. I think that 45 per cent of the respondents said that that is what happened. How do you foresee that you will tackle that issue?

Susan Duffy: The issue is in the spotlight and we are doing a lot of work on it. In particular, we will make a public declaration of what is and is not acceptable behaviour. We hope that people will realise that things that they might in the past have dismissed as banter are not acceptable and that they will be treated seriously. A lot of what we are hoping to do, including through the training, is about prevention and making people realise the impact that their behaviour can have on others. Reporting mechanisms will be one method, but we hope that, by creating a culture where we have zero tolerance-we will explore exactly what that means in practice—we will ensure that people have the confidence to come forward and confidence that things will be taken seriously.

As you said, convener, the results show that a large number of people did not think that something was serious enough to report it. We need to try to get the message across. In the past, people have maybe put up with things or thought that something was banter or should just be put up with. We hope that it will help if we send out a clear message that such things are not acceptable.

The Convener: I want to backtrack a little bit. How will you invite or encourage staff who are based in constituency offices to participate in the focus groups? Obviously, members come from throughout Scotland and it is not equally easy for everyone to travel. Have you looked at other ways of engaging with those staff, perhaps through teleconferencing and so on?

Vicky McSherry: Yes. That is absolutely something that we will be looking at, and it also follows through to the training. When we start our training programme, the training will be for everyone, including people who are based all around the country. We need to look at ways in

which we can deliver that training, and also ways in which we can ensure that everyone who wants to take part in the focus groups can do so. We will be looking at lots of different formats for that.

10:15

Jamie Halcro Johnston (Highlands and Islands) (Con): The convener covered one of the points that I was going to ask about, which was staff in the constituency offices.

You said that you will invite people who want to get involved to do so. How will you ensure that they are representative of all the different users of the building? There are lots of people in different roles and people work at different times. How will you ensure that you get a good cross-section of the people who work here?

Vicky McSherry: Because people will be self-selecting, the people who attend will not necessarily be representative of all the people who work here. People had an opportunity through the survey to give their views, and we have a lot of really good information from that. This is about taking it to the next level with, potentially, people who have experienced sexual harassment. This is about giving them an opportunity in a confidential environment to give a bit more information on what would encourage them to report. Because people will be self-selecting, they will not necessarily be representative of everyone who works here.

Patrick Harvie (Glasgow) (Green): Good morning. I want to explore underreporting a little more, and in particular to try to get a sense of what the survey results tell you about the potentially different reasons for underreporting, which might be intentioned, or the different motivations and causes.

One of the examples that we have discussed is that some people might think that, if they make a complaint, it will be ignored, treated trivially or not taken seriously. That might be a reason for underreporting. Other people who are in different circumstances might not report something because they fear that it would be taken really seriously and would become a big issue, perhaps even becoming publicly known about, or known about more widely among their colleagues.

If the action plan is going to respond to underreporting, you will need to get a sense of what those different factors might be. Do you have anything to say about what the range of reasons might be and the tension between treating something too seriously and not treating it seriously enough?

**Susan Duffy:** You make a very good point. I go back to what Vicky McSherry said about the focus groups, because that is why, with some of the

focus groups, we want to look in particular at people who have experienced this.

In the survey, those who had experienced sexual harassment or sexist behaviour were least likely to say that they thought that they could report things. We would like to use the focus groups to explore that a bit further. As you say, there can be many reasons why people do not want to report. The highest percentage thought that it might have a negative consequence for their career. As you say, there is a spectrum from somebody who thinks that it would not be taken seriously enough to somebody who thinks that it would be taken so seriously that there would be repercussions for them.

We have had some comments through the survey, but we want to dig a bit deeper, particularly with people who feel that they have experienced this, and find out what they felt the barrier was for them not coming forward. Another issue that came out quite strongly from the survey was people's need for confidentiality.

Patrick Harvie: Is there anything to suggest that the reasons for or causes of underreporting might be different in relation to members of the Scottish Parliament and Scottish Parliamentary Corporate Body staff? As a committee, we are responsible for the code of conduct, and a lot of those issues do not apply to SPCB staff, but I think there is a general mood that we want to achieve the same standard of response to the issue of sexual harassment in relation to MSPs. We are aware that a substantial number of the people who responded to the survey talked about behaviour by MSPs.

Is that a distinctive issue in relation to the reasons why somebody might not report? Are there issues around party loyalty or whether something goes into the public domain?

**Susan Duffy:** From the survey results, I think that it would be difficult to say that there is something distinct. In the figures, a lot of things seem to be common across a number of categories of respondents. That is another reason why we want to look at the matter in the focus groups to see whether there are some different issues.

Going back to what I said earlier about confidentiality, I think that, wherever people work in this building, they know that it is under the media spotlight. Some people will be worried that, even if their name was not mentioned, there would be a spotlight on them. I think that, sometimes, that can have an impact on whether people want to come forward.

Patrick Harvie: There is a suggestion about having what has been described as a standalone global policy on sexual harassment, which would apply throughout the building. Have you identified any barriers to including MSPs in that? The committee has discussed that, and some complexities arise from it.

David McGill (Scottish Parliament): We are looking at that very carefully. We are aware that the Westminster Parliament has decided to produce a code of behaviour for Parliament, which will apply not just to people who work in the building but to people who visit it. I think that they have termed it as everybody who engages with the parliamentary community. We are very interested in that, and we think that it would provide that absolute focus at the top level. We can see no reason why something similar could not be used here as the highest level, strategic approach to harassment and bullying for everybody who works in the building, including members.

What we cannot do, however, is provide a single source that goes beyond that. It would be the statement that guides the different strands of reporting and sanctions through the appropriate mechanisms that we have in place just now that would provide that overall focus. That is something that we are really keen to look at.

**Patrick Harvie:** Is the suggestion that, once that is in place, compliance with it will be part of the code of conduct for MSPs?

**David McGill:** Yes. That is the way in which we would see that happening.

Alexander Stewart (Mid Scotland and Fife) (Con): The survey identified that there is a culture, or an atmosphere, of individuals not feeling comfortable about coming forward, which they feel discourages them from making the initial contact. How will we manage that situation? How can we monitor it? How can we assure people that that culture that we seem to have will be addressed?

Susan Duffy: As David McGill said, we hope that we will develop some sort of overarching statement, if you want to call it that. It would say what behaviour is and is not acceptable. We hope that that will send out a message to people about what will be tolerated and what will not be tolerated, and the kind of culture that we want to work in. One of the things in the survey results that is most disappointing to me is the number of people who feel that they do not have confidence to come forward. As I said, I think that that will be down to a variety of things.

One of the things that we have talked about is that we have so many different lines of reporting. We want to make sure that we make that as simple as we can, but with the caveats that David McGill mentioned. The main thing about the culture shift is that we say that we want to work in a place where people are valued and respected.

Those are the values of the institution and they are the values that we expect everyone to adhere to. That means that when someone experiences any situation in which they are not treated in that way, we will take it seriously.

**Alexander Stewart:** It is about engaging with confidence with the authorities in Parliament to ensure that everything is taken seriously and that everyone is treated correctly.

There is also a problem in that some people are frightened of the consequences and of potential publicity. Parliament is not a normal working environment; we are under the spotlight much more than others, so managing that confidence will be very difficult for you. Monitoring six-monthly or yearly might be a way of managing that. Is that your plan?

**Susan Duffy:** We want to see things shifting and changing, so part of what we want to do is to look at how best to monitor the situation: perhaps in a year's time we will ask people what their experience has been. It might be that more people will report because they feel that they are more able to report, but we want to make sure that the policies that we put in place have made a difference.

Alexander Stewart: You touched on the fact that Westminster is introducing a new approach. Were other Parliaments or facilities that do something different to break down that barrier looked at?

Susan Duffy: We have looked across the piece and we have an external expert who helps us on our working group. Our impression is that there is not an awful lot out there that we can draw from. Parliament is a unique organisation. A lot of the things that we have seen are things that we are trying to do, but to be perfectly frank, everybody is grappling with the matter at the moment, and I do not think that anybody has the answers. The fact that everyone is trying to address it is positive, however.

David McGill: It might help if I say that there is a piece of work that we kicked off before the publicity about sexual harassment, looking at organisational culture. We recognise that culture change is extremely difficult and takes a long time. The challenge for us is to get away from just trying to capture bold statements, and instead to deliver the environment that we all want to work in. We have, alongside refreshing our organisational values, been trying to establish the standards and behaviours that should underpin all that, so that all members of staff, and all members of staff who are managers, know what standards and behaviours are required and expected of them.

In respect of members, if we do go down the route of having an overall behaviour code or

something similar, we could use that during MSPs' induction after elections. We could also use it to support members when they recruit their staff, so that it becomes a practical document and not just a bold statement. That is how we see the culture and environment changing over time.

Elaine Smith (Central Scotland) (Lab): I will follow up on that before I ask something else. Would MSPs' staff who are office managers and who have a role in managing people also be included in that specific training?

**David McGill:** That is certainly what we are looking at. We want to cover all the categories of people who work in the building and contribute to our culture.

**Elaine Smith:** Being part of a small team could also be a factor that would prevent people from reporting things.

I will ask about the posters that can be seen around the building. On change, you can see posters everywhere that say, "We will not tolerate abuse of our staff." Where are there posters in the Parliament? Are they in public areas? Should they be in areas such as this committee room, for example, to which members of the public come, as well as Parliament staff? Should posters be placed more widely round about?

Vicky McSherry: As far as I am aware, there are posters in some public areas. There are probably more that are not in public areas, but there are certainly some on that side of the building. Posters are in all the lifts and in public toilets, as well as in the spaces that are not open to the public.

**Elaine Smith:** Has that been helpful? Are you getting feedback on that? I suppose that that builds on what Susan Duffy was saying about drawing attention to what is and what is not appropriate behaviour, and making sure that there is a cultural change and an educational change. Are the posters having an impact?

Susan Duffy: I can talk only anecdotally. I had a visitor in Parliament one day and, as I was taking him up in a lift, he noticed a poster and said, "Wow! I really like that poster. I love the fact that you have the message on it that the victim is not to blame." He was very struck by it. I do not know whether anyone else has had feedback about posters.

Vicky McSherry: I think that there was a bit of feedback on them through the survey. If they are raising awareness, they are doing a big part of their job. If they get the telephone number out there, that again is a big part of their job. The posters were one of the first things that we did, so that is only the beginning of raising awareness overall.

**Elaine Smith:** The posters make quite a bold statement, which is obviously that sexual harassment has no place in Parliament. Are you confident that the action plan will make that sentiment a reality?

**Susan Duffy:** That is certainly our intention. We talk a lot about zero tolerance. We need to understand what that actually means, and we need to be very clear about that in practice. Everything that we do flows from that—they are not just words on a poster, and we take that through all our actions.

10:30

Jamie Halcro Johnston: Is there also information on the website that is clearly available to a person who has visited Parliament and has either seen or been involved in an incident?

**Vicky McSherry:** Absolutely, there is. That information is on the internet rather than just being on the intranet pages, so it is open to people who do not work here.

Jamie Halcro Johnston: Okay.

Tom Arthur (Renfrewshire South) (SNP): Good morning. One of the huge challenges is in maintaining the anonymity of a person who wishes to make a complaint. Recent events have illustrated how challenging that can be. What can be done to protect the anonymity of people who wish to come forward? That issue could have a negative impact in terms of people making the decision to come forward.

Vicky McSherry: You are absolutely right that that is probably quite a big factor in people choosing not to report. For us, I suppose, it is about instilling confidence in people. When we are looking at the processes that we are going to put in place, confidentiality is absolutely at the top of the list—as it is now, to a certain extent. It is about instilling confidence in people that the whole process is tight. I do not think that we can guarantee anonymity when we are dealing with formal complaints, but that is certainly something that we need to look at when we are drawing up the processes.

Susan Duffy: We have been talking about that; it is one of the issues that we grapple with. Obviously, there is confidentiality but, as Vicky McSherry said, there is also anonymity to consider, and how we strike a balance, because we have to make sure that the process is fair to everyone. That is certainly something that we will be looking at, because it is not an easy matter. We will be looking across the piece to see whether there are other systems that have some kind of process for anonymity within them, and at how we would take that forward.

**Tom Arthur:** There is always the danger that attends any high-profile case, that media coverage can compromise, or be perceived to compromise, the integrity of the process. How do you mitigate that risk?

**Susan Duffy:** Again, for us it comes back to confidentiality again. Basically, we will investigate issues on a confidential basis. As has been said before, we work in a unique environment on which there is a media spotlight, but whenever we deal with such issues, we deal with them confidentially.

David McGill: Our dignity at work policy, which covers the staff of the Parliament and the contractors who work here, is very people-centred and is something that we treat as being extremely important in this process. We also note that the Westminster report, in discussing the various reporting strands that can come out of complaints, says that complaints should be progressed with respect to the wishes of the complainant. That is something of which we are taking very close cognisance. All our policies at the moment are built on that base, and the refresh process that we will do will have that as one of its key priorities.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I will ask about the prospect of having an external independent figure to investigate and report on sexual misconduct. What are the pros and cons of that and, in particular, do you think that it would encourage people to report more or less?

**David McGill:** The pros are probably easier. Such a person would remove any suggestion that complaints were simply managed out of the system, or that undue influence had been brought to bear by a party who had an interest in the outcome of a complaint. That might be the kind of pro that people will look for.

One of the cons would be that such a person might create another layer of bureaucracy, and we would possibly lose something in terms of relations that we have within the Parliament. We have all worked closely together—we know each other and we know each other's motivations, and that kind of thing. In terms of reporting, I could only guess whether an independent element would bring greater confidence and lead to more reports being lodged. I would not know until that was in place.

**Kate Forbes:** Did the survey report on or consider whether complainers were satisfied with the outcomes and resolutions of their complaints? Are you aware of any specific dissatisfaction that people noted in their experiences?

**Susan Duffy:** I have the survey here, tagged in various places.

We asked for reasons why people did not report incidents and we included a free-text box at the end. We did not specifically ask people whether they were satisfied with the outcome of a process, but some of the comments that were made were perhaps because the person had not had a good experience.

That question is kind of delving deeper; there were a lot of questions that we wanted to ask in the survey, but we also wanted to make it manageable. That is one of the things that we want to ask people in focus groups. We want particularly to ask those who might have gone through the process what outcome they wanted, what outcome they got and whether that will have an impact on whether they would report in the future. We can try to get a bit more detail about that

Tom Arthur: I will come in on the back of Kate Forbes's question about an external investigator, which complemented my question about anonymity. There should be confidentiality and independence of process. People who make complaints must have confidence in the system. I appreciate that it is not within your remit and that it is a matter for Parliament, but what role do sanctions and confidence in the consequences for someone who has perpetrated an act of sexual misconduct have? There is not a clear path—there is not a clear sense of what the outcome could be. How important is addressing that point in enabling and giving confidence to people to come forward and make complaints?

**David McGill:** Again, that goes back to keeping the complainant at the centre of the process. If the question was about setting out a range of sanctions in advance, I am not sure that that would be entirely compatible with keeping the person's wishes paramount through the complaint process.

We also need to be careful that the independent element that we are talking about would be very much at the investigation stage: reports would still have to come to the appropriate body, which would be determined by employment relationships. Those different bodies will have different policies and procedures in place, which may or may not include sanctions.

We have noted that the suggestion from the Committee on Standards at Westminster is that the parliamentary commissioner for standards there be given a new range of lower-level sanctions that she could impose, which would include requesting an apology from the person who perpetrated the behaviour, or requiring that the person go on training before the complaint would come back in for more serious issues to be dealt with, again internally by the Standards

Committee, and ultimately by the chamber of Westminster.

**Tom Arthur:** Do you think that a scenario in which an MSP can admit to sexual misconduct or sexual harassment and continue to work in the Scottish Parliament building will hinder people in coming forward to make a complaint?

**David McGill:** I think that there is every chance that that would be the case. You are asking us to make a value judgment, which it is probably not appropriate for us to make, but that is a danger that we would take into account when we look at policies and speak to people about what those policies should provide.

**Tom Arthur:** I am not asking you to make a value judgment, but would that constitute good policy or good practice in any other organisation?

**Susan Duffy:** As we said, there are a lot of different employment relationships in the Parliament. With our staff, we have a clear policy and sanctions, and the ultimate sanction can be dismissal. The other categories of people who work here are not in the same situation.

**Tom Arthur:** Do you think that that inconsistency is problematic?

**Susan Duffy:** When we gave evidence previously, we said that there are a number of complexities in the different reporting mechanisms, but there are reasons for some of the complexities because there are different relationships. With sanctions, it is about who the employer is and who is in a position to sanction someone.

**Tom Arthur:** I asked the question, but I appreciate that you have to operate within a restricted framework and, ultimately, the powers that the committee holds to make recommendations for Parliament to decide on.

Patrick Harvie: To follow up on that, clearly not every upheld complaint would result in dismissal, which is a very serious step to take. However, I hope that you can at least tell us that the focus groups that you are going to have will discuss with people and try to understand what expectations they have in relation to whether MSPs should in principle be capable of being held to the same standard as members of SPCB staff in those very serious circumstances. Do you intend to have a discussion in those focus groups about whether that option should exist and, if so, how it would be exercised to minimise the additional stress that would come from a high-profile or even politicised decision-making process?

**Susan Duffy:** We talked about standards earlier. There is the issue about the standard that we will all be held to, but you are talking about the different types of sanctions on different people.

We have not specifically thought about including that in the focus groups. In the work that we are doing through the joint working group, we are very conscious of the committee's inquiry and any findings that you might have, particularly in relation to the code of conduct. We want to be able to take account of that in the work that we do so that everything gels together.

David McGill: The single standard that Patrick Harvie mentioned has to be the aim. If we are serious about looking at the issue from the point of view of the person who is on the receiving end of inappropriate behaviour and the impact that it has, the impact is the same regardless of who the perpetrator is. Going back to the earlier discussion about having a behaviour code for the parliamentary community, which is the way that Westminster seems to be going, that would give us a single focus and would apply to everyone equally, regardless of whether they are an elected member, a visitor or a member of staff.

Patrick Harvie: That is helpful. I was trying to ask the question in a way that keeps it general and does not make it difficult to answer. If you are aiming for something that ends the situation in which MSPs have a unique level of protection from consequences, the next step is to discuss how that can be reached.

**David McGill:** Yes. The difference comes in at the stage of the imposition of sanctions. That has to be a different process, but we recognise that.

Alexander Stewart: To follow on from that, we have touched on the idea of a member who has admitted misconduct and who is still allowed to be on the premises. What measures is the Parliament taking to protect the victim and to monitor whether there is any further misconduct under that circumstance? That is a live situation.

**David McGill:** In a situation like that, we would use our usual informal channels. We do not necessarily need to have a process that is applied here. As I mentioned, we work closely with members. We know how members work. We have good relations and we seek to work with business managers in the parties. Those are the channels that we would use to monitor and manage a situation like that.

10:45

**Alexander Stewart:** Would you also try to protect the victims?

David McGill: Absolutely—yes.

**Alexander Stewart:** You have mentioned a number of times already that they have to continue to be the focus.

David McGill: Absolutely—yes.

**Elaine Smith:** The survey found that about 45 per cent of perpetrators were members of Parliament. Do you know who those members are? Have they been approached? Has action been taken following on from that or did the anonymity include more vague reporting?

**Susan Duffy:** We do not know who those people are. In the survey, we asked people for their experiences, but it was not a way of naming anybody. One thing about the percentage figure is that we do not know whether that is a lot of different people or the same person. It is hard to tell from the results, and we did not break it down further than that.

**The Convener:** I thank the panel for coming along and giving us evidence. I am sure that we have all found that helpful.

As previously agreed, we will now move into private session.

10:46

Meeting continued in private until 11:33.

This is the final edition of the Official Rep	port of this meeting. It is part of th and has been sent for legal de	e Scottish Parliament <i>Official Report</i> archive posit.			
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