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Standards, Procedures and Public Appointments Committee Comataidh Inbhean, D'ighean-obrach is Cur- an-dreuchd Poblach

Sexual harassment and inappropriate conduct



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Standards, Procedures and Public Appointments Committee

The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

- (a) the practice and procedures of the Parliament in relation to its business;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members; and (d) matters relating to public appointments in Scotland; and (e) matters relating to the regulation of lobbying.



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Summary

1. The Committee has reviewed current practices and procedures and taken evidence on arrangements for preventing, reporting and investigating reports of sexual harassment in the workplace. The Committee makes the following key recommendations:
 - A central policy on sexual harassment applying to all campus users;
 - Ongoing monitoring and reporting of work to reduce the incidence and promote the reporting of sexual harassment;
 - Regular reporting about complaint numbers and outcomes;
 - Encouraging positive culture change through mandatory training;
 - Further detailed consideration of whether to establish an independent investigatory body
 - Further consideration of an ultimate sanction for MSPs akin to dismissal for gross misconduct; and
 - Further consideration of a process for suspension of MSPs.

Introduction

2. In response to recent reports about sexual harassment and misconduct at the Scottish Parliament and elsewhere, the Committee agreed to carry out an inquiry to look into current processes and procedures for dealing with sexual misconduct at the Scottish Parliament. The Scottish Parliament should aspire to be a model for other workplaces across Scotland, therefore it is incumbent upon us to implement robust policies.
3. The Committee launched its inquiry in December 2017 with the following remit:
 - To conduct an examination of the rules, procedures and guidance governing the reporting, investigation and sanctioning of MSPs' conduct with regard to sexual harassment at the Scottish Parliament.
 - To consider the Code of Conduct for MSPs, and the context in which it operates, in order to deliver a reporting regime which inspires confidence in those affected by MSPs' conduct that they will be taken seriously and treated fairly and that appropriate action will be taken if sexual harassment is found to have occurred, including sanctions.
 - To examine political parliamentary parties' approaches to the reporting and investigation of MSPs' conduct with regard to sexual harassment at the Scottish Parliament with a view to making recommendations.
 - To understand workplace cultural and societal factors that may be relevant to MSPs' conduct with regard to sexual harassment and determine whether and what changes could be made to the Code of Conduct to address them.
4. The Scottish Parliamentary Corporate Body (the SPCB) also moved swiftly to launch a helpline to advise staff who have been affected by sexual harassment and issued a survey to all staff and Members. The survey sought to establish baseline information on staff and MSP experiences and their attitude to reporting with a view to informing further work by the [Joint Working Group](#), which was established in February 2018. The Group has been established and work is underway in parallel with the Committee's inquiry.
5. To inform our work, we looked at how other Parliaments are dealing with or have dealt with the same issues. An ideal model does not appear to exist and other legislatures appear to be at a similar point in reflecting on their practice in this area.
6. The Committee's remit only extends to the conduct of MSPs. Nevertheless, this report examines a set of core principles for inclusion in an improved reporting and sanctioning system which the Committee would like to see applied, as far as possible, to all users of the Parliamentary complex, including regional and constituency offices.
7. It should be a matter of principle that MSPs are not, and are not seen to be, protected from investigation or sanction in matters such as sexual harassment, compared with people employed at the Parliament in other capacities.
8. MSPs' behaviour towards SPCB staff and the staff of other MSPs is regulated by the [Code of Conduct for MSPs](#) (the Code). Complaints regarding a breach of the

Code are generallyⁱ investigated by the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner), who reports to this Committee on findings of fact and a conclusion as to whether the Code has been breached. It should be noted that the Code does not regulate the conduct of MSPs towards their own staff because this is an employer and employee relationship and other remedies apply. We explore this in more detail below.

9. It is this Committee's responsibility to decide whether it is in agreement with the Commissioner and to recommend an appropriate sanction. The Committee's recommendation is then considered by the Parliament and an agreement is reached on whether to impose a sanction through a motion on behalf of the Committee. The Parliament may, under the Interests of Members of the Scottish Parliament Act 2006, exclude a Member from proceedings of the Parliament. Examples of the manner in which such sanctions may be applied are set out in Section 9 of the [Guidance on the Code of Conduct](#). The principle that MSPs may only be judged by other MSPs and, ultimately, the electorate, is a long-established concept.
10. While SPCB staff are protected by the Code in terms of their treatment by MSPs, staff members' own behaviour is subject to various SPCB policies. SPCB equality policies include a [Dignity at Work Policy and Complaints Process](#). The types of potential sanction are not set out in the Dignity at Work Policy but are included within the disciplinary procedures contained in the Parliament's [Staff Handbook](#).
11. In addition to these internal Parliamentary structures, political parties have their own internal practices and procedures to deal with complaints, even when the events complained of take place in Parliament.
12. It is clear therefore that anyone experiencing unwanted conduct has had to refer to a range of different documents and perhaps consider more than one route in order to pursue a complaint. This situation has recently been improved by the introduction of an advice phone-line for anyone working on the Parliamentary campus to access advice before considering whether they wish to take further action.
13. The Committee cannot, itself, deliver a complete review and replacement of all existing policies and procedures which apply to sexual harassment as responsibility for the majority of these policies rests with the Scottish Parliamentary Corporate Body (the SPCB). The Committee is responsible, however, for recommending any changes to the Code to the Parliament for agreement. This report explores some of the weaknesses and shortcomings we have identified with current arrangements

ⁱ So-called "excluded" complaints are not referred to the Commissioner. The main classes of excluded complaints are as follows: complaints about a Member's conduct at a meeting of the Parliament are the responsibility of the Presiding Officer; complaints about a Member's conduct at a meeting of a Committee are the responsibility of that Committee's convener; the Presiding Officer deals with complaints about engaging with constituents; complaints about a Member's treatment of the Parliament's staff are made to the Parliament's Human Resources Office and complaints about a Member's treatment of the staff of another Member are made to the Member's Business Manager.

and proposes some possible solutions which will need to be developed by the relevant parties working together.

14. This report does not, therefore, represent the conclusion of the Parliament's work in this area but marks the beginning of further detailed work to deliver a new set of policies and procedures with the following aims:

- reducing the incidence of unacceptable behaviour;
- encouraging reporting where unacceptable behaviour occurs;
- providing greater clarity about the procedures which apply to such cases including greater clarity for both complainers and accused individuals; and
- providing some consistency with regard to sanctions where possible.

Background

Duty of care

15. Before we examine current arrangements at the Parliament, we would like to make a very clear statement about an MSP's duty of care towards their staff members. A Member, as the employer of their staff, has a duty to do what is reasonable to provide employees with a safe place of work under health and safety and employment legislation, and at common law. This includes dealing appropriately with unacceptable behaviour in the workplace that they are made aware of to ensure their employees' health, safety and wellbeing. What is appropriate will depend on the circumstances of each complaint.

Current rules

16. The Scottish Parliament is a working environment unlike most others. Within the Parliamentary campusⁱⁱ a range of different employment arrangements exist. Among those working at the Parliament are staff employed by the Scottish Parliamentary Corporate Body (SPCB) to deliver Parliamentary services; MSP staff employed directly by MSPs; contractors and agency workers who work for external organisations to deliver services within the complex; and, finally, MSPs who are elected by voters and like all elected representatives, do not have an employer in the traditional sense.
17. As elected representatives, MSPs have a unique status. They are not employees, and are not subject to the conventional procedures that would enable an employer to dismiss them for unacceptable behaviour. Currently, a sitting MSP will cease to be an MSP outwith an election period either by resigning or if they satisfy the criteria for disqualification.
18. The grounds for disqualification are set out in section 15 of the Scotland Act 1998. They include a person/MSP receiving a prison sentence of more than one year and bankruptcy.ⁱⁱⁱ
19. The diverse nature of arrangements among those working at the Parliament means that different procedures apply depending on who is involved in alleged misconduct. The current [Code of Conduct for MSPs](#), at section 9, sets out the range of different processes for dealing with complaints about Members' conduct including sexual harassment, which depend both on the status of the complainer and the status of the person complained about.
20. The current Code of Conduct for MSPs makes a brief, specific mention of sexual harassment, stating that—

“Members must treat other MSPs with courtesy and respect.”

ii The term “campus” refers to the Holyrood complex and all Regional and Constituency offices.

iii [Representation of the People Act 1981 c.34, Section 1](#)

and

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

21. While the Code regulates MSPs' behaviour towards party staff and the staff of other MSPs, the Code does not regulate the conduct of MSPs towards their own staff which involves a particular relationship - that of employer and employee. Regulation of this legal relationship and the employment rights that flow from it cannot be superseded, impinged or diminished by the Code. If issues cannot be resolved through the employing MSPs' own internal procedures - which should be compliant with the relevant Advisory, Conciliation and Arbitration Service (ACAS) code - the employee's recourse is to an Employment Tribunal, or the courts, or through less formal options such as mediation. MSPs are also able to access advice and support from the Scottish Parliament's Human Resources department.
22. In summary, because of the diversity of working arrangements and options for complaint and redress applying to different circumstances, Parliamentary policies are complex.

Sexual Harassment and Sexist Behaviour Survey

23. The Scottish Parliament Corporate Body commissioned an independent and confidential survey of all those who work in Holyrood and constituency and regional offices to assess the extent to which sexual harassment and sexist behaviour is prevalent. The survey ran from December 2017 to January 2018. A total of 1,039 questionnaires were completed and the overall response rate was 61.7%.
24. A fifth (20%) of respondents had experienced such behaviours - 30% of women compared to 6% of men. Among those who had experienced sexual harassment, 45% said the perpetrator was an MSP. 40% said the perpetrator was a member of the Scottish Parliament staff and 20% said a member of MSP staff was responsible. (These figures total more than 100% because some people had more than one experience).^{iv}
25. A [Joint Working Group](#) comprising representatives of each party, representatives of the SPCB and an external expert from Engender is considering the report's findings. Its remit is as follows—
 - To consider and agree any actions that need to be taken on a joint or individual basis between the Parliament and political parties in light of the survey on sexual harassment and sexist behaviour.

- iv [The Scottish Parliament, Sexual Harassment and Sexist Behaviour Survey, Final Report, 26 February 2018](#). page 3.

26.
27.

The Committee welcomes the SPCB's Sexual Harassment and Sexist Behaviour Survey. It also supports and welcomes the establishment of the Joint Working Group and endorses its aims. The Committee particularly values the inclusion of external expertise on the Group but recommends that this should be further strengthened through trade union involvement in the Group.

The written submissions received by the Committee contained a number of detailed suggestions for an improved reporting and investigation regime. The Committee requests that the Joint Working Group reviews this evidence and considers the suggestions.

Potential changes to the Code of Conduct

28. **The Committee is responsible for recommending changes to the Code of Conduct for MSPs for agreement by the Parliament as a whole. At this stage it is too soon to draft specific changes - this will only be possible once the Joint Working Group has advanced its work. The Committee looks forward to considering the revised policies and procedures developed by the Joint Working Group prior to finalising recommendations for amendments to the Code of Conduct for MSPs which will complement the Parliament's policies.**
29. **At this stage we are aware of a number of specific provisions in the Code of Conduct which we consider may need to be changed. These include—**
- in section 9, the use of the term “excluded complaint” is arguably unhelpful and unclear. This section could be redrafted to read more clearly and improve the terminology;**
 - paragraph 6(d) of Section 9 of the Code states that “opportunities for conciliation will be pursued in the first instance”. We think this provision is inappropriate in cases of sexual harassment and should be revisited;**
 - paragraph 6 of Section 7 of the Code states “Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated.”. We think this is insufficiently detailed and could be redrafted; and**
 - the Code could be clearer on the particular set of circumstances that apply between MSPs and the staff they directly employ.**

Findings and recommendations

30. This section turns to the evidence gathered by the Committee in the course of its inquiry. A number of issues identified by the Committee are explored below and the Committee's recommendations for action are set out.

Barriers to reporting misconduct

31. Under-reporting of sexual harassment appears to be endemic across most organisations and institutions and this was reflected in the Parliament's staff survey, which revealed that the most common response to experiencing sexual harassment or sexist behaviour was to do nothing. Respondents were asked what action, if any, they had taken in relation to any incidents they had experienced. The most common response, given by 45% in relation to sexist behaviour and 40% in relation to sexual harassment, was that they had not done anything about it.
32. Public and Commercial Services Union (PCS) told the committee that, in a recent survey—
- “only 1% of those who experiences sexual harassment reported it to their union and only one in five reported it to their employer”.^v

33. The Scottish Women's Convention observed—
“there is a reason that so many women would rather stay silent than come forward and make perpetrators accountable”.^{vi}
34. The evidence received by the Committee revealed a range of reasons why unacceptable behaviour often goes unreported and some of these are explored in greater detail below.

Clarity of and confidence in policies

35. The Committee heard that a lack of clarity about policies and procedures can be offputting for people considering whether to make a complaint. Such individuals are more likely to proceed if they know exactly what is involved in the process and what the range of potential outcomes might be.
36. Engender carried out a mapping exercise of the Parliament's current policies and concluded that—
“we determined current policy documents to be ambiguous. There was no single reference point to guide an individual on how to make a complaint...instead, the avenues to redress were found across several documents.”^{vii}
37. 23% of those responding to the staff survey said that they were not confident about how to report incidences of sexual harassment and sexist behaviour while 41% of

^v [Public and Commercial Services Union, written submission](#), page 3.

^{vi} [Scottish Women's convention, written submission](#), page 4. ^{vii}

[Engender, written submission](#), page 4.

those who had experienced or witnessed the conduct and decided not to report did so because “the incident would not have been taken seriously”.^{viii} This was backed up by a specific example which had been reported to the Scottish Women's Rights Centre, which was contacted by someone who had experienced unacceptable behaviour at the Parliament who said that “I now have absolutely no confidence in reporting it” as a result of receiving no response to an initial report.^{ix}

38. The Joint Working Group plans to hold focus groups with the intention of hearing more about people's direct experience, particularly where individuals have experienced misconduct and decided not to report it.^x

39. **The Sexual Harassment and Sexist Behaviour Survey revealed a lack of confidence in the Parliament's policies and reporting procedures and this must be urgently addressed.**

40. **It is unacceptable to the Committee that anyone working at the Parliament would decide against making a complaint about misconduct because they do not have confidence in the organisation's processes. We endorse the Joint Working Group's intention to look at reporting procedures as a matter of priority.**

41. **The Committee welcomes the Parliament's recent establishment and promotion of a confidential phone line as the principal method for individuals seeking support and getting advice on how to report instances of sexual harassment. We also support the decision of the Joint Working Group to hold focus groups to get more detailed information on people's direct experience. We propose the establishment of a single complaint route later in this report.**

Confidentiality and anonymity

42. Confidentiality and anonymity of reporting processes were cited by many respondents to the survey when asked what would encourage them to report misconduct. Confidentiality implies that the details about a case under investigation, including the names of individuals involved, are not released while anonymity suggests that the complaint would proceed without the name of the complainer being known by the accused or by investigators.
43. Under current arrangements, there are a number of difficulties with attempting to ensure anonymity and confidentiality in investigation processes. A complaint cannot

viii [The Scottish Parliament, Sexual Harassment and Sexist Behaviour Survey, Final Report, 26 February 2018.](#)

ix [Scottish Women's Rights Centre, written submission](#), page 2. x [Standards, Procedures and Public Appointments. Official Report. 29 March 2018. Col 5](#) be investigated properly without sufficient detail of its facts and circumstances. In many cases, it will be evident to the accused, when presented with the accusation, who their accuser is. It is, therefore, difficult to envisage how anonymity could be fully observed. While it might be possible to offer a level of confidentiality at certain stages of the processes, as a complaint progressed, it is more likely that the identity of those involved would become known – for example once sanctions were imposed or once a report about an MSP was lodged with this Committee.

44. The extent to which an investigation into an anonymous complaint could be progressed would depend on the nature of the allegations and the evidence provided in support. It would also be difficult to sift out complaints that are malicious or vexatious when anonymity is observed. There is a need to balance confidentiality and anonymity with a fair process for the accused. Out of fairness to the person being complained about, the complainer's name could be made available to that person but otherwise kept confidential.

45. The Parliament's place in the public eye means that media scrutiny of cases involving MSPs can compromise the anonymity of both the complainer and the accused. While protecting the anonymity and privacy of the accused while under investigation may be a desirable aim, this is extremely difficult to maintain and would become more difficult if the Parliament were to introduce a procedure for the suspension of MSPs pending investigation, which we explore in later passages of this report.
46. In certain cases, allegations could give rise to either criminal or civil proceedings and if criminal investigation was deemed necessary, the Parliament would be unable to guarantee confidentiality and would not be in a position to prevent any complainer being called as a witness in any proceedings. Neither complainer nor accused are given anonymity in the courts during a trial (although the court can embargo the press from releasing details of the complainer and can and will anonymise court opinions if required).
47. The Committee is extremely concerned that complaints in which SPCB staff members and MSPs'0 staff members were, allegedly, subjected to harassment have been widely reported in the media. In the absence of assurances that confidentiality can be maintained, it is unsurprising that many instances of misconduct appear to have gone unreported.
48. Media interest in a case can mean that the Member is tried in the court of public opinion before an investigation is underway. Press coverage and social media comments could, potentially, be seen to influence an investigation.
49. We explored these issues with SPCB staff representatives in oral evidence. Vicky McSherry, Culture of Respect Team Leader, Scottish Parliament, told the Committee that—

“I do not think that we can guarantee anonymity when we are dealing with formal complaints”^{xi}
50. Susan Duffy, Group Head of Committees and Outreach, Scottish Parliament, told the Committee—

^{xi} [Standards, Procedures and Public Appointments. Official Report. 29 March 2018. Col 9.](#)

“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.”^{xii}

51. The Committee welcomes Vicky McSherry's assertion that, “confidentiality is absolutely at the top of the list” when developing new processes in light of the staff survey.^{xiii} However, we recognise the difficulties with giving any guarantees.

52. **While the Committee understands the challenges involved in balancing confidentiality and anonymity for the victim with fairness for the accused and transparency for interested observers, we recommend that the Joint Working Group gives careful consideration to the issues of confidentiality and anonymity, within the limitations we describe. As it considers the views that have been reached by the Joint Working Group, this Committee will return to the issues of anonymity and confidentiality when updating the Code of Conduct for MSPs.**

Fears about career impact

53. Concern that making a complaint could have a negative career impact or damage working relationships was raised by a number of witnesses^{xiv} as a reason why people may be discouraged from reporting misconduct. The Sexual Harassment and Sexist Behaviour Survey revealed that fear about negative impact on working relations or career was the most common reason why people chose not to report incidents of sexual harassment or sexist behaviour. 55% of those declining to report misconduct did so because of these fears. Change cannot happen while people feel inhibited from making complaints. For this reason we make the following recommendations:

54. **Policies on sexual harassment must clearly state that the consequences for anyone reporting misconduct will be minimised.**

55. **Arrangements for safeguarding and protection of the person reporting misconduct should be clearly outlined in the Parliament's policies. The complainant should have as much control as is practically possible over the progress of the complaint and must be kept informed at all stages.**

xii [Standards, Procedures and Public Appointments. Official Report. 29 March 2018. Col 5.](#) xiii [Standards, Procedures and Public Appointments. Official Report. 29 March 2018. Col 9.](#)

xiv [Zero Tolerance, written submission, Page 2; STUC, written submission, Page 3; Prof Nicole Busby, written submission, Page 3.](#)

56. **Finally, the Committee recommends that support should be provided by the SPCB for the person making the complaint in the form of counselling or therapy if desired and also expert support to handle each step of the complaint.**

Vulnerability of MSP staff

57. Negative career impact may be a particular concern for MSPs' staff, whose jobs are at risk if their employing Member is removed from office or does not wish to employ them any more. Additionally, in the normal course of events, individuals would normally speak first to their line manager about unwanted conduct. This clearly

presents a problem if the line manager is the person engaging in the unwanted behaviour. The small size of MSPs' staffing teams also means that making a complaint and retaining anonymity is very challenging. The STUC's submission posited that—

“the long hours culture, with evening and weekend work, may add to isolation for staff who are working to the demands of their immediate superiors or politicians”.^{xv}

58. All political parties represented in the Parliament have signed up to the aims of the Joint Working Group, which may help to reassure victims that parties do not wish to see this type of behaviour go unchallenged. Nevertheless, party loyalty may inhibit victims from making a complaint to avoid casting the party they work for in a poor light.^{xvi}
59. Other legislatures employ political support staff centrally. If arrangements were made to have the SPCB directly employing party staff instead of the parties themselves then this would be a major departure from current Holyrood arrangements and is not something we were able to consider in the course of this inquiry.

60. **In order specifically to address the job security concerns of MSPs' staff, political parties and the SPCB should give consideration to any mechanisms that would assist with the redeployment and/or support of staff whose employing member has been removed from office as a result of committing this type of offence or where working relationships have broken down following an allegation, regardless of the outcome.**

^{xv} STUC, written submission. Page 2. ^{xvi} Scottish Women's Convention, written submission, page 5.

Simplifying the reporting and investigation landscape

61. At the introduction of this report, we explored the challenge that potential complainers face because policies and procedures are set out in a range of different documents. While this situation has been ameliorated with the introduction of an advice phone-line, we feel there is clearly room for improvement.
62. A lack of clarity about policies and potential outcomes, as explored above, creates a further barrier to those considering whether to come forward and report misconduct.

A single central policy on sexual harassment

63. Current Parliament policies have been criticised for a lack of detail and are not available in a single document. While the Parliament's Dignity at Work Policy articulates a clear message about bullying and harassment and applies to Parliamentary staff, agency workers and contractors, MSPs' staff and MSPs themselves are not bound by it. When it comes to MSPs' role as employers, the

SPCB cannot impose sanctions on MSPs, and the Policy is, therefore, only advisory for them when carrying out their duties as employers.

64. A perception among respondents to the staff survey was that the Parliament could do better with the promotion of its workplace policies on sexual harassment. Written evidence to the Committee suggested that the Parliament is not unique in this respect. 73% of respondents to a recent survey carried out by Zero Tolerance were unsure or unaware of a Violence Against Woman policy in their workplace.^{xvii}
65. A number of people responding to the Committee felt that clarity about sanctions was important. Zero Tolerance stated—“how sanctions will be decided on and what they might constitute should be made explicitly clear”.^{xviii}

66. **The Committee recommends that the Joint Working Group develops a central, stand-alone sexual harassment policy which applies to all campus^{xix} users regardless of employment status. This will, of course, include MSPs and the Code of Conduct will be revisited to ensure that MSPs are formally bound by the Central Policy.**

67. **The Central Policy on sexual harassment should encompass:**

- **a zero tolerance statement centred on unacceptable behaviour – not on the individuals experiencing it - so that it is clear whose actions are the focus of the policy;**

^{xvii} [Zero Tolerance, written submission](#), Page 5. ^{xviii}

[Zero Tolerance, written submission](#), Page 8.

^{xix} **The term “campus” refers to the Holyrood complex and all Regional and Constituency offices.**

- **a code of behaviour for everyone working in or visiting the parliamentary complex;**
- **definitions and examples of what is and is not harassment covering a range of behaviours. Most witnesses agreed that the Equalities Act 2010 definition was a good one but that the Parliament's policy should expand on it to provide more detail and examples. The Equality Act 2010 definition of sexual harassment is: “unwanted contact of a sexual nature which has the purpose or effect of violating someone's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them;**
- **a balance between confidentiality and anonymity of the complainer and fairness for the accused;**
- **clarity about the degree to which confidentiality and anonymity can be expected at each stage of the process – so that complainers can decide whether to proceed with their complaint on an informed basis;**

- **clear protocols for reporting if harassment is witnessed and an encouragement of bystander intervention to report or intervene, with the agreement of the victim;**
- **a commitment to place the complainer at the centre of any processes following a complaint; and**
- **support available for both the complainer and the accused.**

68. **Published separately from this policy should be procedures which clearly set out how specific types of case will be dealt with, since the treatment of each case depends on the employment status of the individuals involved and the types of sanctions that are available will differ. These process documents should be specific on the range of outcomes and consequences that could arise from making a complaint.**

A single portal for complaint

69. The recent establishment of an phone-line to advise anyone working on the Parliamentary campus considering whether to make a complaint is a welcome development. In the interests of simplifying reporting procedures and encouraging people to come forward, the Committee has considered the merits of an independent figure or office which could advise and support all campus users and visitors to the campus on how to make a complaint.

An independent investigator

70. We also considered whether such a figure could, possibly, perform an independent investigatory role and even administer sanctions to MSPs, in order to take sanctioning out of the hands of fellow elected members.
71. A number of written submissions to the Committee argued for a single point for reporting misconduct.^{xx}
72. With regard to allegations of sexual misconduct, we note the potential sensitivities associated with the Committee recommending sanctions as they would with other types of complaints. A Committee recommendation on sanctions could potentially involve placing sensitive information in the hands of Committee members and this would further complicate the ability to offer the anonymity and confidentiality which is explored earlier in this report. All MSPs would need to be in possession of enough details of the case to allow them to take a decision on any sanctioning and it is difficult to see how these details reaching the public domain could be avoided.
73. On the other hand, it is an established constitutional principle that elected members - with the exception of the disqualification arrangements explored earlier in this report - are answerable to the electorate and can be sanctioned by other elected members but not by an external figure or institution.

74. While establishing an independent figure to investigate misconduct would have the advantage of consistency of procedure (as far as possible) and protecting anonymity and confidentiality, there are several drawbacks.
75. Some cases of harassment and bullying involve an element of sexual harassment and it might therefore be difficult to specify which cases fell into the category of sexual harassment. A stand-alone body with this role might have periods of relative inactivity, if complaints about sexual harassment are infrequent. The Commissioner of Ethical Standards in Public Life also already performs such an investigatory function and there would have to be good reasons for establishing an alternative destination for these complaints rather than (say) providing additional support to the current Commissioner to deal with harassment complaints.

76. **The establishment of an independent body to provide a single reporting, support and advocacy point of contact for anyone experiencing misconduct of this nature, with the possibility of also having responsibility for sanctioning MSPs is worthy of further consideration.**

77. **There are practical, legal and constitutional issues to take into account before considering whether it would be appropriate for an independent figure to have the authority to sanction or dismiss MSPs. This would be seen by some as a significant innovation, but by others merely as the extension of a role currently exercised only by the courts. For this reason, we will return to this idea in the future if we determine that there is an**

xx [Zero Tolerance, written submission](#), page 6.

appetite for it once the Joint Working Group has considered and agreed any actions. MSPs will have the opportunity to debate this when this report is debated by the Parliament as a whole.

Sanctions for MSPs

Introduction

78. When discussing sanctions, it occurred to the Committee that some people affected by misconduct might be reluctant to come forward if they felt that the consequences for the offender would be serious. Conversely, there could be reluctance to report if victims felt that there would be few or no consequences. For this reason, it is important that the range of potential sanctions is fit to cover the whole spectrum of behaviour and that so-called “minor” offences can be dealt with swiftly and discreetly without sanction, if that is the most appropriate outcome.

79. Professor Nicole Busby, University of Glasgow, told the Committee that written policies should contain—
- “specific examples of disciplinary actions that may be taken against any perpetrator of harassment or of any retaliation taken against a complaint”. She also asserted that, in defining harassment, “it is the effect of the unwanted behaviour on the individual that is relevant, not the intention or belief of the perpetrator.”^{xxi}
80. Engender agreed, arguing that—
- “the absence of information on sanctions may be acting as a disincentive to reporting sexual harassment” and added that “knowledge of the consequences for negative behaviour can act as a deterrent”.^{xxii}

An ultimate sanction for MSPs

81. The absence of an ultimate sanction for MSPs - akin to dismissal - is a concern to many observers and one which is shared by the Committee. Dismissal for serious offences is a feature of conventional employment arrangements, but there is no mechanism to remove an elected member from office for such misconduct (unless it was serious enough to warrant criminal proceedings and to result in a prison sentence of more than one year, which does trigger disqualification).
82. The Recall of MPs Act 2015 introduced the power of recall for MPs. The Act sets out the conditions under which an MP becomes subject to a recall petition. These are:
- a custodial prison sentence;

^{xxi} [Professor Nicole Busby, University of Glasgow, written submission](#), page 2. ^{xxii} [Engender, written submission](#), page 8.

- suspension from the House of Commons ordered by the Committee on Standards “of a requisite length” (two weeks); or
- conviction of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowances claims).

Once triggered, a petition is forwarded by the electoral returning officer for the constituency to the MP's constituents and a by-election occurs. This process leaves the initial decisions (and investigation) in the hands of Parliament before the matter is put to the public to decide whether to remove the MP by means of the ballot box.

83. We note that some party representatives have discussed a recall mechanism for MSPs for acts of gross misconduct. Under the Scotland Act 2016, it is now competent for the Scottish Parliament to legislate on recall and disqualification. While it may be worth exploring the process of recall in general, this potential remedy would be at odds with the Parliament's desire to demonstrate leadership on the issue of sexual harassment - taking it out of the hands of Parliament and placing it with the electorate. A recall process raises a number of additional complications.

84. The Committee is concerned that including offences of sexual harassment as one of the triggers for a new system of recall would place a sensitive issue into the hands of an electoral contest. A public by-election campaign would ensue in which local issues and party politics would play a part alongside the public's views on the offence committed. Public discussions could cause further trauma for the victim and there could be no predictable outcome for either the victim or the perpetrator. The differing consequences of recalling Regional, Constituency and Independent members would be an additional complicating factor in devising a system of recall for MSPs.
85. To summarise, a power of recall for the Scottish Parliament presents a number of difficulties. By the same token, removing an elected member *without* reference to the electorate cuts across the principles of democracy.

86. **The Committee understands the appeal of introducing procedures for recall for gross misconduct but this clearly requires considerable further thought. The introduction of a new recall procedure would have wider practical and constitutional implications that go further than simply being a standards issue. Any proposal to make an ultimate sanction available in cases of sexual harassment or misconduct would need to address these issues and be carefully designed to meet the aims set out in paragraph 14. Members will have the opportunity to consider this issue in response to the Committee's report.**

Suspension of MSPs pending or following investigation

87. Suspension in the context of employment procedures is not a sanction or punishment but a device to temporarily resolve difficult situations for as short a time as possible, pending investigation of a complaint. Suspension is not a presumption of guilt or a pre-judgement of the facts and the person accused is entitled to a fair process.
88. There is currently no procedure to suspend an MSP pending investigation. While the Parliament does have the power to exclude Members from the Parliamentary complex (but not regional or constituency offices)^{xxiii}, such a sanction can only, in practice, be administered once misconduct has been established. Sanctions must be linked to misconduct and proportionate – a sanction of suspension could not therefore be used as an interim step even if there is a desire to safeguard staff.
89. The Committee recognises that the consequences of a suspension pending investigation would be very significant for MSPs and could lead to serious reputational damage. If an accusation was made in the run up to an election and a Member was suspended prior to the outcome of an investigation then public opinion could be swayed and the outcome of the election affected. During a suspension, constituents could be left without representation when an MSP has not been found guilty of anything. In formulating a suspension procedure, arrangements for staff during the suspension of their employing MSP would need to be considered.
90. Given the obstacles set out above, there would clearly be challenges in establishing a process for suspension which is fair to all involved. Any process would have to guarantee that the investigation would be conducted as quickly as possible to

minimise damage in the event that the Member was not found to have committed the acts complained about.

91. **The Committee believes that MSPs must be held to the same standard of behaviour as people employed in other capacities. However, there would be consequences of a process of suspension which are specific to elected members, and could give rise to a perception of a suspension as a form of punishment. MSPs will have the opportunity to debate this when this report is debated by the Parliament as a whole.**

Culture

Encouraging positive culture change through mandatory training

92. The preceding parts of this report have tended to focus on tackling behaviour after it has occurred. The Committee's view is that prevention of unwanted conduct is the ultimate goal but accepts that cultural change can take time. While change is taking place, action can be taken to ensure that misconduct is more likely to be reported. We particularly endorse therefore the Joint Working Group's two-pronged approach to address both unacceptable behaviour and lack of confidence in reporting.

xxiii Access to regional or constituency offices is not considered to be a right or privilege and therefore cannot be withdrawn via a sanction imposed by Parliament. The ability to remove the members support allowance could impact on a Member's ability to use an office, if the allowance has been used for its rent.

93. **The Committee welcomes the Joint Working Group's intention to establish a programme of education and development for those working at the Parliament and Regional and Constituency offices, which will include specific training for those who manage staff.**

94. The Sexual Harassment and Sexist Behaviour Survey and evidence to the Committee revealed that there can be a lack of certainty about whether harassment has been experienced or witnessed.^{xxiv} Training and education must therefore be based around the new Central Policy for sexual harassment, which will contain clear definitions. Training should explore various theoretical scenarios so that campus users are absolutely clear about what does and does not constitute harassment and unwelcome behaviour.

xxiv [The Scottish Parliament, Sexual Harassment and Sexist Behaviour Survey, Final Official Report, 26th February 2018](#), page 3.

Monitoring and reporting progress

95. The Committee heard about the importance of ongoing monitoring of reporting systems to assess their effectiveness. Susan Duffy told the Committee that—

“we want to make sure that the policies that we put in place have made a difference”^{xxv}

96. As explored earlier in this report, individuals will not come forward if they have no faith in action being taken. Part of the solution is to make investigations and their results visible through reporting statistics, while respecting the confidentiality of all involved. Witnesses reported that secrecy over numbers of complaints^{xxvi} means that complainers are unsure how commonplace complaints are and might therefore be less confident about coming forward. We also heard that reporting about complaint numbers might have a deterrent effect on potential perpetrators.^{xxvii}

97.

We welcome the Joint Working Group's intention to establish mechanisms to monitor and review progress and to ensure that a change in culture occurs as a result of its work. We would like this to go a step further and include regular reporting on numbers of complaints and outcomes without revealing the identity of those involved.

xxv [Standards, Procedures and Public Appointments. Official Report. 29 March 2018. Col 7.](#)

xxvi [STUC, written submission](#), page 2. xxvii [STUC, written submission](#), page 2.

Conclusion

98. As we noted earlier, this report does not represent the conclusion of the Parliament's work on sexual harassment and inappropriate conduct. Further detailed work on new policies and procedures will be necessary and we welcome the areas of work already being pursued by the Joint Working Group as this will cover some of the areas that are not within the Committee's remit.

99. We believe that the following measures need to be the subject of immediate action-

- A central policy on sexual harassment applying to all campus users;
- ongoing monitoring and reporting of work to reduce the incidence and promote the reporting of sexual harassment;
- regular reporting about complaint numbers and outcomes; and
- encouraging positive culture change through mandatory training.

100. We will return to these more substantial matters for detailed consideration following any relevant outputs from the Joint Working Group and in light of the debate in Parliament in which all MSPs will have the opportunity to contribute—

- further detailed consideration of whether to establish an independent investigatory body with powers to sanction elected Members;
- consideration of an ultimate sanction for MSPs akin to dismissal for gross misconduct;
- consideration of a process for suspension of MSPs; and
- changes to the Code of Conduct for MSPs.

101. Finally the Committee welcomes again all of the strands of work which have been initiated by the SPBC to improve reporting and investigation arrangements. In the meantime, we would emphasise that anyone affected by sexual harassment should feel confident about coming forward and that their accounts will be taken seriously.

Annex A - Extract from minutes

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

Sexual harassment and inappropriate conduct: The Committee considered a note by the clerk and agreed to consider an approach paper to an inquiry into sexual harassment and inappropriate conduct at the Scottish Parliament at a future meeting.

20th Meeting, 2017 (Session 5) Thursday 23 November 2017

Sexual harassment and inappropriate conduct (in private): The Committee agreed its approach to its inquiry into sexual harassment and inappropriate conduct at the Scottish Parliament.

21st Meeting, 2017 (Session 5) Thursday 7 December 2017

Sexual harassment and inappropriate conduct (in private): The Committee agreed a call for written evidence.

1st Meeting, 2018 (Session 5) Thursday 18 January 2018

Decision on taking business in private: The Committee agreed that its consideration of evidence heard, and a draft report, on its inquiry into sexual harassment and inappropriate conduct should be taken in private at future meetings.

Sexual harassment and inappropriate conduct: The Committee took evidence from—

Susan Duffy, Group Head of Committees and Outreach, Lorna Foreman, Head of Organisational Development, and David McGill, Assistant Chief Executive, Scottish Parliament.

Sexual harassment and inappropriate conduct (in private): The Committee considered the evidence heard earlier in the meeting.

2nd Meeting, 2018 (Session 5) Thursday 1 February 2018

Sexual harassment and inappropriate conduct: The Committee took evidence from—

Cheryl Gedling, Industrial Officer, PCS Union;

Katy Mathieson, Coordinator, Scottish Women's Rights Centre;

Davy Thompson, Campaign Director, White Ribbon Scotland;

Emma Trottier, Policy and Parliamentary Manager, Engender.

Sexual harassment and inappropriate conduct (in private): The Committee considered the evidence heard earlier in the meeting.

3rd Meeting, 2018 (Session 5) Thursday 22 February 2018

Sexual harassment and inappropriate conduct: The Committee took evidence from—

Professor Nicole Busby, Professor of Labour Law, University of Strathclyde;

Kirsty Thomson, Solicitor, JustRight Scotland and the Scottish Women's Rights Centre;

Amy Johnson, Policy and Research Officer, Zero Tolerance;

Caroline Thomson, Consultant, Scottish Women's Convention.

Sexual harassment and inappropriate conduct (in private): The Committee considered the evidence heard earlier in the meeting.

4th Meeting, 2018 (Session 5) Thursday 8 March 2018

Sexual harassment and inappropriate conduct: The Committee took evidence from—

Maurice Golden, Business Manager for the Scottish Conservative and Unionist Party;

Rhoda Grant, Business Manager for the Scottish Labour Party;

Patrick Harvie, Business Manager for the Scottish Green Party;

Bill Kidd, Chief Whip for the Scottish National Party;

Willie Rennie, Business Manager for the Scottish Liberal Democrats.

Sexual harassment and inappropriate conduct (in private): The Committee considered the evidence heard earlier in the meeting.

5th Meeting, 2018 (Session 5) Thursday 15 March 2018

Sexual harassment and inappropriate conduct (in private): The Committee deferred this item to a future meeting.

6th Meeting, 2018 (Session 5) Thursday 29 March 2018

Sexual harassment and inappropriate conduct (in private): The Committee considered a note by the clerk.

Sexual harassment and inappropriate conduct: The Committee took evidence from—

Susan Duffy, Group Head of Committees and Outreach, David McGill, Assistant Chief Executive, and Vicky McSherry, Culture of Respect Team Leader, Scottish Parliament.

Sexual harassment and inappropriate conduct (in private): The Committee considered the evidence heard earlier in the meeting.

8th Meeting, 2018 (Session 5) Thursday 3 May 2018

Sexual harassment and inappropriate conduct (in private): The Committee considered a draft report.

10th Meeting, 2018 (Session 5) Thursday 24 May 2018

Sexual harassment and inappropriate conduct (in private): The Committee considered a draft report.

11th Meeting, 2018 (Session 5) Thursday 31 May 2018

Sexual harassment and inappropriate conduct (in private): The Committee considered a draft report. Various changes were agreed to, and the report was agreed for publication.

Annexe B - Evidence

Written Evidence

- [Professor Nicole Busby \(90KB pdf\)](#)
- [Engender \(273KB pdf\)](#)
- [PCS \(100KB pdf\)](#)
- [Prospect \(68KB pdf\)](#)
- [Scottish Women's Rights Centre \(150KB pdf\)](#)
- [STUC \(159KB pdf\)](#)
- [SWC \(115KB pdf\)](#)
- [Zero Tolerance \(2228KB pdf\)](#)

Oral Evidence

- Meeting on 18 January 2018
- Meeting on 1 February 2018
- Meeting on 22 February 2018
- Meeting on 1 March 2018
- Meeting on 29 March 2018

Supplementary Written Evidence

- [Parliamentary authorities \(21KB pdf\)](#)

