



The Scottish Parliament  
Pàrlamaid na h-Alba

# Sexual Harassment Policy: Reporting Procedures and Support

*21 March 2019*





## Independent Support Service

Everyone affected by the behaviours set out in the Sexual Harassment Policy is entitled to access the Independent Support Service. This service is there to provide advice and ongoing support regardless of whether or not you choose to make a complaint. If you choose to make a formal complaint under this procedure, it will be submitted through the Independent Support Service.

Specifically, the Independent Support Service provides:

- Access to specialist advisers via telephone and email. The service is independent of all employers, it is confidential, and contact can be anonymous;
- Information and advice on policy and processes to help you decide on the best course of action;
- An advocacy worker who can facilitate appropriate interventions, including face to face, written, or telephone interaction between you and the person you're complaining about;
- Ongoing support throughout any complaint process if that is what you decide to do;
- Anonymised data on the number of incidents.

## Procedures for dealing with complaints

It can be difficult and stressful to take forward a complaint about sexual harassment. Our procedures are designed to provide a range of options so you can choose the option that's most appropriate and comfortable for you.

If you have been subject to sexist behaviour or sexual harassment, you're encouraged in the first instance to contact the Independent Support Service. They will help you decide how you want to deal with this. If the information you give to the support service indicates that a criminal offence may have taken place, they'll give you advice to assist you in coming to a decision on how to take this forward.

What you decide to do will depend on a range of factors, such as the seriousness of the behaviour and what outcome you want.

Employers are generally encouraged to include informal steps to resolve grievances in their policies as this can be the most effective way of dealing with them. However, particularly as sexual harassment can often stem from a power imbalance, it's not always possible or desirable to deal with something informally. The key issue is that *you decide* what's the most appropriate route for you.



## Dealing with issues informally

- You can approach the person directly to let them know the impact of their behaviour. However, you might not feel comfortable doing this, particularly if the person is in a position of authority over you;
- You can approach your own line manager and/or line manager of the person whose behaviour you're concerned about, or in the case of an MSP, their party to help you resolve the issue;
- You can contact the Independent Support Service, which will provide advice and support and can also act as an advocate on your behalf;
- You can also seek the support of your trade union representative, if you are a member.

Whoever you approach will be expected to take your complaint seriously and establish the facts of the case. They should also seek further HR advice for support in dealing with any issues. Even though the complaint has been raised on an informal basis, it might be more practical or appropriate for the facts to be established by someone independent of the line management chain. In those circumstances, the Scottish Parliament's HR Office can arrange for an independent service provider to carry this out.

## Outcomes from informal approaches

The type of action that might be taken will vary, but could include:

- The person who acted inappropriately acknowledging their behaviour was wrong;
- An apology for the behaviour;
- A commitment to change behaviour (including participating in further training).

## Formal complaints

If you haven't been able to resolve your complaint informally, if there's a recurrence of the behaviour or if you think it's not appropriate to resolve it informally, you can make a formal complaint. Investigations into formal complaints will be carried out by an Independent Investigator. This will be someone who is independent of the Parliament and of political parties. This means that investigatory and disciplinary processes will be separate and carried out by different people.

Investigations into formal complaints against MSPs will be undertaken by the Commissioner for Ethical Standards in Public Life in Scotland ('the Ethical Standards Commissioner').

## How to submit a complaint

Formal complaints should be made in writing, to the Independent Support Service using the template provided. You can access the template on our website.

The Independent Support Service will notify the Parliament's HR Office who will commission an Independent Investigator (and notify the respondent's employer) or, in the case of complaints against MSPs, refer them to the Ethical Standards Commissioner. The process that the Ethical Standards Commissioner will follow is set out in Section 9 of the [Guidance on the Code of Conduct](#). The sanctions that can be applied are also set out in Section 9.

## How the investigation will be conducted

The process is set out as follows:

- The Independent Investigator will contact both the complainant and respondent. The respondent will be told the details of the complaint and the name of the person making it.
- The purpose of the investigation is to establish facts and come to a conclusion. It should not be adversarial in nature.
- The Investigator will contact the complainant and respondent within 5 days of being notified of the complaint.
- The Investigator will interview the complainant, respondent and any relevant witnesses, allowing both parties to set out their case and respond to comments made by the other.
- Interviews will take place with each person separately in a private room (off the premises if necessary).
- Complainants and respondents can be accompanied by someone from the support service or other appointed provider, a colleague or a trade union representative.
- Everyone will have the opportunity to review their own interview notes to ensure they are an accurate record of what was said.
- Confidentiality must be maintained throughout the investigation. Action will be taken against anyone who breaches this.

## The report – timing

The Investigator will aim to complete their investigation as soon as possible. Although each case will have differing degrees of complexity, investigations should ideally be completed within 2 months. The Investigator will contact the complainant and respondent if this timescale cannot be achieved and advise them of the anticipated timescale.

## The report – content

The report will summarise the issues raised, the statements made by all parties and it will set out the Investigator's findings and conclusions. Witness statements will not normally be shared to allow the investigation to be conducted in a full and frank manner but at the same time protecting everyone involved in the process. However, all statements will be summarised in the report and taken account of in the Investigator's findings and conclusions. The final report will be shared with the complainant and respondent. However, all concerned, including witnesses should be made aware that the report and all statements made in the course of the investigation may be disclosed in the course of a claim to an employment tribunal.

## The report – next steps

Complaints against MSPs are dealt with under the Code of Conduct for MSPs and the Commissioner's report will be referred to the Standards, Procedures and Public Appointments Committee ('the SPPA Committee').

For all other complaints, the report will be given to the appropriate employer (whether SPCB, MSP or a contractor – where the complaint is against their member of staff or a contractor) to determine what action to take on the basis of the report. The employer may decide:

- That the complaint is not upheld and take no further action;
- That the complaint is upheld and take action short of formal disciplinary action, such as ensuring there is an acknowledgement of the behaviour and an apology;
- That the complaint is upheld and instigate formal disciplinary procedures.

If a complaint is not upheld that means, for the complainant, that nothing further will be done. Therefore, the complainant can appeal the decision not to uphold the complaint. They should set out the reasons for this in writing.

Where the complainant and respondent have the same employer, they should write to their employer. Where the complainant and respondent have different employers, they should contact the Parliament's HR Office which will advise on the appropriate route. Where the decision-maker is an MSP, a formal complaint can be made against the MSP under the Code of Conduct.

If the complaint is upheld, the respondent will have a right to appeal (either through grievance or disciplinary processes) the sanction or action being proposed.



## Disciplinary action

Different employers and political parties have their own disciplinary procedures. However, for there to be consistency of approach, we ask that the following principles apply, regardless of the procedure:

- It should not be conducted in an adversarial manner and confidentiality must be maintained;
- The subject of the disciplinary process must have a right of appeal (see above) and any appeal should be heard by an individual or panel who have not been involved in the original decision.

Employers will determine appropriate sanctions to be applied at the relevant disciplinary hearing. In the case of non-MSPs, these could range from oral warnings to formal written warnings and, in some cases, dismissal. Repetition of the inappropriate behaviour can result in the most serious sanctions being applied. Parliamentary sanctions for MSPs are determined by the SPPA committee and the Parliament and political sanctions, such as removing the whip, are determined by the relevant party.

## Complaints against people who no longer work at the Parliament

As we are not placing a time limit on taking a complaint under these procedures, formal complaints can be taken against people who no longer work for or at the Parliament. This is important as it ensures that people have the opportunity to have their complaints investigated and for the relevant employer to learn any lessons from the way behaviour may have been dealt with in the past.

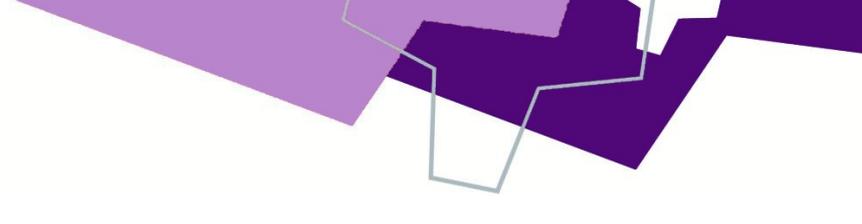
Such complaints will be investigated in the same way as any other formal complaints. A copy of the report will be given to both the complainant and respondent. A copy will also be given to the relevant former employer. Although the employer cannot take sanctions against someone who no longer works for them, they can look at whether any lessons can be learned. Depending on the circumstances, the copy provided to the former employer may be anonymised.

Following consultation with the complainant, the report could be passed to the police if evidence of criminality emerged during the investigation.

Complaints against former MSPs can be referred to the Ethical Standards Commissioner and dealt with under the Code of Conduct.

## Complaints from people who no longer work at the Parliament

As we are not placing a time limit on taking a complaint under these procedures, people who no longer work at the Parliament can submit a formal complaint. They should do this by contacting the Independent Support Service, which will follow the same procedure as they would if the complaint came from someone who still works here.



## Ongoing support

Throughout any informal or formal process, both complainants and respondents can access support. Support for complainants can be provided by the Independent Support Service and support for respondents will also be available, with the exception of contractors, who should contact their employer.

Managers may also need to consider whether different working arrangements would be appropriate while an investigation is ongoing (remembering that any actions should not be seen as pre-empting the outcome or compromising the confidentiality of the process).

It is also important to provide management support once the process has finished. Unless the process has resulted in someone being dismissed, the complainant and respondent may still be working in close proximity.

Managers should be alert to, and take action over, any victimisation of the person who made the complaint or any retaliation against the person against whom the complaint was made.

Some of the measures that might need to be considered are:

- Is it appropriate for people to continue to work together or should contact be minimised?
- If people need to be moved, how should this be done? It is important to remember that moving the person who made the complaint could constitute victimisation;
- Do line management arrangements need to be changed?
- Are there ways contact can be minimised by changing someone's location?
- Could contact be minimised by, for example, allowing someone to work from home for a temporary period or until alternative arrangements are put in place?
- If contact can only be minimised for a temporary period by someone not being at work at all, this should be done on the basis of paid time off rather than the person needing to take annual, flexi or sick leave

Not all of these options will be available or appropriate in every situation and care should be taken to find out what the individual affected by the behaviour may want to do.

# **Sexual Harassment Policy: Reporting Procedures and Support**

***For further information contact:***

*HumanResources@parliament.scot*

*0131 348 6500*

