



OFFICIAL REPORT
AITHISG OIFIGEIL

Committee on the Scottish Government Handling of Harassment Complaints

Tuesday 18 August 2020

Session 5



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Pàrlamaid na h-Alba

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**COMMITTEE ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT
COMPLAINTS**

3rd Meeting 2020, Session 5

CONVENER

*Linda Fabiani (East Kilbride) (SNP)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*Jackie Baillie (Dumbarton) (Lab)

*Alex Cole-Hamilton (Edinburgh Western) (LD)

*Angela Constance (Almond Valley) (SNP)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Alison Johnstone (Lothian) (Green)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Leslie Evans (Scottish Government)

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Committee on the Scottish Government Handling of Harassment Complaints

Tuesday 18 August 2020

[The Convener opened the meeting at 11:02]

Remit

The Convener (Linda Fabiani): I welcome everyone to the third meeting in 2020 of the Committee on the Scottish Government's Handling of Harassment Complaints. Before we begin, I think that it is important to reiterate the remit for the committee's inquiry; how the committee intends to conduct the inquiry; and a reminder of the purpose of this first evidence session. The committee's remit is:

"To consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's 'Handling of harassment complaints involving current or former ministers' procedure and actions in relation to the Scottish Ministerial Code."

The committee's approach will be to establish where issues arose in the handling of the complaints and the actions in relation to the Scottish ministerial code; to consider what actions were taken that gave rise to those issues; to consider whether the policies are sufficient and fit for purpose, or whether it was the application of the processes that gave rise to those issues; to consider whether robust governance of policy evaluation and decision making is in place; and to consider whether any lessons could be learned to avoid the issues arising again.

The committee will not revisit the separate matter of the criminal proceedings that were brought against Mr Salmond, nor will it reinvestigate or consider the substance of the complaints that were originally made to the Scottish Government.

The Scottish Government written statement sets out the background to the development of the harassment policy, including consideration of organisational culture in the context of the results of the 2016 people survey. Issues around organisational culture are likely to be an on-going theme. It is important to stress that we are looking at this in relation to how that culture played into the development of the harassment policy. This is about the collective culture and values of an organisation, namely the Scottish Government. It

is not about looking into individual situations, behaviour or specific cases of concern.

We have agreed that we will break down the inquiry into three general headings: the actions taken in relation to the policy on handling harassment complaints; the judicial review; and the actions taken in relation to the ministerial code. Today's session will focus on the first of those, in particular the development of the policy on handling harassment complaints.

Our agreed approach to our inquiry and our statement on how we will handle information and evidence have been published on our website. The parameters that are set out in the written statement apply to the conduct of everyone, including committee members and witnesses.

Finally, as we set out in our written statement on the handling of information and evidence on our website, it is vital that everyone who takes part in our proceedings complies with both the court order that was made by the Lord Justice Clerk, Lady Dorrian, which prevents publication of the identify of, or information leading to the identification of, the complainants in the criminal proceedings; and the court order that was made by Lord Woolman, which prevents publication of the names and designations, past and present, of Ms A and Ms B, who raised complaints under the harassment policy, or publication of information that would lead to their identification. That means not only that the names and designations of the complainants and Ms A and Ms B should not be disclosed but that everyone must avoid disclosing information that could lead to jigsaw identification in light of material in the public domain.

Given our responsibilities, please be aware that I might have to suspend the committee meeting if we come up against any issues in relation to our obligations under the court orders, or other legal issues.

Interests

11:07

The Convener: Before I turn to item 1, I understand that some members of the committee would like to make declarations on record.

Angela Constance (Almond Valley) (SNP): As this is our first evidence session, I want to reiterate what I placed on record at our first meeting, which is that I am a former minister and I attended Scottish Government Cabinet meetings between 2011 and 2018.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Likewise, although I was not in the Cabinet and was not involved in any way in the development or interpretation of this policy, I was, as people know, a minister between 2011 and 2018.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): As you know, convener, I, too, have been a minister in all three Scottish National Party Governments, from 2007 to 2009, 2011 to 2014 and 2014 to 2018, in different roles. Like Dr Allan, I was not a member of the Cabinet, although, on occasion, I substituted at Cabinet meetings.

Decision on Taking Business in Private

11:08

The Convener: Item 1 is a decision on taking items in private. Do members agree to take item 3 in private, as well as all future discussions of the evidence that is received at subsequent meetings, and the discussion of the work programme at our next meeting on 25 August?

Members indicated agreement.

Development of Policy on Handling Harassment Complaints

11:09

The Convener: Item 2 is phase 1: development of the Scottish Government policy on the handling of harassment complaints involving current and former ministers. I welcome today's witness: Leslie Evans, permanent secretary, Scottish Government.

As previously agreed by the committee, I will now ask Ms Evans to make a solemn affirmation

Leslie Evans *made a solemn affirmation.*

The Convener: I invite Leslie Evans to make an opening statement for up to 10 minutes.

Leslie Evans (Scottish Government): Thank you, convener, and thank you for accommodating my attendance at Cabinet this morning, which is much appreciated, given the issues preoccupying the Government at the moment.

As is standard procedure but I will say for the record, I want to be clear that I and any civil servant giving evidence to the committee will be doing so on behalf of ministers and not in a personal capacity. I shall limit my opening remarks to the issue on which I know you are taking evidence this morning: the development of the procedure to handle harassment complaints involving current or former ministers, with the period to be addressed being October to December 2017.

Underreporting of sexual harassment appears to be endemic across most organisations and institutions. In response to the Scottish Parliament's own survey question on what action staff had taken in relation to sexual harassment incidents that they had experienced, the most common response was that they had not done anything at all. Every single one of us has a right to a safe workplace, free from harassment. The Scottish Government recognises that as a legal responsibility and a duty of care to all employees to create a culture in which such behaviours are simply not tolerated.

The Scottish Government has been on a journey of cultural change since 2015 to ensure that the organisation is more open, capable and responsive. As permanent secretary, I have led a focus on equality, inclusion and wellbeing, which has included addressing bullying and harassment. That is still work in progress, but there is evidence of improvement. Our most recent people survey showed a marked increase in the reporting of bullying and/or harassment, with 57 per cent of those who had experienced bullying and

harassment saying that they had reported it. That is up 19 percentage points from the previous year.

Staff's positive experience of inclusion and fair treatment reached its highest-ever score of 83 per cent. That is among the highest scores in the whole of the United Kingdom civil service. The #MeToo movement that grew in 2017, drawing attention to the historical nature of harassment that had not been reported and dealt with, added welcome additional momentum to an existing programme of work.

For the Scottish Government, the logical next step was to review its procedures. I was commissioned to do so by the Scottish ministers on 31 October 2017 and by the then cabinet secretary and head of the UK civil service, Sir Jeremy Heywood, on 3 November 2017.

The Scottish Government's response to that review, in line with wider work, was to challenge a "say nothing" culture and to give all staff from any part of the organisation confidence that concerns and complaints could be brought forward and would be addressed. After consideration of the relevant policies, it was concluded that, to address an identified gap and to clarify existing provision, a procedure to investigate complaints of harassment should be developed for former and current ministers. That built on the expectation that was set out in the Scottish ministerial code and in our existing fairness at work policy.

The Scottish Government remains ahead of many other institutions in designing and implementing such a procedure openly and transparently, particularly one to address historical allegations of sexual misconduct. We did not shirk our responsibility.

As civil servants, every process that we create must be robust and fair and open to appropriate challenge and scrutiny, and it must reflect our civil service code and its core values of integrity, honesty, objectivity and impartiality. Creating the new human resources procedure was no different. There was an extensive and iterative professional drafting process, led by the team in the Scottish Government that is responsible for offering advice on the operation of the Scottish ministerial code and all matters of propriety and ethics. It was informed by legal advice throughout, and followed human resources best practice, drawing on the Advisory, Conciliation and Arbitration Service guidance. It sought appropriate external engagement, including with our trade unions.

When complaints were raised, it would have been unconscionable and a failure in our duty of care not to investigate those complaints. However, it was accepted at judicial review that one part of our procedure should have been applied

differently. I apologise unreservedly to all concerned for that procedural failure.

11:15

We have already learned early lessons from that experience as part of work that is being led by our people directorate. We also await the findings of the review that I commissioned, which is being externally led by Laura Dunlop QC and is now under way. It remains the case however, that the investigation of those complaints was the right thing to do.

I would also like to take the opportunity to underline for the record the Scottish Government's commitment to co-operating fully with this committee. That commitment is underpinned by action and evidenced by multiple dossiers of information that have been preserved and provided to the committee within agreed timescales. That work has been complex and time consuming to ensure compliance with legal, data protection, and confidentiality restrictions. I am happy to elaborate further on those points to demonstrate the seriousness with which the Scottish Government has approached its engagement with the committee, and the additional measures that were put in place to ensure that all relevant information would be provided before and in parallel with responding to the Covid-19 crisis.

In closing, I want to make three important points. First, the Scottish Government was and remains ahead of many other institutions in designing and implementing a procedure to address harassment, particularly to address historical allegations of sexual misconduct. I am clear that the Scottish Government acted in good faith. The transparency of our written procedure means that it is open to challenge and scrutiny. I accept that scrutiny. We shall apply the learning.

Secondly, the procedure was and is to safeguard all staff and to assure them of the standards of behaviour that they are entitled to expect in their workplace. It was developed with the professional rigour and values that you would expect from the civil service, informed by legal advice and HR best practice. However, it was designed as an HR procedure not a legal instrument.

Thirdly, and finally, in her 2018 report into bullying and harassment in the House of Commons, Dame Laura Cox found:

"people who have been bullied or sexually harassed, or who have seen this happen to others, are generally reluctant to come forward and report it."

By creating the culture and environment in which complaints of this nature could be raised, and in which subsequent investigations of those

complaints could take place, the Scottish Government did not take the easy path, but it is the right one.

The Convener: Committee members have a lot of questions to ask. The culture and environment that you referred to towards the end of your statement is the issue that Margaret Mitchell, followed by Alison Johnstone, would like to raise.

Margaret Mitchell (Central Scotland) (Con): You mentioned the fairness at work policy. If we look at the development of policy, it would be helpful to put it in context. Could you give a brief outline of how the policy developed from dignity at work, from when fairness at work came in right up to the point in 2017 when the internal procedure was brought in?

Leslie Evans: I am not an expert on the fairness at work policy. It was originally introduced in 2010. It was and is still intended to predominantly cover everything except harassment. You will appreciate that, when we looked at fairness at work, which was negotiated and agreed with our trade unions at the time, we wanted to ensure that it had been used, applied, and tested. It is a process for handling, including a number of stages, so it has an informal as well as a more formal element.

Finally, as you would imagine, the policy interacts with and bumps up against the ministerial code. When we looked at what the gaps were through the review that we were commissioned to undertake, that included looking at how the fairness at work policy operated and what it covered and did not cover. For example, it had some very basic elements, such as there being no time bar, which we agreed we would want to include in the new procedure, but it also had a lack of clarity about where it docked into the ministerial code. Where the policy had been used, there had been experience of how well it had operated and how clear it was on where responsibility for what took place was with the fairness at work policy and where that translated and transferred into the ministerial code.

I am sure that you will call witnesses who are more expert in HR than I am and who perhaps may have been involved in creating the policy, but it had existed and had been used since 2010.

Margaret Mitchell: I refer you to the submission from the FDA union, which refers to the policy as "extant" and says that it was seen as something of a "flagship" policy. The FDA states that the policy allowed the conduct of ministers to be looked at in a way other than through the "opaque Ministerial Code". However, the FDA goes on to say that, despite the Scottish Government introducing the policy,

“with a clear process for civil servants to raise complaints about ministers, rather than having to rely on the opaque Ministerial Code”,

it has not proved to be effective in eliminating behaviour that causes concern.

There are two things that I would like you to clarify. When we are talking about complaints, are we talking about expressions of concern about certain behaviour as well as formal complaints? I understand that you took up your post in 2015, but do you agree that that is a fair assessment of the fairness at work policy?

Leslie Evans: I will answer that in two parts. First, in all the policies, including the one on fairness at work, there is a marked difference between raising a concern and lodging a complaint. That is sometimes regarded as some kind of bureaucratic differentiation, but it really is not. On the fairness at work policy in particular, a whole part of it has traditionally been focused on bullying rather than harassment, and that is now even more the case. To deal with issues of bullying, we turn to the fairness at work policy rather than to the new policy that we have for harassment. The fairness at work policy outlines a whole stage that is about informal resolution and the kinds of techniques, processes and support that can enable that.

I emphasise that, as would be the case in any organisation, it would be expected that, if it is appropriate to resolve a concern at the informal stage, it really should be resolved in that way. Certainly, that is HR good practice. There are many ways of addressing that, through things such as mediation and conversations. There is a distinction between concerns and people deciding that they want to trigger a formal process by making a complaint. We may come back to that in discussing the other procedure.

The second part of Margaret Mitchell’s question was about whether the policy is fit for purpose. That issue was one of the reasons why, in the commission from the Cabinet, we took the opportunity to check what our experience had been, and to do a gap analysis. That was undertaken by our HR specialists, who looked at how the fairness at work policy had been applied, where it had been applied, how successful it had been and what gaps still existed in its application.

That was the groundswell of work that produced the first iteration of the new 2017 procedure. It was a gap analysis of where the fairness at work policy had worked, where it had not worked, where it was confusing, where it was not clear—Margaret Mitchell used the term “opaque”—and how the ministerial code docked with the fairness at work procedure. The very early stages of drafting the new procedure involved looking at the fairness at work policy to see where the gaps were.

Margaret Mitchell: Obviously, you would have been briefed on the fairness at work policy when you took over in 2015. Just for clarity, how were you briefed on how it had been working? Was that done face to face, or through emails or texts, for example?

You formed a view on that. Can you confirm that, in forming that view, you included expressions of concern as well as formal complaints? In your capacity as the permanent secretary—the most senior civil servant and the principal adviser to the First Minister and the Cabinet—what did you do in the period leading up to the people survey? That was fully a year and more later, in October 2016.

Leslie Evans: When I took over, I would have been briefed by the person who was in charge of HR at that time, but not particularly on that policy, unless it was required that it be enacted in some way. I took over an organisation in which there were probably thousands of policies, so I was not briefed specifically on that, and would not have expected to be briefed. However, I would have expected to be able to go to my specialist staff and the head of HR as and when required to learn more about how the processes were working and how effectively they were operating.

I would need to check the date, but the first time that I became aware of the fairness at work policy in action was when a particular point of concern was addressed as part of the informal process. As I said, I would need to confirm the date, but when that case was being raised—I would not be involved in it, of course; that would be for the head of HR, who was applying the policy—I was aware that it was not always clear how the policy interacted with the ministerial code. The First Minister is, of course, the ultimate arbiter of the ministerial code. Around that time, issues were raised, which I was aware of and which prompted work being started to look at where the fairness at work process could be improved, and how the policy might be enhanced or revised. That was already on the radar, at that point.

The review that I talked about that subsequently came out of the commission from the Cabinet exacerbated and intensified work that was already on the agenda.

Margaret Mitchell: I would like to pin you down not on the exact date—

The Convener: Please be quick, Margaret.

Margaret Mitchell: Was that between 2015 and the people survey in that year-plus?

Leslie Evans: The people survey in 2016 would have come around in the autumn. That would have been in the first full year in which I was in the role. We would have had a people survey in 2015;

we have one every year. There would have been the first one in around September 2015 and—

Margaret Mitchell: Were you aware of any issue or problem to do with the fairness at work policy before that? How were you briefed?

Leslie Evans: I became aware of the application of the fairness at work policy—that it was being used—at some point and the issues that were being raised, but I cannot quite remember the date. I am being absolutely up front with you: I think that that was in 2016, but it might have been in early 2017. I will write back to you with that date, to be exact.

Margaret Mitchell: So you were not aware of anything else that caused you concern about the fairness at work policy, up until that point.

Leslie Evans: I was not—no.

Margaret Mitchell: And you were not briefed in texts or emails, or in any other way.

The Convener: We have to move on to let others ask questions.

Leslie Evans: I will come back to you on the date.

The Convener: Thank you.

Alison Johnstone (Lothian) (Green): Good morning, permanent secretary.

In our papers, we are advised that you met deputy directors across the Scottish Government to discuss organisational culture, in response to the 2016 people survey. The survey contained a question on discrimination, harassment and bullying, and it seems that that survey has clearly played an important role in policy development since that time. Of the 11 per cent of people who said that they had experienced discrimination, harassment or bullying, only 34 per cent said that they had reported it, and only 20 per cent of people regarded the issue as having been resolved.

However, we are also advised that few formal complaints were received over the same period. The Scottish Government has suggested possible lack of awareness of or confidence in existing processes and procedures. I would like to understand the situation better. Is it your view that, at that time, reporting channels for people who wished to report harassment were clearly defined?

11:30

Leslie Evans: Yes—in that there was a fairness at work policy and people were aware of it. However, it takes more than being aware of a policy for people to be confident about being forthcoming. People were aware that the policy existed, but I am not sure how many people would

have thought of it as their first stop. They would probably have spoken to their manager first, rather than automatically going to HR to activate the policy.

Alison Johnstone: It is notable that only 20 per cent of people regarded the issue as having been resolved. Perhaps that plays a part in people's reluctance to come forward. Was it made clear that there would be no victimisation of or retaliation against people who made complaints?

Leslie Evans: Absolutely. Let us be clear. I took particular action as a response to the 2016 results. I appointed a senior director to lead a piece of investigation and research work on culture and how it affects bullying and harassment. That was not book-study research, but live research, working with our HR people and specialists on how to ensure that our culture was one that would welcome and appropriately support people who come forward with concerns.

We also carried out a distinct piece of research on a protected-characteristics analysis of people who were coming forward to say that they had been bullied or harassed. For example, it looked at whether incidence was higher among people from minority ethnic communities and people with disabilities.

We also looked very carefully at the hotspots to see whether there were directorates in the organisation that seemed to have higher levels of bullying and harassment, and to ask why that was. We commissioned work on diversity and hotspots and the senior director used that work, alongside HR expertise, to consider what cultural changes were needed.

Finally, I spent most of 2016 working on the theme of trying to support, encourage and invest in our managers—I am talking not just about the very senior managers, but about front-line managers—so that they were more aware of preventative work that could be done in their teams to ensure that the culture was as it should be—thriving, inclusive, diverse and so on.

I instigated a significant amount of work that took place after the 2016 results. There was already work under way on how the environment and management setting of the organisation could be inclusive, diverse and supportive.

Alison Johnstone: I have one further question.

You referred to “hotspots”, permanent secretary. We are advised of an attachment to an email—a staff communication from you—that suggests that pastoral care in communications and private offices may be helpful. Could you elaborate on that suggestion?

Leslie Evans: Yes. First, on the hotspots, nobody will be very surprised to hear that

traditionally, such hotspots occur where there is a large number of staff members distributed across the organisation working together, and where the line management is quite dispersed or stretched, and/or which are in areas that have been under considerable stress. We expected to see a slight rise in hotspots where people—through the nature of the policy and the exposure that they had experienced during that time—were under stress. We were looking at trends as much as at blips.

Recently, we have taken quite a few steps in relation to ministerial private offices, and I am pleased to say that the 2019 results are the best that we have ever had in the people survey, including on reporting of bullying and harassment. I am sure that there will be a chance for me to share those results with you later.

To go back to 2016, we were aware of the importance of having a director or leader who could look after the ministerial private offices; we were keen to ensure that that was part of our structure for the future. I would expect pastoral care to be part of any manager's role and responsibility, but we know that working in ministerial offices is incredibly hard work; it can be stressful and it is fast-paced, so we were keen to ensure that people did not feel isolated or without care, in that respect.

Alison Johnstone: Thank you.

Dr Allan: At this stage of our conversation, we are keen to find out the problem that the Government was seeking to fix with its new policies, with particular regard to the response to the 2016 people survey, which has been alluded to already. The response that the Government gave to the committee, along with some of the papers that it submitted, is summarised as saying that

“Initial assessments identified a number of areas for action which included: work to review the existing Fairness at Work and disciplinary procedures through the lens of sexual harassment; a review of processes for handling complaints against Ministers or former Ministers”.

I take it that “initial assessments” means assessments of the 2016 people survey. Can you briefly take us through the steps that were taken immediately on receipt of the 2016 people survey results, and the Government's priorities in responding to it?

Leslie Evans: Yes, there is a pattern of response to the people survey; as I said, it takes place every year. Every department, in every Administration, in the civil service undertakes it; agencies also undertake it. It has been taking place for many years, so a huge amount of trend data has accumulated. As with most years, we have a very in-depth analysis of the data as it comes forward—we have high-level data. The

data is all traced back to the UK Government analysis, because it undertakes and has the ownership of and licence for the people survey. The pattern of response to the people survey is that we get high-level data, which we immediately share. After that—usually a few weeks later—we get it drilled down into divisions, way down into the heart of the organisation. The two main strands of work that take place are that we share and analyse the results and then we question and commission locally—as well as at director-general level—the response to those results.

In our time, we have got better at homing in on those areas that were of most concern. The first port of call would be the people board, which is a part of the Scottish Government's governance and assurance structure that looks after all issues to do with people and HR. Very quickly after the 2016 results, on 30 November 2016, the people board discussed the headlines and narrative—the story that the survey results were telling us about the organisation. There was also detailed and fairly high-level analysis of the variation within and between groups that had taken part, such as where one directorate or group of protected characteristics—such as women versus men—was showing very differently to another. The executive board, which is me and my most senior team, had a presentation on the insights of the survey that emerged from that analysis and the discussion on the people board. In December, a directorate-level analysis was shared with every member of the senior civil service. That included the trend data, so that every director and division knew how they were looking in comparison to others, as well as at their own hand. We also cut it by grade, to show how the experience and response of a B-band member of civil service staff in one part of the organisation differed from the equivalent in other parts and directorates and why.

There are two strands—the strategic analysis and probing that takes place at the highest level of the Scottish Government and in depth at the people board, and the local conversations, probing and analysis that take place for each deputy director with his or her teams—to question why the results are as they are.

It is statistical analysis and it is compared at UK level, as well, so that we see the outliers. There are many free-text boxes in the people survey so people can say what they want as well as answer particular pre-set questions.

Dr Allan: In relation to that, you mentioned the initial analysis of the results of the survey. Was it at that point or later in 2017 that the question whether the rules specifically around ministers and former ministers were in need of review was considered? Was that considered initially, or only in 2017?

Leslie Evans: I am sorry—I interrupted you. Bullying and harassment came forward, as they always do; they are always a point of interest and probing and analysis in every survey, and in 2016 that was no different.

The point about ministers past and present was particular to the circumstances of the 2017 procedure, in that the commission that had brought about the gap analysis of the fairness at work process, which I mentioned earlier to the convener, had identified even then an inconsistency in how we were dealing with complaints against or concerns about ministers. That was not prompted by the 2016 people survey, although bullying and harassment were an important part and therefore an important context for subsequent work and the subsequent commission that came up in October.

Dr Allan: You indicated that some areas of Government came out of the survey differently, let us say, from others. I appreciate that, within the rules, there is a limit to how granular you can be in the answer to this question, but can you say more about what areas of Government—let us say, what work of Government—were highlighted more than others in the survey?

Leslie Evans: Do you mean in the 2016 survey?

Dr Allan: Yes.

Leslie Evans: I can probably give you better written advice than an answer off the top of my head to that question. There are always themes that we look most closely at; bullying and harassment is one of them, and the other is managing change—

Dr Allan: I am sorry; I meant which parts of Government.

Leslie Evans: Sorry—you are talking about which specific parts. I would probably need to come back to you to give advice. We have plenty of data on that question and I am very happy to give you an analysis of the snapshot of that particular year.

Dr Allan: It has been alluded to that, following that survey and the initial analysis of it, there were what might be called, vaguely, interim measures—a director was appointed; someone was described as a “sounding board”. Was any assessment undertaken of the effectiveness of those immediate measures for creating points of contact for staff and whether they were sufficiently formal?

Leslie Evans: There are two elements to your question, Dr Allan. A sounding board—I think the term “confidant” was used as well—was part of the procedure for 2017, so it was quite separate from anything to do with the people survey. However, you are correct in that I appointed a senior director

to look specifically at addressing culture and to produce research on culture and what made a difference to people feeling more comfortable about raising issues around bullying and harassment, in particular, and what circumstances would make them feel more confident about raising them, as I mentioned earlier. That information was helpful because it was used as a backdrop to support and advise all our senior civil service leaders. They were given professional advice and research evidence on the causes and cultural conditions that are associated with bullying and harassment and they particularly asked to get under the skin, as I would call it, of their scores on bullying and harassment locally, as a result of listening and hearing about that research and what to look for.

The Convener: Thank you for your offer of written evidence, which I note at this point. I make very plain that great care would have to be taken before that kind of evidence could be submitted to the committee.

I understand that Alex Cole-Hamilton has a specific point in relation to this, which will be followed by Murdo Fraser’s questions.

Alex Cole-Hamilton (Edinburgh Western) (LD): It is a very specific follow-up, convener, because I want to reserve the bulk of my time for questions about the timeline of events around the development of the policy.

11:45

Good morning, permanent secretary. In any organisation in which 65 per cent of complaints went unresolved, staff would—understandably—not have a great deal of faith in the processes that went before. I want to ask about the informal ways of handling complaints. Was it commonplace in the culture of the Government for managers within teams to change rotas, working locations or specific duties, for example, so that complainers were further removed from subjects?

Leslie Evans: Are you talking about a particular period of time?

Alex Cole-Hamilton: Prior to the new policy coming in.

Leslie Evans: So, prior to 2017.

Alex Cole-Hamilton: Yes.

Leslie Evans: I am certainly not aware of that, and it is certainly not something that I would encourage. I think that managers are supported—we have a management development programme, as you would expect any organisation to have. People are supported as managers in their own right, and through our human resources expertise, to be able to resolve issues locally where they

can. That is not done by avoiding the issue—it is about taking preventative steps wherever possible, and appropriate steps to resolve issues, and wherever possible to do so informally. However, there are some clear circumstances in which informal resolution is not appropriate or it fails.

The Convener: We will move to Murdo Fraser, and then we will hear from Angela Constance and Jackie Baillie.

Murdo Fraser (Mid Scotland and Fife) (Con): I have some questions to follow up on the issue of organisational culture, and specifically on the questions that Margaret Mitchell asked a few moments ago.

Permanent secretary, you will have seen that the committee received a submission from the FDA, which is the trade union for senior civil servants. I will read a couple of short paragraphs from that submission. In referring to the publication of the fairness at work policy in 2010, the FDA states:

“Around this time, the culture within the former First Minister’s Office and other ministerial offices in relation to bullying behaviour became a concern for us and was raised with successive Permanent Secretaries. Although action was taken and short-term improvements or apologies were made, this did not bring about an overall change in culture. Some civil servants expressed to us that they were operating in a culture of fear and were unable to speak truth unto power and discharge their duties effectively.

The culture within the Ministerial offices in the organisation was such that despite the support of FDA, some members made clear to us that they did not trust SG to handle complaints effectively or to ensure confidentiality of the complainants. They furthermore expressed concerns over the effectiveness of the policies at that time. In particular, members in the former First Minister’s office indicated that they felt isolated and out of the policy protection of the rest of the SG. Individuals spoke in confidence and did not wish to raise complaints because they thought this may be detrimental to their career aspirations or their current role.”

I am sure that you would agree that the FDA has raised some very serious complaints. I appreciate that you became permanent secretary only in 2015, but prior to that you were with the Scottish Government in a senior role. Were you aware at that time of the concerns that the FDA has highlighted?

Leslie Evans: I read the FDA’s submission with interest. I do not recognise the term “culture of fear”, and it is not a term that I would use.

I will make two points—well, three points, actually. First—I will come back to this—I am glad that I do not recognise some of those terms, although I really want to stress that I am not complacent in any way. The most recent snapshot of how the organisation is feeling is very different from what the FDA has described in historical terms. I am pleased about that, but not

complacent. We have compelling data to show that people are now willing to come forward and are happy with the levels of inclusion. Things are not perfect, so I will put that to one side, but that is the context in which I make my other comments.

Secondly, I was aware, and have always been aware, that working in any private office is full of strain, stress and hard work. Many people around the table this morning have been ministers and will recognise the description of private offices as a very difficult place to work.

That is one of the reasons why I instigated additional support for private offices. Indeed, as I mentioned earlier, we strengthened the pastoral care to ensure that staff felt supported and that they knew where to go if they were feeling uncomfortable or they had problems with their workload and so on.

Although I do not recognise the term “culture of fear”, we have worked closely with the trade unions during my time as permanent secretary. Where concerns are raised with the unions, or their membership go to them with issues or to make complaints, we work closely with them, through our HR team. We ensure that, where people feel that they want to make those complaints official—in other words, to come to the organisation rather than go through the trade union, although they are absolutely at liberty to do that—we encourage them to take that path. Anecdotal evidence is important, but we also need people to come forward formally.

One of the things that I have been at most pains to do as permanent secretary since 2015 is to make it clear to the organisation that culture is paramount and that, to use one of my phrases, what you permit, you promote. I have made it clear that we should call out areas of poor behaviour—anything that makes people feel uncomfortable or lacking in confidence to bring their full selves to work.

At the moment, I am very fixed on where the organisation still needs to address issues. Changing a culture does not take months; it takes years, and I am not complacent. We have a more inclusive culture than we had, we have greater capacity, and we have built staff confidence to come forward in the knowledge that action will be taken. As I said in my opening statement, although that is still work in progress, it is certainly something that I have made an important part of my leadership contribution as permanent secretary since 2015.

Murdo Fraser: I thank you for that response. I understand the point about how you feel that things have got better. You also said that you do not recognise the term “culture of fear”.

We will take evidence from the trade unions—I think next week or the week after—and we will get their side of the story. Nonetheless, I put to you again that they say that their concerns about bullying behaviour were raised with successive permanent secretaries. Were they raised with you?

Leslie Evans: I do not remember ever being given a specific complaint from a trade union about a specific bullying behaviour. Having said that—I hastily make sure that I am thoughtful about this response—I cannot comment for previous permanent secretaries.

We have had cases against ministers of bullying and harassment that have been addressed at an informal level; I think that there have been two since 2007, but I will check my facts. I know that the unions—correctly and rightly—have regularly raised with HR colleagues the issue of addressing the nature of the culture so that people feel that they can speak out if they are exposed to bullying and harassment. I am aware of concerns having been raised about certain behaviours in the past. I cannot say other than that; that is based on confidential conversations and I prefer not to say more than that.

During my time as permanent secretary, I have seen this as a point of principle. It is of great importance for the organisation to improve and develop its culture to be more diverse and inclusive and, as a result, more able to demonstrate the importance of the equality policies that the Scottish Government embraces, not just for the organisation, but for Scotland as a whole.

Murdo Fraser: I have one final question at this stage, if I may, convener.

It has been stated publicly that female civil servants were advised not to be alone in the company of the former First Minister. Is that something that you were aware of?

Leslie Evans: I cannot comment on that.

The Convener: I note at this point, Mr Fraser, that I am not sure that that is entirely appropriate in relation to what we are doing at this committee under its remit.

Murdo Fraser: With respect, convener, I think that it is a relevant question in relation to the culture that we are trying to investigate, which led to the development of the policy. The permanent secretary said that she cannot comment. I do not know whether that is a denial or an admission.

The Convener: Mr Fraser, I have made my decision.

Murdo Fraser: Okay. Thank you, convener.

Alex Cole-Hamilton: On a point of order, convener. I believe that Mr Fraser's question is pertinent. This committee is charged with looking at the Government's handling of harassment complaints. That does not just mean the application of hard and fast procedures; it also concerns the application of informal steps that were taken to protect complainers. If what Mr Fraser is asking about happened, that is something that this committee absolutely needs to know about.

The Convener: I have made my decision. This is something that the committee can discuss in private, if we wish. I am more than happy to listen to the views of all committee members at that point.

Margaret Mitchell: Can we take legal advice on this? We have the permanent secretary in front of us, and she might be quite willing to answer the question. If not, could we take some legal advice on the matter?

The Convener: I have made my decision, and we will discuss this matter after the meeting, when we are in private session. I am willing to listen to all committee members and to the Parliament's legal advice. We will take a decision, and it may well be that we can invite the permanent secretary to give evidence in writing on the matter, or, indeed, that the matter can be raised again if she comes back to speak to this committee. Meanwhile, I think that we should move on.

Angela Constance: Good morning, permanent secretary. Complaints need to be investigated and policies need to be fit for purpose. Why, therefore, was there no wider and more formal staff engagement, other than an email from you to all members of staff on 2 November 2017, which is in document YY084?

Leslie Evans: If you are referring to the development of the procedure, I was informing staff that the procedure was under development. It was an employment procedure. We were engaged with the unions on it, and, as part of the commission from the Cabinet and from Sir Jeremy Heywood, we were asking the lead division most appropriately tasked and most appropriately skilled to undertake that procedure development. If I recall the document correctly, I was alerting staff to the fact that we had been commissioned to produce this procedure and that that process was under way.

Angela Constance: I understand the content of the email. My question was more about where the more formalised engagement with the staff was. I also want to come on to address trade union engagement.

The Scottish Government's written statement and chronology of events lays out the background

to the policy development, which is what we are discussing today. It states what took place in 2016 and in spring 2017. That is clear.

In your opening statement, you spoke about how the #MeToo movement gave momentum to the work around this policy, and you referred to the instructions that you got from the First Minister and Cabinet. I want to ask you about the pace of that work, from the beginning of November until its completion, which was either when the First Minister signed it off on 20 December 2017, or when the policy was finalised in January 2018, before it was published in February.

Can you say what informed the process and why that work was done at pace? The trade unions acknowledge that the policy was developed quickly. Forgive me if this is a stereotype, but given that civil servants are known for their strengths in methodical and forensic work, sometimes, perhaps, at the expense of doing things at pace, I am keen to understand why the work in question, from the end of November until it was completed, was done at pace.

12:00

Leslie Evans: The commission was from 31 October. A Cabinet commission, as you will know, is an important piece of work. A commission that has come directly from Cabinet has a particular status associated with it.

That was endorsed and enforced by a letter from my line manager and head of the UK civil service, Sir Jeremy Heywood, who asked all permanent secretaries to satisfy themselves rapidly that processes were in place. We therefore had a Cabinet commission, which already has a certain status associated with it, and we had the head of the UK civil service writing out to every permanent secretary in the land, telling them to satisfy themselves on the processes. We also knew that the unions were keen—we have spoken about this—to ensure that any issues of harassment were addressed and that a strong stance was taken, to use their term.

That was all set in the context of quite a febrile atmosphere on social media and some very high-profile and very high-hitting examples of historical and current harassment. The Scottish Parliament was not immune from that.

I would hesitate to say that the work was rushed. I do not think that that is accurate. It was an intense and focused piece of work, which was located in the right part of the Scottish Government, in the heart of the propriety and ethics and ministerial code team. It was also iterative. You will see from the paperwork that we have provided—and subsequently, if you speak to the deputy director who led on this piece of work—

that it was highly consultative within the organisation and, indeed, drew on guidance from ACAS. We also spoke to Police Scotland about it.

The work was not self-contained within one division, so it needed a fair amount of co-ordination as well. It was informed at every stage by legal advice and by HR expertise. I would not say that it was rushed, but I would say that it was intense. By the time we came to bring the procedure to fruition, later on that year, we needed to ensure that the First Minister, who is the ultimate arbiter of the ministerial code, was satisfied, that I was happy with it and that the trade unions were comfortable with it.

At that point, a number of people were raising concerns—not complaints, to go back to my previous differentiation, but concerns. I did not know whether those concerns were going to turn into complaints. However, it was a reminder that the procedure was required, that we had acted appropriately and that we needed to make sure that we had a robust and professionally well-researched procedure ready, if people decided that they wished to lodge formal complaints. That “if” is an important word.

Angela Constance: Can you confirm when the policy was signed off? Again, the Scottish Government’s chronology of events refers to the First Minister signing off on the policy on 20 December 2017, but it was not published until 8 February 2018.

There appears to have been a bit of to-ing and fro-ing with the feedback that was received from trade union colleagues on 19 December 2017, and it is not clear whether the policy was adapted to reflect those comments. I am keen to understand when the policy was finalised—when it was done and signed off.

Leslie Evans: It was signed off by the First Minister, as you have seen from the paperwork, on 20 December. It was not published immediately because of other relevant work that was on-going, and we wanted to bring the whole package together. There were two elements in particular that we wanted to bring together. Although I was not closely engaged in this, as you would imagine, my understanding is that fairness at work discussions with the unions about how we would define and refine the fairness at work policy in relation to this procedure were still going on. That was one thing.

In addition, the Scottish ministerial code was being revised to reflect changes in the UK code, and we wanted to bring that all together so that there was a neat and co-ordinated approach to publishing the procedure and the changes to the ministerial code, and that we had concluded discussions on fairness at work with the unions.

The unions were already aware of the procedure in December, so had complaints been lodged at that time, for example, they would have known what the procedure required and what was associated with it, but we published in February, when we had all the other pieces of the jigsaw in place.

Angela Constance: This is my final question for now, but I might want to raise further issues to do with trade union involvement later on. I want to understand more about what informed the decisions around the sharing of a policy that was still a draft—for example, we know from the Scottish Government's chronology of events in its written statement that the draft policy was shared with a potential complainant on 14 December 2017, but the policy was not signed off by the First Minister until 20 December.

Leslie Evans: I understand that, too. I was not aware, because I was not close to the procedure development, as you would expect, but I will make two points on that issue.

First, it is not unusual—in fact, it is increasingly the case—that, in developing policy and procedure, we base it as much as possible and draw on what is called—this is not a term that I particularly like—“lived experience”. In drawing any policy together now, in order for it to have resonance and relevance, it needs to be not at the pen of a civil servant but to actually reflect what people are wrestling with in their own lives and experience and so on. That would have informed the procedure. If somebody had raised a concern—a number of people had raised concerns by that time in November 2017—it would not have been beyond professional practice to have asked about that. More particularly—and, I think, more importantly—the other issue is to ensure that the developing procedure would have made a difference in different circumstances. In other words, we wanted to have in place a procedure that, in the future, would mean that the experience that people might have been telling us about would have been less likely to happen.

My final point is that I was informed that the policy was shared on 14 December, which was the time of the final draft—I think that version 7 was the iteration that was out at that point, and I do not believe that any changes were made as a result of that sharing, either. However, that is not an area of expertise of mine—that is for people who were developing the procedure at the time, to whom, I am sure, you will talk further.

Jackie Baillie (Dumbarton) (Lab): Good afternoon, permanent secretary. I would like to make a gentle correction before we get going. I think that you said in your opening statement that the committee had been provided with all the evidence that we sought, to the timescales that we

asked it to be provided. I think that you will find that that is not the case—the committee has sought information that it has not been provided with, and certainly not to the requested timescale. I accept that civil servants are busy with other things, but it is important that there is accuracy.

I will move on to my first question.

Leslie Evans: I may wish to come back to that, Ms Baillie.

Jackie Baillie: Indeed, but let me ask my first question, then you can do so.

Leslie Evans: Of course.

Jackie Baillie: The Cabinet Office expressed concerns about the policy to include former ministers in an email—that exchange is captured in document YY092. Comment is made in which the Cabinet Office expressed disquiet; it asked you to await its review. Did you do so? Was there any further contact with the Cabinet Office? It is clear that the policy was not signed off.

Leslie Evans: The first thing to point out is that the Cabinet Office does not need to sign off the policy of the Scottish Government. Although we have regular and good contact with the Cabinet Office, as you would expect, the responsibility for developing employment policies and procedures for staff is delegated to the First Minister for Scotland, so we take our instruction through that and I act on that behalf.

We were working to a commission from Cabinet, and we were coming from quite a different place from the one that the UK Government was coming from—to my knowledge, the way that it operates is such that it does not have a fairness at work policy. We had a written procedure to deal with bullying; it was flawed, but we had it. We were very clear about the sensitivities relating to our circumstances and understanding and our commission from Cabinet.

Cabinet Office discomfort in such areas is not new. It has wrestled with its own concerns about procedure. I believe that the Cabinet Office still does not have a written procedure. I might be corrected on that, but I believe that it does not. It does not have a published policy for handling cases involving complaints about ministers. Such issues are addressed to the propriety and ethics team, using the ministerial code alone.

Jackie Baillie: Did you wait for the Cabinet Office's review? Was there any further contact beyond the email that I referred to?

Leslie Evans: I apologise—I did not address that point.

The review of policies and procedures that Sue Owen was undertaking in January was quite separate and distinct from the policies that we

were pursuing. Those were separate because they are delegated to the First Minister. We took notice of that review, because all this stuff is generically relevant, but it was not something that we were taking part in.

Jackie Baillie: So there was no further contact beyond that email exchange. You were aware of the Cabinet Office's review in January, after the procedure had been signed off in December.

Leslie Evans: We were aware of its review, and we continued to have contact with the Cabinet Office, as we always do.

Jackie Baillie: That is great.

I want to explore an issue that Angela Constance raised to make sure that I have it right in my mind. You published the new policy on current and former ministers on 8 February. Is that right?

Leslie Evans: Yes—on the website.

Jackie Baillie: Yet you had complaints lodged in January. Is that correct?

Leslie Evans: That is correct.

Jackie Baillie: You said in a press release on 23 August that you had published the new policy and procedures on the intranet in December. Surely that is not correct, given what you have just told me.

Leslie Evans: I do not recognise that. I would need to go away and check that. The policy was published on the internet in February, having been signed off in December, for the reasons that I gave earlier. I am happy to clarify if I was confused or if that is a different reference.

Jackie Baillie: Was the policy signed off, given that you were making amendments in January?

Leslie Evans: To my knowledge, no further amendments were made in January. It was signed off by the First Minister and me on 20 December, after consultation with relevant parties. The work that we were referring to earlier was the fairness at work policy, on which discussions were still taking place with the unions; indeed, we are still talking to the unions about the fairness at work policy.

Jackie Baillie: Forgive me; I do not know this. Is it customary for people to lodge formal complaints about a policy that has not yet been published for the civil service?

Leslie Evans: It is important to understand that people will decide to lodge complaints at any time. They do not feel the need to wait until a procedure is in place.

Many concerns were raised during November. Some translated into complaints; the individuals who decided to complain did so in January. They

could have done that at any time. I was not aware of why that was their timing. There were a number of concerns, two of which translated into complaints, and those were lodged in January.

Jackie Baillie: You are saying that, of the concerns that were raised, two were then lodged as complaints in January. Was the information on the drafting of the policy shared with those two people prior to them lodging complaints?

Leslie Evans: I believe—as I said to Ms Constance—that one of the people who went on to lodge a complaint was asked, in the light of their lived experience, about the draft as it was then. I was not aware of that. It is not unusual to test new procedures or policies with people who have relevant experience, as I mentioned earlier, but I do not believe that any changes were made to the policy as a result of that. It was already at version 7 by that point.

Jackie Baillie: I will reserve my other questions for later.

Alex Cole-Hamilton: I have three questions, the first of which is a double-header. Given that the original procedure was designed to cover the whole of the civil service, why did the expansion of the policy on retrospective harassment extend only to former ministers and not to former civil servants? Why did it also not cover complaints that were not about harassment?

Leslie Evans: The answer to that is that civil servant to civil servant complaints are covered by the fairness at work procedure.

What was your second question?

Alex Cole-Hamilton: Why did expansion of the policy cover only harassment complaints and not non-harassment complaints?

12:15

Leslie Evans: Bullying, which would be the counterpart, is covered by the fairness at work policy. What we have to understand here—as I say, I was not involved in the detail of this—is that this was an opportunity for the clarification and improvement of the fairness at work policy, particularly in relation to issues, which were referred to earlier, where trade unions and others said that it was not working perfectly. This was the opportunity for us to clarify what policy does what. For harassment purposes, the 2017 policy is the go-to place. For civil servant to civil servant issues and bullying by ministers, it is the fairness at work policy. That is the rough divide that we use for reference when deciding which policy is applied.

Alex Cole-Hamilton: It is a matter of public record that Ms B first notified officials of her complaint against Alex Salmond on or around 7

November 2017, which was at the height of the development of the policy. She asked that you be told. At any point, did you signal to either Nicola Sturgeon or anyone else involved in the development of the policy for former ministers that that complaint had been made?

Leslie Evans: A concern was raised by a whole range of people in November 2017. We need to bear in mind that two or three elements were going on at the same time. There was a procedure that was led by a deputy director in charge of the Cabinet, Parliament and governance division, drawing on others' experience, to produce a procedure in response to the commission from the Cabinet and Sir Jeremy Heywood.

At the same time, as a backdrop, two high-profile historical cases were taking place, and we were receiving concerns from staff in a separate but concurrent stream of work that the HR team was undertaking, which was providing support, advice and information for staff. On my request, a confidential sounding board post was added to that, so that people who did not want to go to HR could go to it. It was similar to the phone line that the Scottish Parliament set up, but it was a live person they could refer to.

I was made aware of two things. I was made aware of contact that had taken place between Mr Salmond and certain Scottish Government members of staff in very early November. He had contacted them because he wanted to talk to them about a piece of media work that was being undertaken by Sky News. I was told by two different sources, one of whom was extremely concerned, that they had received that contact, and that they were a bit bewildered and unhappy about it.

I did not know what was said—I did not ask, as I did not feel that it was appropriate for me to know—but I was concerned about the staff, who are always my priority in such circumstances. I mentioned to the First Minister that Mr Salmond had been in touch with staff about an Edinburgh airport incident that Sky News was investigating. I told her about that and said that I was concerned, mostly because the staff were anxious about it. I was also concerned that it could become a story. I did not know whether it would, but I was concerned that we should be ready for whatever form that story might take, because the media were very volatile at that point and reporting on everything.

At the same time, I was told that other people were coming forward with concerns, not complaints. As they were concerns, they were not registered.

I am looking around to see whether the convener is comfortable with what I am saying.

The Convener: I am afraid that I am becoming uncomfortable.

Alex Cole-Hamilton: Can I draw it back?

The Convener: Yes, I would appreciate that, please, Mr Cole-Hamilton.

Alex Cole-Hamilton: If I could draw it back specifically to Ms B, who raised a complaint and specifically asked that it be shared only with you.

Leslie Evans: I do not recognise that at all.

Alex Cole-Hamilton: Okay. You do not have a recollection of that, but—

Leslie Evans: I do not have a recollection of Ms B asking for a complaint to be shared with me. I have a recollection of a concern—

The Convener: Can I stop this here? I am becoming concerned again. That was not pulling it back.

Alex Cole-Hamilton: I will move on.

The Convener: I ask committee members and witnesses to be very aware of the remit of this committee and the restrictions under which it works. Could you genuinely pull it back, please?

Alex Cole-Hamilton: My line of questioning is entirely in accordance with our remit, so I will ask my final question.

We know that a specific policy on former ministers was in train between 31 October and the end of November 2017. Ms B's complaint emerged at the start of that process. Some officials had knowledge of that, and some of them had responsibility for designing the policy. Did that knowledge influence the design of that policy in any other way? Forgive me for being blunt, but I will put it another way, as the optics of it are not great: was this targeted policy, which applied only to harassment complaints against former ministers, engineered to fit any complaint that had been arrived at through the Scottish Government? Was it designed to get Alex Salmond?

Leslie Evans: No. Absolutely not.

Alison Johnstone: My question concerns the development of the process for current and former ministers and your confidence in the independence of the process for the investigation of complaints against ministers.

In an email that you wrote to senior trade union officials on 8 January 2019, you noted that

“the procedural flaw in the investigation relates to the perceived impartiality of the Investigating Officer”

and that

“there is nothing to suggest that the Investigating Officer did anything wrong.”

I would like to understand the point that you were making. Prospect, the trade union, noted:

“The Permanent Secretary explained the decision taken by the Scottish Government to concede the Judicial Review, taken due to an issue with the application of one paragraph in the process.”

In your statement earlier, you spoke about one part, procedural failure. I would like to understand exactly what that failure was and why it happened.

Leslie Evans: We are in danger of getting into the judicial review and the implementation. However, I absolutely understand the premise of your question, so if the convener is happy, I will answer it.

The meaning of paragraph 10 of the policy, which is to do with the role of the investigating officer, was absolutely clear to those who were involved in the development and, indeed, the operation of, the procedure. It was very clear that the investigating officer should not be involved in the matter that was being investigated. That is the terminology of it. Previous iterations of the final drafts of the policy were absolutely clear about the other elements of the investigating officer role that could comprise that, but we simplified and summarised it in the phrase “not involved in the matter investigated”. However, it is worth looking at previous versions of the policy, which give much more detail about what the investigating officer role was really about.

It features in earlier drafts, but what became clear during the process of the judicial review was that paragraph 10 could be open to a different interpretation, and we conceded on that point. It was accepted that what mattered was apparent, not actual, bias in the way in which the investigation was carried out. That is a very important point. In other words, the different interpretation was not just that the investigating officer should not be involved in the matter that was being investigated but that, in addition—and this was the judicial review’s interpretation—the investigating officer should have had no prior contact with the complainers as well as no involvement in the subject matter of the complaint.

I hope that that clarifies the differentiation.

Alison Johnstone: Yes, certainly.

Will lessons be learned from the occurrence?

Leslie Evans: Absolutely, lessons will be learned about the application of the procedure. The Laura Dunlop review, which I mentioned in my opening statement, will focus predominantly on that element: the interpretation of paragraph 10 and how we need to make its future application clearer. It will relate to the application of that one element rather than the procedure overall.

Maureen Watt: We have already spoken about the fact that, in spring 2017, a director was appointed in the Scottish Government to champion the tackling of bullying and harassment. How was that person chosen? Who was it and what qualifications did that person have for the role?

Leslie Evans: I will not give names if that is all right, but the person was an experienced director who had moved their way up and around the Scottish Government, so they were familiar with the culture of the organisation. That person had worked in a range of policy areas and was a generic manager, so they had been in the position, as many of our managers have been, of looking at their bullying and harassment scores and thinking, “What do I do about this?”

That person was to lead that piece of work. They were well experienced to look at it from the perspective of practical application of the knowledge that they would bring. They worked very closely with two specialists in the HR team. They worked as a small unit in looking at what we need to learn about how culture changes and, in particular, the trigger factors for a culture of bullying and harassment.

Maureen Watt: Why was it not somebody from the HR directorate, who would have a qualification in personnel management and development?

Leslie Evans: HR specialists were working to and with that individual. I wanted two things. First, I wanted somebody who had already had experience in receiving people survey results year after year and in deciding what to do with them and how to use them to best effect for change. I wanted somebody in the position who was in a director’s shoes. Secondly, I wanted somebody who had worked across the organisation and who knew how to work in a team with people with specific expertise.

The system worked well. It was something that I introduced that had never been done previously. Other directors and managers listened. That is not to say that they would not, of course, listen to HR specialists; they do. We draw on HR expertise every day of our managing lives. However, if you are faced with and listening to somebody who has been in the same position as you—perhaps with responsibility for several hundred staff and working under pace and duress—and who is interpreting the data and analysis from your perspective, that helps. I wanted to ensure that senior managers were listening and looking at their own results through the lens of experience that they recognised.

Maureen Watt: In response to a previous question, you said that people might not want to go to HR. I would have thought that, in any other organisation, you would first go to your line

manager if that was appropriate, but if it was not, you would go to HR. Why do people in the civil service not want to go to HR?

Leslie Evans: I hope that that is not what I said, although I understand your line of questioning. People will go to a range of places. They will go to their line manager, to their union and to HR. People go to HR regularly, so please do not let it be put on the record that HR staff are not doing a good job and that people are not going to them.

I appointed what I referred to earlier as a confidante or sounding board in very particular circumstances during autumn 2017. That was unique to those circumstances. I thought that that person could act as a complement to HR. If people wanted to go to HR to share their concerns, and if, ultimately, they decided to make them into complaints, of course, they could go to HR.

Frequently, people do not necessarily want to go to the official place; they want to speak to somebody who understands what they are saying and what they have experienced. That is borne out through research, and the committee will be increasingly familiar with that through its work. People want somebody who will listen and point them to further information and help but who will just recognise the experience that they want to share.

We found that many people did not want to take their experience of poor behaviour any further, but they wanted somebody to listen and understand, and they wanted that to be registered. That is what that person's particular and unique role was about. It was for a unique set of circumstances against the backdrop of the #MeToo campaign.

Maureen Watt: Do you feel that the roles that are set out in the policy for senior figures are sufficiently clear to meet best-practice standards? Who, for example, would decide to alert the police where a crime had been committed?

12:30

Leslie Evans: On your first question, yes—I think that the roles in the procedure are clear, although we will learn from the Laura Dunlop review that I mentioned earlier, which will look at the application of the procedure. If further clarity is needed, I will be particularly keen to ensure that we put that into place.

With regard to the police, we took advice from Police Scotland, because we wanted to ensure that the procedure was appropriate and sympathetic, and that it was effective in terms of encouraging people to use it. As I said earlier, it is an employment procedure and not a legal tool. The police's view, which we adhered to and which is reflected in the procedure, is that the process

must be led by the victim—by the people who are bringing concerns or complaints. If they wish to go to the police, they are at liberty to do so at every stage in the operation. The procedure expressly stipulates that staff are at all times free to make a complaint directly to the police. The confidential sounding board post that I spoke about also emphasised that, if a victim felt that a criminal act had been committed and wanted the police to know, that was entirely appropriate.

However, as our investigation—I know that we are not going into the application of the investigation now—reached its conclusion, the Scottish Government decided, informed by legal advice, that three of the complaints should be referred to Police Scotland. As a Government, and indeed as members of the civil service, we have to comply with the law.

Maureen Watt: I am keen to tease out the level of oversight of the Cabinet and executive team in the development of policies—not just the harassment policy—in the Government. For example, I take it that, if you are recruiting to the legal directorate, you would look for people with a legal background, and similarly with finance. Is it the same procedure with HR, or is the idea that civil servants are able to do anything and everything, and are slotted into HR? Do you consciously recruit people with an HR background?

Leslie Evans: We do and we did.

Maureen Watt: You are responsible for the day-to-day running of a civil service, which is an organisation that serves ministers. Apart from where there is an overlap, for example with the harassment policy in the ministerial code, is it otherwise pretty separate, or does the Cabinet get papers on lots of organisational matters?

Leslie Evans: The Cabinet does not receive papers at all on organisational matters of the HR kind and so on, unless it is a procedural issue or a change of procedure. When it comes to the content, that is not traditionally done.

Maureen Watt: In the case of the harassment policy, I understand that the First Minister asked the Deputy First Minister to get involved. What was his involvement?

Leslie Evans: My understanding is that his involvement was very limited—if I recall it correctly, it was discussed at Cabinet, when the commission was created, that it would be appropriate for a man to instigate the parliamentary question that prompted this. That was in response to written exchanges that had already taken place between the First Minister and the Presiding Officer about the importance of the issue. I think that it was agreed that it would be good for a man to instigate the PQ, rather than a

woman, which could be considered to be a bit stereotypical. I think that the Deputy First Minister was asked by the First Minister whether he would do that—actually, I think that he volunteered to do it. My understanding is that that was his only involvement in the development of the procedure. Ministers would not be involved in the procedural development at all.

Jackie Baillie: I will try to ask brief questions for brief responses. You said to Angela Constance that you started work on the new policy. The inclusion of former ministers was not mentioned in the parliamentary statement on 31 October, nor was it discussed at Cabinet on the same day. Is that correct?

Leslie Evans: It was not specifically discussed, although the context of the commission referred to the fact that many of the issues were of long standing.

Jackie Baillie: Okay, but it was not specifically mentioned. At what point were former ministers mentioned and by whom?

Leslie Evans: They were mentioned in the first iteration of the policy. I do not have a copy of it in front of me and others were closer to it. I go back to the previous conversation: the fairness at work procedure failed to mention former ministers, and that was a gap that had already been identified.

Jackie Baillie: Was the first iteration done by James Hynd?

Leslie Evans: James Hynd was responsible for all the iterations—he was deputy director.

Jackie Baillie: So he was the first person to introduce former ministers, and that was not in conversation with anyone else.

Leslie Evans: Not as far as I understand.

Jackie Baillie: I will ask him about that.

Leslie Evans: Can I just clarify that? James Hynd is and was the person responsible for the ministerial code of ethics and he also led on the development of the procedure. He will have had conversations with others about it—particularly the legal team, but also HR.

I believe that the first part of the first draft mentioned previous ministers.

Jackie Baillie: Did you seek a view from Scottish Government lawyers about the overall policy and the inclusion of current and former ministers specifically?

Leslie Evans: We consulted lawyers throughout the iterations of the policy.

Jackie Baillie: Did they express any concerns?

Leslie Evans: I cannot answer that, because lawyers were involved throughout. They will have expressed views and given legal advice throughout the iteration, from the beginning of November until 20 December.

Jackie Baillie: Is it appropriate for you to go back and consider whether they expressed concerns and provide that information to the committee?

Leslie Evans: I suspect that that will fall under the legal privilege. I have no locus on that. As you know, that is a ministerial decision.

Jackie Baillie: The Deputy First Minister said that we could ask, but perhaps we should pursue that elsewhere.

Leslie Evans: You are welcome to give me written questions.

Jackie Baillie: I will move on. In a memo dated 7 November 2017—document YY073—Judith Mackinnon suggests that allegations against former ministers should be escalated to you but that someone independent should investigate complaints. That view was shared by the trade unions and by James Hynd, but it was not implemented. Why was that?

Leslie Evans: My point about independence was slightly different from that of the unions. My point about independence was about how someone might be slightly aside from the HR process in the way that I have just described to Ms Watt in relation to the confidential sounding board. There could be someone within the organisation, aside from HR, who could act as a confidential sounding board.

Jackie Baillie: Was that specifically in relation to former ministers?

Leslie Evans: No, I do not recollect that being about former ministers in particular—it was to do with the procedure as a whole.

The point that has been raised subsequently by the unions about independence is whether a more independent element should be inserted into all procedures. That has taken place subsequently in the Westminster procedure, which now has an independent element.

Jackie Baillie: I will move on to the letter commissioning the policy to include former ministers that was sent to you by the First Minister on 22 November. When was the chief of staff involved? Was it before that date?

Leslie Evans: I cannot tell you, I am afraid. I was not involved in the drafting, so I do not know that. We had already included former ministers in all the iterations that I am aware of—it was there from the very beginning.

Jackie Baillie: Okay. Do you know when the chief of staff became involved? At paragraph 27 of the statement, you say that the chief of staff's only involvement was that she was consulted on

"the appropriate allocation of responsibilities between the First Minister and the Permanent Secretary, and provided comments on a draft of internal correspondence".

Is that paragraph right?

Leslie Evans: I cannot comment on that extract.

Jackie Baillie: You said that in your statement. I am asking whether the paragraph is correct.

Leslie Evans: Then it is right. I am not sure what the point is that we are trying to get to here. The point about historical allegations against previous ministers was in the very early iterations as a result of work that had been done on the fairness at work policy. It was confirmed in the letter that the First Minister sent some time in November—I think that her letter is dated 22 November. She confirmed elements of the procedure and where they would apply.

I was not involved or engaged—nor should I have been—in the to-ing and fro-ing between the different parties in how the procedure was drafted. That is not my role. I would need to refer to others on when and how individuals were incorporated and consulted.

Jackie Baillie: So you never had discussions with the chief of staff.

Leslie Evans: I have discussions with the chief of staff.

Jackie Baillie: Okay. Did you have discussions about this, prior to the letter of 22 November being signed off?

Leslie Evans: I do not recall having a specific discussion with the chief of staff. I have discussions with the chief of staff on a whole range of issues, as you can imagine. I do not remember having a particular discussion on that issue.

Jackie Baillie: That is unfortunate, because you assert quite clearly that the chief of staff had only one specific comment to make, and the suggestion—

Leslie Evans: That may well be the case, yes.

Jackie Baillie: But you cannot remember whether there were any other discussions round about that time.

Leslie Evans: She would not have made the comment to me; I was not drafting the procedure. That is not my role—it was delegated very clearly to the deputy director, as was discussed earlier. It may well be that discussions took place, and it

may well be—as I have said—that that was her contribution, but the comment was not made to me.

Jackie Baillie: So you cannot say accurately that that was the sum and substance of her contribution to this issue—you can say only that you have no recollection that anything was said to you personally.

Leslie Evans: I can take account only of what people have said to me, and I have no recollection of that particular—

Jackie Baillie: Thank you—I will pursue that with others.

Leslie Evans: My memory may be wrong—it was nearly three years ago—but we would have had conversations about a whole range of things during that time.

Jackie Baillie: Sure. Memory is a fickle thing.

Let me ask you one personal question. When were you made aware of the likelihood of concerns or complaints being made against the former First Minister?

Leslie Evans: We are going back to the conversation that I had with Mr Hamilton. I was first aware of the issue being raised through a different route, which was Mr Salmond getting in touch with our staff about Edinburgh airport—

Jackie Baillie: Okay—you do not need to repeat that.

Leslie Evans: After that, I was made aware that a range of people—I did not know who—were raising concerns. I understood that they were raising concerns about a range of different circumstances, but I was not told about them. One of the concerns to which I was alerted had referenced Mr Salmond.

Jackie Baillie: When was that?

Leslie Evans: That was in early November.

Jackie Baillie: Convener, I have one final quick question, if I may.

The Convener: I ask you to be circumspect about it, please.

Jackie Baillie: Absolutely—it is not on the same matter. I am going to take us to a different place.

I understand that James Hynd, who was responsible for drafting the policy, is now assigned to the ministerial code investigation. Do you consider that to be a conflict of interest?

Leslie Evans: I am sorry—could you explain that? You mentioned the ministerial code investigation.

Jackie Baillie: There is an investigation under the ministerial code being done by James Hamilton.

Leslie Evans: Oh, yes—sorry.

Jackie Baillie: I understand that James Hynd has been assigned to that investigation. Is that a conflict of interest?

Leslie Evans: No.

Jackie Baillie: Okay—thank you.

The Convener: There are two short supplementaries, and then we will move to Angela Constance as the final contributor. Margaret Mitchell will go first, followed by Alasdair Allan.

Margaret Mitchell: I return briefly to the informal confidential sounding board—the individual—that Leslie Evans said was put in place in the unique circumstances of #MeToo. A private, formal and supportive space was provided in which the person in that role could signpost and guide someone to support or move to a formal action if required.

Can you explain why that was not continued? From your evidence, I understand that if an employee who experienced a past incident of sexual harassment wants to come forward and raise it in that way, there is no longer a person in that role. We know that, in such circumstances, it can be a little while before people come forward. Surely good practice would dictate that the sounding board should be continued rather than be in place just for those particular circumstances.

Leslie Evans: That is a very good point. It was a very deliberate decision to appoint somebody who would be good in that role, and who would have the time, and the trust of other people in the organisation, to undertake it effectively. However, the role is quite onerous—it certainly was at that point, as you might imagine, when there was so much going on and many people were approaching the individual in question.

The sounding board is not a formal part of the procedure. Laura Dunlop will advise us on one particular aspect of the procedure, but she may wish to make other comments. I will reflect on whether we would want to make the sounding board a more permanent process, so that there would always be somebody with that additional care and confidence role sitting outside the traditional confines of HR.

It was not that we deliberately stopped the role—it was more that we found that fewer people were coming forward at that time to use the sounding board. Nonetheless, there is learning for us from all of this process; I hope that I am not giving anybody the impression that there is not.

The fact that the role was not part of the formal procedure was one aspect of how valuable it was. That proved to me the importance of it, and we may well wish to think about how we preserve some element of it in the future.

12:45

Dr Allan: I do not want to put words in your mouth, but a while back you said, more or less, that ministers were not involved in the development of the policy. Although I understand that Cabinet would have been involved in the sign-off, am I correct in taking from what you have said that ministers were not involved in what you call the iterative process around the formation of the policy? Can you elaborate on what you meant?

Leslie Evans: They were not involved in the iterative process. As you have been a minister, you will know that we look through versions of policies and hold them up to the light and consult people. The process was quite intense, for reasons that I explained to Angela Constance earlier, and ministers were not particularly involved in it.

Angela Constance: I want to go back to the point about the evidence from the FDA. It called for a fully independent process for the investigation of ministerial harassment complaints, akin to what exists in the House of Commons, but instead we have an internal investigation process. Why is that?

Leslie Evans: I think that I mentioned earlier to Jackie Baillie that the independence of the Westminster process is pretty recent. That happened well after our procedure was developed; originally, it did not have any independent element to it.

Angela Constance: I am not asking about the process; I am asking why the Government opted not to have an externally independent investigation process.

Leslie Evans: I understand that and I am trying to explain it. It is an employment policy. It is unusual in employment policies to have any independent element until after the procedure has been exhausted. ACAS would become involved in an independent element, and so would the employment tribunal. That was the lens through which this procedure was developed. In other words, it was predominantly looked at as an employment policy.

Since then, Westminster has decided to inject an independent element. Interestingly, at the time when we were developing our policy, the issue of whether we should have an independent element was not raised by the unions. We will be looking and learning and taking account of the Laura

Dunlop process, and we will decide whether an independent element should be injected into the procedure at some point. I am not against that, but I am pointing out that Westminster has followed us in having a written procedure and has subsequently been pressured by the FDA, successfully, to include an independent element. It might well be that we will find that to be the best route in the future. We are not at that stage yet.

Angela Constance: I understand that issues of employment policy and employment law are complex and can require lengthy consideration. However, when you signed off this policy—a policy that was developed from 31 October and was signed off on 20 December—were you absolutely confident about its robustness?

Leslie Evans: I was. It had been informed by legal and HR expertise throughout.

The Convener: I have one final question. You have referred quite a few times to the investigation by Laura Dunlop QC. Could you tell me the timeline for that and when it is likely to conclude and report?

Leslie Evans: I do not have a final timeline. I think that it is expected to last about three months, but I can write to you with the anticipated timeline, based on what has been progressed so far.

The Convener: Thank you for that, and thank you for coming along today to answer our questions. There are a few things that we will pick up—as I am sure, your people will—in relation to the potential for written evidence to be sent to us.

I remind everyone that next week, we will take evidence from two Scottish Government officials. I ask the permanent secretary and her team to reflect on some of what was said today, particularly in relation to the letter from the Deputy First Minister and the issues of legal privilege and verbal evidence, which one of my colleagues raised, and, perhaps, to have a discussion about how evidence can be given next week.

The committee and I have some concerns about the redactions in some of the information that has been sent in. I ask that further consideration be given to some of that, and that discussions be undertaken between parliamentary officials and Government officials.

We might invite you back, permanent secretary, after we have listened to your colleagues and to the trade unions. That appearance might concern the element of our inquiry that we have been discussing today. In any case, I am sure that we will see you further on in our inquiry, in relation to the other elements. Once again, thank you for coming.

This meeting will now continue in private session.

12:50

Meeting continued in private until 13:18.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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