



The Scottish Parliament
Pàrlamaid na h-Alba



All About Respect
Cultar Spèise

Report of the Joint Working Group on Sexual Harassment



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Executive Summary

Introduction

Every person has the right to work in an environment that promotes respect, fairness, equality, and dignity and enables them to make their best contribution. Sexist behaviour and sexual harassment do not belong in the Parliament.

The Scottish Parliamentary Corporate Body (SPCB) set up a [Joint Working Group](#), comprising senior Parliament officials, representatives from each political party and an external expert to look at how the Parliament should address these issues.

The Joint Working Group would like to thank everyone who took the time to complete the survey into sexual harassment and sexist behaviour and who took part in our focus groups. The feedback was invaluable to us in putting together our proposals.

Our report sets out our vision for the Parliament as a place where everyone can flourish and not be subject to harassment and sexism. We also set out the changes that need to be made to our current policies and procedures to deal effectively with complaints of sexual harassment and sexist behaviour.

New complaints procedures won't be enough. Our culture needs to change and we set out what we mean by zero tolerance, the principles that should apply and how we have translated these principles into the actions we're recommending.

Our proposed new policy on dealing with Sexual Harassment would apply to everyone who works in and for the Parliament. It is attached as an annex to this report and sets out in detail how complaints would be dealt with.

In summary, this is what we're proposing:

Independent Support Service

A centralised service providing a single complaint route and providing advice, support and advocacy. This will be independent of the Parliament and the political parties and will be run by an external body. It will provide ongoing support to anyone experiencing sexual harassment or sexist behaviour, irrespective of whether or not they submit a formal complaint

People will be able to access this service on an anonymous basis. Formal complaints, however, can't be made anonymously as the person being complained about has the right to know the details of the complaint and, in these cases, that means knowing who made the complaint except in exceptional circumstances, for example where there is a threat to someone's safety

However, we will investigate ways in which more than one anonymous complaint about the same perpetrator can be 'matched' to enable those who have complained anonymously to be securely informed that there are others in the same position to help them decide whether to make a complaint.

Reporting procedures – dealing with issues informally

We know that raising a formal complaint can be daunting so our proposed new policy sets out different ways in which complaints can be resolved on an informal basis. The Independent Support Service will be crucial in providing support and they can also take on an advocacy role to support complainants. Support can also be provided by trade union representatives, line managers and the Parliament's HR department.

While it is often better to resolve issues informally, we know this might not always be appropriate and so people should be able to take a formal complaint without any expectation that they should have gone through any informal processes.

Reporting procedures – dealing with issues formally

It's crucial that investigatory and disciplinary processes are separate and carried out by different people. Therefore, we propose that formal complaints be investigated independently of the Parliament and political parties.

Investigations into complaints against anyone, bar Members, would be carried out by an independent investigator contracted by the Parliament.

Investigations into all complaints against Members should be carried out by the Ethical Standards Commissioner for Scotland.

This is because the current procedure for dealing with complaints against Members is governed by the Code of Conduct and the Scottish Parliamentary Standards Commissioner Act 2002. Under this, the Standards, Procedures and Public Appointment (SPPA) committee propose sanctions on Members found to have breached the Code and the SPPA committee is also responsible for proposing any changes to the Code.

Taking all this into account, we have made recommendations to the Standards, Procedures and Public Appointments Committee about revisions that would need to be made to the current framework to ensure the same principles of fairness and transparency apply and we have, where possible, sought to reflect model employment practices.

However, it's important to recognise that regardless of procedure, we expect the same standard of behaviour of everyone who works in and for the Parliament which is why our policy applies to everyone.

We also pose the question about whether it's appropriate for complaints of sexual harassment against Members to be considered by the SPPA committee at all. This raises a number of issues (not least, the question of how any sanctions would be applied) and we are asking the SPPA Committee to look at this issue.

Time Limits

While it is always better to raise an issue as soon as possible after it has happened, we recognise that this might not always happen for legitimate and understandable reasons. The revised procedures we're proposing are designed to make people feel more confident about raising a complaint. For these reasons, we do not believe there should be any time limit to raising a complaint. This also means that formal complaints can be taken against people who no longer work here.

Each complaint should be dealt with on its own merits and how far back the allegations go, whether it was a one-off incident or whether the behaviour has recurred can all be taken into account during the investigation to determine whether there is a case to answer.

Ongoing support and assistance

Both complainants and respondents will have access to support when a complaint is being dealt with. However, we're acutely aware that raising a complaint and having it dealt with is not the end of the story for either the complainant or respondent. People may experience increased stress and anxiety and therefore, it is imperative that ongoing support is given.

Our policy sets out the different types of support we believe should be offered.

Next Steps

This report and our new policy is the start of the process, not the end. We will be monitoring the impact of the changes and of the programme of education we're undertaking to make sure our culture is changing.

Finally, it's important to remember that, important as robust policies and procedures are, we all have a responsibility to stop sexual harassment and sexist behaviour happening in the first place by looking at ourselves and how we behave and calling out bad behaviour in others.

Introduction

1. Equality is one of the Parliament's founding principles. The Parliament has always strived to be an exemplar, as an employer and as an institution and launched a [Diversity and Inclusion Strategy](#), setting out a vision of a Parliament that is ***“accessible and open to people from all walks of life and background – as a place to work, to visit and to participate.”*** As part of the Strategy, seven diversity networks have been set up to offer peer support to colleagues and to help us build up a better picture of the challenges and barriers that different groups might face. Not only have these Networks given a much higher profile to the issue of diversity in the Parliament, they have also been instrumental in introducing changes, such as the introduction of free sanitary products across the Parliament.
2. As an employer, the Parliament carried out gender pay gap analysis and equality monitoring looking at all protected characteristics and has produced an action plan to address the findings, such as the under-representation of women in senior positions and the under-representation of BME staff in the Parliament.
3. As an institution, the Parliament introduced rule changes so that gender balance had to be taken account of on the SPCB and on the Parliamentary Bureau and introduced 'Acting Conveners' allowing conveners to retain their position while on a period of parental leave. The Commission on Parliamentary Reform also made a number of recommendations in relation to the diversity of elected members which are currently being worked on.
4. It was within this context that the Parliament considered its approach to sexual harassment, in light of press reports that, as with other institutions, there were issues that needed to be addressed.
5. It is important to mention these other areas of work because dealing with sexual harassment is not just a case of introducing revised policies. It is about creating a change in culture where people are treated with dignity and respect, regardless of who they are. Studies have shown that harassment can be linked to broader forms of inequality and to power imbalances and that in order to create lasting change, patterns of sexism and structural inequalities must be addressed as well.
6. That is why the Parliament's approach focussed on sexist behaviour as well as sexual harassment and why it is important that the other areas of work highlighted above continue to be progressed.
7. The Joint Working Group on sexual harassment was set up as part of a series of measures to deal with harassment. Another step that was taken was to issue a comprehensive survey to everyone who works in and for the Parliament. The number of reported cases of sexual harassment was very low but we know that

it can sometimes be very difficult and traumatic for people to come forward and we needed a much clearer picture of the scale of the issue.

8. The survey was issued to just over 1600 people and there was an overall response rate of 62%. The rate of response from Parliament staff and MSPs staff was particularly high – 81% and 76% respectively.
9. This survey indicated that while the majority of respondents (78%) had never experienced sexual harassment or sexist behaviour, a fifth overall (20%) had experienced such behaviour while working at the Parliament. When the results were broken down by gender, 30% of women and 6% of men reported experiencing this behaviour in some form.
10. The survey also showed that while knowledge of the different reporting procedures was high, the percentage of those actually reporting anything was low. Further, those who had experienced such behaviour were the least likely to have confidence in the reporting process.
11. The Joint Working Group, comprising senior Parliament staff, representatives from each political party and an external expert was set up with the remit “to consider and agree any actions that need to be taken on a joint or individual basis between the Parliament and political parties in light of the survey on sexual harassment and sexist behaviour”
12. The Joint Working Group set out the broad strands of work it intended to take forward to address the findings from this survey. These were:
 - Establish a comprehensive programme of education and development for those working within the Parliament and within Regional and Constituency offices to prevent such behaviour happening in the first place
 - Improved reporting procedures and policies to address the lack of confidence in current procedures
 - Additional measures to support anyone who has experienced sexual harassment or sexist behaviour
 - Mechanisms to monitor and review what is put in place to ensure it is delivering what we need it to.
13. This report sets out the measures already put in place by the Joint Working Group. It also sets out the revised policies, support and reporting mechanisms that we are proposing to deal with sexual harassment and sexist behaviour. We have sought to explain the reasons we have suggested a particular policy or procedure, particularly in relation to how complaints against Members should be dealt with, where we have tried to balance a number of complex issues.

14. We have said from the outset that to be effective, we need to have a unified approach. That is why we have produced an overarching policy that will apply to everyone who works in and for the Parliament, including MSPs, MSP staff and contractors.
15. The other inter-dependency is with the [Code of Conduct for Members of the Scottish Parliament](#). The Standards, Procedures and Public Appointments (SPPA) Committee undertook its own inquiry into sexual harassment and inappropriate conduct and produced a [report](#) in June setting out its initial views.
16. The SPPA committee's report recommended that the Joint Working Group look further at a number of areas such as reporting procedures, confidentiality and anonymity and develop a sexual harassment policy that applies to all campus users regardless of their employment status. The SPPA committee also confirmed that it would consider any revised policies and procedures before recommending any changes to the Code of Conduct to complement the Parliament's policies.
17. The Joint Working Group has looked at all of these issues and our report raises issues in relation to the Code of Conduct that we believe need to be addressed.
18. We recognise that revised procedures relating to complaints against Members cannot be put in place until the SPPA and the Parliament has agreed any changes.

The principles underpinning our approach

19. In announcing the Parliament's response to the newspaper suggestions of sexual harassment in the Parliament, the Presiding Officer and party leaders made clear they endorsed a zero tolerance approach. To ensure clear communication of this message and a shared understanding of what it means, the Joint Working Group published a Zero Tolerance statement. This is attached as Annex B to this report.
20. This sets out the definitions of sexist behaviour and sexual harassment and includes a set of principles that underpins all of the work we are taking forward. The Statement set out what we will do as an institution:
 - Take steps to prevent sexism and sexual harassment from occurring and support culture and behaviour change through information and education
 - Take complaints seriously ensuring we deal with them promptly and sensitively
 - Have policies and processes which are transparent, easily accessible and understood by those who need to use them
 - Ensure principles around confidentiality within the complaints process are clear
 - Respond in a manner which is consistent, fair and proportionate

- Ensure that there are consequences for sexist behaviour and sexual harassment.
21. In addition to the principles in the Zero Tolerance statement, we had another guiding principle when looking at our policies and procedures. We recognise that there are a number of different employment relationships within the Parliament and that normal employment grievance and disciplinary procedures are not always directly transferable to elected members. However, our aim has been to replicate the principles that underpin effective employment policies as far as possible. In doing so, it's important to remember that taking a complaint is not a judicial process. While procedures will adhere to the rules of natural justice, the standard of proof is not to prove something beyond reasonable doubt as it is with criminal cases, it is to decide on the balance of probabilities. Procedures should also be non-adversarial.

Programme of education and awareness raising

22. As we say at the beginning of this report, addressing sexual harassment cannot be done just by revising policies and procedures. It requires a change in behaviour and a recognition of the impact that harassment and sexist behaviour can have on individuals and on the organisation's overall culture. That is why we have taken forward this work under the title of 'Culture of Respect'.
23. As promised when we set out the next steps we wanted to take following the survey, we have set up a programme of education and awareness raising with a series of workshops. The workshops cover:
- The fundamental principles of zero tolerance and what this means in relation to our culture and values.
 - The law and the definitions of what constitutes sexual harassment and sexist behaviour.
 - How to deal with inappropriate behaviour if you see it and/or experience it.
 - Understanding the impact of our behaviours on others through unconscious bias and how we might judge/treat others.
24. These workshops are an important first step towards building a culture where unacceptable behaviour is not only recognised and challenged but is prevented from happening in the first place.
25. We will also be developing the next phase of the programme which will be designed to focus more on individual learning needs and on embedding the tackling and prevention of sexual harassment and sexist behaviour into existing programmes and induction.

A single point of contact for everyone

26. The results of our survey made clear that those who had experienced sexual harassment and sexist behaviour lacked confidence in our current reporting procedures. As we have said, there are a number of different employment relationships within the Parliament and each political party currently has its own procedures for dealing with complaints. It is clear from the survey that people found the landscape confusing and cluttered and this in itself could be a barrier to reporting. It was also clear people wanted to be able to access independent and confidential advice.
27. While we recognise that it's important to have a range of options available to people to deal with incidents of sexual harassment and sexist behaviour, we wanted to make sure that there was one central point for advice, support and reporting.
28. Therefore, building on the helpline we established in November last year, we propose setting up a centralised service providing a single complaint route and providing advice, support and advocacy. This will be independent of the Parliament and the political parties and will be run by an external body. It will provide ongoing support to anyone experiencing sexual harassment or sexist behaviour, irrespective of whether or not they submit a formal complaint.
29. It is also extremely important that we see whether or not our culture is changing and therefore, we propose this service will also collect anonymised data so we can have a better picture of what is happening across the Parliament, rather than just relying on statistics in relation to the number of formal complaints that have been submitted.
30. The next section of the report sets out in more detail, the role of this independent service in relation to complaints.

Reporting mechanisms

31. The Independent Support Service will provide advice, support and guidance including guidance on the different options available to seeking resolution. The final decision about how to take something forward will rest with the person who has experienced inappropriate behaviour.
32. People don't always want to take a formal complaint. Sometimes all they want is to make the person aware of the impact their actions have had and for the offending behaviour to be acknowledged and addressed. However, if their complaint has not been resolved satisfactorily on an informal basis, or if the complainant believes it would not be appropriate to resolve the issue informally (for example if they think disciplinary action ought to be considered), the complainant will be able to take a formal complaint.

33. The Independent Support Service will provide ongoing support, regardless of whether or not the person making the complaint decides to deal with it informally or formally.
34. The principles set out in our Zero Tolerance statement should be adhered to regardless of whether the matter is dealt with formally or informally. That is to say, complaints should be taken seriously and dealt with promptly and sensitively and they should be dealt with in a way that's consistent, fair (to both the complainant and respondent) and proportionate.

Anonymity

35. The suggestion made most often in the survey to improve the level of reporting was that processes should be confidential and/or anonymous. It is absolutely vital that there is confidentiality at the heart of any process we develop (and we mention this specifically at paragraph 93 in relation to the Code of Conduct later in this report) both for the complainant and the respondent. Investigations must be allowed to progress without the glare of publicity.
36. The issue of anonymity is more complex. People will be able to access the support services outlined above on an anonymous basis and any data collected will be done so anonymously. Again, this is the right thing to do. However, if someone decides to take forward a complaint, this cannot be done anonymously. In the interests of natural justice, any respondent has to know the nature of the allegations against them and in cases such as these, that includes knowing who has made the allegations. In a limited number of cases, it might be possible not to disclose the identity of the complainant to the respondent when dealing with an issue on an informal basis, but this will depend on the individual circumstances. But in the case of formal complaints, the identity of the complainant will have to be made known to the respondent, except in exceptional circumstances, for example, where there is a threat to the complainant's safety. Regardless of this, the identity of the complainant must be kept confidential to those who have a legitimate need to know it (such as the respondent and the investigator).
37. However, we do recognise that one of the difficulties someone faces when thinking about whether to make a complaint is that they think they will be on their own and don't want to be the person who raises their head above the parapet. This can be a significant barrier and one that we want to address. As with so many of these issues, there is not an easy answer. We will work with our Independent Support Service to investigate ways in which more than one anonymous complaint about the same perpetrator can be 'matched' to enable those who have complained anonymously to be securely informed that there are others in the same position to help them decide whether to make a complaint. Research has shown that this can give the complainant confidence to take further action if they know there are others in the same situation and this could ultimately lead to the identification of serial offenders.

Informal resolution

38. The way in which issues are resolved informally can vary depending on the individual circumstances. The complainant may wish to raise the issue directly with the respondent or with the respondent's line manager or, where the respondent is a Member, with the relevant party (usually through the party business manager). In all cases, the Independent Support Service will be available to the complainant to provide support. Such support can also be provided by the complainant's trade union.
39. We realise that it can be daunting for someone to raise an issue directly with the person causing the problem or even with the relevant line manager or political party. The Independent Support Service will also be able to broker and facilitate informal resolution in these circumstances. The SPCB, parties and contractors will all be expected to engage with the Independent Support Service if they are approached to facilitate an informal resolution.
40. The proposed Sexual Harassment Policy sets out in more detail the options and procedures for dealing with issues on an informal basis.
41. We recognise that raising a formal complaint can be a stressful process for both complainant and respondent and for that reason, people may want to deal with an issue informally. This can be an effective way of seeking a resolution.
42. It is important to stress however that dealing with something informally does not mean dealing with a complaint any less rigorously, it just means dealing with it through a different route.
43. If someone raises an informal complaint, this must be taken seriously and the person to whom the complaint has been made should seek to establish the facts of the case. This might involve speaking only to the complainant and the respondent, but, where there are different versions/interpretations of events, to anyone who might have witnessed the incident.
44. It is extremely important that complaints of sexual harassment and sexist behaviour (whether informal or formal) are dealt with appropriately and sensitively and facts should be established in a thorough but non-adversarial way. In practice, this means the person making the complaint and the person being complained about should be spoken to separately. Such conversations should take place in private rooms. Both parties should be allowed to bring someone with them (even though this is not a formal process) and questions should be framed to establish facts, not to make a judgement or apportion blame.
45. We appreciate this is not always easy and people dealing with such complaints may need support. This is why the second phase of our education and awareness programme will focus on line managers, helping them to deal with

such issues when they arise. In addition, we would expect that people dealing with such complaints would seek advice from the Parliament's HR department.

46. There may be occasions where, even though the complaint has been raised on an informal basis, it might be more practical or appropriate for the facts to be established by someone independent of the line management chain (for example, where there could be a perceived conflict of interest). In those circumstances, the Parliament's HR department would arrange for an independent service provider to carry this out. In the next section, we set out how we propose formal complaints should be dealt with and we envisage that the same independent investigator that will be contracted to deal with formal complaints should be used in these circumstances.
47. We recognise, particularly as sexual harassment can often stem from a power imbalance, that it's not always possible or desirable to deal with an issue informally. Therefore, there is no expectation that someone has to exhaust informal routes before taking a formal complaint.
48. Where someone consider it's more appropriate to deal with an issue formally or where informal processes have been used but haven't resolved the issue, a formal complaint can be made.

Formal Complaints

49. If someone wishes to take a formal complaint, they can submit the formal complaint to the Independent Support Service.
50. As stated earlier, the Independent Support Service is there to provide help, support and advocacy. It will continue to do this throughout any process but to avoid any conflicts of interest, it will not investigate the complaint.

Independent investigation

51. Currently, if someone lodges a formal complaint of sexual harassment it is dealt with in a variety of ways, depending on who is the complainant and who is the respondent.
52. It was clear from the survey that this in itself could be a barrier to people reporting issues. In addition, best practice is that investigatory and disciplinary processes shouldn't be carried out by the same people and should be separate processes.
53. A number of respondents in the survey also said they wanted complaints to be investigated independently (whether of political parties or of Parliament). Taking all of this into account, we propose that the Parliament contract an independent organisation to conduct investigations on its behalf into any formal complaints of sexual harassment. How formal complaints against Members will be dealt with is set out in the next section of the report.

54. This does not preclude someone taking a complaint through their own party or employer's procedures if they are not a member of SPCB staff. Crucially though, it is their choice, and this independent route would be available to everyone who wants to take it.
55. The proposed policy on sexual harassment annexed to this report, sets out in more detail how the independent organisation will conduct this investigation. It will be carried out in a non-adversarial, sensitive and appropriate manner. Confidentiality must be maintained throughout. The report will summarise the issues raised, will set out how the investigation was carried out, will summarise statements made by complainant, respondent and any witnesses and set out the investigator's findings and conclusions on whether the behaviour complained about is unacceptable under our policy. It is extremely important for the report to summarise the statements of everyone who has been interviewed as it may not always be appropriate for the full statement to be made available to the complainant or respondent.
56. Once this independent body has completed its investigation, a copy of the report will be given both to the complainant and the respondent.
57. The final report will be passed to the appropriate person or body to determine what, if any, action (such as instigating formal disciplinary action) to take. For example, complaints against a member of SPCB staff will be passed to the appropriate line manager and HR. If the complainant is not happy with the decision on whether or not the complaint has been upheld, they will be able to raise this with the body or individual who has made the decision. The respondent will have the right to appeal against any disciplinary action proposed where the complaint is upheld.
58. If the relevant person or body determines that formal disciplinary action needs to be taken, it will follow its own disciplinary processes with potential sanctions being within the terms of the relevant employment contract (for example, oral warnings, written warnings and dismissal). While a disciplinary process is necessarily formal in nature, as with an investigation, it should not be conducted in an adversarial manner and confidentiality must be maintained. All disciplinary processes must have a right of appeal with any appeal being heard by an individual or panel who have not been involved in the original decision.

Independent Investigation – complaints against members

59. We considered whether investigations into complaints against Members should be carried out by the same independent body, given that the Commissioner for Ethical Standards in Public Life in Scotland ('the Ethical Standards Commissioner') already performs that role.
60. The SPPA committee's report also looked at how complaints against a Member should be investigated. The report recognised that having the same

independent body investigate complaints, regardless of who the respondent is would have the advantage of consistency of procedure. However, the Committee also noted the role of the Ethical Standards Commissioner and stated ‘there would have to be good reasons for establishing an alternative destination for these complaints rather than (say) providing additional support to the current Commissioner to deal with harassment complaints’.

61. There are arguments for and against both options. However, there are a number of issues that need to be taken into account and this has proved to be a very complex area. Our desire has been to ensure that any process adheres to the principles in our zero tolerance statement – such as fairness to both parties and ensuring there are consequences for sexual harassment and sexist behaviour, but without creating unintended consequences by trying to make the Code of Conduct for MSPs fit where it’s not appropriate or indeed, seeking solutions that would require legislative change.
62. We set out below all of the issues we took into consideration.

Using an independent investigator rather than the Ethical Standards Commissioner

63. As mentioned above, this would provide consistency of approach as the body would investigate all claims of sexual harassment. This would be a new process and therefore, more easily designed to suit our needs than having to change existing processes. We will also be able to stipulate when we are seeking to fill the contract, that the investigators have the necessary skills to deal with claims of sexual harassment in an appropriate and sensitive manner.
64. However, we have to consider how this would fit with the existing Code of Conduct. Currently, the only route for parliamentary sanctions to be applied to a member is through the SPPA committee and ultimately the Parliament. This is governed by the Code of Conduct for MSPs and the role of the Commissioner was put in place by the Scottish Parliamentary Standards Commissioner Act 2002 (“the 2002 Act”).
65. An independent investigator would not have certain powers that the Ethical Standards Commissioner has, by virtue of the 2002 Act, notably the power to compel witnesses and documents. We considered whether this was crucial or not. In a normal employment situation, if an employee refuses to comply with a legitimate instruction or process they could be subject to disciplinary action. Members are not employees and therefore, it could be argued that the power to compel may at times be needed.

Using the Ethical Standards Commissioner

66. It is extremely important that whoever performs this investigatory role has the necessary skills and knowledge to recognise and investigate sexual harassment and deal with the complainant and respondent in an appropriate and sensitive

manner. Any independent body appointed would need to demonstrate their investigators have these skills. The Commissioner's office has trained investigators who are used to dealing with complaints against elected members and the Commissioner would also have to demonstrate that staff had the skills and knowledge required to investigate cases of sexual harassment.

67. If necessary, the Commissioner has the power to contract someone else to undertake the investigation if they think they do not have the necessary skills within their office.

Changes to the Code of Conduct

68. On balance and particularly because of the powers of compulsion and the links to the SPPA committee and the current Code of Conduct, we recommend that the Ethical Standards Commissioner continue to conduct any investigations into formal complaints about Members.
69. The issue we also had to consider in relation to dealing with complaints against Members was whether the procedures in the Code of Conduct and the 2002 Act would fit with our overall policy or whether changes would need to be made and the consequence of those changes.
70. We identified a number of areas that we believe would need to be addressed. These are set out below. However, we also conclude by asking the fundamental question of whether, going forward, complaints of this nature should be dealt with completely separately from the Code, the Commissioner and the SPPA committee.

Time limit on complaints

71. The first change we recommend is the removal of the current one-year time limit for making a complaint. The one-year time limit is set out in sections 6 and 7 of the 2002 Act. If a complaint is about something which happened over a year ago, it will be classed as an 'inadmissible complaint'. In such cases, the Commissioner will produce a report for the SPPA committee setting out their reasons for ruling a complaint inadmissible. The SPPA can decide however, that such a complaint should still be investigated and can direct the Commissioner to do so.
72. We know that historically there have been very low numbers of complaints and at the same time, our survey reported that 30% of women had experienced sexual harassment or sexist behaviour. People can be very reluctant to bring forward complaints – concerned that they might not be believed or that they are in some way to blame.
73. The changes we are making to our processes are designed to make it easier for people to make a complaint and for people to feel confident that their complaint will be taken seriously. If our aim is to create a culture where people feel more

confident to report, we believe it would be counter-productive to set a time limit on making such complaints.

74. The UK Parliament's 'Independent Complaints and Grievance Scheme Delivery Report' introduced a new procedure and complaints under this new procedure can only be considered if they relate to something that happened after the start date of the 2017 Parliament. Complaints pre-dating that can still be raised but will be dealt with under the procedures that were in place at the time of the action being complained about. Under old and new procedures, the Commissioner can look at historic allegations dating back seven years.
75. Responding to the report by Dame Laura Cox on bullying and harassment of House of Commons staff, the Leader of the House of Commons, the Rt Hon Andrea Leadsom MP, confirmed that the House of Commons Commission will look again at how historical complaints should be dealt with.
76. We are of the view that there should be no time limit applied to complaints of sexual harassment and complaints should be dealt with under the procedures we are proposing. Each complaint should be dealt with on its own merits and how far back the allegations go, whether it was a one-off incident or whether the behaviour has recurred can all be taken into account during the investigation to determine whether there is a case to answer.
77. We appreciate that not setting a time limit also means that complaints can be taken against former members. We believe that complaints should be able to be made against former members (and the same goes for former members of staff) and the Code of Conduct currently allows for this. However, there are issues over what should happen to any report into former members and employees which are addressed later in this report.

Access to report

78. Currently, it is only the Member being complained about who is given a copy of the Commissioner's report. The Member is given the opportunity to make representations about the alleged breach and on the draft report. This is based on section 9(3) of the 2002 Act:

'No report concluding that a member of the Parliament, who is named in the report, has breached a relevant provision shall be made to the Parliament unless the member concerned has been given a copy of the draft report and an opportunity to make representations on the alleged breach and on the draft report; and there shall be annexed to the report made to the Parliament any representations made by that member which are not given effect to in that report. Such representations are then annexed to the report.'

79. We note that the Act only requires a copy of the report to be given to the Member where a breach has occurred.

80. As we have said earlier, it is not always possible for complaint and grievance processes in an employment context to be directly transferable to a complaints system against members. However, we believe the underlying principles should be replicated wherever possible.
81. Therefore, we would ask the SPPA committee to consider how best this could be done. Some practical issues that could be considered are ensuring both complainant and respondent have the opportunity to review drafts of their statements to the Commissioner and ensuring both parties have the opportunity to respond, throughout the investigation, to issues that are raised.
82. The SPPA committee decides whether to accept the Commissioner's findings in fact and conclusion and whether to recommend any sanctions to the Parliament. Therefore, reflecting the principles applying to complaints against non-MSPs, both the complainant and the respondent could be invited to make representations to the committee in written form although relevant adjustments should be made for anyone whose disability would prevent them from doing this. In order for this to happen, the complainant must also be given a copy of the Commissioner's report.
83. We appreciate that to make the position fully analogous with typical grievance procedures, it could be argued that the SPPA committee should hear from the complainant—effectively an appeal hearing. However, this has never been the purpose of the committee and we think that asking a complainant to appear in front of a parliamentary committee (even in private session) would be daunting and would create a barrier.
84. As with a number of these issues, this also raises the more fundamental question as to whether complaints of sexual harassment should be dealt with completely separately to the Code.

Excluded complaints

85. The Code currently lists complaints that are 'excluded' (i.e. not dealt with in the first instance by the Commissioner). We do not particularly like the term 'excluded' but we recognise such terminology flows from the 2002 Act.
86. Excluded complaints includes a Member's treatment of Parliamentary staff which is referred to the Parliament's Human Resources office and the member's treatment of the staff of another Member (referred to the member's business manager). In both cases, if the complaint cannot be resolved, it will be reported to the SPCB who may refer it to the SPPA committee.
87. As set out earlier in this report, our policy covers the various options open to someone who wishes to complain on an informal basis. If the complainant is

not satisfied with the outcome of this informal process, they can decide to make a formal complaint. It's also important to note that a complainant can decide to take a formal complaint without having first gone through an informal process.

88. As the Code is currently written, it does not take account of the variety of informal options that will be open to people under our policy and instead prescribes a particular route a complaint should take. Additionally, a complaint could only be referred to the SPPA committee once these additional steps have been taken and the decision is for the SPCB rather than the complainant themselves.
89. Therefore, we believe that section 9 in relation to 'Excluded Complaints' needs to be rewritten to reflect the new policy and to allow complainants to take a formal complaint directly to the Commissioner without having gone through any other processes.
90. Regardless of any other changes being made, we agree with the SPPA committee that the reference to conciliation being pursued in all cases should be deleted as we do not believe this is appropriate in relation to sexual harassment

Confidentiality

91. As we have said, any process must be confidential for people to have faith in it. Our survey showed that confidentiality was one of the most important issues for those who have experienced sexual harassment or sexist behaviour.
92. In most workplaces, it's unlikely that complaints will end up in the media. However, the Parliament is no ordinary workplace and complaints against Members can and do get reported on and people are likely to be disinclined to come forward if they know that details of their complaint are going to be reported in the media. Even if they are not named, they may feel that they are reliving their experience.
93. The SPPA committee's report also explored issues around confidentiality and anonymity. Earlier in this report, we outlined why we think there are significant issues with someone making an anonymous complaint. However, as we also said earlier, we need to ensure (as far as we can) that the identity of the complainant remains confidential.
94. Under current procedures in relation to the Code of Conduct, the SPPA committee publishes its report and the report from the Commissioner once it has decided what action it is going to take. If the committee recommends sanctions against a member, a motion is considered by the whole Parliament.

95. This means that the investigation should be able to take its course without the glare of publicity. However, details of the complaint will eventually be made known in a very public way. Therefore, we considered whether the report needs to be published at all.
96. The main issue that would arise from not publishing the report would be that Parliament would be asked to take a decision without knowing the basis on which it was being asked to take that decision. In other workplaces, it would be inconceivable that a person or body would decide whether to impose a sanction on a member of staff without having the details of the investigation available to them.
97. Therefore, we do not see how a report could remain confidential while we have this process for sanctions to be applied.
98. However, given the nature of the issues, the identity of the complainant should not be made known in the report. This will require careful drafting as it is not just a case of not naming the person, it is about ensuring that the complainant cannot be readily identified from the information in the report.

Complaints about a Member's member of staff

99. Section 7.18 of Code states that:

"Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff".

We do not disagree with this, but neither do we think that a formal complaint of sexual harassment should be taken against a Member if it is their member of staff who is alleged to have behaved inappropriately. This is primarily because we want everyone to take responsibility for their own behaviour and while, in a 'normal' employment situation a manager should ensure staff are behaving appropriately, if a member of staff sexually harassed another member of staff it is they who would be disciplined and not their manager (unless the manager had been negligent in their duty in which case, a manager might be disciplined separately).

100. Therefore, complaints against a Member's member of staff should be investigated by the independent investigator, in the same way as complaints against anyone else who is not a Member, with the report being passed to their employing Member to take whatever action is required.
101. If the Member does not take appropriate/proportionate action, a complaint could subsequently be taken against the Member under the Code of Conduct. This

would also be the case where an issue had been raised informally with the employing Member and no action was taken.

Complaint against a Member by their own member of staff

102. While the Code of Conduct sets out the standard of behaviour expected of MSPs in their dealings with others, it does not specifically cover this in relation to Members' treatment of their own staff. This means that any complaints from a member of staff against their employing member are dealt with under the relevant Grievance procedure.
103. However, the process in the current Grievance procedure for member's staff could lead to the report of an independent investigation being given to the employing Member who has been accused of harassment to determine whether they accepted the findings and to determine what action to take. This goes against the notion of a fair process and therefore, we think that such formal complaints should instead be dealt with under the Code of Conduct.
104. This also means that the Parliament will be able to hold Members to account for their behaviour towards their own staff in the same way as their behaviour towards anyone else. We recognise, however, that this relationship is governed by employment legislation. This revised process allows for parliamentary sanctions to be imposed on the Member concerned but does not impinge on the complainant's rights to seek other forms of redress, including taking a case to employment tribunal.

Overall

105. We recognise that the SPPA committee will need to consider the implications of changing the Code as outlined in the previous sections. To avoid unintended consequences, it may be considered appropriate for complaints of sexual harassment to be treated as a separate class of complaint.
106. We have deliberately dealt with sexual harassment separately because it is directly related to gender and requires specific interventions and policies. Separating it out also allows us to be specific about what constitutes unacceptable behaviour. However, when we review our procedures for dealing with bullying and other inappropriate conduct, it is likely that we will follow the same procedures as we are proposing for sexual harassment. Therefore, the SPPA committee might want to think about having a class of complaint that encompasses this broader range of misconduct. This could not only allow for complaints of sexual harassment to be dealt with as intended under the overall policy but also 'future-proof' the Code for further changes that might be needed.
107. This means that consideration would need to be given to making further changes to the Code to ensure that behaviour involving bullying and harassment as well

as sexual harassment where the complainant is from a member of staff (SPCB or members' staff) would be dealt with under the Code.

108. We appreciate this all needs careful consideration and we also recognise that in some areas, changes may need to be made to the 2002 Act. If, for whatever reason, the SPPA concludes such changes cannot or should not be made, then our proposal would be that complaints against members of sexual harassment be investigated by the same independent investigator as all other complaints and a different system of applying sanctions would need to be found.
109. We know that going through any kind of formal process can be stressful for all parties, which is why our policy places so much emphasis on informal resolution. However, we're also aware that people may feel very intimidated about having to go through a process where their complaint will be considered by the SPPA committee and, ultimately, the Parliament, particularly (as we set out above) that we believe the report has to be made public.
110. This is not an argument about whether or not the investigation is carried out by the Commissioner or by another independent body, it is about whether complaints of sexual harassment should be referred to the SPPA committee at all.
111. There may be occasions where it might be more appropriate for the respondent to apologise to the complainer or for something other than sanctions to be applied (in the same way that complaints against staff might not always result in disciplinary action being taken). In those circumstances, it's questionable whether the SPPA committee needs to be involved (although the question arises about who would decide what action to take). However, currently the only body that can propose parliamentary sanctions is the SPPA committee. Any process that did not involve the SPPA committee would be a process that would not allow for parliamentary sanction to be applied. We note that in the case of local authorities, complaints against elected members are investigated by the Ethical Standards Commissioner and considered by the independent public body, the Standards Commission for Scotland. That body then determines the sanctions to be applied to any councillors deemed to have breached their code of conduct.
112. Political parties have their own disciplinary processes and, regardless of whether or not Parliament decides to apply parliamentary sanctions of withdrawing rights or privileges, parties may wish also to take disciplinary action against the Member concerned, following the independent investigation. As we say earlier in this report, any disciplinary process should be conducted in a non-adversarial and appropriately sensitive manner. There also has to be a right of appeal against the sanction imposed.
113. Going back to the issue of parliamentary sanctions, our view is that, unless Parliament decides that parliamentary sanctions for sexual harassment should

be dealt with in a different way, formal complaints will have to be considered by the SPPA committee.

114. The SPPA committee considered this in its report and concluded:

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

115. We note that the recent report by Dame Laura Cox into ‘The Bullying and Harassment of House of Commons Staff’ also raised questions about whether sanctions should be applied by someone other than a parliamentary committee (albeit that the Standards Committee in the Commons also includes non-voting lay members and the Standards Committee is proposing that lay members should be given a vote).

116. The Leader of the House of Commons has confirmed that the House of Commons Commission and the Standards Committee will look at how this could be achieved ‘while still upholding the principle of democratic accountability’.

117. We think, going forward, the fundamental issue of whether such complaints should be dealt with under an entirely different system needs to be considered. However, this is for the SPPA committee and ultimately, the Parliament to decide. What we have done is set out the areas of the Code that we believe need to be revised to provide the consistency, transparency and fairness of the process set out in our Zero Tolerance statement. Our intention in doing this is to aid the discussion over how complaints against Members should be investigated.

Former members/former members of staff

118. As set out earlier in the report, we do not believe there should be a time limit placed on complaints of sexual harassment. This means that complaints could be taken against former members or former members of staff and this is entirely appropriate as it means people have the opportunity to have their complaints investigated and allows employers to learn any lessons from the way behaviour might have been viewed in the past. The issue we need to consider is what happens once an investigation has been completed.

119. The definition of ‘Member’ under the 2002 Act includes former members and as such, complaints can already be investigated. However, as they are no longer MSPs, parliamentary sanctions cannot be applied. This is discussed further in paragraphs 123 and 124. There has been one such complaint, and as would be

expected, the Standards Committee decided it couldn't do anything with it as there was no sanction it could apply.

120. Given what we say earlier in the report about the need to investigate complaints under the Code because of the link to the SPPA committee, there is an argument that complaints against former members should be investigated by the independent investigator instead. However, the question of the power to compel witnesses and documents raises its head again. Arguably, it could be more difficult to get relevant documents from former members and therefore more important to have the power to compel. Therefore, on balance, it would be better for the investigation to remain with the Ethical Standards Commissioner and it would also be consistent with the way in which investigations are carried out into current members.
121. The way in which any complaint is investigated should be exactly the same as it would be in relation to a complaint against a current Member or current member of staff, including that the report should be given to both the complainant and respondent.
122. Where procedures would differ is in relation to what happens next to the report. To consider this, we need to think about what the purpose is of the report being given to an appropriate body or person. The purpose is for that body or person to decide whether formal action should be taken where a complaint has been upheld. Neither the former employer nor the SPPA committee can take formal action or apply sanctions if someone is no longer in the Parliament.
123. However, the report may prove useful to the appropriate former employer in learning any lessons from the complaint. Therefore, we suggest that the report is given to the relevant employer for that purpose. In the case of Members, a copy of the report could still be given to the SPPA committee for that purpose, even though the Committee can't apply parliamentary sanctions.
124. Although the Committee can't apply sanctions, it can still produce a report, which could provide a form of closure for the complainant. If a Member is still a member of a political party, then consideration should be given to providing a copy of the report to the relevant party as they can still take action against the Member if they decide it is appropriate.
125. We have said previously that reports against Members have to be published to allow Parliament to take an informed decision on the sanctions that should apply. If no sanctions can be applied, then the logical argument is that there is no need for the report to be published. However, there are counter arguments such as the SPPA being able to publish their findings on a case, particularly where there might have been media speculation.
126. In relation to complaints against non-MSPs, the Parliament would not give a copy of the report to any other third party beyond those mentioned above, except

where it appears that a criminal act has been committed in which case, it may be referred to the police.

Ongoing support and assistance

127. We are acutely aware that raising a complaint and having it dealt with is not the end of the story for either the complainant or respondent. People may experience increased stress and anxiety and therefore, it is imperative that ongoing support is given.
128. It is unacceptable for anyone to be victimised because they raised a complaint about sexual harassment or sexist behaviour. Our proposed overarching policy sets out the various forms that victimisation can take. Complaints of victimisation should be treated in the same way as complaints about sexual harassment
129. Just as there will be consequences for anyone who victimises someone there will also be consequences for anyone who raises a malicious or vexatious complaint.
130. It's important to remember that people may require ongoing support and help and this goes beyond taking formal action against any victimisation. In our survey, one of the main reasons people do not report sexual harassment is they are fearful it will have a negative effect on their career. This is not just that they feel they may not be promoted, but that they will not be believed, will be ostracised and their working life made uncomfortable, if not intolerable.
131. Not only will support in the form of counselling be important, line managers must be alert to and deal with any inappropriate targeting or victim-blaming.
132. It is likely that complaints will have involved staff and/or Members who either work together on a daily basis or at least, come into contact with each other during the course of their work.
133. It can be extremely difficult for such relationships to be maintained, regardless of the outcome of any complaint and line managers and parties must think about the impact on individuals of a complaint having been made.
134. In considering how to provide protection to those involved and how to maintain working relationships, employers and parties should take into account the wishes of the complainant and whether it is necessary (and possible) for people to be moved. In doing so, if the respondent has been found to have harassed the complainant, they should be moved rather than the complainant – otherwise it could be construed as victimisation. Our proposed policy sets out in more detail, some of the issues that might need to be considered.

135. We appreciate this is not straightforward in the case of MSP staff. Staff are employed by individual members and therefore, cannot be moved around in the same way as SPCB staff and if a Member has been found to have harassed a member of their staff, the Member cannot be moved. In this latter situation, the relevant employer and party should consider whether any measures could be taken to ensure a safe working environment for the member of staff.
136. The SPPA committee raised specific issues in relation to Members staff in their report and suggested that political parties and the SPCB could consider any mechanisms that would assist with the redeployment and/or support of staff whose employing member has either been removed from office as a result of committing this type of offence or where working relationships have broken down following an allegation, regardless of the outcome.
137. One way of doing this would be for parties to commit, wherever possible, to redeploy a member of MSPs staff in these circumstances. This is likely to be easier for larger parties but more problematic for smaller parties where options are more limited. Regardless of party size, there can also be issues around whether people are able or want to be moved (for example, where they work in a constituency office).

Conclusion

138. We would like to thank everyone who took the time to fill in the survey, participate in our focus groups and talk to us about the issues we need to deal with. This is a hugely important issue and one that requires a change in culture to prevent unacceptable behaviour happening in the first place. But people must also have confidence in our reporting procedures. As our report demonstrates, it is a very complex picture in the Parliament but we must have robust processes that people trust to be fair, transparent and appropriate.
139. We are proposing a revised policy whose principles apply to everyone who works in and for the Parliament. The next step will be for the Parliament (through the SPCB) to contract and set up the Independent Support Service. Further work will also be done with parties and others (such as contractors) to look at whether their own grievance procedures are compatible with what we're proposing, given that someone may choose to use those rather than the new procedures we are proposing.
140. The procedures in relation to complaints against Members cannot be finalised until the SPPA committee has had the opportunity to consider our findings. While we could have held off publishing our new policy, we thought it was important to get all of the other elements, such as the support service, in place as soon as we could.
141. We recognise there are some tricky issues for the SPPA committee to consider and that they need sufficient time to do this, particularly where there may be a

need to make legislative change as well as changes to the Code of Conduct. Therefore, the Committee may wish to consider, in the intervening period, whether transitional arrangements need to be put in place.

142. The intention is to draft additional guidance to complement the proposed new policy to ensure it is as accessible as possible. This guidance will cover issues such as what you should do if you witness any inappropriate behaviour and specific guidance for managers on how to deal with issues raised with them. We would welcome any feedback on any areas that people would like to see expanded on in this guidance.
143. This report and proposed new policy is the start of the process, not the end. As we say at the beginning of this report, change cannot be brought about just by revising policies and procedures. It requires a cultural shift.
144. We will continue to monitor and review what we have put in place to ensure we are helping make that cultural change. In addition to that, we will be looking at further targeted training and support for line managers. We will also consider what further additional work is needed to ensure that the Parliament is a place where everyone is treated with respect and dignity.

ANNEX A

Sexual Harassment Policy

Aim and scope

The aim of this Policy is to create an environment which is free from sexual harassment and sexist behaviour. We will do this by being clear about the behaviours that are unacceptable and by fostering a culture of respect which ensures a safe, secure, and welcoming environment.

The behaviour standards set out in this Policy and the proposed procedures for investigating breaches of the policy are for all those who work within the Holyrood campus and constituency and regional offices. They apply to behaviour when undertaking parliamentary duties and activities here or elsewhere.

This means that everyone who works in and for the Parliament must behave in a way that is consistent with this Policy. Everyone who works in and for the Parliament will have access to an independent support service and any formal complaints of sexual harassment will be investigated independently of the relevant employer or political party. By necessity, there will be some differences in procedures to be followed and those differences are made clear.

Zero tolerance approach

Sexual Harassment is contrary to the Equality Act 2010 and the values of the Parliament. We have committed to a zero tolerance approach to sexual harassment and sexist behaviour in the Parliament. Every person has the right to work in an environment that promotes respect, fairness, equality, and dignity and enables them to make their best contribution. Sexist behaviour and sexual harassment do not belong in the Parliament and we are committed to creating the shared understanding of appropriate behaviours, culture, and accountability mechanisms that will eradicate them.

This means that we will:

- Take steps to prevent sexism and sexual harassment from occurring and support culture and behaviour change through information and education.
- Take complaints seriously ensuring we deal with them promptly and sensitively.
- Have policies and processes which are transparent, easily accessible, and understood by those who need to use them.
- Ensure principles around confidentiality within the complaints process are clear.
- Respond in a manner which is consistent, fair and proportionate.
- Ensure that there are consequences for sexist behaviours and sexual harassment.

Definitions and examples

We have included sexist behaviour in this policy and in our zero tolerance statement because if such behaviour is left unchallenged (even if an individual instance can appear relatively innocuous) it can create a culture where assumptions are made about people based on their gender and can perpetuate inequality. This behaviour degrades individuals and is not acceptable.

Below are definitions and examples of both sexist behaviour and sexual harassment.

Sexist behaviour is *any behaviour which is, or is perceived to be, motivated by prejudice or discrimination, including behaviour or attitudes that stereotype individuals on the basis of gender.*

Examples of Sexist behaviour include:

- Saying something to someone of one gender that you wouldn't say to another – such as the form of address or making assumptions based on their gender – such as asking mothers about the impact of childcare on their job but not asking the same question of fathers
- Using different language to describe attributes depending on gender – such as saying a man is decisive, but a woman is aggressive
- Reinforcing gender stereotypes by treating people differently – such as assuming women are the junior employees in the room or criticising men for expressing emotion

Sexual Harassment *occurs when an individual engages in unwanted behaviour of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.* It can be an isolated incident or persistent behaviour and is essentially about the effect on the recipient, not about what was intended.

Sexual harassment can come in many forms, such as:

- Comments of a sexist nature
- Looks, leers, comments or gestures of a sexual nature, including comments about someone's body or appearance
- Circulation by email or sharing digitally comments or jokes of a sexual nature
- Being asked questions of a sexual nature
- Unwanted text messages, emails or other communications of a sexual nature
- Unwanted physical contact such as touching, groping, kissing, or invasion of personal space
- Unwanted persistent attention to form an intimate relationship

Sexual harassment and sexist behaviour can happen to anyone and can be carried out by anyone but research shows that it is disproportionately carried out by men against women. It can be a product of power imbalance and of inequality and therefore

other protected characteristics such as age, race, disability, gender reassignment and sexual orientation impact how people experience harassment.

Responsibilities

We expect all those who work within the Parliament to adhere to this policy by:

- Treating others with dignity and respect in line with our zero tolerance approach
- Ensuring your behaviour is compliant with this Policy
- Being aware of different power dynamics within the Parliament and never abusing your power
- Taking prompt action to address any issues
- Speaking up and challenging inappropriate behaviour you experience or witness.

The Parliament will:

- Treat all complaints seriously and in a sensitive manner with due respect for all parties involved
- Encourage informal resolution of complaints where appropriate
- Provide appropriate processes and ensure support is available
- Provide training to all who work here
- Promote this policy and ensure it is accessible
- Monitor all reported incidences of sexual harassment.

Anonymity

Access to support for those who have experienced sexual harassment can be made anonymously and issues will be logged via a central reporting function for the purposes of anonymised data collection.

It is important when raising a complaint all of the facts are taken into account to make sure that the process is fair to both parties. In a limited number of cases, it may be possible not to disclose the identity of the complainant to the respondent when dealing with an issue on an informal basis, but this will depend on the individual circumstances. In relation to formal complaints, the respondent will need to know the nature of the allegations made against them, and in cases such as these, that includes the identity

of the person making the complaint except in exceptional circumstances, such as where there is a threat to the safety of the complainant.

Confidentiality

We know that concerns about issues being made public can prevent people from coming forward in the first place. Therefore, it is essential that complaints raised under the new procedures are dealt with in the strictest confidence and all parties involved in any complaint must respect confidentiality at all stages of the process.

The identity of the complainant and the respondent will be kept confidential to those who have a legitimate need to know and any sensitive information disclosed will be handled in accordance with the Data Protection Act 2018 and the General Data Protection Regulation.

Victimisation

Those who experience sexual harassment often feel unable to report it for fear of victimisation. Victimisation has a defined meaning in legislation and involves being treated less favourably than other people as a result of having made a claim of sexual harassment or by assisting someone else with their complaint.

This could take the form of penalising someone by for example, finding fault with their performance where it is not merited or giving them unrealistic or impossible deadlines; excluding the person from work-related activities or conversations, creating a difficult working environment or making disparaging comments.

Victimisation in any form is not acceptable within the parliament and will be dealt with through the appropriate formal procedures.

Ongoing support

Support will be available to both the person making the complaint and the person against whom the complaint is made throughout any process. However, raising a complaint and having it dealt with is not the end of the story for either the complainant or respondent. People may experience increased stress and anxiety and therefore, ongoing support will also be provided after the process is finished

Vexatious or malicious complaints

All complaints made under this Policy are assumed to be made in good faith. We anticipate that false accusations will be rare but should this be found to be the case, these will be dealt with seriously, potentially leading to disciplinary action being taken.

Monitoring and Review

This Policy will be reviewed after the first 12 months of operation. Anonymised data on the numbers of calls to the helpline and informal and formal cases will be reported to the SPCB after the first 6 months of operation and annually thereafter.

ANNEX TO SEXUAL HARASSMENT POLICY

Reporting Procedures and support

Independent Support Service

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

Specifically, the Independent Support Service provides:

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

Procedures for dealing with complaints

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

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

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

Employers are generally encouraged to include informal steps to resolve grievances in their policies as this can be the most effective way of dealing with them. However, particularly as sexual harassment can often stem from a power imbalance, it's not

always possible or desirable to deal with something informally. The key issue is that you decide what's the most appropriate route for you.

Dealing with issues informally

- You can approach the person directly to let them know the impact of their behaviour. However, you might not feel comfortable doing this, particularly if the person is in a position of authority over you.
- You can approach your own line manager and/or line manager of the person whose behaviour you're concerned about, or in the case of an MSP, their party to help you resolve the issue.
- You can contact the Independent Support Service who will provide advice and support and can also act as an advocate on your behalf.
- You can also seek the support of your trade union representative.
- Whoever you approach will be expected to take your complaint seriously and establish the facts of the case. They should also seek further HR advice for support in dealing with any issues.
- Even though the complaint has been raised on an informal basis, it might be more practical or appropriate for the facts to be established by someone independent of the line management chain. In those circumstances, Parliament's HR Office can arrange for an independent service provider to carry this out. Outcomes from informal approaches

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

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

Formal Complaints

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

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

How to submit a complaint

Formal complaints should be made in writing, to the Independent Support Service using the template they will provide to you or you can access it on our website.

The Independent Support Service will notify the Parliament's HR Office who will commission an Independent Investigator (and notify the respondent's employer) or, in the case of complaints against MSPs, refer it to the Ethical Standards Commissioner.

How the investigation will be conducted

The process that the Ethical Standards Commissioner will follow is set out in section 9 of the [Guidance on the Code of Conduct](#).

The sanctions that can be applied are also set out in section 9.

For all other complaints, the process is set out as follows:

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

- Confidentiality must be maintained throughout the investigation. Action will be taken against anyone who breaches this.

The report – timing

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

The report – content

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

The report – next steps

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

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

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

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

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

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

Disciplinary action

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

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

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

Complaints against people who no longer work at the Parliament

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

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

any lessons can be learned. Depending on the circumstances, the copy provided to the former employer may be anonymised.

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

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

Complaints from people who no longer work at the Parliament

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

Ongoing support

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

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

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

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

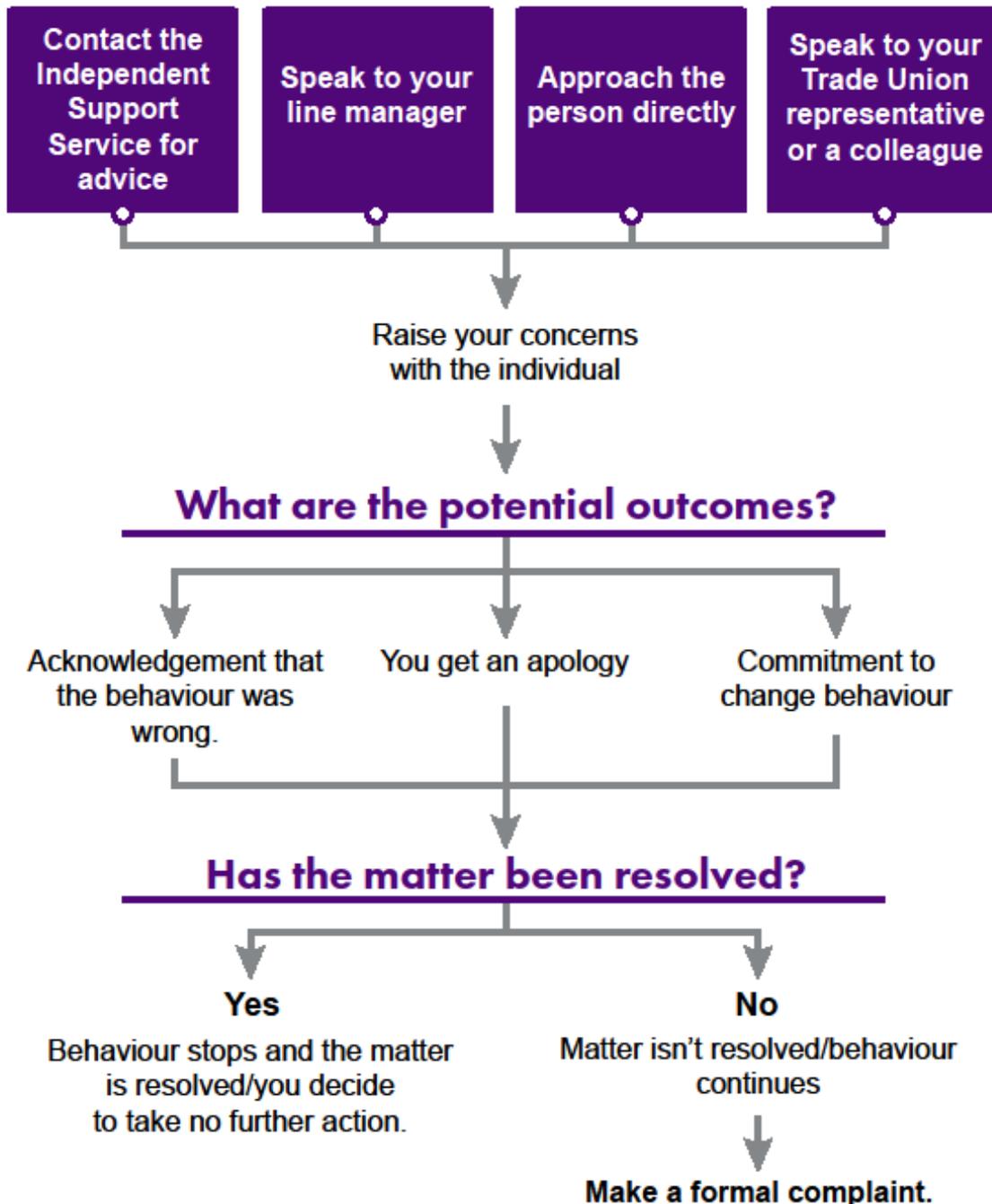
Some of the measures that might need to be considered are:

- Is it appropriate for people to continue to work together or should contact be minimised?
- If people need to be moved, how should this be done? It is important to remember that moving the person who made the complaint could constitute victimisation
- Do line management arrangements need to be changed?

- Are there ways contact can be minimised by changing someone's location?
- Could contact be minimised by, for example, allowing someone to work from home for a temporary period or until alternative arrangements are put in place?
- If contact can only be minimised for a temporary period by someone not being at work at all, this should be done on the basis of paid time off rather than the person needing to take annual, flexi or sick leave

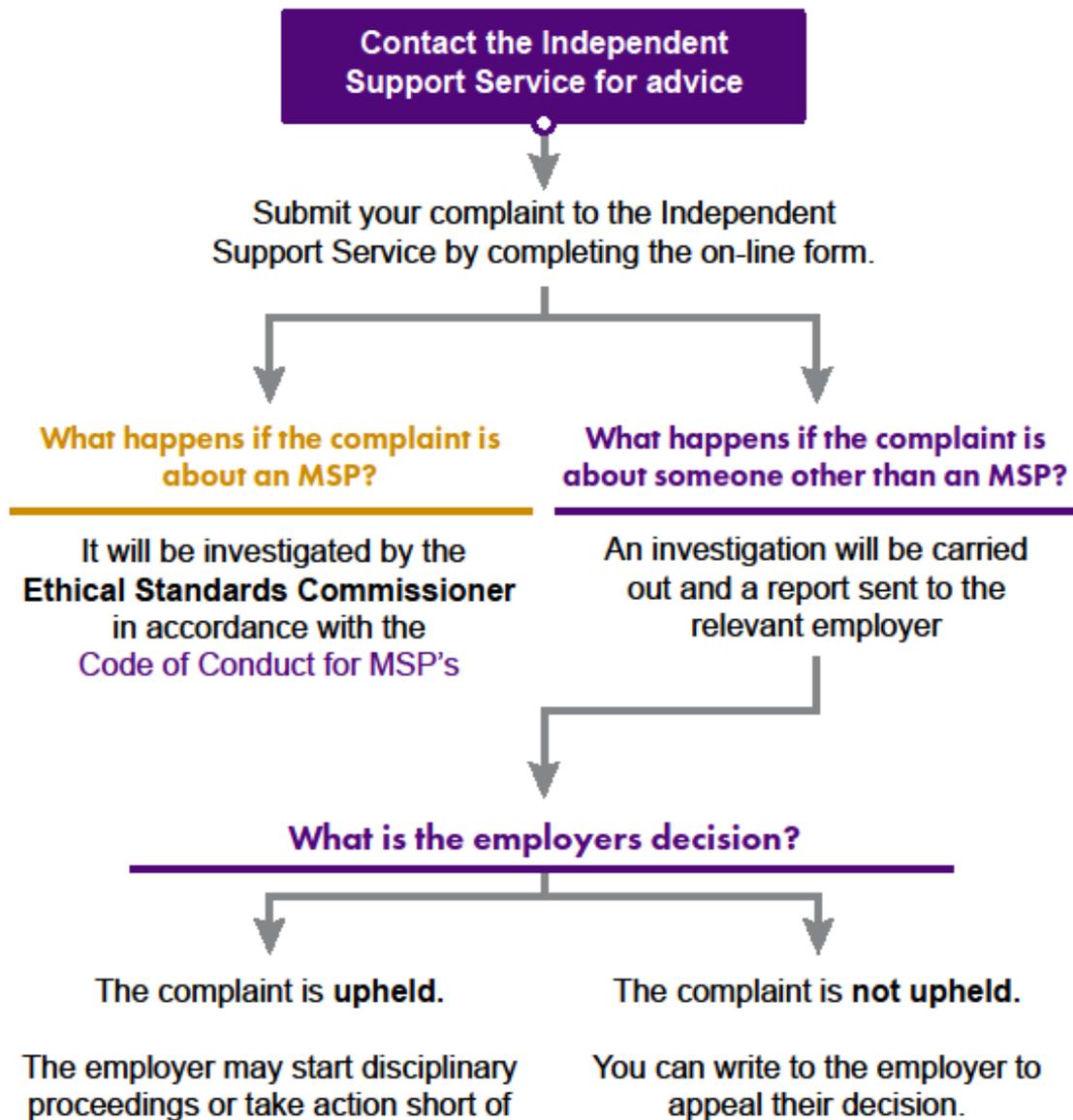
Not all of these options will be available or appropriate in every situation and care should be taken to find out what the individual affected by the behaviour may want to do.

How can I raise my concern informally?





How can I make a formal complaint?



Note:

You do not have to raise your concern informally prior to making a formal complaint

ANNEX B

Zero Tolerance Statement

Fostering a culture of respect

Zero Tolerance of Sexist Behaviour and Sexual Harassment

Every person has the right to work in an environment that promotes respect, fairness, equality, and dignity and enables them to make their best contribution. Sexist behaviour and sexual harassment do not belong in the Parliament and we are committed to creating the shared understanding of appropriate behaviours, culture, and accountability mechanisms that will eradicate them.

Sexual harassment occurs when an individual engages in unwanted behaviour of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It can be an isolated incident or persistent behaviour and is essentially about the effect on the recipient, not about what was intended.

Sexist behaviour is any behaviour which is, or is perceived to be, motivated by prejudice or discrimination based on sex, including behaviour or attitudes that stereotype individuals on the basis of gender.

We're adopting a zero tolerance approach to sexist behaviour as well as sexual harassment because such behaviour can create a culture where people feel undermined and not respected.

This means that we will:

- Take steps to prevent sexism and sexual harassment from occurring and support culture and behaviour change through information and education.
- Take complaints seriously ensuring we deal with them promptly and sensitively.
- Have policies and processes which are transparent, easily accessible, and understood by those who need to use them.
- Ensure principles around confidentiality within the complaints process are clear.
- Respond in a manner which is consistent, fair and proportionate.
- Ensure that there are consequences for sexist behaviours and sexual harassment.