



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

MEETING DETAILS

2nd meeting 2018, Session 5

Thursday 1 February 2018 at 9.30am in the James Clerk Maxwell Room (CR4).

ADDITIONAL INFORMATION

Members will note that the meeting is scheduled to start earlier, at 9.30am but members are asked to attend at **9.20am** for a pre-brief.

[Meeting papers and Official Reports from previous meetings](#)

COMMITTEE PAPERS

Agenda

Cross-Party Group paper

Sexual harassment and inappropriate conduct written submissions

NOTICES

Next meeting:

22 February 2018

Future Meetings:

1 March 2018
15 March 2018
29 March 2018
26 April 2018
10 May 2018
24 May 2018
7 June 2018
21 June 2018



The Scottish Parliament
Pàrlamaid na h-Alba

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

AGENDA

2nd Meeting, 2018 (Session 5)

Thursday 1 February 2018

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Cross-Party Group:** The Committee will consider an application for recognition from the proposed Cross-Party Group on Shared Parenting, and take evidence from—

Ivan McKee, Co-Convener of the proposed CPG on Shared Parenting.
2. **Sexual harassment and inappropriate conduct:** The Committee will take evidence from—

Cheryl Gedling, Industrial Officer, PCS Union;

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

Davy Thompson, Campaign Director, White Ribbon Scotland;

Emma Trottier, Policy and Parliamentary Manager, Engender.
3. **Cross-Party Group - approval:** The Committee will decide whether to accord recognition to the proposed Cross-Party Group on Shared Parenting.
4. **Sexual harassment and inappropriate conduct (in private):** The Committee will consider the evidence heard earlier in the meeting.
5. **Commission on Parliamentary reform - parliamentary questions (in private):** The Committee will consider a note by the Clerk.

Joanna Hardy/Alastair Macfie
Clerks to the Standards, Procedures and Public Appointments Committee
Room CG07
The Scottish Parliament
Edinburgh
Tel: 0131 348 6924
Email: SPPACcommittee@parliament.scot

The papers for this meeting are as follows—

Agenda item 1

Note by the clerk

SPPA/S5/18/2/1

Agenda item 2

PRIVATE PAPER

SPPA/S5/18/2/2 (P)

Written submissions

SPPA/S5/18/2/3

Agenda item 5

PRIVATE PAPER

SPPA/S5/18/2/4 (P)

Standards, Procedures and Public Appointments Committee

2nd Meeting 2018 (Session 5), Thursday 1 February 2017

Cross-Party Group Application

Introduction

1. In accordance with the provisions on Cross-Party Groups (CPGs) set out in section 6 of the Code of Conduct (the Code), proposals for the establishment of CPGs in the Scottish Parliament must be submitted to the Standards, Procedures and Public Appointments Committee (the Committee) for its approval.
2. There is one proposed Group for the Committee's consideration.

Proposed CPG on Shared Parenting

3. The registration form submitted by the proposed Group is attached as an Annexe.

Consideration by the Standards, Procedures and Public Appointments Committee

4. Paragraph 18 of Section 6 of the Code states "...one of the proposed Group's MSP office bearers (usually the Convener) will be invited to attend a meeting of the Committee to explain the justification for the proposed Group." Ivan McKee MSP has been invited to the meeting to discuss registration of the proposed Group.

Purpose

5. Paragraph 19 Section 6 of the Code states "the Committee will pay particular attention to a proposed Group's purpose. If the Committee considers that a proposed Group is not in the public interest but is intended, for example, to further particular commercial interests, the Group will not be accorded recognition. The Committee will also consider whether the purpose of a proposed Group overlaps the remit of an existing Group. If there is any overlap Groups are asked to provide justification as to why their aims could not effectively be achieved within an existing Group".

6. The stated purpose of the proposed Group is to—
 - "... identify, examine and promote policy and practice that supports parents in sharing parenting responsibilities. It will consider how gender stereotypes can be tackled in the pursuit of a better understanding of what we need to do to ensure the best possible childhood and most promising adult life for Scotland's children. It will provide a forum for MSPs, stakeholders and other interested parties to engage directly in dialogue to inform policy developments and practice which impact on parents sharing responsibilities for the role and support networking on this topic."

7. The Group does not consider its remit overlaps with any other existing Group but that there will be positive links through our MSP members to other CPGs involved in tackling gender stereotyping.

Membership

8. Paragraph 8 of Section 6 of the Code requires group membership to include at least five MSPs, with at least one MSP from each of the parties or groups represented on the Parliamentary Bureau. The Committee has previously agreed that there should be a general waiver of this Rule in the current Session and Groups are now required to have five MSPs from the majority of parties represented on the Parliamentary Bureau. The proposed Group meets this requirement.

9. The MSP membership (by party) of the proposed Group is as follows—

- 2 Scottish Conservative and Unionist Party
- 1 Scottish Green Party
- 4 Scottish National Party

10. Paragraph 9 of Section 6 of the Code entitles groups to contain members from outwith the Parliament. The proposed Group has listed three non-MSP member in the individual category and 13 in non-MSP member organisations.

Office Bearers

Paragraph 10 of Section 6 of the Code requires one MSP to be Convener of the Group and there to be at least one other MSP office bearer. The proposed Group meets this requirement: Ivan McKee MSP, Gillian Martin MSP and Adam Tomkins MSP are the Co-Conveners of the Group.

Financial Benefits and Subscription

11. The registration form indicates that the Group will receive n financial benefits.

12. The registration form also indicates that members will not be charged a subscription.

Next Steps

13. At agenda item 1 the Committee is invited to discuss any aspects of the application for recognition of the proposed Cross-Party Group on Shared Parenting with Ivan McKee MSP.

14. At agenda item 3 the Committee will discuss whether to accord recognition to the proposed Groups.

Sam Currie
Support Manager
Standards, Procedures and Public Appointments Committee
January 2018

CROSS-PARTY GROUP REGISTRATION FORM

| |
|---|
| NAME OF CROSS-PARTY GROUP |
| Cross-Party Group on Shared Parenting |
| PURPOSE OF THE GROUP AND PROPOSED DISCUSSION TOPICS |
| <ol style="list-style-type: none"> 1. Please state the purpose of the Group. 2. Please also provide a brief explanation of the purpose of the Group and why the purpose is in the public interest. 3. Please also provide details of any overlaps with the purpose of existing Cross-Party Groups and an explanation of why, regardless of any such overlap, the Group should be established. 4. Please also provide an indication of the topics which the Group anticipates discussing in the forthcoming 12 months. |
| <p>1.The Group will identify, examine and promote policy and practice that supports parents in sharing parenting responsibilities. It will consider how gender stereotypes can be tackled in the pursuit of a better understanding of what we need to do to ensure the best possible childhood and most promising adult life for Scotland's children. It will provide a forum for MSPs, stakeholders and other interested parties to engage directly in dialogue to inform policy developments and practice which impact on parents sharing responsibilities for the role and support networking on this topic.</p> <p>2.Gender stereotyping is an issue that impacts upon many aspects of life including economic, social and family spheres. In the family arena traditional gender assumptions around child raising is one aspect of this, but an important one, as such assumptions influence early years' perceptions, career choices and economic opportunities. In addition, where both parents are involved in their childrens' upbringing, there is clear evidence of positive educational and social development. As such, shared parenting is a key mechanism for closing the attainment gap and tackling inequalities.</p> <p>The CPG on Shared Parenting will benefit society and the public interest by working to inform the Scottish Government's forthcoming review of the Children (Scotland) Act 1995. <u>It will</u> identify issues and areas where policy and practice could be initiated or reformed, by gathering the latest research from Scotland and elsewhere and hearing from speakers and researchers in the key areas that will inform the issues.</p> <p>3.No overlap but positive links through our MSP members to other CPGs involved in tackling gender stereotyping – for example Women in Enterprise CPG.</p> <p>4. Broadly 2 topics per meeting a mixture of presentations and discussion on the following (and more): Survey the shared parenting landscape – issues and definitions of terms; invite Scottish Government officials to talk about what they are doing in this and related policy areas, including the new parenting plan which should be launched soon and the Children (Scotland) Act consultation; invite a</p> |

judge/retired judge/the Judicial Institute to talk about how judges are trained; how parenthood is taught/learned; impact of changes to the Benefits system; hear from young people who have experienced shared parenting; consider shared parenting situations where there isn't conflict as role models of best practice; consider the role of mothers and fathers and breaking gender stereotypes around caring; how schools engage with parents; impact of gender stereotypes on economic and child development; review international experiences including Scandinavia, where shared parenting is the norm.

MSP MEMBERS OF THE GROUP

Please provide names and party designation of all MSP members of the Group.

| | |
|--------------------|---------|
| Finlay Carson MSP | (Con) |
| Bob Doris MSP | (SNP) |
| Kate Forbes MSP | (SNP) |
| Gillian Martin MSP | (SNP) |
| Ivan McKee MSP | (SNP) |
| Adam Tomkins MSP | (Con) |
| Andy Wightman MSP | (Green) |

NON-MSP MEMBERS OF THE GROUP

For organisational members please provide only the name of the organisation, it is not necessary to provide the name(s) of individuals who may represent the organisation at meetings of the Group.

Individuals

Fiona Robertson
Amanda Ward
Ellen Forson

Organisations

(to date)
Families Need Fathers Scotland
Dads Rock
Fathers Network Scotland
Relationships Scotland
Family Mediation West of Scotland
Parent Network Scotland
Men in Childcare
Midlothian Surestart
One Parent Families Scotland
The Spark
Families Outside
Circle Scotland
Fatherhood Institute (corresponding)

GROUP OFFICE BEARERS

Please provide names for all office bearers. The minimum requirement is that two of the office bearers are MSPs and one of these is Convener – beyond this it is a matter for the Group to decide upon the office bearers it wishes to have. It is permissible to have more than one individual elected to each office, for example, co-conveners or multiple deputy conveners.

| | |
|-----------------|--|
| Co-conveners | Ivan McKee MSP Gillian Martin MSP Adam Tomkins MSP |
| Deputy Convener | |
| Secretary | John Forsyth/Ian Maxwell Families Need Fathers |
| Treasurer | |

FINANCIAL BENEFITS OR OTHER BENEFITS

Please provide details of any financial or material benefit(s) the Group anticipates receiving from a single source in a calendar year which has a value, either singly or cumulatively, of more than £500. This includes donations, gifts, hospitality or visits and material assistance such as secretariat support.

None

SUBSCRIPTION CHARGED BY THE GROUP

Please provide details of the amount to be charged and the purpose for which the subscription is intended to be used.

None

CONVENER CONTACT DETAILS

| | |
|-----------------------|---------------|
| Name | Ivan McKee |
| Parliamentary address | Room M4.14 |
| Telephone number | 0131 348 6950 |

STATEMENT ON COMPLIANCE WITH THE CODE OF CONDUCT

I declare that the Cross-Party Group on Shared Parenting is constituted and will comply with the terms of Section 6 of the Code of Conduct for Members of the Scottish Parliament.

Signed

Date

Standards, Procedures and Public Appointments Committee

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

**Inquiry into sexual harassment and inappropriate conduct at the Scottish
Parliament - written submissions**

The following written submissions, in relation to this meeting, been received—

- Engender
- PCS Union
- STUC

**Clerks
Standards, Procedures and Public Appointments Committee
January 2018**

WRITTEN SUBMISSION FROM ENGENDER

Engender welcomes the decision by the Standards, Procedures and Public Appointments Committee of the Scottish Parliament to hold an inquiry into sexual harassment and inappropriate conduct at the Scottish Parliament. The Committee inquiry has four aims:

1. Examine the rules, procedures and guidance governing the reporting, investigation and sanctioning of MSPs' conduct with regard to sexual harassment at the Scottish Parliament.
2. To consider the Code of Conduct for MSPs, and the context in which it operates to deliver a reporting regime which inspires confidence in those affected by MSPs' conduct that they will be taken seriously and treated fairly and that appropriate action will be taken if sexual harassment is found to have occurred, including sanctions.
3. To examine political parliamentary parties' approaches to the reporting and investigation of MSPs' conduct with regard to sexual harassment at the Scottish Parliament with a view to making recommendations.
4. To understand workplace cultural and societal factors that may be relevant to MSPs' conduct with regard to sexual harassment and determine whether and what changes could be made to the Code of Conduct to address them.

1. Harassment in the workplace

Violence against women is perpetrated in and around workplaces. In the UK, more than half (52%) of women have experienced some form of sexual harassment, with one quarter experiencing unwanted touching, and one fifth experiencing unwanted sexual advances.¹

The Equality Act 2010 enables employees and workers to seek remedy for sexual harassment in the workplace that is perpetrated by a colleague, treating it as sex discrimination. However, third-party harassment provisions set out in that Act were repealed in 2013, meaning that individuals cannot seek remedy where harassment is perpetrated by customers, clients, or individuals with other forms of relationships to the employer. Of all employees and workers surveyed by the TUC, four out of five women experiencing sexual harassment did not report the unwanted behaviour to their employer.²

Women report sexual harassment as having a negative impact on their mental health, making them less confident at work, and prompting them to avoid certain work situations to avoid the perpetrator. All of these effects and responses are likely to diminish women's performance at work, and their propensity to apply for and be appointed to promoted posts. In this way sexual harassment contributes to the 'glass ceiling'; to women's subordinate role in the workplace; and to the population-level gender pay gap.²

¹ TUC. (2016). *Still just a bit of banter? Sexual harassment in the workplace in 2016*.² Ibid.

² Close the Gap. (2017). *Working Paper 17: Gender pay gap statistics*.

2. Harassment in international human rights law

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) protects women from discrimination in the workplace. While CEDAW does not speak specifically to violence against women and girls, the UN CEDAW Committee's General Recommendation 19 states "Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace".³ This recommendation followed the drive in the 1960s for sexual harassment to be recognised as a legitimate cause of action under the sex discrimination provisions of the Civil Rights Act in the United States (U.S.), which was followed in the 1980s by the U.S. Supreme Court decision recognising sexual harassment as a legitimate form of sex discrimination prohibited by federal law.

The Council of Europe Convention on preventing and combating violence against women (the 'Istanbul Convention') contains two relevant articles that capture the workplace in their definition of sexual harassment. Article 40 on sexual harassment states that:

*[State] Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment, is subject to criminal or other legal sanction.*⁴

Article 34 says that:

*[State] Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.*⁶

In April 2017, the UK Parliament passed Dr. Eilidh Whiteford MP's private members' bill to ratify the Istanbul Convention. The UK signed the convention on 8 June 2012.

3. Committee questions

3.1. What are the key principles and essential elements of a reporting, investigation and sanctions framework for use by the Scottish Parliament to deal with sexual harassment and inappropriate conduct that would inspire confidence in those engaging with the process and the public in general?

³ United Nations General Assembly. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women*.

⁴ Council of Europe. (2011). *Convention on preventing and combating violence against women and domestic violence*. ⁶ Ibid.

Below, we outline key principles of an effective framework. Whilst we view the development of principles as vital to the future framework, we must not lose sight of the more significant challenge laying ahead of us – putting principles into practice.

Zero tolerance

- Every person employed in the Scottish Parliament has a right to work in an environment free of sexual harassment and inappropriate conduct.
- The Scottish Parliament must never tolerate or ignore sexual harassment or inappropriate conduct of any kind or in any form.

The right to access to justice

- Every person employed within the Scottish Parliament must have complete access to a redress mechanism without negative consequence.
- There must be zero tolerance of any attempts at recriminations against – or further victimisation of – a person using the sexual harassment policy to grieve inappropriate behaviour.

The duty to investigate

- Any allegation of sexual harassment or inappropriate conduct must be investigated, and such behaviour will not be ignored or minimised.
- There must be no distinction between openly sanctioning and wilfully ignoring sexual harassment or inappropriate conduct (or claims of either).

A fair process and an expeditious response

- The Scottish Parliament must be accountable for sexual harassment through processes and procedures that respect the dignity and privacy of the person making a complaint.
- The Scottish Parliament must commit to communicating with the person who lodged the complaint about the steps being taken to address the sexual harassment or inappropriate conduct and the perpetrator of the sexual harassment or inappropriate conduct.
- The Scottish Parliament must also commit to taking immediate action once an allegation of sexual harassment or inappropriate behaviour has been made, including the act of stopping it, addressing it and preventing its recurrence.
- The Scottish Parliament must recognize the harm done to a person who has been the victim of sexual harassment or inappropriate conduct through the imposition of an appropriate sanction.

Continued learning in the Scottish Parliament

- The Scottish Parliament must commit to collecting data on claims and incidents of sexual harassment and inappropriate behaviour, which can be used to evaluate whether policies and practices are contributing to a safer environment for its employees.
- The Scottish Parliament must also commit to raising awareness about sexual harassment and inappropriate conduct through the continual education of its employees, including those who represent the Scottish populace.

3.2. What features of reporting and investigation frameworks can act as barriers to reporting and a lack of action on undesirable behaviours? Please provide examples. Do you have any comments on how effective and clear the current arrangements are in the Scottish Parliament for reporting sexual harassment? Do you have any suggestions for changes to improve the current rules and procedures?

We have taken the liberty of amalgamating some of the Committee questions and answering them in the section below. We believe this is in the interest of a clear and concise response. Therefore, in the section below we highlight current features of the existing framework that act as a barrier and subsequently provide recommendations for change.

Policy spread across multiple documents causes ambiguity

Following the public revelations of sexual harassment in the Scottish Parliament, staff at Engender reviewed the current reporting and investigation framework for sexual harassment. Our purpose in the exercise was to map out the process for reporting harassment, including the practices associated with investigating allegations and the sanctions that could be imposed when conduct was deemed inappropriate. Through our mapping exercise, we determined current policy documents to be ambiguous. There was no single reference point to guide an individual on how to make a complaint of sexual harassment or inappropriate conduct. Instead, the avenues to redress were found across several documents. Following our review, we found that clarity and coherency was needed within the policy documents on sexual harassment and/or inappropriate conduct, and that the information must be easily accessible.

That said, we are encouraged by the recent introduction of the 'Culture of Respect' tab on the Scottish Parliament's website, which provides information on different methods of reporting harassment. This is a step in the right direction. However, further efforts are needed to streamline policies to ensure a coherent process, where individuals can easily find information about the Scottish Parliament's sexual harassment policy as well as its response to claims and incidents of sexual harassment and/or inappropriate conduct.

As it stands, there is a lack of clarity in existing reporting arrangements, primarily over those incidents covered as "excluded". For example: if sexual harassment and/or inappropriate conduct occurred directly following a meeting of the Parliament,

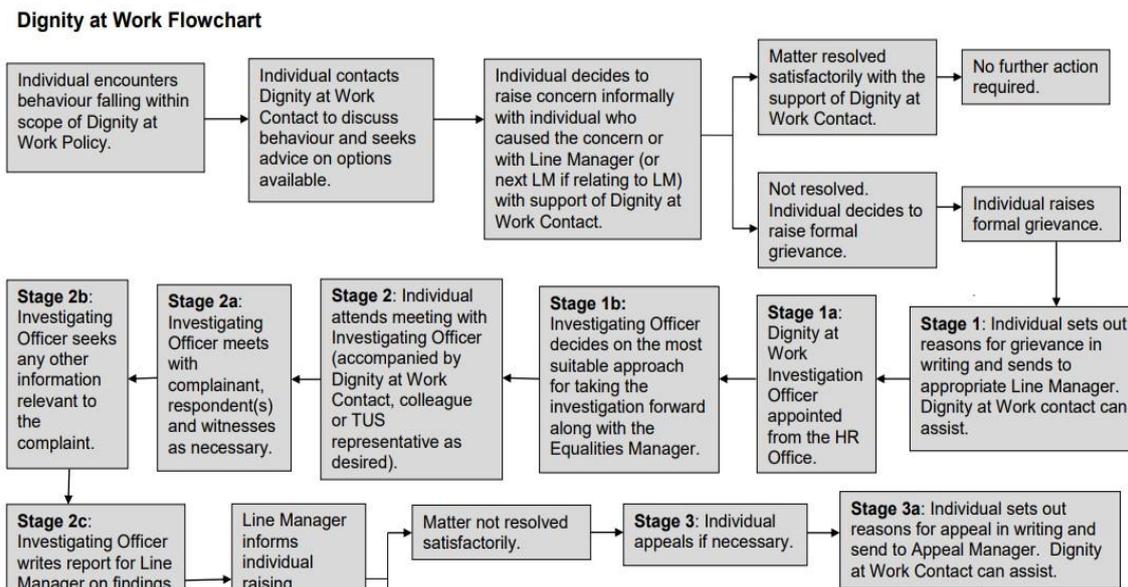
but still within the Chamber, would the complaint be made to the Commissioner for Ethical Standards in Public Life in Scotland or to the Presiding Officer?

It is also not clear, even if one determines to whom the complaint should be submitted, where additional guidance may be found. For example: If the member violated the Code of Conduct and the incident of sexual harassment and/or inappropriate behaviour involved Parliament staff, how would the staff member make a complaint to the Parliament's Human Resources Office? Is there a complaint form? Where is the sexual harassment policy of Parliament's Human Resources Office?

The lack of clarity extends also to guidance for staff of the Scottish Parliament. As an example of the ambiguity of existing policy documents for Scottish Parliament staff, we highlight the small difference between the "Dignity at Work" policy and its accompanying flowchart. The "Dignity at Work" policy, at paragraph 18, stipulates that a person making a grievance may do so informally or formally:

If a member of staff believes they are being harassed, discriminated, bullied or victimised an informal or formal complaint can be made under the scope of this policy.⁵ [emphasis added]

However, the flowchart, looks as follows:



At issue here is that the "Dignity at Work" policy distinctly states – by the use of the word 'or' – that a person can choose to pursue a formal or informal complaint, whilst the flowchart appears to suggest that an informal complaint is the first step in the process.

⁵ Scottish Parliament. *SPCB Dignity at Work*. <http://www.parliament.scot/abouttheparliament/16483.aspx>

As previously mentioned, it is vital that sexual harassment and inappropriate conduct policies be clear, coherent and simple to read, allowing easy access by all staff.⁶ Policies that are unclear, rely on inaccessible language or unfriendly formats, or are difficult to locate run the risk that staff will interpret the organisation as unwilling to apply the policy.⁷

Lack of detailed guidance may impact perceptions of legitimacy

Similarly to the above, the existing policy materials are not sufficiently detailed. Much of the policy for reporting requires first determining where the incident occurred and who committed the act of sexual harassment and/or inappropriate conduct. However, once that information is established, there is a lack of guidance on how a complaint should be made and what options are available to the individual making the complaint. For example:

- Does an individual have the option of making a formal or an informal complaint?
- What privacy safeguards are in place?
- What is the timeline for the investigation? How many days are allotted for each stage of the process? What redress is available if there are delays in the investigation?
- Are there formal hearings? If so, will the person who submitted the complaint be informed that he or she is not required to be in the same room as the person against whom they have brought the complaint?

These and other questions should be answered in policy materials so an individual has all the available information before deciding to disclose an incident of sexual harassment and/or inappropriate behaviour.

The same concerns listed above extend to the guidance materials for Scottish Parliament (e.g., “Dignity at Work” policy).

The absence of detail within existing policy leaves the processes and procedures as complete unknowns to those subjected to them. In the interest of transparency and accountability, policies should detail how processes and procedures will unfold at each stage and set out the time allotted for each stage, including how undue delays will be addressed.

Concerns over confidentiality may influence people to not report

Complaints involving sexual harassment are often allied by the fear of job loss, retribution, or the potential embarrassment that could result from the informal or formal disclosure of the behaviour. It appears that the existing reporting mechanism

⁶ Richards, J., and Daley, H. (2003). Bullying policy: Development, implementation and monitoring. In S. Einarsen, H. Hoel, D. Zapf, and C. L. Cooper (eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (pp. 127–144). London: Taylor & Francis.

⁷ Harlos, K., and Pinder, C. C. (1999). Patterns of organizational injustice: A taxonomy of what employees regard as unjust. *Qualitative Organizational Research*, 2, 97–125.

in the Scottish Parliament requires a person to report the sexual harassment to multiple individuals.

Of concern is the materials that reference confidentiality, but do not expand on the meaning. As an example, the “Frequently Asked Questions” concerning the telephone line at the Scottish Parliament states:

How do I know that the discussion will be kept confidential?

We will never disclose anything you tell us if you don't want us to unless in exceptional circumstances we are required to do so by law.⁸

However, the FAQ does not answer the question: what constitutes an ‘exceptional circumstance’ that would require, by law, the disclosure of information shared during the telephone call? Who would be the recipient(s) of the information?

The absence of safeguards to a person's personal information and/or circumstance constitutes a barrier to justice. The below are a few examples of questions which may be asked about the reporting and investigation mechanisms:

- Have the reporting and investigation processes undergone a Privacy Impact Assessment to determine how privacy risks can be reduced?
- What is the goal of sharing information during or after the investigation into a complaint? It is important to identify the reasons for why information needs to be collected, compiled or shared. These reasons should be weighed against the potential harm it could pose for the person who submitted the complaint.
- In instances where information must be shared, has the person who submitted the complaint been notified that the information will be disclosed?

This is not an exhaustive list of questions that may need to be asked. Rather, it is meant to serve as an example of questions which, if answered and implemented in policy, may foster greater confidence in the protection of personal information and, in turn, allay fears of job loss, retribution or personal embarrassment resulting from reporting an incident of sexual harassment and/or inappropriate behaviour.

Responses to sexual harassment and inappropriate behaviour are unclear

One feature of the framework that acts as a current barrier to reporting is the unclear consequences for sexual harassment and/or inappropriate conduct. In other words, there is no public list of sanctions for sexual harassment, nor is there any detail on the criteria relied on for choosing a particular sanction. The absence of this kind of information leaves one to question:

- What sanctions can be imposed on the perpetrator?

⁸ Scottish Parliament. FAQs. <http://www.parliament.scot/abouttheparliament/106540.aspx>

- How does the decision-making authority conclude that one punishment is more appropriate than another? Will it be based on the seriousness of the incident(s) and the culpability of the perpetrator? If not, then how do decision-makers decide on an appropriate sanction?

To instil confidence in the system, policy should detail the actions that can be taken when a person is found to have breached policy and caused harm to another person. At the moment, the absence of information on sanctions may be acting as a disincentive to reporting sexual harassment. Without this kind of information, one might ask themselves what the purpose of reporting an incident of sexual harassment would be.

More broadly, however, this gap in information may be fostering a toxic work environment. Knowledge of the consequences for negative behaviour can act as a deterrent to displaying that behaviour, but only if the consequences are known, understood, and trusted to be applied. It is therefore crucial that mandatory and recurring training occur for every person employed in the Scottish Parliament (i.e., MSPs, MSP staff, parliament staff). All staff must be aware of the sexual harassment policy applicable to them, including the consequences for violating the policy. Moreover, sanctions must be applied to incidents of sexual harassment. Failing to sanction perpetrators of sexual harassment/inappropriate conduct has severe consequences, not the least of which is the system losing its legitimacy.

How can positive changes to workplace culture be achieved that lessen the prevalence of sexual harassment?

Sexual harassment is, above all, a manifestation of power relations. The cultural shift needed in the Scottish Parliament to root out sexism first requires an acknowledgment and understanding that women are much more likely to be victims of sexual harassment precisely because of these unequal power dynamics. The social causes of violence against women and girls are rooted in male entitlement, privilege and the exercise of male control and power. All of these factors – male privilege, entitlement and control – give license to acts of violence against women and are used to reinforce supremacy.

Engender maintains that even the most robust mechanisms for gathering, investigating, and acting on complaints will not, on their own, eradicate sexual harassment. This is because sexual harassment, like other forms of violence against women, is both a cause and consequence of women's inequality. To banish sexual harassment from the Scottish Parliament, action is needed to stamp out sexism. Though this extends beyond the remit and control of the Standards, Procedures and Public Appointments Committee, we believe that the Scottish Parliament, alongside political parties and other actors that shape parliamentary culture, need to play their part in bringing about women's equality. Having women around the table as equal participants is key.

While there remains much work ahead of us, we are encouraged by the decision of the Standards, Procedures and Public Appointments Committee to undertake a study on sexual harassment and inappropriate conduct in the Scottish Parliament.

Whilst policies cannot independently prevent and eradicate sexual harassment in the Scottish Parliament, we look forward to working with the Committee and others to develop an effective framework for reporting, investigating and sanctioning such behaviour.

**Emma Trottier,
Policy and Parliamentary Manager,
Engender
26 January 2018**

About Engender

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. Engender is a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

WRITTEN SUBMISSION FROM PCS

1. PCS represents around 185,000 members in the civil service and related agencies, bodies and contractors. In Scotland, overall, we have over 24,000 members, including 8000 in the Scottish Sector (under the remit of the Scottish Parliament).
2. Whilst PCS represent staff working in the Parliament, we also represent workers who will come into regular contact with MSPs and MSP staff in the Scottish Government and other NDPBs.
3. Our comments on current practice in this submission relate to the experience PCS has as a union within the Parliament, although that comes with a caveat in terms of the low number of sexual harassment complaints we have dealt with as a union in this workplace. This does not mean that sexual harassment is not taking place in the Parliament, but that reporting is not commonplace.

Current Practice

4. PCS, along with our sister unions Prospect and the FDA, are consulted on the creation and development of HR policies. The 'staff handbook', where policies and procedures are laid out, is currently under review. The unions will be consulted before changes are made.
5. There is an ongoing survey of all workers within the parliament, which has a closing date of 19th January. At the time of the submission of this paper, the analysis was not yet available so we cannot comment in writing on its findings.
6. PCS were informed of the intention to conduct a survey almost immediately after the reports in the press in 2017, and were also consulted on the questions which would be included.
7. In terms of formal representation, PCS has only handled one sexual harassment case in the last five years which was resolved formally. However, we have emphasised with SPCB HR colleagues that this does not mean that other incidents have not taken place, but that reporting may be an issue.
8. PCS welcome the establishment of the harassment helpline, recognising that it was set-up in haste in response to the revelations of harassment allegations in the parliament and across wider society. However, this means that it has limitations and can only be considered a short-term solution.
9. PCS have some concerns that the helpline itself is only available during limited hours of the working week, when in reality working hours in the parliament span much broader than 9 – 5, including evenings and weekends. We also have concerns that the helpline is ran by parliament staff, as even with the caveats in place, it could mean that there are perceived barriers in terms of confidentiality and trust.

Union research on the scale of sexual harassment

10. We draw the TUC research, “Still just a bit of banter?”¹ to the committee’s attention. The report demonstrates that sexual harassment affects more than half of all women. 1/3 of women have been subject to unwelcome jokes of a sexual nature, more than ¼ of women have been subject to comments of a sexual nature about their body or clothes. Nearly ¼ of women have experienced unwanted touching (such as hand on the lower back). One fifth of women have experienced unwanted sexual advances.

11. The research points out that it is important to note that a perpetrator’s claim that a comment or action was meant in jest or as a compliment is not a reasonable defence in a sexual harassment case, though it is often used. Nor does the harassment have to be directed at the person complaining about it. For example, sexual comments directed at others may create a degrading, intimidating or hostile working environment for workers even if they are not intended as the object of the comments.

12. The case may be worse for some groups of women, from the TUC research, 68% of women aged 18 – 24 had experienced some form of sexual harassment compared to an average of 53% amongst women of all ages. There may also be greater impacts on BME (Black and Minority Ethnic) and LGBT (Lesbian, Gay, Bisexual and Transgender) women.

13. The impact of harassment can be wide scale and life-changing, from affecting the ability of women to progress within their career or to contribute fully within the workplace, to women no longer feeling safe in their working environment.

14. Women are more likely to experience sexual harassment than men. Eurofound data² suggests that women are three times as likely to be subjected to harassment. However, the fact that men are less likely to experience sexual harassment may exacerbate feelings of shame or embarrassment when it does happen.

Barriers to reporting

15. The context of sexual harassment as an ongoing experience for women throughout their lifetime should not be overlooked as barrier to why incidents are not reported or even seen as significant to those who experience them.

16. A wide scale European study carried out by the EU Agency for Fundamental Rights³ in 2014 found that an estimated 83 million to 102 million women (45 per cent to 55 per cent of women) in the EU have experienced sexual harassment since the age of 15. This means that many women at some point in their life have been harassed.

¹ <https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

² Eurofound (2012), Fifth European Working Conditions Survey, Luxembourg, Publication Office of the European Union, p. 57.

³ EU Agency for Fundamental Rights (2014) op. cit.

17. The 2016 TUC research shows that only 1% of those who experienced sexual harassment reported it to their union, and only one in five reported the sexual harassment to their employer.

18. The small percentage of harassment cases reported to unions is not unexpected, as union coverage in the majority of workplaces is low. It is a matter of concern to all trade unions that workers do not see their union as a place to go to for help.

19. The TUC report makes a very important point on how power can contribute to an enabling culture within organisations “As is the case in other types of violence against women, sexual harassment is inextricably linked with power. Whether the perpetrator is abusing a position of power by harassing someone they see as less powerful, or whether the perpetrator feels powerless and is using sexual harassment as a means to disempower the target of their harassment and thus increase their own power and status in the workplace.”

20. The TUC research found that one in five said they were too embarrassed to report it. Fifteen per cent feared a negative impact on their career if they reported it. Twelve per cent of women said they did not know how to report the unwanted behaviour and just under one in ten women said they were unaware that they could report it.

21. Within the Parliament, the culture of close working between politicians, staff and MSP aides adds sensitivities for those who want to call out inappropriate behaviour. The fear of impacting on the individual’s career or reputation is likely to be more of a factor in this kind of environment.

22. PCS believes that the long hours culture, with evening and weekend, may add to isolation for staff who are working to the demands of their immediate superiors or politicians. They may become encouraged to be remote from the usual policies and procedures of the employer as a result, so when inappropriate behaviour takes place they do not feel confident in reporting it.

Changes

23. PCS note the positive action that the SPCB have begun to initiate. However, this can only be seen as the start of longer-term investment into affecting a change in culture and practice within the parliament.

24. At present, there is a lack of robust data on the prevalence of sexual harassment and views from those working in the parliament. Until recent public events, there was most likely the view that the issue has gone away.

25. PCS call for more regular monitoring and surveying of all staff and employees, done in conjunction with the trade unions.

26. Every employer should aim to have clear policies, and be seen to implement and enforce policies. Zero tolerance to sexual harassment should be absolutely clear to anyone who comes into contact with the parliament.

27. The SPCB should aim to have independent support offered to staff, rather than an in-house managed helpline.

28. Though the helpline staff can currently signpost callers to the Employer Assistance Provider (EAP) for counselling, the type or period of help may be quite limited. PCS would like to see this provision extended, to allow staff to access unlimited counselling beyond the usual six sessions. There may also be additional services that can be offered outside of the current EAP contract.

29. Mandatory facilitator led training for staff and politicians should be provided in addition to mandatory unconscious bias training

30. The employer could consider establishing collective safe spaces for staff, facilitated by trade unions who have some expertise in equality networks.

31. PCS would like to work further with the SPCB to consider ways to encourage workers to report harassment and seek appropriate help from their union as well as the employer.

**Joy Dunn, National Officer
On behalf of the PCS Union
25 January 2018**

WRITTEN SUBMISSION FROM THE STUC

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 560,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black members, LGBT+ members, and members with a disability, as well as retired and unemployed workers.

Do you have any comments on how effective and clear the current arrangements are in the Scottish Parliament for reporting sexual harassment?

It is relatively unclear what the reporting mechanisms were for reporting sexual harassment prior to the hotline being set up in December 2016 for people working in the Parliament to report any issues of sexual harassment, other than via the normal grievance process. It is clear that a complaint about an MSP should be made to the Commissioner for Ethical Standards in Public Life in Scotland. However, for many victims of sexual assault this may seem an inaccessible option which has the potential of exposing their identity. We understand that, as well as the helpline, those who work in the Parliament are also encouraged that they can report any incidents of sexual harassment to the police, political parties, and other parliamentary officials via the grievance procedure. Although trade unions are mentioned in relation to disciplinary and grievance hearings, the guide for MSP staff does not explicitly state that there is a right to join a union or that advice and support can be sought from trade union representatives. The STUC believes that parliament should clearly outline this.

Trade Union research on sexual harassment

In a similar vein to PCS union's submission to this inquiry, we draw the TUC research, "Still just a bit of banter?" to the committee's attention. The report demonstrates that sexual harassment affects more than half of all women. 1/3 of women have been subject to unwelcome jokes of a sexual nature, more than 1/4 of women have been subject to comments of a sexual nature about their body or clothes. Nearly 1/4 of women have experienced unwanted touching. One fifth of women have experienced unwanted sexual advances.

The research points out that it is important to note that the harassment does not have to be directed at the person complaining about it. For example, sexual comments directed at others may create a degrading, intimidating or hostile working environment for workers even if they are not intended as the object of the comments.

The case may be worse for some groups of women, from the TUC research, 68% of women aged 18 – 24 had experienced some form of sexual harassment compared to an average of 53% amongst women of all ages. There may also be greater impacts on BME (Black and Minority Ethnic) and LGBT (Lesbian, Gay, Bisexual and Transgender) women.

The impact of harassment can be wide scale and life-changing, from affecting the ability of women to progress within their career or to contribute fully within the workplace, to women no longer feeling safe in their working environment.

The TUC report makes a very important point on how power can contribute to an enabling culture within organisations. “As is the case in other types of violence against women, sexual harassment is inextricably linked with power. Whether the perpetrator is abusing a position of power by harassing someone they see as less powerful, or whether the perpetrator feels powerless and is using sexual harassment as a means to disempower the target of their harassment and thus increase their own power and status in the workplace.” This is a particularly important point in relation to the Scottish Parliament.

Within the Parliament, the culture of close working between politicians, staff and MSP aides adds sensitivities for those who want to call out inappropriate behaviour. The fear of impacting on the individual’s career or reputation is likely to be more of a factor in this kind of environment.

The STUC agrees with PCS union that the long hours culture, with evening and weekend work, may add to isolation for staff who are working to the demands of their immediate superiors or politicians. They may become encouraged to be remote from the usual policies and procedures of the employer as a result, so when inappropriate behaviour takes place they do not feel confident in reporting it.

What features of reporting and investigation frameworks can act as barriers to reporting and a lack of action on undesirable behaviours? Please provide examples.

Any framework which does not put the complainant at the centre of the process, or which does not make clear that the start point of any investigation is that the complainant’s experience is believed, will act as a barrier to complainants coming forward.

Furthermore, any framework which keeps numbers of complaints, and outcomes, entirely secret may act as a deterrent as complainants are not sure of the landscape in terms of how many people are coming forward or if it is ‘worth’ making a complaint as they may feel that nothing will be done. The framework must be transparent and decision makers must be accountable to wider workplace structures; whilst maintaining confidentiality.

Third party reporting should be used as often complainants will feel that their confidentiality may be breached if they are reporting to parliamentary staff, regardless of whether they are assured that the process will be confidential.

Furthermore, third party reporting allows complainers to speak to someone out with the employer who has a duty of care to act. This is important as, although sexual harassment is a crime, often people will not want the employer to take the matter forward to the police.

The TUC research found that one in five said they were too embarrassed to report sexual harassment. Fifteen per cent feared a negative impact on their career if they reported it. Twelve per cent of women said they did not know how to report the unwanted behaviour and just under one in ten women said they were unaware that they could report it. These issues must be addressed through the reporting framework.

Precarious, insecure, and agency work also has an impact on whether people feel comfortable to report. It is well recognised through international agencies that a person who does not have security of employment may feel that by reporting issues of sexual harassment they are in a vulnerable position in terms of their employment continuing.

What are the key principles and essential elements of a reporting, investigation and sanctions framework for use by the Scottish Parliament to deal with sexual harassment and inappropriate conduct that would inspire confidence in those engaging with the process and the public in general?

Any reporting, investigation or sanctions framework dealing with sexual harassment should follow the 'zero tolerance' approach which has been advocated by international organisations, including all UN agencies, since 2002. Furthermore, any framework must have in mind that sexual harassment is a crime and can be reported to the police, as well as parliamentary officials or officials of political parties. Complainers should be made aware of their rights in terms of time-limits for claims in law, and employers themselves, in this case potentially MSPs, must be aware that in employment tribunal proceedings they and the harasser can be subject to claims.

Each complaint of sexual harassment must start from the point of view that the complainer is believed. Experiencing harassment is difficult and people may have many, often conflicting feelings about the events that have led to them feeling humiliated, offended or degraded or about the fact that they are in an environment that violates their dignity. People can feel this way if another person intended to make this happen or not; what matters is how the complainer feels.

In addition to general Discrimination, Bullying and Harassment policies there should be a separate sexual harassment policy which highlights an understanding of systemic and gendered power dynamics in the workplace, and which includes additional points of contact that are available to those who have experienced sexual harassment, despite whether they make a complaint or not. All those who are available to listen, advise and guide a complainer through the process should be identified including trade union representatives who will be trained appropriately.

Any new procedure should be informed by insights and advice drawn from specialist agencies, focus groups with staff, and an independent review of policies and

procedures should take place. In developing the framework, staff should be asked for feedback on the process in a confidential and supported way.

How can positive changes to workplace culture be achieved that lessen the prevalence of sexual harassment? What examples of best practice are there from which the Scottish Parliament could learn?

A programme of sexual harassment awareness should be developed which includes equality and diversity training, safeguarding training, and sessions on unconscious bias and 'lad culture'¹ prior to the introduction of sexual harassment reporting and monitoring frameworks. These training sessions should be in place for new as well as existing staff and should be updated and included in general staff CPD. Clear definitions of 'sexual harassment', 'sexual assault', 'sex discrimination' and terms such as 'misogyny' can help to label and pinpoint attitudes and behaviour. Peer to peer training with external agencies serves to ensure people understand these terms and the impact which attitudes and behaviour can have on those who are on the receiving end, as well as on men who are negatively impacted by "toxic masculinity" in society and feel pressured into participating in the 'lad culture'.

However, it is the STUC's position that online training, or top-down training, serves only as a tick-box exercise for employers and will not break down people's perceptions of language and behaviour. Instead, training must be interactive and include everyone in the workplace – from the highest paid to the lowest paid member of staff – completing the training together or in mixed groups. This would break down people's perceptions, making them more confident at identifying behaviours and therefore challenging them. The STUC understands that Rape Crisis Glasgow has worked with the University of Strathclyde on coherent training and reporting of gender based violence which has been lauded.

Any campaign also needs to keep intersectionality at its forefront. Understanding how low level behaviour, including 'banter', jokes and objectification, lead to a culture where harassment is normalised, will contribute to changing people's perceptions of their own behaviour and how this feeds into the sexual violence pyramid.

¹ NUS report "That's what she said", 2012, defines 'lad culture' as a group or 'pack' mentality residing in activities such as sport and heavy alcohol consumption, and 'banter' which was often sexist, misogynist and homophobic.



2

Close the Gap will shortly be providing an Equally Safe employer accreditation programme. Equally Safe is Scotland's violence against women strategy which recognises that violence against women is a cause and consequence of gender inequality, and that tackling women's labour market inequality will reduce violence against women, which includes sexual harassment. The Scottish Parliament should ensure that it is leading the way in terms of this accreditation. The employer could also consider establishing collective safe spaces for staff, facilitated by trade unions who have some expertise in equality networks.

The STUC are keen to ensure that the Scottish Parliament is regarded as having a best practice model on sexual harassment in terms of training, reporting, investigation, and sanctions which includes trade unions in the development of this framework.

STUC
26 January 2018

² <http://www.11thprincipleconsent.org/consent-propaganda/rape-culture-pyramid/>