

Section 7: MSPs' General Conduct

Confidentiality rules

12. All drafts of committee reports, and committee reports which, although agreed by a committee and no longer in draft, have not yet been published, ~~should~~must be kept confidential, unless the committee decides otherwise. In addition, the following ~~should~~must be treated as confidential—

- briefing provided to members by Parliamentary staff for particular members' information only;
- documents produced during a private session of a committee;
- evidence submitted to a committee sitting in private from a witness which it has been agreed can be treated as confidential;
- any other documents or information which the committee has agreed ~~should~~must be treated as confidential; and
- minutes of private discussions.

13. Unless the Parliament or the relevant committee has agreed otherwise, such documents ~~should~~must not be circulated, shown, or transmitted in any other way to members of the public (including those in Cross-Party Groups), media or to any member of any organisation outwith the Parliament, including the Scottish Government, nor to other MSPs who are not members of the committee or committees for whom the material was intended.

14. Members must not provide the media with ~~off the record~~any other briefings ~~or views~~ on the general contents or 'line' of draft committee reports or other confidential material or information. Disclosures of this kind can also seriously undermine and devalue the work of committees.

15. Unless the Parliament or the relevant committee has agreed otherwise, members must not disclose any information to which a member has privileged access, for example, derived from a confidential document or details of discussions or votes taken in private session, either orally or in writing.

16. Where a committee member wishes to express dissent from a committee report, the member should only make this public once the committee report has been published in order to avoid disclosing the conclusions of a draft report.

~~Awareness of MSPs' staff~~ Members' responsibilities

17. Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises.

18. On occasion, MSPs' staff will handle confidential information. MSPs must ensure that their staff or any other persons accessing or handling confidential documents or information listed in paragraphs 12 – 15 on their behalf comply with the confidentiality rules. MSPs will be held responsible for any breach by these parties.

198. 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.

SECTION 9: ENFORCEMENT OF THE RULES

Disclosure

1. Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1, 2 and 2-3 of the procedure for dealing with complaints (this procedure is set out in the guidance on the Code of Conduct (the Code)). Stage 3 is completed when the Standards, Procedures and Public Appointments Committee has made a report to the Parliament.

2. In relation to Excluded Complaints (which are not always subject to the four stage process set out in the guidance notes), this restriction applies until the Standards, Procedures and Public Appointments Committee has confirmed that the Ethical Standards Commissioner will not be carrying out an investigation or, where such an investigation has been carried out, that the Ethical Standards Commissioner will not be carrying out any further investigation.

3. Where, during the period when the restriction on disclosure applies, any complaint or intention to make a complaint has been publicised in the press or other media without the involvement of the member who is the subject of the complaint or intended complaint, that member may issue a brief statement. In doing so, the member must, so far as possible, avoid discussing details of the complaint or intended complaint.

Complaints

4. Complaints, in relation to the conduct of Members of the Scottish Parliament under the Code, are initially investigated by the Commissioner for Ethical Standards in Public Life in Scotland ("the Ethical Standards Commissioner"). Exceptions to this procedure are set out below as "Excluded Complaints".

Excluded Complaints

5. Section 3(2) of the Scottish Parliamentary Standards Commissioner Act 2002 excludes certain complaints from the remit of the Ethical Standards Commissioner.

6. The complaints mentioned in the following paragraphs are "Excluded Complaints" and should not be made to the Ethical Standards Commissioner—

(a) Complaints about a member's conduct at a meeting of the Parliament, including a member's treatment of another member: these are to be referred to the Presiding Officer. Complaints about a member's conduct at a meeting of a committee, including a member's treatment of another member: these are to be referred to that committee's convener, unless the complaint is about the conduct of the convener (including the convener's treatment of another committee member), in which case the complaint is to be referred to the Presiding Officer. The Presiding Officer, or as

the case may be, the committee's convener will consider the complaint and may refer the complaint to the Standards, Procedures and Public Appointments Committee.

(b) Complaints made under Section 8: Engaging with constituents: these are to be referred to the Presiding Officer.

(c) Complaints about a member's use of the Reimbursement of Members' Expenses Scheme: these are to be referred to the Scottish Parliamentary Corporate Body (SPCB). Where, following an investigation (whether as a result of a complaint or claim submitted), the SPCB finds that a member has submitted an improper claim, the SPCB may report the matter to the Standards, Procedures and Public Appointments Committee and may recommend the removal of all or part of the member's entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify.

(d) Complaints about a member's treatment of the Parliament's staff: these are to be made to the Parliament's Human Resources Office which will investigate the complaint. Complaints about a member's treatment of the staff of another member: these are to be made to the member's Business Manager who will investigate. In some cases a joint investigation by the Human Resources Office and Business Managers may be appropriate. In all cases, opportunities for conciliation will be pursued in the first instance. If a complaint cannot be resolved, it will be reported to the SPCB who may refer the complaint to the Standards, Procedures and Public Appointments Committee.

(e) Complaints about Cross-Party Groups: these are to be made to the Standards, Procedures and Public Appointments Committee unless the complaint relates to the use of Parliamentary facilities and services in which case it should be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services by a Cross-Party Group to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.

(f) Complaints about use of SPCB facilities and services and breaches of SPCB policies (which do not relate to conduct at a meeting of the Parliament or at a meeting of a committee): these are to be made to the SPCB. The SPCB may refer any complaint relating to the use of Parliamentary facilities and services and breaches of SPCB policies to the Standards, Procedures and Public Appointments Committee together with a recommendation for action.