



The Scottish Parliament
Pàrlamaid na h-Alba

Published 23 June 2020

SP Paper 766

7th Report (Session 5)

Standards, Procedures and Public Appointments Committee

**Comataidh Inbhean, Dòighean-obrach is Cur-an-dreuchd
Poblach**

Proposal for a Committee Bill – Complaints against MSPs – amendment of the Scottish Parliamentary Standards Commissioner Act 2002

Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Background	2
Provisions to allow the Commissioner to investigate complaints about historic sexual harassment by MSPs towards their own staff	4
Current arrangements	4
Proposed change	5
How the Act would be amended to give effect to this proposed change	5
Provisions to remove extra requirements for the Commissioner to investigate older complaints	6
Current arrangements	6
Committee consideration of this JWG recommendation	6
Proposed change	6
How the Act would be amended to give effect to this proposed change	7
The requirement for complaints (and complaint withdrawals) to be signed	8
Current arrangements	8
Proposed change	8
How the Act would be amended to give effect to this change	9
Consultation	10
Conclusion	11
Recommendation	12
Annexe A: Consultation responses	13

Standards, Procedures and Public Appointments Committee

The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

- (a) the practice and procedures of the Parliament in relation to its business;
- (ab) a proposal for a Bill relating to the arrangements for financial assistance to non-Government political parties represented in the Parliament;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members; and
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters relating to Scottish general elections falling within the responsibility of the Cabinet Secretary for Government Business and Constitutional Relations.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/standards-committee.aspx>



SPPA.Committee@parliament.scot



0131 348 6924

Committee Membership



Neil Findlay
Scottish Labour



Jamie Halcro Johnston
Scottish Conservative
and Unionist Party



Gil Paterson
Scottish National Party



Convener
Bill Kidd
Scottish National Party



Deputy Convener
Mark Ruskell
Scottish Green Party



Alexander Stewart
Scottish Conservative
and Unionist Party



Maureen Watt
Scottish National Party

Introduction

1. This report sets out the provisions of a proposed Committee Bill (under Rule 9.15 of Standing Orders) to deal with complaints about historic sexual harassment by Members of the Scottish Parliament towards their own staff and to remove the requirement for a signature on complaints (and on complaints withdrawals). The proposed Bill also deals with a change to the admissibility criteria in the 2002 Act in relation to older complaints in general.

Background

2. The Committee wishes to promote the highest standard of conduct among the Parliament's MSPs and, in doing so, uphold public confidence in the reputation of the Parliament.
3. The proposed Committee Bill is part of a wide range of measures that have been put in place to tackle sexual harassment and inappropriate behaviour in the Scottish Parliament. Other measures include the provision of a standard approach to the investigation of all complaints about MSPs and a Zero Tolerance Statement committing the Parliament to creating a shared understanding of appropriate behaviours, culture, and accountability mechanisms with the aim of eradicating sexist behaviour and sexual harassment.
4. Like the other measures put in place, the Bill responds to the recommendations of the Joint Working Group on Sexual Harassment and Sexist Behaviour (the JWG), which was established to “consider and agree any actions that need to be taken on a joint basis between the Parliament and political parties in light of the survey on sexual harassment and sexist behaviour.” One recommendation was that “there should be no time limit applied to complaints of sexual harassment”. This recommendation requires changes to primary legislation and it is for this reason that the Standards, Procedures and Public Appointments Committee is proposing a Committee Bill. The proposed Bill would make it possible for complaints to be brought about historic misconduct on the part of any serving or former MSP towards his or her own staff. This is already the case for complaints about conduct towards SPCB staff and other MSPs.
5. The Scottish Parliament's work to address sexual harassment started at the end of 2017 in response to reports in the media about alleged sexual harassment and misconduct at the Scottish Parliament and elsewhere. The Standards, Procedures and Public Appointments Committee (the Committee) agreed to carry out an inquiry into the Parliament's processes and procedures for dealing with sexual misconduct by MSPs.
6. While the Committee's inquiry was underway, the Scottish Parliamentary Corporate Body (SPCB) launched a sexual harassment helpline and issued a survey to all staff and Members in order to establish baseline information on staff and MSP experiences and their attitude to reporting sexual harassment. The survey found 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, they showed that 30% of women and 6% of men reported experiencing this behaviour in some form.
7. The JWG was then established in February 2018 to progress the work arising from the results of the staff survey on sexual harassment and sexist behaviour. It was composed of senior Parliament officials, representatives from each political party and an external expert. The JWG report took into account the Committee's inquiry report on Sexual Harassment and Inappropriate Conduct ¹ as part of its work. The JWG's own report ² was published in December 2018 and, following a consultation

on its recommendations, was referred to the Committee by the Scottish Parliamentary Corporate Body to implement the recommendations.

8. The Committee considered the recommendations in the JWG's report in the first half of 2019 before consulting MSPs³ on proposed revisions to the Code of Conduct for MSPs⁴ (the Code) to implement those recommendations. The consultation referenced the Committee's view "that work should be initiated on preparing amendments to the 2002 Act with a view to allowing members' own staff to make complaints about historic behaviour which involved sexual harassment".
9. The final changes proposed by the Committee to the Code of Conduct⁵ were agreed by the Parliament on 10 December 2019 and came into effect on 7 January 2020. The key changes to the Code of Conduct are:
 - Changing the process for the enforcement of the rules to allow complaints under the Code of Conduct about a MSP's treatment of a member of the Parliament's staff or a MSP's treatment of a member of staff of another member to be made directly to the Commissioner for Ethical Standards in Public Life (the Commissioner). Previously, these had been "excluded complaints" under the Code.
 - The insertion of a specific reference to MSPs' own staff in the standard of conduct on the treatment of others, allowing the Parliament "to hold Members to account for their behaviour towards their own staff in the same way as their behaviour towards anyone else."⁶ The new standard requires MSPs to treat their own staff with courtesy and respect, as well as other MSPs, parliamentary staff (including contractors providing services to the Parliament) and the staff of other MSPs.
 - The revision of the standard of conduct for the treatment of others to make it clear that MSPs must not behave in a manner towards others, including their own staff, that includes bullying, harassment (including sexual harassment) or any other inappropriate behaviour.
10. In addition, the Guidance on the Code of Conduct⁷ was revised by the Committee to enhance the anonymity and confidentiality of the process, as well as providing for a complainer's opportunity to make representations on their complaint.
11. As noted above, the Committee identified that there would be a need for primary legislation to implement the JWG's recommendation that "there should be no time limit applied to complaints of sexual harassment".⁸ This was required for two reasons. Firstly, legislative change would be necessary to allow for the historic complaints about sexual harassment by MSPs of their own staff to be investigated under the 2002 Act. Secondly, the JWG had specifically recommended the "removal of the current one-year time limit for making a complaint"⁹, referring to the requirement in section 6(5) of the Scottish Parliamentary Standards Commissioner Act 2002 ("2002 Act") that a complaint be made "within one year from the date when the complainer could reasonably have become aware of the conduct complained about".
12. The following sections of this report deal with these two proposed legislative changes.

Provisions to allow the Commissioner to investigate complaints about historic sexual harassment by MSPs towards their own staff

Current arrangements

13. Unlike parliamentary staff and the staff of other MSPs, conduct matters arising within the employment relationship between MSPs and their own staff had previously been dealt with outside the Code of Conduct and under employment law instead.
14. As noted above, the recent revisions to the Code of Conduct introduced a standard of behaviour in relation to MSPs' own staff, requiring MSPs to treat their own staff with courtesy and respect. This allowed complaints to be made to the Commissioner about MSPs' treatment of their own staff from the point in time when that change was made to the Code. However, as this standard did not exist historically, there is no "relevant provision" in the context of the 2002 Act which Members would have had to follow.
15. A "relevant provision" under section 3(3) of the 2002 Act is any provision at the relevant time in the Standing Orders; the Code of Conduct; in the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999; or made by or under an Act of the Scottish Parliament in pursuance of section 39 (members' interests) of the Scotland Act. For a complaint to be admissible, a "relevant provision" must have been in place at the time when the behaviour complained about took place (that is, at a "relevant time").
16. This means that any complaint about behaviour that took place before 7 January 2020 would be deemed inadmissible by the Commissioner.
17. In order to implement the Joint Working Group's recommendation that there "should be no time limit applied to complaints of sexual harassment" there is therefore a need for primary legislation to amend the 2002 Act to allow for complaints about alleged sexual harassment by MSPs in relation to their own staff to be considered a "relevant provision" in force at the "relevant time" under the 2002 Act. This will apply to serving and former MSPs.
18. Existing employment law rights and remedies will remain unaltered by this proposal.
19. **The Committee wishes to ensure that the highest standards of conduct among MSPs are upheld, particularly with respect to sexual harassment. We believe that it is in the parliamentary and wider public interest to investigate allegations of sexual harassment on the part of elected serving and former members whenever it occurs or has occurred. Accordingly, we propose the following change.**

Proposed change

20. In order to implement the recommendation of the Joint Working Group that no time limit should be applied to complaints of sexual harassment, as well as the recommendation that Members should be held to account for “their behaviour towards their own staff in the same way as their behaviour towards anyone else”, the Committee believes that complaints about sexual harassment by MSPs (and former MSPs) in relation to their own staff should be brought within the Commissioner's investigatory remit.

How the Act would be amended to give effect to this proposed change

21. The proposed Bill would amend the 2002 Act to allow the Commissioner to investigate complaints about past instances of alleged sexual harassment by MSPs towards their own staff.
22. This will involve some adjustment of what is treated as a relevant provision for the purposes of the Commissioner's investigations under the 2002 Act so that complaints about historic instances of sexual harassment can be dealt with. Any expansion of what is to be deemed a relevant provision will only apply to complaints of sexual harassment.
23. This change would mean that complaints about MSPs' own staff would henceforth be treated as though they had always been covered by the Code of Conduct in relation to complaints about sexual harassment.

Provisions to remove extra requirements for the Commissioner to investigate older complaints

Current arrangements

24. Complaints under the 2002 Act are not subject to an absolute time limit. However, the admissibility criteria in the 2002 Act require a complaint to be made “within one year from the date when the complainer could reasonably have become aware of the conduct complained about.” If the Commissioner considers that this one-year requirement has not been met, but that the complaint is otherwise admissible, she is obliged under the Act to seek a direction from the Committee either to dismiss the complaint or treat it as admissible.

Committee consideration of this JWG recommendation

25. The Committee considered whether the Act should be revised only to remove this one-year provision in relation to complaints about sexual harassment, as requested by the JWG, or more widely in relation to complaints about any breach of the Code.
26. The Committee concluded that it wished to recommend that the one-year provision be removed for all complaints for the following reasons:
- This approach would have the advantage of simplicity by applying a uniform approach in relation to historic cases under the Act and avoiding the need for two separate processes being in place; and
 - There was no evidence to suggest that the removal of this procedural step would result in an increased volume of complaints about historical behaviour as the complaints to date have almost exclusively focused on recent behaviour.

Proposed change

27. **The Committee proposes that the 2002 Act be amended to remove the admissibility requirement (at section 6(5)(e), set out below) that a complaint be made within one year from the date when the complainer could reasonably have become aware of the conduct complained about. The Committee proposes that this will apply to any potential breach of the Code of Conduct – not just those involving a Member's treatment of others.**

How the Act would be amended to give effect to this proposed change

28. The proposed change would be achieved by amending the 2002 Act to remove the admissibility requirement at section 6(5)(e) of the 2002 Act which requires that a complaint:

” (e) is made within one year from the date when the complainer could reasonably have become aware of the conduct complained about.

The requirement for complaints (and complaint withdrawals) to be signed

29. In considering the amendments to the Act discussed above, consideration was given as to whether there were any other provisions within the Act that should be revised.

Current arrangements

30. The Scottish Parliamentary Standards Commissioner Act 2002 requires that complaints made to the Commissioner are signed and that any notice of the withdrawal of a complaint must also be signed. This had previously been highlighted as a constraint to the online process of submitting a complaint on the Commissioner's website.

31. The provisions in the 2002 Act are set out below.

Section 6(5)(b) requires that a complaint:

- ” (b) is made by an individual person, is signed by that person and states that person's name and address;

Section 11(1) requires that:

- ” (1) At any time after a complaint has been made to the Commissioner and before a report is made to the Parliament under section 9, the complaint may be withdrawn by the complainer by notice in writing to the Commissioner which is signed by the complainer.

Proposed change

32. **The Committee notes that the online processes used by the Commissioner for Ethical Standards in Public Life provide safeguards to ensure that the identify of a complainant is fully established and that only the complainant would be able to withdraw a complaint. In addition, allowing an online signature would better reflect modern working practices. The Committee therefore proposes that the requirement for complaints to the Commissioner to be signed is removed, along with the requirement that a notice of the withdrawal of a complaint is signed.**

How the Act would be amended to give effect to this change

33. This proposed change would be achieved by amending sections 6(5)(b) and 11(1) to remove the requirement that complaints and notices of the withdrawal of complaints are signed.

Consultation

34. The Committee invited political parties, MSPs, MSPs' staff, those who responded to the Committee's 2018 inquiry into sexual harassment and inappropriate conduct and Dame Laura Cox (author of the independent inquiry report: "Bullying and Harassment of House of Commons Staff") to respond to a call for views on the proposed Committee Bill.¹⁰ The Committee also invited views from anyone else with an interest in this area. The deadline for responses was 31 January 2020.
35. Two responses were received and are published on the Committee's web page. The Scottish Women's Convention¹¹ welcomed the Committee's proposed changes, pointing out the psychological toll that historic sexual harassment has on victims. It endorsed the Commissioner's role in investigating independently complaints of this nature in order that political loyalties do not come into play. Engender's submission¹² referred to the power dynamic between MSPs and their direct employees, pointing out that this went beyond the regular 'employer – employee' relationship because of party hierarchies. It touched on the various reasons why people who have experienced sexual harassment may choose to make a complaint at a later date.
36. Both submissions welcomed the proposed creation of an alternative, independent route for complaints that did not involve complaining directly to the employing MSP under employment laws.

Conclusion

37. The Committee seeks the Parliament's approval to proceed with the introduction of a Bill to achieve the policy aims set out in this report.

Recommendation

38. **The Committee recommends that the Parliament agrees to this proposal to introduce a Committee Bill to allow for the investigation of complaints about historic sexual harassment by MSPs towards their staff, to streamline the process for all older complaints and to remove the requirement for a signature on complaints and complaint withdrawals.**

Annexe A: Consultation responses

- [Engender \(175KB pdf\)](#)
- [Scottish Women's Convention \(154KB pdf\)](#)

- 1 <https://sp-bpr-en-prod-cdnep.azureedge.net/published/SPPA/2018/6/5/Sexual-harassment-and-inappropriate-conduct-1/SPPAS052018R04.pdf>
- 2 https://www.parliament.scot/traininganddevelopment/joint_working_group_final_harassment_report_december_2018_2.pdf
- 3 https://www.parliament.scot/S5_Standards/General%20Documents/ConsultationLetter.pdf
- 4 <https://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>
- 5 <https://sp-bpr-en-prod-cdnep.azureedge.net/published/SPPA/2019/12/3/Code-of-Conduct-for-MSPs---proposed-revisions-to-implement-the-recommendations-contained-in-the-Joint-Working-Group-s-Report-on-Sexual-Harassment-and-Sexist-Behaviour/SPPAS052019R16.pdf>
- 6 Report of the Joint Working Group on Sexual Harassment. Scottish Parliament, December 2018, paragraph 104. Available at: https://www.parliament.scot/traininganddevelopment/joint_working_group_final_harassment_report_december_2018_2.pdf
- 7 <https://www.parliament.scot/Parliamentaryprocedureandguidance/CoC7.2GuidanceCombined.pdf>
- 8 Report of the Joint Working Group on Sexual Harassment, December 2018, paragraph 76. Available at: https://www.parliament.scot/traininganddevelopment/joint_working_group_final_harassment_report_december_2018_2.pdf
- 9 Report of the Joint Working Group on Sexual Harassment, December 2018, paragraph 71. Available at: https://www.parliament.scot/traininganddevelopment/joint_working_group_final_harassment_report_december_2018_2.pdf
- 10 The Call for Views can be accessed at the following link: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113541.aspx>
- 11 https://www.parliament.scot/S5_Standards/Inquiries/SWC_Jan2020.pdf
- 12 https://www.parliament.scot/S5_Standards/Inquiries/Engender_Jan2020.pdf

