

Engender submission of evidence to the Standards, Procedures and Public Appointments Committee inquiry on a Draft proposal for a Bill to amend the Scottish Parliamentary Standards Commissioner Act 2002

1. INTRODUCTION

Engender is a feminist policy organisation working across Scotland to secure women's equality with men and a Scotland where women are free to live a good life, with equal access to their rights, power, resources and safety. **The freedom to live such a life is severely diminished by systemic and culturally tolerated sexual harassment, discrimination and violence that women experience on a daily basis.** Sexual harassment constrains and disrupts women's careers, as women carry out 'safety work' to avoid men known to harass, lone working and travel in some contexts, and move job roles and occupations rather than report harassment to their employers.

Engender is pleased to respond to the Standards, Procedures and Public Appointments Committee inquiry on a Draft proposal for a Bill to amend the Scottish Parliamentary Standards Commissioner Act 2002. We have previously offered advice to Scottish Parliament staff working to develop the new Sexual Harassment Policy, a single central policy to ensure coherence, and continue to support Parliament taking any step open to it to ensure that robust accountability and support systems are in place to prevent sexual harassment, support women who report sexist and sexual harassment, and enable widespread and lasting culture change in which women are valued as workers on an equal basis with men. This change however first demands an acknowledgement of the gendered nature of sexual harassment.

2. MSPS' STAFF COMPLAINTS ABOUT THEIR EMPLOYING MSP

Sexual harassment is a manifestation of power relations. The power dynamic between an MSP and their direct employee is one built on not only the relationship between employer and employee, but often also that between a senior figure within a political party structure and a more junior activist. Where these relationships involve

a gendered element,¹ wider structural and social tolerance of sexist attitudes and behaviour creates an enabling culture which puts women at an increased risk of harassment and abuse.

The 2018 Scottish Parliament survey, for example, showed that 30% of women employed at parliament vs. 6% of men had experienced sexual harassment or sexist behaviour.² Of the 137 respondents who answered in relation to sexual harassment, 45% said the perpetrator was an MSP. Women who experience multiple disadvantage due to their experiences of other protected characteristics, such as women of colour or disabled women, have also been shown to experience sexual harassment and sexist behaviour at increased levels.³

It has therefore been troubling that, to date, complaints made by a staff member regarding the behaviour of an employing MSP has been solely left to employment law. Employment law has an important role to play in enforcing protections and sanctions for prohibited behaviour. However, the nature of employment relationships within the Parliament means that many staff being harassed by MSPs are directly employed by those same MSPs and have no other remedy using employment law other than raising a complaint with that self-same MSP. Claims using employment law are time-barred three months after an individual leaves an MSP's employment (with certain very narrow exceptions), and so are not appropriate for investigating historical behaviour.

Engender therefore supports the extension of the investigatory remit of the Commissioner for Ethical Standards in Public Life to complaints about past instances of alleged sexual harassment by an MSP towards that MSP's own staff. However, it must be made clear that the complainant has the sole discretion over which route to challenge behaviour of an employing MSP. Primary legislation brought forward to amend the Scottish Parliamentary Standards Commissioner Act 2002 must also have due regard to the appropriate sanctions for MSPs. The 2002 Act currently prevents the Commissioner from expressing any view as to the appropriate sanctions for a breach of the Code of Conduct and Parliament is not bound to take action against a member following the receipt of the report.

¹ A statistically likely scenario given the over representation of male MSPs (Engender, (2020) *Sex and Power in Scotland 2020* Engender <https://www.engender.org.uk/content/publications/Engenders-Sex-and-Power-2020.pdf>) and gender balance of parliament staff weighted towards women which was 54% in 2018 (Scottish Government (2018) *2017-18 Diversity in Employment Monitoring Form* Scottish Government. Available at: <https://www.parliament.scot/abouttheparliament/19453.aspx>)

² The Scottish Parliament (2018) *Sexual Harassment and Sexist Behaviour Survey Final Report* Scottish Parliament http://www.parliament.scot/StaffAndManagementResources/10130_Sexual_Harassment_Sexist_Behaviour_Survey_-_Final_Report_260218.pdf

³ Trades Union Council (2017) *Is Racism Real?* TUC. Available at: <https://www.tuc.org.uk/research-analysis/reports/racism-real>; Engender (2018) *Our Bodies, Our Rights: identifying and removing barriers to disabled women's reproductive rights in Scotland* Engender. Available at: <https://www.engender.org.uk/content/disabled-women/>

Existing sanctions and redress mechanisms for MSPs from within Parliament are, understandably, constrained by constitutional and democratic limits. Engender has previously argued that such questions could be addressed by examining comparative measures in other jurisdictions and seeking expert advice on how such approaches might be aligned with the processes and principles of the Scottish Parliament.⁴

It is also important that mechanisms to enable employment tribunals to remain competent to hear complaints are considered, and that pathways for complainers to pursue justice are preserved in the event that MSPs fail to take appropriate action against one of their peers. The existing system for investigation and reporting is not necessarily fair and expeditious – the Act currently prevents a report to parliament naming an MSP before they have been given a copy of a draft report, and their response must be included in an annex, for example. This may have consequences for the privacy and dignity of complainers.

Furthermore, despite ongoing restructuring, the complaints process within parliament remains to be fully rationalised and there is still a lack of clarity, for example, around reporting arrangements, primarily over those incidents covered as “excluded” from the remit of the Commissioner for Ethical Standards in Public Life.⁵ **We maintain that a wider review of the 2002 Act, including the formal role and remit of the Commissioner and the responses open to Parliament in sanctioning an MSP, are necessary as part of the development of a draft Bill.**

3. COMPLAINTS ABOUT HISTORIC CONDUCT

The 2002 Act excludes complaints where these are not made within one year of the complainer becoming aware of the behaviour unless the Commissioner makes additional justification for their proceeding. This provides an additional and unnecessary barrier to effective redress, and is inappropriate in a context in which women may be unaware that they have experienced actionable sexual harassment until a much later date.

Requiring the Commissioner to make a recommendation to Parliament as to why a complaint should be treated as having met all requirements is unnecessary, vague and bureaucratic, while also potentially upsetting to complainers, who may perceive it as overly disclosive.

⁴ Engender (2017) Parliamentary Briefing: Sexual Harassment And Inappropriate Conduct In The Scottish Parliament (<https://www.engender.org.uk/content/publications/Engender-Parliamentary-Briefing---SPPA-report-on-sexual-harassment.pdf>)

⁵ Scottish Parliament (2020) *Code of Conduct for MSPs* Scottish Parliament. Available at: <https://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

There are clearly reasonable and understandable reasons why somebody who has experienced sexual harassment and sexist behaviour in their workplace may choose to make a complaint at a later date. For example, they may experience a considerable degree of trauma from being exposed to the behaviour, fear retaliation, and/or may be concerned about their current or future employment prospects.

Engender therefore also fully supports amending the 2002 Act to remove the admissibility requirement (at section 6(5)(e)) that a complaint be made within one year from the date when the complainer could reasonably become aware of the conduct complained about for all categories of complaints. The comments made above relating to the effectiveness of the process would also apply here.

4. CONCLUSION

Engender welcomes these most recent steps as part of the Parliament's response to the evidence-base produced through the 2018 survey. **However, we see them as minimal and incremental steps towards a more robust complaints procedure.** We would wish to see a holistic review of all the changes being introduced following the work of the Joint Working Group on Sexual Harassment to identify those gaps that remain.

It is vital that anybody making a complaint retains autonomy through the process, while at the same time ensuring that there are appropriate responses to anonymous complaints or circumstances in which an employee withdraws their complaint. We would therefore wish to see Parliament give serious consideration to developing a more comprehensive response to employer MSPs, which ensure that its aspirations for a zero-tolerance approach to sexist and sexual harassment is consistently applied and matched with appropriate sanctions.

However, even the most robust mechanisms for gathering, investigating, and acting on complaints will not eradicate sexual harassment alone. Scotland's national strategy for tackling violence against women understands that sexual harassment, like all violence against women, is a cause and consequence of women's inequality.⁶ Its eradication demands a concerted approach to tackling gender inequality in all areas of the Parliament itself, within political parties, and by individual staff and MSPs and others who work in its estates and participate in its democratic functions.

⁶ Scottish Government (2016) *Equally Safe: national strategy* Scottish Government. Available at: <https://www.gov.scot/publications/equally-safe/>

FOR FURTHER INFORMATION

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ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.