



RESPONSE TO SCOTTISH PARLIAMENTARY INQUIRY: SEXUAL HARASSMENT AND INAPPROPRIATE CONDUCT

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 However, third-party harassment provisions set out in that Act were repealed in 2013, meaning that individuals cannot seek remedy where harassment is perpetrated by customers, clients, or individuals with other forms of relationships to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

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

² Ibid.

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.³

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".⁴ 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.*⁵

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

⁴ United Nations General Assembly. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women*.

⁵ Council of Europe. (2011). *Convention on preventing and combating violence against women and domestic violence*.

⁶ Ibid.

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?

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.

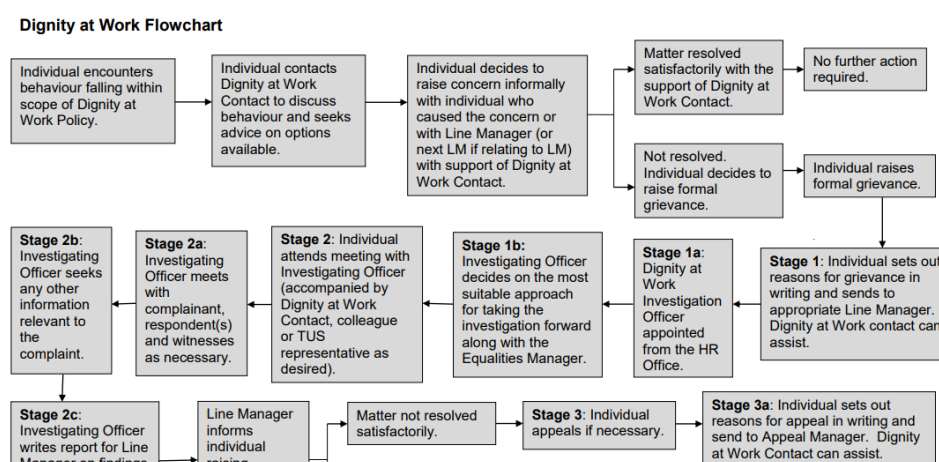
As it stands, there is a lack of clarity in existing reporting arrangements, primarily over those incidents covered as “excluded”. For example: if sexual harassment and/or inappropriate conduct occurred directly following a meeting of the Parliament, but still within the Chamber, would the complaint 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.⁷ [emphasis added]

However, the flowchart, looks as follows:



⁷ Scottish Parliament. *SPCB Dignity at Work*. <http://www.parliament.scot/abouttheparliament/16483.aspx>

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.

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.⁸ 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.⁹

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

⁸ 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.

⁹ 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.

behaviour. It appears that the existing reporting mechanism 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.¹⁰

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?
- 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

¹⁰ Scottish Parliament. FAQs. <http://www.parliament.scot/abouttheparliament/106540.aspx>

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.

For Further Information Contact:

Emma Trottier, Policy and Parliamentary Manager, Engender

Email: emma.trottier@engender.org.uk

Mobile: 07889 805787

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