

Agenda – Standards of Conduct Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 27 February 2018

Meeting time: 09.30

For further information contact:

Meriel Singleton

Committee Clerk

0300 200 6565

SeneddStandards@assembly.wales

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Code of Conduct – Review: Consideration of consultation responses received

(09.30 – 09.45)

(Pages 1 – 80)

SoC(5)–04–18 Paper 1 – Letter from Andrea Leadsom MP

SoC(5)–04–18 Paper 2 – Consultation response from Chwarae Teg

SoC(5)–04–18 Paper 3 – Consultation response from Welsh Women’s Aid

SoC(5)–04–18 Paper 4 – Consultation response from Flintshire County Council

SoC(5)–04–18 Paper 5 – Consultation response from Equality and Human Rights Commission

3 Code of Conduct Review – Stakeholder event

(09.45 – 10.45)

Cerys Furlong – Chief Executive, Chwarae Teg

Gwendolyn Sterk – Public Affairs Manager, Welsh Women’s Aid

Ruth Coombs – Head of Wales Equality and Human Rights Commission

Iestyn Wyn – Campaigns, Policy and Research Manager, Stonewall Cymru

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(10.45)



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Item 5

5 Code of Conduct – Review: Consideration of evidence received
(10.45 – 11.00)

Agenda Item 2



Office of the Leader
of the House of Commons

70 Whitehall
London
SW1A 2AS

Tel: 020 7276 1005
commonsleader@cabinetoffice.gov.uk

Our ref: AL/NMP068
19 February 2018

Dear Jayne

Thank you for your warm welcome on 30 January and for our engaging conversation with you and your team.

As we discussed, the Prime Minister convened a cross-party Working Group to establish a new independent complaints and grievance procedure, in response to reports of sexual harassment and bullying in parliament. As Chairman of the Working Group, I am pleased that all members of the Working Group and all Party Leaders agreed the report, and we can continue to make progress on this very important work.

It is intended that all passholders not already covered by the House 'Respect' policy, along with visitors to the parliamentary estate, will be able to access this new procedure, and will be subject to it. The new scheme will provide independent support and advice to complainants, it provides a route to raising a complaint or a grievance that is independent from the political parties, and it will offer confidentiality and fairness to those who have a complaint brought against them.

These new processes offer protections and support for staff and parliamentarians alike - fairness will be at the heart of these changes and will demonstrate our commitment to treating everyone who works in parliament with dignity and respect.

I have enclosed a copy of the report which I hope you will find useful for the Standards of Conduct Committee's inquiry into Creating the Right Culture: Inquiry into the Review of the Code of Conduct for Assembly Members.

*Best
Andrea*

**RT HON ANDREA LEADSOM MP
LEADER OF THE HOUSE OF COMMONS**

The Llywydd
The National Assembly for Wales
Cardiff
CF99 1NA

Jayne Bryant AM
Chair of the Standards of Conduct Committee

Enclosure: Report of the Cross-Party Working Group on an Independent Complaints and Grievance Policy

Cross-Party Working Group on an Independent Complaints and Grievance Policy

Report

CONTENTS

	<i>Page</i>
Introduction	3
Membership of the Working Group	4
Secretariat	4
Terms of Reference	5
Evidence	6
Chapter 1: Key findings	8
Chapter 2: New policies and procedures	9
Content of new policies and procedures	9
Reporting and monitoring	10
Support services	10
Confidentiality	11
Decisions and sanctions	11
Table 1: Decision making	12
Supporting work required	12
New policies and procedures	12
Procurement and contracts	13
Parliamentary Codes of Conduct	13
Data sharing	14
Outstanding actions	14
Review body	14
Chapter 3: Sexual harassment	15
Reporting and monitoring	15
Informal process	16
Investigation	16
Supporting work required	17
Appeals	17
Research	17
Chapter 4: Bullying and harassment	18
Reporting and monitoring	18
Informal process	19
Investigation	19
Supporting work required	20
Appeals	20
HR advice service	20
Chapter 5: Culture change	21
Behaviour Code for Parliament	21
Training	21
Culture change	22
Monitoring and review	22
Chapter 6: Possible sanctions	23
Table 2: Possible sanctions	23
Chapter 7: Next steps	25
Work by the House Authorities	25
Working Group	25
Review	25

Annex A: Oral submissions	26
Annex B: Written submissions	28
Annex C: Sample codes of conduct	31
Annex D: Definitions	48

Report

Introduction

1. All those who work for or with Parliament have a right to dignity at work. In a working environment of over 15,000 people including Members of Parliament (MPs), Peers and staff working across and outside the estate, we must all seek to ensure an environment free from bullying and harassment, including sexual harassment.
2. Recent allegations and accounts in the press about inappropriate behaviour and a culture of bullying and sexual harassment at Westminster have resulted in the setting up of a cross-party, bicameral Working Group on an Independent Complaints and Grievance Policy.
3. When fully implemented, the proposed new system will rest on two pillars:
 - (a) the adoption of a shared and binding Behaviour Code for Parliament, for all who work in or for Parliament and its members, wherever they work, or who are otherwise lawfully on the parliamentary estate; and
 - (b) a new independent complaints and grievance policy to underpin the Behaviour Code.
 - (c) The Behaviour Code will cover behaviours that contribute to bullying and harassment and sexual harassment, and provide a basis for significant and sustainable change.
4. On the basis of the compelling evidence received, the Working Group recognises that sexual harassment is qualitatively different in a number of ways to other forms of unacceptable behaviour and therefore requires its own set of procedures and personnel. The Working Group has therefore made separate recommendations relating to sexual harassment and bullying and harassment. Definitions of key terms and concepts are provided in Annex D of this Report. These include the definition for harassment in the Equality Act 2010 which, importantly, stipulates the unwanted conduct relates to a relevant protected characteristic: race, sex, age, disability, religion or belief, sexual orientation or gender reassignment.
5. The evidence, particularly from staff, was that a change in workplace culture is both urgent and essential, and is ultimately the best guarantor of a change in behaviour. This is an ongoing, longer-term project wider than the Working Group's Terms of Reference that will need to be addressed. Given its importance, the Working Group has made recommendations that will support culture change in both the immediate future and the longer term.
6. It is unacceptable that inappropriate behaviours, including bullying and harassment and sexual harassment, take place across what we have called "the parliamentary community". The Working Group recognises that a greater understanding of these issues will be an important contributor to change, so there is a need for mandatory and voluntary training for MPs, Peers and staff.

7. To be effective, the new independent complaints and grievance policy will require changes to other procedures, including an expansion of the range of available sanctions to ensure that all levels of inappropriate behaviour can be addressed effectively and proportionately. Appropriate sanctions will need to be available to ensure that the new independent complaints and grievance policy is effective regardless of the position that the perpetrator holds in the parliamentary community.
8. The Working Group recognises that visitors to constituency offices and advice surgeries must be in scope but has not taken sufficient evidence and advice to propose how they should best be included in these new arrangements. This issue needs to be properly considered and has been identified as an area for early future action. Our ambition is for further work to be undertaken so that employees of the House of Commons and the House of Lords can be included in these new arrangements. In the meantime these staff will continue to be protected by their existing employment policies.
9. It is recognised that parliamentarians are under a constant media spotlight and that due to the nature of political discourse there is a risk of malicious and/or vexatious complaints against those who work in the Palace of Westminster either as MPs, Peers or staff. The new procedures must ensure checks and balances are in place to guard against such complaints. At the same time, the new scheme must put arrangements in place to minimise the well-documented risk of under-reporting by those experiencing sexual or other forms of harassment or bullying.

Membership of the Working Group

10. The Working Group was formed on 14 November 2017. It comprises representatives from the political parties in both Houses of Parliament, a Crossbench Peer from the Lords, and representatives from unions and employees' organisations that are active in the Houses of Parliament. The following individuals form the Working Group: Andrea Leadsom MP (Leader of the House of Commons and Chair of the Working Group), Baroness Evans of Bowes Park (Leader of the House of Lords), Dawn Butler MP (Shadow Minister for Women and Equalities), Emily Cunningham (National Union of Journalists ("NUJ") representative SNP staff Westminster, Lord Hope of Craighead (Convenor of the Crossbench Peers); Max Freedman (Unite), Emma Little Pengelly MP (Democratic Unionist Party "DUP"), Caroline Lucas MP (Co-Leader of the Green Party), Georgina Kester (Members and Peers' Staff Association "MAPSA"); Liz Saville Roberts MP (Plaid Cymru); Jo Swinson MP (Liberal Democrats); Valerie Vaz MP (Shadow Leader of the House), Pete Wishart MP (SNP).

Secretariat

11. The Working Group was supported by a temporary secretariat drawn from both Houses of Parliament, the Cabinet Office and the Government Legal Department. In addition, the Working Group engaged Dr Helen Mott as a specialist adviser in violence against women and girls. The Working Group is grateful to Dr Mott and the members of the secretariat for their contribution.

Terms of Reference

12. The Working Group agreed the following terms of reference on 14 November 2017. The terms of reference were subsequently amended on 22 November 2017:—
- To agree a proposal for a new independent complaints and grievance system, which would:
 - Cover complaints relating to bullying and harassment, including sexual harassment;
 - Be accessible for complaints from staff employed by Parliament or by MPs or Peers, whether on a permanent or temporary basis, interns, holders of parliamentary security passes, MPs and Peers, or those who have been invited on to the parliamentary estate or to a constituency office;
 - Apply to behaviour of those whose place of work is the parliamentary estate or constituency offices;
 - Cover behaviour taking place on the parliamentary estate, constituency office, other designated place of work, or in the course of parliamentary duties or activities;
 - The Group will not itself consider grievances or individual cases;
 - The Group recognises the importance of training, including consent training, in the context of harassment. The Group notes that initiatives on training are being taken forward elsewhere, including by the House of Commons Commission. It will keep itself apprised of developments and will address the issue of training where it pertains to the Group's work;
 - As part of the process to agree a new, independent complaints and grievance system, the Group should consider a number of issues, including the following:
 - What kinds of complaint will be covered?
 - Who will be able to submit a complaint?
 - Who could complaints be made against?
 - Where must behaviour take place to be subject to a complaint?
 - What systems exist within Parliament and how could these be extended?
 - How would existing systems inside and outside Parliament interact with any new grievance process?
 - How will vexatious complaints be managed?

- How can confidentiality be preserved, where appropriate, for those involved in a complaint?
- Should the new grievance process make provision for sanctions?
- If so, what sanctions would be available under the new grievance process?
- The circumstances in which a complaint should be referred to the police, and who should refer such complaints to the police.

Evidence

13. The Working Group sought input, in writing and in person, from parliamentary officials and employees, MPs, Peers, staff of MPs and Peers, parliamentary bodies, unions, academics, experts on sexual violence and lawyers. The persons and organisations who made oral submissions to the Working Group are listed in Annex A. The written submissions received by the Working Group are listed in Annex B.
14. The Working Group also commissioned a short survey which was open to a wide range of people working in or with Parliament including a number of passholders who have not previously been asked about their experiences of bullying and harassment. The survey was open for a week, and received 1,377 responses (17%). The results of this survey, together with the staff surveys of MPs' and Peers' staff conducted by Unite and MAPSA, were reviewed by the Working Group and used to inform its deliberations. The findings of all these surveys were similar in key respects.
15. Headline results from the Working Group's survey revealed that bullying, harassment and sexual harassment have been a feature in the lives of many who work in or with Parliament. The results for prevalence were broadly in line with what research would predict. 39% of the respondents reported experience of non-sexual harassment or bullying in the last year, 45% of female respondents and 35% of male respondents. 19% of the respondents reported experience of sexual harassment, including witnessing sexually inappropriate behaviour, with women reporting twice as much as men.
16. MAPSA's survey of the staff of MPs and Peers returned higher prevalence rates, particularly among constituency staff, but was not restricted to a 12-month period. 53% of the 815 MPs' and Peers' staff who responded to this survey said they had experienced, witnessed or heard of bullying/harassment during their time in employment. Unite's survey of the staff of MPs also found high levels of bullying, harassment and sexual harassment, with 27% having experienced behaviour they would describe as bullying or intimidating towards them and 14% experiencing behaviour that they would describe as a form of sexual harassment.

17. A quarter (24%) of those who had experienced bullying, harassment or sexual harassment in the past twelve months spoke to their MP or line manager. Approximately 50% of respondents working for the House of Commons and 52% of House of Lords staff had confidence in the ability of managers in the two Houses to manage complaints of bullying and harassment. Nevertheless, a majority (55%) of respondents who had made a report under existing procedures were dissatisfied with the choices given to them for next steps, and a majority (55%) were dissatisfied with the level of understanding shown about what an appropriate remedy, outcome or sanction would be from their own perspective.

18. People who had experienced bullying, harassment or sexual harassment were less confident than others that a complaint would be dealt with satisfactorily. These groups also said they would have the most confidence in an external independent service provider for bullying and harassment (47% of those who had experienced bullying or harassment) and in an external independent specialist service provider for sexual harassment concerns (57% of those who had experienced sexual harassment).

Chapter 1: Key findings

19. Based on the oral and written submissions received, the Working Group has identified six guiding principles:—
- (1) A need for a shared “Behaviour Code for Parliament” which is applicable to all persons on the parliamentary estate or engaged in parliamentary business, regardless of location, and which can underpin the new complaints and grievance policy.
 - (2) A need for a complaints and grievance system that is independent from political parties, yet is signed up to by MPs and Peers.
 - (3) An acknowledgement that sexual harassment and sexual violence are qualitatively different in a number of ways from other forms of inappropriate behaviour including harassment and bullying, and require separate definition and procedures.
 - (4) The need for appropriate support to be provided to all those involved in a new complaints and grievance system, and that this needs to include the provision of HR advice to MPs’ and Peers’ members of staff.
 - (5) A recognition that the current Respect policy, a House of Commons employment policy, is only available for employees of the House of Commons. The Respect policy offers a basis on which an improved and expanded complaints and grievance policy can be built, to address inappropriate behaviours and bullying and harassment for all concerned. The Working Group acknowledges however that the Respect policy does not set out to address sexual harassment as a separate process.
 - (6) The need for a new, independent complaints and grievance system that:
 - is transparent, robust, credible, timely and reliable;
 - is based on the principle of equality and recognises intersecting inequalities;
 - protects the confidentiality of proceedings wherever necessary, and processes data lawfully and appropriately;
 - is fair to all concerned and has their confidence, and applies the rules of natural justice; and
 - establishes an effective policy and procedures without delay, recognising that these may need to be further developed over time.
20. During its sittings, the Working Group has had the advantage of receiving a number of oral and written submissions on relevant issues. These prompted wide-ranging and thoughtful discussions which have informed the Working Group’s recommendations. In the remainder of this Report, there is an outline of the policies that the Working Group believes are likely to fulfil its aims and Terms of Reference. These are presented in outline form and the dependencies and further actions are therefore also identified.

Chapter 2: New policies and procedures

21. The Working Group recommends the development of (a) a Parliament-wide behaviour code and (b) an independent complaints and grievance scheme (“The Scheme”) including two new Parliament-wide policies for responding to and managing complaints of (i) sexual harassment and (ii) bullying and harassment. These policies will relate to behaviour by those working for or with Parliament which takes place on the parliamentary estate, in constituency offices or elsewhere in the course of parliamentary work or which relates to the person’s parliamentary position, including on overseas visits.
22. The policies must encourage a culture of prevention; and uphold and ensure the right to a safe and dignified environment free from discrimination. During this report, the term ‘complainant’ has been used for consistency, recognising that terms including victim and survivor are preferred in some cases and that not everyone experiencing bullying and harassment would raise a complaint. Underpinning the Group’s work is the need to understand the issues from the perspective of the complainant, taking into account their welfare and rights and the impact of actions and decisions upon them.
23. The Working Group recognises that sexual harassment is qualitatively different in a number of ways to other forms of unacceptable behaviour and therefore requires its own policy and procedures. This chapter describes the elements of the new policies where it is thought that a joint approach is possible.

Content of new policies and procedures

24. There are various types of workplace misconduct which would be subject to internal disciplinary proceedings and that could also potentially also be of a criminal nature. Examples would be acts of violence, or dishonesty, racially or religiously aggravated offences and sexual offences. Such offences may be reported to the police separately from any internal complaint in the workplace. For the avoidance of doubt, the content of the new policies and procedures relate to forms of misconduct in the workplace and not the investigation of specific criminal offences.
25. The policies will define “sexual harassment” and “bullying and harassment”, and explain their impact on complainants. The policies will make it clear that sexual harassment and bullying and harassment are unacceptable in all circumstances and explicitly acknowledge that the abuse of power can be an aggravating factor in such cases. They will acknowledge the cumulative harm of repeated inappropriate behaviours. Legal advice will be sought, as appropriate, during the development of the new policies and procedures.
26. The policies will detail new procedures for action against sexual harassment and bullying and harassment as disciplinary matters across the parliamentary community. Flowcharts will be provided as well as written procedures to ensure these can be well-understood. The process for reporting a complaint will describe the informal and formal stages for managing and resolving complaints, and the process through to the determination of complaints and

imposition of a range of sanctions. In matters where formal disciplinary action upholds allegations of serious misconduct, employees may be dismissed, and MPs and Peers may be suspended from either House and face recall or expulsion proceedings. The provision of support for all parties will be described.

27. These arrangements are not intended to discourage individuals from choosing to present complaints directly to the police, an employment tribunal, a political party, or a Parliamentary Commissioner for Standards. Complaints under the Scheme can only be made against individuals who (i) were working for or with Parliament at the time of the alleged behaviour, and (ii) are currently working with or for Parliament, or continue to hold a Parliamentary pass, at the time the complaint is made. The level of investigation into any allegation should be proportionate, taking into account, for example, the severity of the allegations, when the behaviour complained about took place and the evidence likely to be available to investigate the complaint fairly. Complainants will be encouraged to report any criminal allegations to the police, and supported whether or not they choose to do so; the new scheme will provide support and advice to the complainant, whether or not they choose to raise criminal complaint.
28. Individuals may choose to use other processes—for example, those associated with their employment or the political party of the person complained of. This will be a complainant-led choice, but the general principle will be that the Scheme will reserve the right not to investigate incidents that have already been investigated under another process.

Reporting and monitoring

29. The Scheme is intended to provide an improved and inclusive reporting and monitoring mechanism, to provide specialist independent support and guidance to complainants, to offer a specialist independent investigation process where required and to arrange access to informal resolutions (where appropriate and agreed by both parties).
30. There will be separate reporting helplines for allegations of sexual harassment and for bullying and harassment. Where there are allegations of sexual harassment alongside other inappropriate behaviour, the individual will be able to choose to report either via the sexual harassment route or the bullying and harassment route. A key requirement of the new arrangements must be that everyone working for or within Parliament will know where to go to report sexual harassment and bullying and harassment.

Support services

31. Emotional support and guidance on options and possible processes will be available for both complainants and alleged perpetrators. Support will recognise differences in employment arrangements in different MPs' and Peers' offices, as well as arrangements for those employed externally or by political parties. Support and advice will be provided by independent and appropriately qualified people and those providing support for sexual

harassment cases will hold specialist knowledge and qualifications. In practice, support will be provided through the newly established helplines, including face-to-face support, as part of the broader HR advice available to complainants and alleged perpetrators, and through the existing Employee Assistance Programme (open to Peers, MPs, their staff and other passholders including agency staff and journalists) and the Parliamentary Health and Wellbeing Service provided by the House of Commons.

Confidentiality

32. Confidentiality will apply at all stages of the process. Significant detail of allegations (and any counter-allegations) will be provided to enable the alleged perpetrator(s) to understand and respond to the issues raised. The alleged perpetrator will be able to provide evidence in their own defence.

Decisions and sanctions

33. Where allegations have been investigated and a finding of sexual harassment, bullying and/or harassment has been made, the matter will be referred for a decision, and the application of any sanctions, to different bodies depending on the role of the perpetrator in the parliamentary community. Table 1 below details these decision-making bodies. In these cases, where a finding of sexual harassment, bullying and/or harassment has been made, the body that this adjudication is referred to will use its own policies and procedures to progress the matter, with due regard to their own internal and legal obligations and in ways that respect the wishes, rights and welfare of the complainant.
34. Any internal policies that are applied, following the referral of a finding from a full investigation to the body relevant to the perpetrator, are likely to include a variety of sanctions. Possible sanctions are detailed in the Sanctions table at the end of this Report. A number of existing internal policies will need to be reviewed in light of the Scheme, and it must be clear to those with access to the Scheme how it coexists with their other rights and obligations.
35. Appeals from either complainants or perpetrators about the decision made following the independent investigation report, including any sanctions, would generally be made to the body to which the person is linked and managed using their internal procedures. In cases where a finding about the behaviour of a staff member of an MP or Peer has been referred to that MP or Peer for disciplinary action and the complainant does not believe that the matter has been appropriately dealt with, a separate complaint may be made against the MP or Peer to the relevant Parliamentary Commissioner for Standards.
36. The following table sets out which decision-making bodies would, under the current structures, make decisions about the action which should be taken following the report of an investigation, including decisions imposing appropriate sanctions according to the person's role in the parliamentary community. If the resulting decision upholds an allegation of sexual harassment, bullying or harassment, where the perpetrator is known to be a member of a political party, the party will normally be notified of the outcome, unless the complainant specifically requests that this does not happen.

Table 1: Decision making

Role	Decision-maker
MP/ Peer	Parliamentary Commissioner for Standards (Commons or Lords), in conjunction with a relevant Committee of the Houses for the most serious cases or where alternative resolutions have failed.
MP or Peer's staff, or employed by parties to work on the parliamentary estate	MP, Peer or political party who employs them (or otherwise engages them –e.g. intern, volunteer or work experience agreement, or contract for services)
Commons, Digital Service and Lords employees	House Authorities, through the appropriate management chains
Relevant passholders	Relevant officials and processes for suspending or revoking parliamentary passes. The passholder's employer may also be notified, where relevant.

37. Employees of the House of Commons are subject to the Respect policy and employees of the House of Lords are able to raise allegations of bullying and harassment by Peers under their existing grievance procedures. Consultation with the recognised trade unions would be needed to amend these policies and allow employees of both Houses to be covered by the Scheme. So these existing policies will remain in place for such staff during the development of the Parliament-wide policy and procedure, and the Scheme will not apply to these groups in the first instance. We hope that it will be possible for the Scheme to be extended to include these groups very soon, but recognise that this will involve further work.

Supporting work required

38. To implement the new policies and procedures effectively, work is needed in a number of other areas. Areas of work common to the policies for both sexual harassment and bullying are outlined here.

New policies and procedures

39. It will be important to develop detailed sexual harassment, and bullying and harassment, policies to enact the framework described in the following two chapters, and for them to be accompanied by a comprehensive set of supporting procedures. The Working Group will consider further whether and how allegations which predate the Scheme can be accommodated.
40. These will need to be written in consultation with relevant stakeholders including MPs, Peers, staff representatives, trade union representatives, the Independent Parliamentary Standards Authority (IPSA) and relevant officials

within both Houses. There will need to be a full equality impact assessment process, to which the Workplace Equality Networks will be asked to contribute, as well as detailed checks for legal compliance. This may include the revision of existing employment policies and contracts which should be considered by each organisation in line with its own best practice.

Procurement and contracts

41. The new scheme will require appropriate procurement and contractual arrangements between the House Commissions and various third-party service providers involved in delivering elements of the new scheme. These contractual arrangements will also provide services to the House of Lords and will, to this extent, be a joint endeavour. Staff representatives will also be involved in the procurement processes, and full regard will be given to diversity and inclusion issues throughout.
42. It is recognised that these arrangements carry inherent risks. It is not intended that the Scheme will create additional employment relationships, and the House will take legal advice from a senior lawyer.

Parliamentary Codes of Conduct

43. The Working Group did take evidence from both Parliamentary Commissioners for Standards (PCS) and both Standards Committees, each of whom agreed in principle that their remit could be amended to address the recommendations in this report. The Group recommends developing these proposals in more detail and in consultation with relevant stakeholders, including ensuring that the independence of the Scheme is maintained throughout.
44. It will be necessary to review and amend the existing Parliamentary Codes of Conduct to reflect the new Parliament-wide Behaviour Code. The Working Group recommends that these changes include:
 - (a) The process will be confidential and where information will be shared this should be specified.
 - (b) Evidence will be available to the complainant and to the alleged perpetrator who will also be able to provide evidence in their own defence, and consideration will be given to any requests either party to the complaint makes to be represented or accompanied during the process.
 - (c) The PCS should have access to a legal adviser.
 - (d) The range of sanctions available to the PCS will need to be expanded, and include a wider range of informal sanctions. In other cases the PCS will have to submit their findings to the relevant Committees in both Houses, who, following revised procedures, will have the ability to recommend the suspension of the MP or Peer for a specified period, which may trigger recall proceedings or the expulsion of the Peer through the Recall of MPs and House of Lords (Expulsion and Suspension) Acts 2015.

45. There will be a need for the PCS to ensure that an investigation applying all the rules of natural justice has been conducted before reaching any conclusions. This will include a review of the report produced by the independent investigation, gathering any additional, relevant evidence, including from each party, in order to allow the PCS to reach a decision of their own. In this respect, when a complaint is passed to the PCS, this process constitutes an appeal against the findings of the independent investigation.
46. The PCS may need additional or different resources in their offices to fulfil these expanded independent functions effectively, and the relevant Committees in both Houses should develop the detail of the other changes needed. The arrangements for the Committees themselves should be reviewed as part of this process, to ensure they are fit for this revised purpose. This might include, for example, reviewing the composition of the Committee, its voting arrangements, the confidentiality and reporting arrangements, the training for Committee members, the provision of expert advice where appropriate, and representation for the alleged perpetrator. The most severe sanctions, including suspension of the Whip and recall and expulsion arrangements under the 2015 Acts, remain available.

Data sharing

47. Information and data-sharing protocols and agreements will need to be developed with organisations involved in the Scheme, and will need to be compliant with guidance from the Information Commissioner's Office and relevant data protection legislation.

Outstanding actions

48. The Working Group recognises that the detailed procedures resulting from The Scheme will need to be finalised. Therefore the Working Group will reconvene for a limited period of time as a Steering Group to oversee the progress of the workstreams put in place by the House of Commons Commission in accordance with an agreed timetable.

Review body

49. Once the Scheme has been implemented, an appropriate body or group should review the implementation and operation of the new processes at 6 and 18 months. Any review would need to cover both Houses and have direct staff representation. The appropriate body or group will also need to consider how visitors to constituency offices, or who otherwise come into contact with MPs and Peers in their parliamentary role, can best be included in these new arrangements, and how third party-reports would be managed.

Chapter 3: Sexual harassment

50. This chapter provides further detail about the reporting, informal and formal stages of the new sexual harassment policy and procedures within the Scheme. It describes the specialist services and approach needed to manage allegations of sexual harassment appropriately.

Reporting and monitoring

51. Sexual harassment is unwanted conduct of a sexual nature, which can happen in a number of ways (see definition at page 49). Most workplace sexual harassment does not constitute a criminal offence. However some forms of sexual harassment covered in the Scheme can also be defined as criminal offences (for example, sexual touching can also constitute the crime of “sexual assault”). The only people who can conduct a criminal investigation are the police. However in most cases where sexual harassment is reported using the new sexual harassment policy, it can and will be investigated under the Scheme, as a workplace disciplinary matter. To avoid confusion, within the Scheme’s internal processes and in the policy on sexual harassment, use of language that is specifically appropriate to investigation of offences under the criminal justice system (such as “sexual assault”) will be avoided. Instead terms such as “sexual misconduct” will be used in the context of internal complaints and investigations.
52. The Scheme will provide for the practical and emotional support of and advice to complainants, whether or not they decide to report a criminal offence to the police or decide they do not wish to make any internal workplace complaint.
53. In line with modern practice and legal obligations, the sexual harassment policy will acknowledge that complainants do not usually have an obligation to report criminal offences such as sexual assault or rape to the police or to other statutory authorities, although they will be supported if they choose to do so.¹ The aim of the parliamentary community to prevent sexual harassment and violence, and to protect victims, is separate from any criminal justice process. However, findings from any process implemented by the criminal justice system, which require a high standard of proof, may inform any subsequent independent investigation. If there is a police investigation, any formal disciplinary process may be paused until the criminal justice process has concluded. This will depend on the circumstances of each case. Support, necessary risk assessments and associated actions will not normally be paused in such circumstances.
54. All reports and complaints will be handled by a specialist, trained Independent Sexual Violence Adviser (ISVA) who will aim to be a single point of ongoing contact and advocacy for complainants. Face to face support will be available for complainants and alleged perpetrators. Mechanisms will be put in place to protect confidentiality of all those involved in the process throughout. If there is to be any disciplinary process, the right of alleged perpetrators to have complete disclosure of the allegations made is a key principle. It is

1 Legal requirements are different in Northern Ireland under the Criminal Law Act (Northern Ireland) 1967 and the new policies and procedures will reflect this and any other differences in the relevant legal jurisdiction.

nonetheless recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect complainants from retaliation or further victimisation, may inform the degree of disclosure to an alleged perpetrator of certain details of some reports, in tandem with the principles of natural justice for all parties. The ISVA role includes management of an ongoing risk assessment process, and the keeping of confidential records of all allegations made against individuals (including allegations made anonymously or by third parties), in accordance with data protection laws. Where risks to the complainant or others are identified, it is the ISVA's responsibility to ensure appropriate referrals are made to manage the risk. Where the level of risk requires it, this may include referral to other agencies, including the police, taking into account the complainant's needs and wishes.

55. Arrangements about how information will be shared will be developed in order to protect all parties while upholding the duty to protect all members of the community from harm. This may include provision for 'cluster' reports concerning individuals (where a pattern of misconduct is identified through multiple reports) and for third-party reporting. It will be necessary to seek detailed legal advice to ensure that arrangements fulfil relevant information rights and information security obligations.

Informal process

56. Those who experience sexual harassment often prefer to seek resolution without going through a formal disciplinary process. If a complainant decides to pursue an informal process in the first instance, this will be led by an independent investigator with a specialist qualification in understanding sexual violence. The ISVA will remain available to provide support during this process. If resolution is agreed between all parties, there would, under the current structures, be no formal finding. Resolution measures may include but would not be limited to: a written apology, future behaviour agreements, restrictions on freedom of association or movement, undertaking a learning programme alone or as part of a workplace training course, or a course of training in how to challenge sexual harassment for complainants and/or their colleagues. Brokering these resolutions may include discussions with others as appropriate, such as individual MPs, Peers or other line managers, as well as with the parties to the complaint.

Investigation

57. When reports of sexual harassment become a workplace disciplinary matter, the key principles will be fairness and proportionality. Alleged perpetrators should usually be provided with all details of the allegations made against them, and the opportunity to present their own evidence and test evidence against them. The standard of proof will be for any disciplinary finding to be made on the balance of probabilities. An investigation process will be led by a trained independent investigator with a specialist qualification in understanding sexual harassment. The investigation will result in a written report which may be shared with relevant decision-making bodies according to the role of the perpetrator in the parliamentary community, as detailed above (Chapter 2). Any members of decision-making bodies involved in a

sexual harassment complaint process should be required to have received training in understanding sexual harassment and its prevention.

58. If an investigation results in a finding of fault against an alleged perpetrator, the report of any findings will be passed for a decision, and the application of any sanctions, to different bodies depending on the role of the perpetrator in the parliamentary community, as explained in Chapter 2 above. This may lead to action by, for instance, an MP in respect of conduct by that MP's member of staff, or by the Parliamentary Commissioner for Standards in respect of conduct by an MP. The Commissioners' processes may need to change so that they are not obliged to publish details of their investigations. Complainants will have a right to anonymity, which they may choose to waive. If rectification at any final stage of determination includes any published outcome for the perpetrator, the complainant should have a choice about whether their own identity is made public. The complainant's view about how much information concerning the case is to be made public should be fully taken into account.
59. Sanctions on perpetrators will take into account complainants' wishes and may include, but are not limited to, any of the resolution measures listed above under the informal process. In addition, potential sanctions resulting from the investigation process are detailed in Chapter 6 at the end of this Report: "Possible sanctions". This may ultimately include the recall of an MP, or the expulsion of a Peer through the mechanisms of the respective 2015 Acts of Parliament, and an employee may face dismissal.

Supporting work required

Appeals

60. The proposed policy and procedures detailed here are necessarily outline in nature. The Working Group recognises that further work is needed to develop and implement these fully, and recognises the importance of ensuring that the detailed procedures include appropriate appeal processes, including potential grounds for appeal and timelines.

Research

61. Research should be conducted, including on the issue of workers and visitors on, and associated with, the parliamentary estate, to understand the specific context of their experience and to feed that into the development of policies and procedures and benchmarking for ongoing monitoring and evaluation. The further research into the experiences and views of staff and others should include a survey and/or focus groups, including open-ended questions. It may also include further exploration of some of the findings from the survey conducted by the Working Group, including the findings about the extent of under-reporting. The research will also enable intersecting experiences of inequality to be considered in more detail than has been possible in the short duration of the Working Group's deliberations.

Chapter 4: Bullying and harassment

62. This chapter provides further detail about the reporting, informal and investigation stages of the new bullying and harassment policy and procedure within the Scheme, and identifies further work that is required to implement this new policy.

Reporting and monitoring

63. The new policy and procedures will be specifically designed for complaints about bullying and harassment. There are many definitions of bullying and harassment, and the terms are often used interchangeably. Annex D details the definitions of bullying and harassment that have been used by the Working Group. Other complaints that might arise, for example, contractual disputes or about other types of inappropriate behaviour, will continue to be managed through existing employment and other complaint procedures. The Working Group recognises that the staff of MPs and Peers need HR advice across the range of employment issues that might arise, and has put in place arrangements for this support to be provided on an ongoing basis.
64. Most workplace bullying and harassment does not constitute a criminal offence. However, some forms of harassment that are covered in the new policy could constitute criminal offences (for example physical assaults, hate crimes or prejudice-based incidents). The only people who can conduct a criminal investigation are the police. However, in cases where the matter is reported as harassment using the new bullying and harassment policy, it can and will be investigated under the Scheme, as a workplace disciplinary matter.
65. A new independent reporting helpline for bullying and harassment complaints will be commissioned, with the facility for face-to-face support. The helpline will have mechanisms to ensure the confidentiality of both the complainant and alleged perpetrator. Appropriate and confidential records will also be kept about both reporting levels and the types of issues raised, to inform the development of awareness-raising campaigns and wider cultural change initiatives.
66. It will be important to ensure that individuals assisting complainants have a clear understanding of parliamentary structures, relationships and power dynamics, to provide accurate information about the options available to the variety of potential users across the parliamentary community.
67. There may be cases where complaints of bullying and harassment reported to the Scheme are also being investigated by the police. In such cases consideration will be given to whether the matter can be progressed under the Scheme, or whether it would be more appropriate to pause until the other process has concluded. This will depend on the circumstances of each case. Support, necessary risk assessments and associated actions will not normally be paused in such circumstances.

68. The reporting helpline for bullying and harassment will be supported by an independent service in workplace dispute resolution. Part of the remit of this service will be to support the development of the detailed policy and procedures for managing complaints of bullying and harassment. These will take into account best practice from other organisations, particularly those where there are a number of different contractual and other relationships within a single workplace, as well as the practicalities of making the procedures work in the parliamentary context.

Informal process

69. The Working Group took evidence, from ACAS among others, of the advantages of resolving workplace issues at the earliest possible stage. Where possible and agreed by both parties, the Scheme will provide access to informal resolution mechanisms. These might include an apology, future behaviour agreements, mediation or training. Brokering these resolutions may include other people, where relevant and agreed by both parties, such as individual MPs or Peers in their role as employers, line managers in both Houses, and possibly people from trained peer support networks.

Investigation

70. An independent investigation process will be available where informal resolution is unlikely to be successful. This process may also be recommended in more serious cases where informal resolution would be inappropriate. An investigation process will be led by a trained independent investigator with experience in conducting investigations into bullying and harassment. The standard of proof used will be proof on the balance of probabilities, and in most cases the investigator will need to gather evidence from both parties and any other potential witnesses. The procedures will also allow for cases where several allegations are made against the same individual. The investigation process will include sharing sufficient details of the complaint with the alleged perpetrator and others in order to ensure that allegations can be fully understood and responded to. The investigation will result in a written report.
71. Where cases have been fully investigated, and a finding of bullying and/or harassment has been made, the matter will generally be referred for a decision and sanctions to different bodies, depending on the role held by the perpetrator as detailed in Chapter 2. The report will provide enough information to allow the decision-making body to review both the evidence and the key factors taken into account by the investigator, including any evidence that is in tension with the report's conclusion. Potential sanctions are detailed in Chapter 6 in the table "Possible sanctions" and may include the recall of an MP or the expulsion of a Peer, and an employee may face dismissal. Complainants will be made aware of and consulted about any sanctions that involve the public identification of the perpetrator, and their views will be fully taken into consideration.

72. Decisions about appropriate sanctions will take into account complainants' wishes, as well as other relevant factors such as precedents in other comparable cases. In some cases, informal resolution may still be possible following a full investigation, and this will always be preferred if agreed by both parties.

Supporting work required

Appeals

73. The proposed policy and procedures detailed here are an outline. The Working Group recognises that further work is needed to develop and implement these fully, and recognises the importance of ensuring that the detailed procedures include appropriate appeal processes, including potential grounds for appeal and timelines.

HR advice service

74. The Scheme will be underpinned by an HR advice service for MPs' and Peers' staff, including those who are collectively employed. This HR advice will be delivered through a third-party provider and will cover the full range of potential employment concerns and disputes. It will also be knowledgeable about the arrangements in place for complaints of bullying and harassment, including sexual harassment.
75. The House authorities have put in place interim HR helplines to whom MPs' and Peers' staff can talk about employment matters. These will stay in place until the new third-party service is up and running, for which a tender is being written. This HR advice for MPs' staff will ultimately need to refer to a new MPs' Staff Handbook, which will be written to bring together information about the terms and conditions, mandatory and optional policies and guidance provided by IPSA, as well as practical information such as how sickness absence pay is calculated.

Chapter 5: Culture change

76. There are a number of areas where work is needed to create the environment within which the Scheme can be effective. These include the new Behaviour Code for Parliament and training. The Working Group recognises that some people are managers or employers and some are not. While those who are will require specific training, all members of the parliamentary community will benefit from training to assist compliance with the Behaviour Code and ensure policies and procedures are understood in practice.

Behaviour Code for Parliament

77. Whilst the Seven Principles of Public Life apply to those who work as public office holders, which includes MPs elected and Peers appointed to public office, a new binding Behaviour Code for Parliament is needed, to encompass a shared set of explicit behavioural expectations of all those working for or within Parliament, to promote dignity at work.² Existing third-party contracts with the Houses could be amended to include this Code by agreement, as they are already asked to demonstrate their commitment to the Equality Act, and compliance could be a requirement for future contracts. This Behaviour Code for Parliament would also apply to visitors to the estate, who will be informed of what is required of them and could be asked to leave if they do not meet the standards of conduct required. The development of the new Behaviour Code would be one of the first workstreams to be taken forward, overseen by the Working Group, as described in paragraph 90.

Training

78. A core level of training will be available to everyone, underpinning the Behaviour Code. For those who employ or manage others, training will be available to assist professional practice. Training can also be delivered as an outcome of an informal or disciplinary process, where training needs have been identified.
79. The Working Group recommends the development of comprehensive training to help MPs, Peers and staff across the estate to understand and prevent harassment, including sexual harassment, bullying and discrimination. One way in which such training could be delivered is during the normal induction of new MPs, Peers and staff to ensure awareness of the new Behavioural Code. Training should be required for MPs and Peers where appropriate, as well as any others involved in recruitment, when they are going to recruit new staff. The Working Group also recommends that, in the next Parliament, mandatory training for MPs, Peers and staff should be introduced. Such training must be relevant to their circumstances. This will support the creation of a shared understanding of the standards of behaviour expected, and embed the new Behaviour Code for Parliament. Until such time as training is mandatory, records of those who have completed the recommended training will be publicly available.

² The Behaviour Code and policy is also expected to apply to (former) MPs during periods of dissolution.

80. In addition, for the remainder of the current Parliament, once appropriate training has been developed, it is expected that all those who manage staff will take it up. Subjects covered may include: understanding and preventing bullying and harassment (including sexual harassment); diversity and inclusion, including unconscious bias; good employment practices including giving feedback, conducting performance appraisals, managing absence, disciplinary and grievance cases, and mental health awareness.
81. In addition, developmental training to help identify and address inappropriate behaviours should be available, both as a possible sanction or outcome when complaints have been made and as voluntary training of MPs, Peers and staff. A Good Employer Standard could be developed for MPs and Peers who employ staff and ensure that all appropriate training is taken up by them and their staff members. The existing MPs' staff training programme provided by the House of Commons Commission should be reviewed, particularly with reference to induction arrangements, and consideration given to whether the offer can be usefully extended to Peers' staff.

Culture change

82. The Working Group agree that, in addition, wider-reaching work needs to be done to develop the working culture in Parliament to help address the underlying framework that has allowed the current issues in relation to bullying and harassment to develop. A key objective in bringing about change will be the introduction of measures to promote a culture of co-professionalism.

Monitoring and review

83. The progress and impact of the proposed arrangements should be monitored, reviewed and evaluated regularly. The Working Group recommends that the implementation of the new policies is accompanied by a clear timetable for review as referred to above (paragraph 49) which should measure the success of the Scheme's operation after 6 and 18 months after it comes into existence.
84. The Working Group heard submissions from a number of experts who described the value that trade union engagement had added to other organisations committed to ensuring dignity at work, and from the TUS President from the House of Commons, Ken Gall. A number of the Group's members suggested that there should be trade union recognition for Members' staff, although the Group also noted the valuable contribution made by the Members' and Peers' Staff Association within Parliament. The technical difficulties created by the lack of a single employer were noted. Trade union recognition does not fall within the Working Group's terms of reference, and closer working with trade unions and staff associations can therefore only be recommended by the Group as an area for future consideration. The Working Group nevertheless notes the valuable contribution that the MAPSA, Unite and NUJ representatives have made through their membership of the Group.

Chapter 6: Possible sanctions

85. In line with the professional advice that the Working Group has received, a range of possible sanctions are detailed below. The appropriateness of sanctions in a particular case will take into account a number of factors, including the wishes of the complainant, the role of the perpetrator, the severity of the bullying, harassment or sexual harassment and any precedents set by comparable cases.
86. Not all sanctions are available in all cases. For example, the House and the MPs' constituents have recourse to sanctions that would prevent the MP from continuing in their role. However, the parliamentary pass of an MP may not be suspended or removed because of their need to access the parliamentary estate while they are entitled to sit in the House of Commons as elected officials. Other sanctions may also be implemented outside of the Scheme and are not detailed here. For example, a perpetrator's political party may decide to suspend or remove the Whip.

Table 2: Possible sanctions

Role	Sanction	Decision-maker	Review of powers needed
MP / Peer	Suspension / recall (in the Commons) Suspension / expulsion (in the Lords)	Parliamentary Commissioner for Standards (Commons or Lords), in conjunction with (Sub) Committees of the relevant House, a Resolution of the relevant House, and the provisions of the Recall of MPs Act 2015, and the House of Lords (Expulsion and Suspension) Act 2015	Yes, to the processes of the Parliamentary Commissioners for Standards
MP / Peer	Apology / future behaviour agreement / compulsory training	With agreement by all parties or imposed by Parliamentary Commissioner for Standards (Commons or Lords)	Yes
Staff	Warning / final warning / demotion / dismissal	Employer	No
Staff	Apology / future behaviour agreement / compulsory training	With agreement by all parties or imposed by Employer	No

Relevant passholders	Withdrawal of pass	Relevant officials and processes for revoking parliamentary passes. The passholder's employer may also be notified, where relevant.	Yes
Relevant passholders	Apology / future behaviour agreement / compulsory training	With agreement by all parties	Yes

Chapter 7: Next steps

Work by the House Authorities

87. Once a motion is passed by the House of Commons, and any necessary equivalent steps are taken in the House of Lords, the House Commissions would authorise the House Authorities to work up the details of the agreed processes and plan their implementation.
88. The House Authorities would be asked by the Commission to establish a series of workstreams to implement the proposals including:
 - (a) Procuring independent services including an Independent Sexual Violence Adviser (ISVA) service and a workplace dispute resolution service to anyone wanting to report sexual harassment or bullying and harassment;
 - (b) Procuring an HR advice service for Members' staff;
 - (c) Developing a Behaviour Code for Parliament ;
 - (d) Developing a handbook for Members' staff; and,
 - (e) Drafting changes to Standing Orders following further evidence gathered by the Working Group to finalise amendments necessary to the procedures of the Parliamentary Commissioners for Standards and the relevant Committees in both Houses
89. Costs will be met by the existing budgets of the House Authorities.

Working Group

90. The Working Group will become a steering group to oversee the work of the House Authorities in progressing the workstreams.
91. Some members may not be able to commit to continuing on the Group and therefore 'one off' substitutions may have to be made. Staff representatives may consider whether further staff representation is needed on the Group.
92. The work will proceed at pace and the estimate for completion of all workstreams is three months.

Review

93. When the Scheme has been fully in place for 6 and 18 months, an appropriate body or group will review the implementation and operation of the new processes.
94. Such a review will need to cover both Houses and have direct staff representation.

Annex A: Oral submissions

The Working Group met 17 times and took oral submissions from the following persons and organisations on 8 of those occasions:

Tuesday 14 November:

David Natzler, Clerk of the House of Commons
Ed Ollard, Clerk of the Parliaments

Tuesday 21 November:

Ruth Evans, Chair, Independent Parliamentary
Standards Authority (IPSA)
Marcial Boo, Chief Executive, IPSA
Faye Law, ACAS
Ken Gall, House of Commons Trade Union Side
President

Wednesday 22 November:

Hannah Carver, Stefan Jagielski and Richard
Krytowycz, Health Assured
Professor Sarah Childs, Professor of Politics and
Gender, Birkbeck, University of London

Tuesday 28 November:

Kathryn Hudson, Parliamentary Commissioner for
Standards
Lucy Scott-Moncrieff, House of Lords
Commissioner for Standards
Lord Bew, Chairman of Committee on Standards in
Public Life
Sarah Fraser Butlin, Barrister, Cloisters Chambers
Paul McFarlane, Solicitor, Partner at Weightmans

Wednesday 29 November:

The Rt Hon. Sir Kevin Barron MP, Chair of the
Committee on Standards

Monday 4 December:

Siobhan Endean, UNITE National Officer for
Equalities

Tuesday 5 December:

The Rt. Hon. John Bercow MP, Speaker of the House of Commons,

The Rt Hon. the Lord McFall of Alcluith, Senior Deputy Lords Speaker

Thursday 7 December:

Members of staff: Maria Finnerty, Harriet Rainbow, Naomi Snowdon, Tim Sansom, Gareth Myton

Annex B: Written submissions

The following persons and organisations were invited to make written submissions to the Working Group:

The House of Commons Reference Group on Representation and Inclusion
 The Law Society
 The Trades Union Congress (TUC)
 End Violence Against Women Coalition
 The Parliamentary Workplace Equality Networks:
 ParliGENDER
 ParliOUT
 ParliON
 ParliABLE
 ParliREACH
 GMB
 Dame Janet Gaymer QC (Hon.)
 Rape Crisis England & Wales
 IPSA
 Chartered Institute of Personnel and Development (CIPD)
 Professor Andrea Cornwall, University of Sussex
 The Rt Hon. Lord Brown of Eaton-under-Heywood, Chair of the Lords Conduct Sub-Committee
 NUJ SNP Westminster Chapel
 Rev. Rose Hudson-Wilkin, Speaker's Chaplain
 Holly Dustin, Committee Specialist, Women and Equalities Committee

Written submissions were received from:

Joe Egan, President, The Law Society
 The Rt Hon. The Lord Brown of Eaton-under-Heywood, chair of the House of Lords Sub-Committee on Lords' Conduct
 IPSA
 Dame Janet Gaymer QC (Hon.)
 Chartered Institute of Personnel and Development (CIPD)
 ParliGENDER workplace equality network (WEN)

TUC

GMB

Sarah Green & Rachel Kryss, Co-Directors, End Violence Against Women Coalition

Rape Crisis England and Wales

Professor Andrea Cornwall, University of Sussex

Joint submission from the five workplace equality networks (WENs) – ParliABLE, ParliGENDER, ParliON, ParliOUT and ParliREACH

NUJ SNP Westminster Chapel

PRU (Policy Research Unit)

Anonymised staff submissions sent via MAPSA

The House of Commons Reference Group on Representation and Inclusion

Holly Dustin, Committee Specialist, Women and Equalities Committee

Members and Peers' Staff Association (MAPSA)

The Working Group also considered written submissions provided by persons who had also made oral submissions, as well as miscellaneous papers relevant to its work:

Paper to the Working Group on an Independent Complaints and Grievance Policy, Sarah Childs, Professor of Politics and Gender, Birkbeck, University of London, dated 23 November 2017

David Natzler, Clerk of the House of Commons and Ed Ollard, Clerk of the Parliaments, dated [XXX]

Paper dated 28 November 2017 by Lucy Scott-Moncrieff, The House of Lords Commissioner for Standards

UNITE submission to Working Group on an Independent Complaints and Grievance Policy, dated 19 November 2017

UNITE Dignity at Work strategy

Sexual Harassment Policy of the Labour Party

Policy on Preventing and Managing Situations involving Harassment in the Workplace, Assemblée Nationale of Québec

The Working Group commissioned a staff survey and considered its results in its deliberations and in the preparation of this Report.

Finally, the Working Group benefited from papers prepared by the specialists on the Secretariat:

Dr Helen Mott:

Defining Sexual Harassment

Understanding and responding to sexual harassment and sexual violence in the workplace – guidance notes

Commentary on 'straw person' document with regard to proposed report of Working Group, with Appendix on violence prevention at the community level

Justine How:

Summary note following Working Group discussion
Wednesday 29th November 2017: Current process / sanctions when managing the conduct of MPs and Peers

Annex C: Sample codes of conduct

Zero harassment in the workplace - a guide for Members of the European Parliament

'Members of the European Parliament, as directly elected representatives of European citizens, have a special responsibility which relates also to their irreproachable conduct in carrying out their duties. This entails that they must pay special attention to their conduct towards their staff ensuring that this is appropriate and respectful at all times. This brochure, entitled "Zero harassment in the workplace – a guide for Members in the European Parliament" can be an important tool in our collective effort to prevent and address harassment behaviour. The European Parliament, as an institution, can set an example and bring awareness to this issue and ensure that employers, including MEPs, make use of the resources available to them to develop their team management skills to prevent conflict and harassment in the workplace.'

Antonio Tajani, President

'Having a good team to support his or her work allows a Member of the European Parliament to be a strong politician. Each Member manages a team with whom he or she must work in full trust. As Quaestor with responsibilities for harassment resolution and conciliation in dismissal procedures, I have been asked to solve a large number of conflict relationships between Members and their APAs. However, I believe that it can be avoided that these working relationships degenerate, creating poor working conditions for both sides, ultimately at the prejudice of the Member's work as a politician. I am convinced that the European Parliament should be a model employer for the benefit of all European citizens. I hope therefore that this guide will be useful for all Members to help them prevent and better manage conflict and harassment.'

Elisabeth Morin-Chartier, Quaestor

The aim of this flyer is, on the one hand, to inform you, as Member of the European Parliament, **how to avoid improper behaviour towards your staff that might escalate into a conflict situation** which may be perceived by your staff, including your accredited parliamentary assistants (APAs), as harassment and, on the other hand, **how to handle the situation should you be involved in a harassment procedure.**

This flyer was developed by the Advisory Committee dealing with harassment complaints between APAs and Members and its prevention at the workplace and was endorsed by the College of Quaestors on 13 December 2016.

Your role as a member in charge of a team

You, as a Member of the European Parliament, select staff, in particular APAs, to work for you in your office to provide support to fulfil your mandate in the European Parliament. Members enjoy substantial leeway in selecting their staff. The contract with the selected APAs is then concluded with the European Parliament. APAs therefore become staff of the European Parliament and enjoy the rights and have to respect the duties provided for in the Staff Regulations.

While Parliament is the formal employer of APAs, each Member is exclusively responsible to decide how to organise the work in his or her office and enjoys a large degree of autonomy in doing so. Therefore, the triangular contractual relationship between the European Parliament, the Member and the APA does not discharge the Member from the responsibility of properly managing his or her office. Even though some Members may prefer to delegate the staff management to a senior APA, each Member remains fully responsible for the working conditions in his or her office.

It is therefore important that you take your role of team manager seriously and adopt appropriate initiatives to ensure proper working conditions in your office and to avoid improper behaviour which might lead to conflict relationships.

The APAs enjoy the same rights as other staff members of the European Parliament and can therefore legitimately expect to be treated with professionalism, dignity and respect when carrying out their work. The APAs also have the right to benefit from protection against harassment and Parliament, as the formal employer, has a duty of care and protection towards APAs in this regard. In order to facilitate a ZERO harassment working environment, it is important to focus on prevention.

Preventing conflict and harassment

Preventing conflict starts by a proper recruitment procedure

It is important to do your utmost to select the right candidates in terms of experience and personality to suit your needs as a Member of the European Parliament. Therefore the methodology you choose for this selection procedure will have a significant impact on the result of the selection. Sharing the same political affiliation is not a guarantee that you will work well together.

Based on previous experience of Members in the European Parliament and considering some widely accepted best practices on management, you could consider the following procedure when selecting your team, in particular your APAs:

- [prepare a non-exhaustive job description](#): of course you do not know at the beginning what your mandate will require you to deliver and any staff job description will have to be flexible to adapt to your evolving needs; however, certain tasks will always be needed (such as certain administrative tasks like managing the Member's agenda and travel arrangements); **some APAs start with unrealistic expectations about what their job entails and this can create problems subsequently, as they feel disappointed** with the tasks they have to perform; a nonexhaustive job description can set more realistic expectations; ask DG PERS for the existing sample functions exercised by APAs which you can adapt to your needs;
- [organise a call for applications](#): publicise your vacancy where you deem relevant to get as many candidates as possible for you to choose from; **the more candidates you have to choose from, the higher your chances to find someone who will suit you** in terms of experience and personality;
- [hold job interviews personally](#): once you have selected a short list of candidates on paper, **take the time to meet them personally; it is important to check whether the personality and attitude of the potential staff member will suit your personal needs** and character; it is important also to let them know what you expect from them in terms of work (non-exhaustive job description), in terms of availability and in terms of attitude;
- [provide in the beginning for a 12-month only contract](#): although you are free to request Parliament's administration to establish from the beginning a contract for your staff covering your full term of office, it might be wise to provide for a 12-month only contract in the beginning; once the contract has been signed for a certain period, **you need to invoke substantial reasons, supported by evidence, to put an end to the contract before the end of that period**; in fact, according to settled case law, you need proper grounds for dismissing an APA; therefore, consider providing for a short contract at the beginning where you will be able to check whether this person is, in practice, right for you.

Prevention continues with good management of your team throughout your mandate

You have been elected for your political skills and expertise in specific policy areas. However, **you will also have to develop team management skills**. If necessary, consider attending the specific in-house training on "Management skills for Members of the European Parliament" which could prove extremely useful for you. Since you are also entitled to a training budget, you could also enrol in an external training.

You will find below some hints on how to properly manage your office. Think about them throughout your mandate:

- [always use a decent and civilised language](#) to speak with your staff; while the level of familiarity used might depend on nationalities and even political affiliation, always aim for a language acceptable to all and do not assume that vulgar or sexist language is acceptable; in doubt, remain conservative in the language used; **mutual respect is always appropriate irrespective of your nationality and political affiliation**;
- [do not use rude language or insults](#) towards your staff, do not shout at your staff: it is never acceptable;
- [avoid comments on your staff's physical appearance](#), whether positive or negative: it might not be well interpreted or perceived;
- [avoid negative comments, cynicism and sarcasm](#) on your staff's intellectual capacities: it will not be well perceived and even if it makes you feel good on the spot, you will lose in the medium and long term;
- [inform your staff](#) from the outset and regularly about how you want the work to be organised in your office, what your working methods are and the values to want to be respected; this could be done in a team meeting and individually with each staff member;
- [have a clear vision of how work is shared among the staff](#) and, if possible, a competence list for each staff member; while you are free to distribute the tasks among your staff as you prefer, do not take away high-profile duties from a staff member in a way that might be perceived as an unjustified downgrading; keep the communication rolling and explain why you are changing the task attribution;
- your parliamentary staff is here to support you in your parliamentary work: [do not give your parliamentary staff duties lying outside the scope of your mandate](#);
- [be clear, concise and specific when requesting work](#) from your staff; allow for - and even stimulate - questions to be asked; check in a non-patronising way whether the request has been understood;
- think about whether your orders given to one staff member might be perceived as contradictory to any others given before and explain possible links between the tasks;
- [do not give contradictory orders](#) to several staff members to put them in competition with one another;
- [give feedback regularly](#) to each staff member individually and in private; if it is negative, do not give it in front of the others to shame the person; allow for questions to be asked; avoid criticism in public;
- [be careful with the workload of your staff](#): as a Member of Parliament, you will have a lot of work; do not put an excessive workload on your staff, respect meal breaks and do not require excessively long working hours on a regular basis; systematically requesting availability 24/7 is not admissible; contacting your staff after their working hours should remain exceptional;
- [have clear guidelines about taking holidays](#), be fair with each staff member and do not refuse leave without a proper justification;

- [respect your staff's private life](#): how your staff spends their evenings, weekends and holidays or what they write on social networks is not your business, as long as it does not affect your work and reputation; consider preventively establishing guidelines for your office about what is appropriate and not to share on their private social media accounts about work-related matters;
- [respect your staff's medical appointments and sick leave](#) by not requesting them work-related questions during these periods; if you suspect a staff member's sick leave is not medically justified, you can ask the Medical Leave Service (MLS) to check³ ; if the MLS doctor confirms the sick leave is justified, it is not acceptable to question it further;
- [be open to discuss existing problems](#) with your staff and to suggest concrete solutions to conflicts; it is not a waste of your time, it is an investment in getting your work well-done;
- [if a staff member lets you know that he or she is perceiving your behaviour as offensive, take it seriously](#) and attempt to resolve the problem; communicate actively with the staff member concerned and make him or her understand that you take the problem seriously; propose concrete suggestions for a solution and monitor how the situation evolves over time;
- [intervene immediately if you identify any inappropriate behaviour among your staff](#) (sexist jokes, vulgar acts, insults, gestures, etc.). You are ultimately responsible for ensuring each staff member behaves well towards the others; make an effort to be alert to the existing atmosphere in your office, **do not try to run away from your responsibilities by ignoring a situation.**

If you feel the working atmosphere is tense or you are accused of harassment, ask for help

You are not alone if you feel the working atmosphere in your office is deteriorating and you want to do something to improve this situation. Often conflict relationships and the feeling of being harassed lead to psychological suffering and even physical symptoms. You can always **turn to the Medical Service**⁴ which has doctors, nurses, psychologists and social workers experienced in professional-related illnesses and loss of well-being for advice.

If you are confronted with rumours or accusations of inappropriate behaviour and harassment from your staff and you feel unable to resolve the problem alone, **you may seek help from one of the members of the Advisory Committee dealing with harassment complaints between APAs and Members** of the European Parliament and its prevention at the workplace⁵.

3 Please contact the Medical Leave Service : absencesmedicales@europarl.europa.eu

4 Please contact the Brussels Medical Service: bmedical@europarl.europa.eu

5 Please see the contact on the last page.

But what exactly is harassment?

The legal definition of harassment is very precise. There are two types of harassment: psychological harassment and sexual harassment.

What is psychological harassment?

« Psychological harassment means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person » - Staff regulations, article 12a / article 3 of the Bureau decision of 14 April 2014.

Psychological harassment always involves persistent and repetitive actions and has serious impact on the victim in terms of physical and mental health.

Psychological harassment can take various forms ([non-exhaustive list](#)):

- offensive or degrading comments, particularly in public, bullying, antagonism, pressure, offensive behaviour, even refusal to communicate;
- insults relating to your staff's personal or professional competence;
- abusing or threatening remarks, both oral and written;
- belittling your staff's contributions and achievements;
- isolating, setting apart, excluding, rejecting, ignoring, disparaging or humiliating a staff member;
- impairing your staff's social relations;
- stalking;
- not allocating tasks corresponding to the job description.

What is sexual harassment?

« Sexual harassment means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender » - Staff regulations, Article 12a / article 3 of the Bureau decision of 14 April 2014.

The following behaviour may constitute sexual harassment (non-exhaustive list):

- promises of some kind of reward (favourable career moves, etc.) in return for sexual favours, or threats of reprisals if such requests are turned down;
- repetition of coarse or suggestive remarks, or sexual innuendo; use of crude or obscene language and gestures;
- repeated and exaggerated compliments on the appearance of a staff member;

- physical contact, rubbing against someone, pinching, deliberate unwanted kisses;
- acts of voyeurism or exhibitionism;
- use of pornographic material.

Only unwelcome conduct is considered sexual harassment. Consensual dating is not considered harassment if not unwelcome or offensive. **Consent has to be expressed in a free-willing manner and cannot be forced** by using your influence or power.

Beware of the following warning signs: there may be harassment in your office when...

- there is an increased absenteeism;
- there is a noticeable decline in productivity;
- there is a decline in the communication between the staff member and you;
- one or several staff members express concern about the working conditions;
- there is an increase in petty criticism or blaming at meetings or social events;
- there is increased or systematic absence from social events (coffee breaks or informal gatherings).

Having recourse to your managerial rights and duties does not generally constitute harassment

Managerial rights and duties, such as the ones listed below, are not, as such, acts of harassment:

- allocating work and requiring performance to job standards;
- following up on work absences;
- taking disciplinary measures;
- a commanding style which is not necessarily motivated by an intention to destabilise anyone and does not target one person in particular.

However, these actions might appear to qualify as harassment if they are repetitive or systematic and carried out in a manner that is offensive, humiliating or embarrassing rather than in a constructive and sensitive manner.

To determine whether the conduct is offensive, you could ask yourself “Would a reasonable person placed in this situation have perceived the conduct as offensive?” or alternatively “Would I accept similar treatment from a direct supervisor”?

Distinction between harassment and conflict

A conflict usually takes place at just one point in time. It is a disagreement between two persons where neither moves from their position. Each party tries to defend their position and expresses their views.

In cases of harassment, there is often a relationship of subordination and power. This is typically the case in a Member/APA relationship. The victim usually has no

way to defend him- or herself and often remains isolated and quiet. Harassment may last for months and, in general, only gets worse.

Distinction between harassment and inappropriate behaviour

Isolated incidents and occasional inappropriate behaviour do not, strictly speaking, constitute harassment, because in a harassment pattern, there is a prolongation of this type of behaviour over time. **All inappropriate behaviour must nevertheless be avoided.**

The formal harassment procedure in Parliament

The Bureau decided to establish an **Advisory Committee dealing with harassment complaints between APAs and Members** and its prevention at the workplace on 14 April 2014⁶. According to this decision, the main tasks of the Committee are twofold:

- play a role in the prevention of harassment of APAs by Members, and
- act as a consultative body for the President of Parliament in enquiring and issuing a recommendation on formal harassment complaints from APAs against Members of Parliament⁷.

The **formal internal harassment procedure** provided for in this Bureau decision starts with a **formal complaint of psychological or sexual harassment** by an APA against a Member. The Committee hears the APA who considers that he or she is a victim of harassment and, if there is enough evidence, opens an investigation. The Committee may then invite the Member concerned for a hearing and may hear any relevant witnesses. **Both parties are invited to submit any relevant evidence supporting their case and the Committee may request all necessary evidence to Parliament's administration.**

Once the investigation is concluded, the Committee issues a recommendation with its findings to the President, who makes the final decision on the case. If the President believes harassment to be established, he or she may impose a penalty on the Member concerned under Rule 166 of the Rules of Procedure, after having heard the Member. The Member may appeal against this decision to the Bureau.

The Committee works with full autonomy, independence and confidentiality and its deliberations are secret. This procedure is of an administrative nature and is subject to judicial review.

6 Bureau Decision of 14 April 2014 on the Internal Rules on Harassment and its Prevention at the Workplace and on Harassment Complaints involving Accredited Parliamentary Assistants and Members of the European Parliament - link: <https://epintranet.in.ep.europa.eu/home/parliamentary-life/political-groups-bodies/bureau/compendium-of-rules.html>

7 For harassment complaints against a member of staff, the Advisory Committee on Harassment and its Prevention at the Workplace for Staff competent.

Therefore if a formal harassment complaint is lodged against you and the Committee believes there is enough evidence to investigate the case, you will probably be contacted to submit evidence and to be heard by the Committee. **You should take this procedure seriously, as the consequences of having harassment deemed established by the President can be severe: the lightest sanction imposed by the President, under Rule 166, is already a public reprimand in Plenary, announcing to the world that you have been harassing your staff. Needless to say, this can have serious consequences on your political career, as journalists and political opponents will certainly use this against you**

If you have any doubts on the procedure, you can contact any member of the Committee or its secretariat

The current members of the Committee are:

- Ms Elisabeth MORIN-CHARTIER, Chair, Quaestor,
- Mr Vladimír MAŇKA, Quaestor,
- Ms Catherine BEARDER, Quaestor,
- Mr Olivier PLUMANDON, APA Committee representative,
- Mr Poul RUNGE NIELSEN, as representative of Parliament's administration, Chair of the Advisory Committee on Harassment and its Prevention at the Workplace for staff.

You can contact the secretariat at harassmentAPAs@europarl.europa.eu

Policy - Harassment and bullying

1. The Faculty of Advocates' policy on bullying and harassment

- (1) The Faculty is committed to ensuring that all of its Members and staff are treated with dignity and respect and treat others in the same way. We believe that every Member of Faculty and every member of staff has the right to work in an environment which is free from any form of harassment and/or bullying. This policy therefore covers harassment and bullying that occurs:
 - (1) in the workplace; and
 - (2) outside the workplace in a work-related context, such as on business trips, client/ solicitor / supplier events or work-related social events.
- (2) This policy applies to all practising Members of Faculty
- (3) All Members of Faculty are required to read this policy and to ensure that they understand what types of behaviour are unacceptable. If you have any queries, please refer to the Dean's Secretariat.
- (4) All complaints of harassment and / or bullying will be treated seriously, promptly and sympathetically. Any Member of Faculty who feels they have been subject to harassment and/or bullying should not hesitate to use this procedure nor fear victimization for doing so. Retaliation

against a person who brings a complaint of harassment and/or bullying is itself a serious disciplinary offence. Since malicious complaints of harassment and/or bullying can have a serious and detrimental effect upon a colleague and the workplace generally, any unwarranted allegation of harassment and/or bullying made in bad faith by a Member of Faculty may be dealt with via the Faculty's Disciplinary Rules.

2. **Definition of Harassment**

- (1) Harassment may take a number of forms (including bullying), can occur on a variety of different grounds and can be directed at one person or a number of people. Harassment need not be directed at the complainant and can occur if the complainant witnesses another person being harassed.
- (2) Harassment involves subjecting an individual to conduct which is unwanted and where the conduct has the purpose or effect of:
 - (1) violating the victim's dignity; or
 - (2) creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim
- (3) Harassment also occurs where the perpetrator engages in unwanted conduct of a sexual nature and that conduct has the purpose or the effect referred to above. An individual of any gender may be the victim of sexual harassment.
- (4) A person will also commit harassment if they (or anyone else) engage in unwanted conduct (of a sexual nature or otherwise) that has the purpose or the effect referred to above and the victim either rejects or submits to it and, because of that rejection or submission, that person treats the victim less favourably.
- (5) Conduct usually becomes harassment if it continues even though it has been made clear that it is regarded by the recipient as offensive or unwanted. A single incident may, however, amount to harassment if it is sufficiently serious.
- (6) The unwanted nature of the conduct distinguishes harassment from friendly behaviour that is welcome and mutual. Members must always consider whether their words or conduct may be considered offensive.
- (7) Harassment can occur whether or not it is intended to be offensive, as it is the effect on the victim which is important, not whether or not the perpetrator intended to harass them. Harassment or bullying is unacceptable even if it is unintentional. Harassment of a person includes causing the person alarm or distress, and occurs in circumstances where it would appear to a reasonable person that the conduct would amount to harassment of that person.
- (8) Harassment may relate (without limitation) to:
 - (1) age;
 - (2) disability (past or present);
 - (3) gender reassignment;

- (4) race, colour, nationality, ethnic or national origins;
 - (5) religion or belief;
 - (6) sexual orientation
 - (7) trade union membership (or non-membership)
 - (8) part time or fixed term status
 - (9) power or hierarchy
 - (10) willingness to challenge harassment (leading to victimisation).
- (9) The phrase 'relate to' is wide, and covers inter alia:
- (1) harassment based on a perception of another person - for example that the person is gay, or is disabled, whether or not this perception is correct - and even if the perpetrator knows that their perception is, in fact, wrong; and
 - (2) harassment that occurs because someone is associated with another person - for example, someone who is harassed because they care for a disabled person, or who is harassed because they are friends with a transsexual person, or a white worker who sees a black colleague being subjected to racially abusive language which also causes an offensive environment for her.
- (10) Whilst not an exhaustive list, forms of harassment can include:
- (1) physical contact;
 - (2) 'jokes' and 'banter';
 - (3) offensive language, shouting or behaving in an intimidating manner;
 - (4) gossip;
 - (5) slander;
 - (6) offensive, insensitive or sectarian songs or messages (including email);
 - (7) displaying posters or pictures, graffiti, emblems, flags;
 - (8) obscene or offensive gestures;
 - (9) offensive email and screen savers etc;
 - (10) isolation or non co-operation and exclusion;
 - (11) coercion for sexual favours or sexually suggestive remarks;
 - (12) pressure to participate in political/religious groups;
 - (13) intrusion by pestering, spying and stalking;
 - (14) continued requests for social activities after it has been made clear that such suggestions are not welcome; and
 - (15) verbal, non-verbal or physical conduct of a sexual nature.

3. **Definition of Bullying**

- (1) Bullying may be described as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Bullying may be physical, verbal or non- verbal conduct.
- (2) Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the 'grey' areas that cause most problems. Within the Faculty of Advocates, unacceptable behaviour includes (without limitation):
 - (1) spreading malicious rumours, or insulting someone (particularly because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation);
 - (2) ridiculing or demeaning someone, picking on them or setting them up to fail;
 - (3) deliberately excluding a person from communications or meetings without good reason;
 - (4) unfair treatment;
 - (5) overbearing or intimidating supervision or other misuse of power or position;
 - (6) making threats or comments about job security without foundation;
 - (7) deliberately undermining a competent worker by overloading and constant criticism; and
 - (8) preventing individuals progressing by intentionally blocking promotion or training opportunities.
- (3) Legitimate, reasonable and constructive criticism of a person's performance or behaviour, or reasonable instructions given to a person in the course of their work will not, of itself, normally amount to bullying.

4. **Informal procedure**

- (1) If an incident happens which you think may be harassment or bullying, you may prefer initially to try to resolve the problem informally, if you feel able to do so. In some cases it may be possible and sufficient to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends you or makes you uncomfortable and that it interferes with your work. You should make it clear that you want the behaviour to stop.
- (2) In circumstances where this is too difficult or embarrassing for you to do on your own, you may wish to consider seeking support from a colleague or from a Faculty Office Bearer.
- (3) If you are in any doubt as to whether an incident or series of incidents which have occurred constitute harassment and/or bullying, then in the first instance you should approach the Clerk of Faculty or a member of the Faculty's Equality and Diversity Committee on an informal and confidential basis.

- (4) If the incident concerns another Member of Faculty and is not amenable to informal resolution it should be raised through the formal process described at paragraph 5 below.
- (5) If the incident concerns someone who is not a Member of Faculty (such as a member of the judiciary, a solicitor, a client or other third party), you may wish to ask an Office Bearer to intervene for you on an informal basis. In such a situation, the Faculty will seek to provide such further assistance and support as may be considered appropriate in the circumstances.

5. Formal procedure

- (1) If the incident concerns another Member of Faculty and (a) informal methods of resolution have either failed or are not appropriate; or (b) serious harassment and/or bullying has occurred, you are advised to complain formally in writing to any Faculty Office Bearer. Your written complaint should set out full details of the conduct in question, including the name of the perpetrator, the nature of the harassment or bullying, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken to attempt to stop it occurring.
- (2) Once a formal complaint of bullying or harassment has been made against a Member of Faculty, the Faculty must refer the matter to the Scottish Legal Complaints Commission (“SLCC”) in terms of section 33 of the Legal Profession and Legal Aid (Scotland) Act, 2007 (“the 2007 Act”). If the SLCC determines (under section 6 of the 2007 Act) that the complaint is a “conduct complaint” and remits the complaint to the Faculty, the complaint will thereafter be dealt with by the Faculty in terms of the Faculty’s Disciplinary Rules.

ROYAL COURT: Preventing sexual harassment and abuses of power

An offering, a provocation, a hope for CULTURE CHANGE.

A code of behaviour

The following code was created in response to the events at the Royal Court Theatre Day of Action on Saturday 28th October 2017.

Responsibility

Reporting

Raising Awareness

Breadth & Scope

Responsibility

- You must take responsibility for the power you have. Do not use it abusively over others more vulnerable than you.
- Call it out, straight away, even if it is awkward to do so. Don't feel shame. Use this language: "That is not appropriate - it makes me feel uncomfortable". Empower yourself and others. Stand up for yourself.
- No one is alone. Everyone has responsibility to stand up for each other, to call behaviour out and to report it. Do not be a bystander.
- Every organisation signs up to leading and active sexual harassment policy. Make it a living policy. It should be based around workshops and scenarios to clarify the so-called grey areas. (See the Royal Court Theatre policy.)
- Once harassment and abuse is proven, it must not be hidden. Board and organisations cannot conceal it as a reason for dismissal. Challenge confidentiality - why is it needed and who is protecting.

Reporting

- Freelancers must be empowered to use the same reporting structures as staff. Also use ITC, UKT, SOLT, Equity, BECTU, Stage Directors UK, Federation of Drama Schools, Art Council England and other industry bodies.
- Have an open clear reporting structure. There should be three possible structures to report to across an organisation. As well as line managers and senior management, use peers and trusted colleagues - everyone in the organisation is responsible.
- Talk to colleagues in other theatres or companies to support your process if you need to.
- Logging behaviour is important, even if no further action is wished for. This way patterns are picked up.
- We understand these reporting structures are not available to everyone and we will work with the industry to create clear places to report and get advice going forwards.
- The industry must develop a model for dealing with historic cases.
- (See the Royal Court Theatre policy for a reporting model).

Raising awareness

- Induct all staff, freelancers, casting directors, actors, stage managers, writers, crew on their first day of work on the policy and code of behaviour. They should sign that this has happened.
- Run annual workshops with staff led by trained facilitators. Use scenarios and language.
- Consult with freelancers. (The Royal Court Theatre will be holding a freelancers session in January 2018). Encourage them to use theatre buildings for their one-to-one meetings.
- Recognise the blurred boundaries between work and social spaces. Don't exploit them.

- Interrogate the stories and representations we put on stage. We are in the business of representing the world. Take responsibility. Make it equal.
- Engage in a robust conversation between drama schools and industry - to tool up students - acting, stage management, technical directing, writing, producing - to be confident, empowered and appropriate. (Since Saturday the Royal Court Theatre is in positive dialogue with Mountview and the Federation of Drama Schools in advance of their next meeting).

Breadth and Scope

- Theatre is an art form - the work can and should be challenging, experimental, exploratory and bold. Artistic form of expression is essential but the creative space must be a safe place.
- The theatre industry is broad: it involves an intimate, rigorously personal system of drama training, it involves office, work, auditions, rehearsals, crewing, late night working, bars, parties and public-facing frontline work, ambitious young people.
- The industry includes commercial producers and theatres, non-for-profit publicly funded, touring and fringe companies, presenting venues, festivals - all have different contexts and resources.
- A policy needs to speak to this scope of practice, and recognise particular areas of risk.
- Drama students, freelancers, early career artists, actors at all stages of their career, ushers and bar staff, and core junior staff are all vulnerable to abuses of power.
- Recognise that abuses of power can happen across diverse gender and working relationships.
- Take responsibility and empower across the scope. Write a policy that fits.

Patterns and Scenarios

- Of our 150 stories, 126 related directly to experiences in our industry.
- 21.3% were incidents which happened in rehearsals or backstage.
- 16% were sustained inappropriate sexual comments over a period of time during production or in a workplace.
- 14% happened at drama schools between tutors and students.
- 13.3% happened at work parties - press nights, birthdays, end of the run, Christmas, in the pub or at dinner, with alcohol. In the Town Hall meetings this blurred social context came up so many times.
- 10% happened in interviews or auditions for jobs.
- 9.3% happened when invited or taken into an abuser's home.
- 7.3% happened in an office context.
- (The remaining 8.6% were "other" - witnessed, online, conference)
- That 51.3% of the stories submitted took place in rehearsals, backstage, in drama schools, or involved sustained verbal abuse suggests significant changes needs to happen in institutional culture.

- There were 11 accounts of rape.
- Some suggested code of behaviour to avoid these patterns and protect the areas of risk (this is only a beginning):
- It is never appropriate for someone in a junior role to be asked by someone in a senior role to work outside hours in their private home.
- It is never appropriate to verbally sexually objectify anyone's body in a rehearsal room or theatre.
- It is never appropriate for an actor to be made to feel vulnerable through nudity, undress or costuming.
- It is never appropriate to send overly personal or suggestive communications to a junior colleague.
- It is never appropriate to initiate unwanted intimate physical contact.
- It is never appropriate to push people to share their personal experiences to deepen the work. If it is offered, it has to remain within the trust of the working room.

Annex D: Definitions

Bullying and Harassment

There are many definitions of bullying and harassment and both terms are often used interchangeably. The definition for harassment set out below reflects that which is contained in the general definition at Section 26 of the Equality Act 2010. The definition for bullying set out below is that which is based on the classification provided by ACAS.

Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The unwanted conduct relates to a relevant protected characteristic: age, sex, race, disability, religion or belief, sexual orientation or gender reassignment.

The unwanted conduct may be persistent or an isolated incident. It is the recipient's perception which is relevant in deciding whether the conduct shall be regarded as having the required effect.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation. Like harassment, bullying can take the form of physical, verbal and non-verbal conduct.

Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

Complainant and Alleged Perpetrator

Everyday language, legal language and the language of counselling or recovery differ in their use of preferred terms for people who report or are accused of misconduct. The commonly understood terms "complainant" and "alleged perpetrator" are used preferentially in this report, in the interests of continuity. The term "complainant" does not imply that the person reporting into or making use of the Scheme will request an investigation.

Independent Sexual Violence Advisers (ISVAs)

ISVAs are specially trained workers who are able to provide specialist advocacy services. An ISVA's main role is to provide practical and emotional support and information to people who have reported or are considering reporting sexual harassment or assault.

Parliamentary Community

The parliamentary community includes staff employed by or working for the House of Commons, Parliamentary Digital Service and the House of Lords, MPs, interns and other paid or unpaid staff, holders of parliamentary security passes including those employed by external organisations, Peers and Peers' staff.

Reporting, or making a complaint

Not all reports of harassment or bullying are made with the intention, or outcome, of action being taken against the alleged perpetrator. Sometimes the intention is simply to provide information for monitoring purposes. In such cases it is more accurate to use the term “report” rather than “complaint”—which tends to imply that formal or informal redress for the victim is being sought.

Sexual Harassment

The term harassment is used in this document to describe the very wide range of behaviours that are proscribed in civil law by section 26 of the Equality Act 2010. Harassment of a sexual nature as defined in subsections (2) and (3) of that section is one of the most common forms of harassment. A simple, non-exhaustive summary that covers the majority of what is meant by the term is: unwanted behaviour that is sexual in nature or that draws attention to sex in an unwanted way. The law around sexual harassment is grounded in a rights framework: sexual harassment offends the universal right to work in a dignified, safe environment and not to be subject to discrimination.

Additionally, some forms of sexual harassment are also offences in criminal law (e.g. sexual assault, rape, image-based sexual abuse offences as well as certain harassment offences).

In practice, proportionately, cases of sexual harassment are very rarely taken to Tribunal or to court (whether or not also a criminal offence) despite victim impact that can be considerable. Research also suggests that most cases are not reported to official channels. Fears of malicious reporting are not matched by evidence. Reluctance to report can contribute to a culture of impunity and a culture where people may not understand that their behaviour is unacceptable. Victims may prefer disciplinary resolution to routes that engage with the criminal justice system and they may prefer informal resolution to formal resolution. A good policy and procedure will support victims' rights while promoting an improved culture for all.

National Assembly for Wales: Standards of Conduct Committee
Creating the right culture: Inquiry into the Review of the
Code of Conduct for Assembly Members

SoC(5) RCC01

Evidence from Chwarae Teg

Introduction

We welcome the Committee's inquiry into this important issue. We are concerned that there remains a culture in which people, particularly women, are uncomfortable coming forward with complaints. While the terms of reference for this inquiry are far reaching, we wanted to focus our submission on this area in particular, and set out the key themes we think should be considered as part of any likely changes to the Code of Conduct.

1. Clarity of process

- 1.1. The Code of Conduct for Assembly Members and the Procedure for Dealing with Complaints about Assembly Members are rightly comprehensive documents. However, we are concerned that many people, even those regularly in contact with AMs and the National Assembly, are unaware of the process for lodging a complaint.
- 1.2. While the Code outlines the principles of public life, there is a lack of clarity as to the types of behaviour that would be deemed to fall short of this. For example, the Code does not explicitly outline that behaviour deemed as sexually inappropriate or intimidating would fall within the remit of the Standards Commissioner to investigate.
- 1.3. The current document is largely focused on outlining expectations related to registered interests. This risks overshadowing the role of the Code in setting out expected behaviour. The proposed respect and dignity policy may help to address this.

2. Anonymity

- 2.1. The Code as written does not set out whether complainants can maintain their anonymity during the course of investigations. In Wales and elsewhere we have seen instances where complainants' details are shared with those they have complained about and wider audiences, which has resulted in public attacks and intimidating behaviour, often on social media.
- 2.2. There is a risk that fear of abuse, and hostile and potentially intimidating behaviour due to a lack of anonymity could further discourage individuals, particularly women, from coming forward with valid complaints.
- 2.3. Any revisions to the Code of Conduct and complaints procedure should consider the issue of anonymity to ensure women are able to come forward with valid complaints.

3. Social media

- 3.1. Social media is increasingly an arena for abuse, and hostile and potentially intimidating behaviour. Chwarae Teg as an organisation, and our staff have experienced this, often from anonymous online accounts in response to our advocacy work.
- 3.2. The extent and impact of online abuse experienced by women has been the focus of numerous reports and campaigns recently including work by the Fawcett Society, Amnesty International and Reclaim the Internet.¹
- 3.3. We are concerned that fear of targeted, sustained aggression and harassment on social media might discourage women from coming forward. We would urge the Committee to consider whether the Code as written, is clear enough on expectations of conduct on social media by AMs and whether this behaviour would be taken into account in any investigation.

4. Patterns of behaviour

- 4.1. A further area we wish to highlight is whether there is, or should be, a process for those who regularly demonstrate behaviour that is directly in breach of the Code or not in the spirit of either the Code or the new dignity and respect policy. There may be instances where a single incident does not meet the current requirements for sanction, but when viewed with other instances, indicates a pattern of behaviour that is in breach of the standards we expect from elected representatives.
- 4.2. We would suggest that consideration be given to the sanctions process for an individual who may have had multiple complaints made over time, which individually might not call for more severe sanction but when viewed together, demonstrate consistent failure to conduct themselves in a manner expected under the Code.
- 4.3. The Code currently states that complaints must be made within 12 months of the incident complained about. We would question whether consideration should be given to instances when a complaint might spark further complaints from others who have experienced similar behaviour from the individual complained about. As written, it is unclear whether older complaints might be considered as part of the investigation process.

5. Role of political parties

- 5.1. We think there remains uncertainty as to when complaints should be raised with the Standards Commissioner and when they should be raised with political parties directly. We would suggest that consideration be given to improving this clarity.
- 5.2. Furthermore, we think consideration should be given to how the Standards Commissioner can engage with political

¹ <https://www.fawcettsociety.org.uk/news/twitter-failing-women-experiencing-online-threats-harassment> Accessed 30.01.2018 / <https://www.amnesty.org.uk/press-releases/more-quarter-uk-women-experiencing-online-abuse-and-harassment-receive-threats> Accessed 30.01.2018 / <http://www.reclaimtheinternet.com/> Accessed 03.01.2018

parties. It might be considered whether there could be scope for the Commissioner to refer more serious cases to political parties, as well as applying the appropriate sanctions available to them. For example, where the Committee concludes that an individual has brought the Assembly into disrepute, it may be appropriate to refer the case to political parties as well.

Conclusion

We believe that it is vital that individuals, particularly women, are able to come forward with valid complaints about the behaviour of AMs. This inquiry provides an opportunity to bring greater clarity as to the behaviour that would fall short of the expectations placed on AMs and the process that those making complaints should follow.

The current culture does not adequately support women to bring complaints. A key challenge is to ensure that women are able to bring complaints without fear of targeted, sustained aggression and harassment, especially on social media. This shift cannot be brought about solely by changing the Code of Conduct, but as part of a wider piece of work we are confident that we can bring about the change required.

National Assembly for Wales: Standards of Conduct Committee
Creating the right culture: Inquiry into the Review of the
Code of Conduct for Assembly Members

SoC(5) RCC02

Evidence from Welsh Women's Aid

As the umbrella organisation for violence against women, domestic abuse and sexual violence services in Wales, our response is based on consultation internally and with our membership of specialist services and reflects experiences across all regions. Additionally, we consult with survivors of abuse through Welsh Women's Aid's SEEdS project (Survivors Empowering and Educating Services).

Welsh Women's Aid's response relates predominantly to matters of processes and complaints around all forms of violence against women, domestic abuse and sexual violence, including sexual harassment and intimidation at work. We would like to stress that sexual harassment is a form of violence against women and should be treated with the utmost seriousness. The Welsh Government National Strategy 2016-2021¹ defines violence against women and girls in accordance with the UN Declaration definition of violence against women² :

- **All acts of gender-based violence** that result in, or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.
- This encompasses, but is not limited to:
 - (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
 - (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, **sexual harassment and intimidation at work**, in educational institutions and elsewhere, trafficking in women and forced prostitution;
 - (c) Physical, sexual and psychological violence

¹ Welsh Government, 'National Strategy on Violence against Women, Domestic Abuse and Sexual Violence - 2016-2021', Welsh Government, 2016.

² <http://www.un.org/documents/ga/res/48/a48r104.htm>.

perpetrated or condoned by the State, wherever it occurs.

Question 1: .Would you feel comfortable making a complaint about an Assembly Member or somebody who works on the Assembly estate? If not, why?

1.1 When Welsh Women's Aid asked members and survivors whether they felt comfortable making a complaint about an Assembly Member (AM) or somebody who works on the Assembly estate, responses were varied. While some respondents said that they would feel comfortable (although they did not have much contact with AMs), others said they would not. For example:

"No. They didn't investigate the recent complaints made [regarding the late Carl Sargeant] so I wouldn't have confidence that they would take complaints seriously."
specialist service

1.2 The third sector in Wales place significant importance on effective engagement with, and cross-party support from, local and regional Assembly Members. This can be in the form of raising issues in relation to violence against women, domestic abuse and sexual violence as constituents, as advocates for survivors of abuse, or by holding the Welsh Government to account on strategy or legislative delivery. However, many of these organisations are also funded, in part, by the Welsh Government either directly or indirectly. Therefore, concerns have been raised with us about the deliberate or unintended consequences of challenging people in power or close to those in power. It is possible that an individual may feel that by making a formal complaint, they could be harming the position of their organisation and the survivors who they work with every day to protect.

1.3 Victim blaming is another factor to consider. Even if anonymity is protected, a chance of a real or perceived backlash against survivors of abuse may dissuade people from wanting to report any complaints about an Assembly Member or someone who works on the Assembly estate. While names are kept confidential, consequences are not and media coverage of AMs can lead to media sources and the wider public criticising individual complainants despite not having access to the facts of the matter. This was unfortunately the case for women associated with the recent complaints regarding the late Carl Sargeant, and although they remained anonymous, there was evidence of victim blaming in the public domain which might deter women from pursuing complaints or from coming forward in future. It is of course also possible that leaked information could lead to direct online and media attention, including

online harassment, trolling and inflicting physical and psychological harm to those disclosing any complaints.

1.4 It is also worth noting that Assembly employees working closely with an AM, who themselves may have aspirations to build their own political careers, may have concerns that making a complaint could close doors in relation to their future career prospects. The recent scandal of sexual harassment and sexual violence in Westminster shines a light on this often hidden issue. For example, one Labour activist who has waived her right to anonymity has spoken out about how she was raped at a Party event in 2011 by a more senior Party member and was discouraged by an official from reporting the crime because it could damage her career.³ There are countless other examples of sexual harassment allegations being made against powerful politicians going unreported until recently, and certainly more that will remain hidden.

1.5 The Assembly is constantly under scrutiny and operates in the public eye. Any media coverage around alleged complaints and subsequent action or inaction has a direct bearing on public perception of how complaints are taken forward and the consequences of both making a complaint and being held to account for breaching a code of conduct. If there are proceedings and consequences are perceived as inadequate, it damages public trust in the process and ultimately damages the reputation of the institution.

Question 2: Would you know how to make a complaint about an Assembly Member or somebody who works on the Assembly estate?

2.1 No, the process appears confused. There seem to be many different and conflicting advice with regards to how to make a complaint about an Assembly Member or other member of Assembly staff. One respondent noted "Not exactly, although I have looked on the website and it looks very long winded". For example, there appears to be at least four different ways of making a complaint against an AM and it is unclear which to use for different scenarios:

1. Complaints about all AMs to the Commissioner for Standards;
2. Complaints about AMs directly to Welsh Government if they were working on behalf of Welsh Government at the time;
3. Making a complaint to the party of AMs (this is obviously not available for those who are independent);
4. Complaint advice via the DignityandRespect@assembly.wales

³ R. Mason, et al. 'Labour activist says she was raped at party event and told not to report it', *The Guardian*, 1 November 2017, <https://www.theguardian.com/world/2017/oct/31/labour-activist-says-she-was-raped-at-party-event-and-told-not-to-report-it>, (accessed 26 January 2018).

email address, as stated in the Dignity and Respect statement on the National Assembly for Wales' website.

2.2 The process is in need of simplification to make it as easy as possible to make a complaint, so that all those who would like to do so feel confident in the process, such as a 'one portal' system for complaints.

2.4 While Welsh Women's Aid commends the provision of a confidential helpline for advice is available to internal Assembly staff, in addition to the counselling helpline available for those who are not ready to make complaints, a high standard of this service needs to be met. In practice, the National Assembly for Wales needs to ensure that those who work on the helpline understand sexual harassment - in the wider context of VAWDASV - and signpost survivors to appropriate specialist VAWDASV services and ensure that those operating the helpline have received effective training in this area.

2.5 It is unfortunate that these service or similar services are not available to those who don't work for the Assembly in some capacity. We would also recommend that the Welsh Government funded Wales Live Fear Free helpline is also promoted so that if anyone were seeking to make a complaint in relation to sexual harassment and any other forms of violence against women, domestic abuse or sexual violence, they can access independent, confidential support through the 24 hour service in Wales.

Recommendation:

- **Ensure that those who currently work on the existing helpline and counselling services for the National Assembly for Wales' staff have a nuanced understanding of sexual harassment as a form of violence against women and where appropriate, signpost survivors to specialist VAWDASV services.**
- **Individuals should be signposted to the Wales Live Fear Free helpline when their complaint relates to any form of violence against women, domestic abuse or sexual violence - including sexual harassment.**

Question 3: Do you feel there are any barriers to you raising concerns about the inappropriate behaviour of an Assembly Member or somebody who works on the Assembly estate?

3.1 One of our members said:

"This consultation suggests that others may have encountered barriers and this review is therefore timely and appropriate in order to identify whether the system

can be improved. I would want to be able to approach someone to help word the complaint so it complies with the guidelines."

3.2 We feel there are a number of barriers to people raising concerns about the inappropriate behaviour of AMs or someone who works on the Assembly estate, some of which are common in high profile and high power workplaces, and others that are exacerbated by the current processes. One respondent to our survey highlighted the "lack of investigation into the previous complaints made" as a concern and a barrier to making future complaints or confidence in the system.

3.3 As previously highlighted, another barrier to making a complaint may be the feeling that there may be political consequences for an individual, organisation or sector due to the power of the person who the complaint is about. This could take many forms:

1. prominent issues related to the work of the complainant such as VAWDASV could disappear from the political agenda of Welsh Government, backbencher or opposition AMs;
2. Employees of certain organisations may feel that a complaint could threaten their organisation's funding or that they could lose job security;
3. the survivor could feel that they would not be believed because of the power of the person involved.

3.4 In addition, a complainant may feel that there is a lack of clarity around the process used, which as previously stated "appears longwinded". There also appears to be a lack of specific information in relation to sexual harassment policies and violence against women related policies within the Assembly. While there is a helpline for internal employees, there is no such support for external people who may wish to make a complaint or receive support. More information in relation to AM's Code of Conduct would also make it clearer when a breach has occurred. There is currently a distinct lack of guidance laid out in relation to how AMs and Assembly staff are expected to behave both internally and externally.

3.5 Welsh Women's Aid does not believe that the one year limitation for making complaints is satisfactory. For matters relating to violence against women, survivors often need considerable time to process their negative experiences and until they feel safe and able to disclose them. Therefore, survivors may not choose to tell anyone of their experiences for some time, and often will disclose for the first time years after the abuse has occurred. We believe that AMs and others who work on the Assembly estate should be held to

account by the Assembly for their behaviour for the duration of their service.

3.6 Other issues are unique to the Assembly in that AMs are elected every five years and that currently all complaint proceedings are paused during the election process. While complaints may be re-started if the AM who is complained about is re-elected, for those who are not re-elected the Assembly currently lacks powers to pursue matters further. What makes the Assembly relatively unique is that the said AM may then be re-elected five years later. Welsh Women's Aid would like to see a flag of complaints that have been paused during an election, so that this is pursued if they are re-elected in future.

3.7 It also appears that while an AM has the right to appeal a decision, a complainant does not have the right to appeal if they disagree with the decision. The complainant currently has no ability to end proceedings or appeal a decision that finds that the code of conduct has been breached, but is deemed less serious than the complainant believes to be true. This does not seem proportionate or just and shows an imbalance of rights, for example, between an internal employee and an external complainant or indeed an internal complainant reporting an internal complaint.

3.8 Barriers in terms of equality and accessibility of the process for those with various protected characteristics and those who commonly face barriers to have their voices heard must be considered and addressed. For example, there need to be specific protections against people with protected characteristics outlined in the Equality Act 2010, around age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. In addition, provisions need to be made for those who have language or communication barriers or other additional needs, to ensure that guidance and the process of making a complaint is accessible to everyone, regardless of specific need.

Recommendation:

- **One year limit changed to at least the length of the Assembly and one year prior to re-election, if applicable. In addition, complaint procedures that were dropped due to an AM not being re-elected should stay on file so that if that AM is re-elected in the future, this remains on their record for a period of one year.**
- **Appropriate policies and procedures are in place and effectively implemented to ensure that there are no barriers to making a complaint for people with protected**

characteristics, and those with specific language needs etc.

Question 4: Do you have any suggestions regarding how the complaints procedure can be simplified?

4.1 The language of the documentation only presents an overview and not specific details. Some of our members also perceive the language of the document as unclear - it is full of confusing clauses and jargon, which presents a potential barrier to a complainant reading the document as it is hard to navigate quickly and effectively. The only mention of interpersonal conduct currently refers to AMs and their staff, and even this section is sparse. The documentation does not outline how AMs are expected to behave, for example, around external professionals or constituents.

4.2 Welsh Women's Aid feels that current guidance does not go far enough and therefore we agree that there is a need for the dignity and respect guidance which the committee intends to create - this should include specific sexual harassment and violence against women policies, which make it explicitly clear that the claimant of these unacceptable acts will be treated with appropriate care, support and confidentiality and lay out a clear timeline of procedures and expectations of how the National Assembly for Wales will protect the complainant from any further negative experiences, whether from the accused, the wider organisation or the public. Conduct around interpersonal relationships should also be outlined.

4.3 We recommend that the process should be simplified to allow anyone making a complaint to go through one portal, where the complaint can then be directed to the correct channel. For example, all complaints against Party members, AMs, or those working on behalf of the Welsh Government could be directed by the Commissioner for Standards office.

4.4 The current document would benefit from being written in an easy to read format, accompanied by clear guidelines, procedures and timescales, with bullet points outlining whom to make a complaint to. In addition, a designated Complaints Officer may be of benefit.

Recommendation:

- **The new dignity and respect policy explicitly and thoroughly outlines a detailed violence against women policy - including sexual harassment - and includes clear guidance of the code of conduct around interpersonal relationships between colleagues in the National Assembly for Wales and with employees of the Assembly and external**

people.

- **Simplify guidance and process so it is clear who to report complaint to, the timeframe and the support that complainants would receive, preferably into one portal.**

a) Is the guidance clear? Is the language used simple to understand?

"No it is not clear. No the language is not simple to understand."

5.1 Overall we feel that the guidance is broad and sparse and does not give guidance regarding specific complaints. Not all responses to this question did find the guidance unclear, though the majority of people found it unhelpful

5.2 The document gives an overview of the Code of Conduct in line with the seven principles of: Selflessness; Integrity; Objectivity; Accountability, Openness, Honesty and Leadership. It was surprising that Dignity and Respect are not the eighth and ninth principles as they are referred to specifically on the Assembly's consultation page with regards to this inquiry. We would therefore recommend these are included.

5.3 One respondent commented that:

"The guidance is defined but it is complex and requires lengthy study to understand in order to ensure any complaint is lodged within its requirements."

They continued that they would be concerned about whether their complaint would comply with the guidance, as it appears complicated.

Recommendation:

- **Include 'Dignity' and 'Respect' in the core principles in the Code of Conduct for AMs, alongside the additional seven principles.**

b) Does the document help you understand who you should contact about different types of complaints?

6.1 While responses to this question were mixed, the vast majority of respondents did not feel that the document successfully clarified this matter. For example, one person stated:

"No, again it is very long winded, without clear instruction and it doesn't identify in plain English the different types of complaint."

6.2 The issue continues to be that even when the guidance does provide the answers, it takes the reader a considerable amount of time to find the correct information. -. One person responded to the question of whether the document helped them to understand who to contact about different types of complaints, saying: "Yes, ultimately" but also highlighted that the system is very complex, requires studying in order to fully understand, and that they would benefit from external help in order to feel assured that they were following the process correctly. This level of scrutiny and external involvement can only be seen as a barrier and is therefore not an acceptable process for an organisation if the ultimate aim is to have a clear and transparent complaints procedure.

c) If you were a victim of inappropriate behaviour, would you feel confident in using the procedure as it currently stands?

7.1 The responses to this question were mixed. One person stated that:

"With regard to inappropriate behaviour I would feel more confident if I had an independent organisation to support my complaint. Doing so as a lone member of the public is daunting and would make me feel potentially vulnerable."

7.2 One person stated:

"No, not after having had a look at it. It seems very confusing and I would worry that my complaint would not be dealt with effectively or efficiently or sent to the right person."

7.3 Other respondents noted the fact that they felt previous complaints had not been dealt with well, which means that they would not be confident in using the procedure as it currently stands.

7.4 Another comment was that:

"As a constituent and member of Welsh society, I don't see what I would gain from undergoing this process. There's no suggestion of support for the person complaining or reassurance that they won't be ostracised in one way or another."

7.5 While a small proportion of our respondents stated that they would feel confident in the current procedure, the vast majority did not. This suggests that the current process is not working for everyone and more needs to be done to inspire confidence in the system. This should be done through

supporting complainants and simplifying both the guidance and the process so that it is neither onerous nor confusing for the person making the complaint. All perceived barriers should be removed wherever possible, so that public confidence in the Assembly and our AMs can be strengthened and maintained. It is vital that the public can hold democratically elected politicians to account for their behaviour, and any breaches of their Code of Conduct that the electorate and wider society perceive to be in question should be addressed in as fair and transparent way as possible.

Further Comments:

8.1 Welsh Women's Aid welcomes the Standards of Conduct Committee's commitment to develop a Dignity and Respect policy which spells out that inappropriate behaviour has no place in the National Assembly for Wales. This policy document is long overdue and will help to ensure that the National Assembly for Wales and all of its employees are able to understand both what is expected in terms of their conduct in relation to dignity and respect, including around areas of violence against women, including domestic abuse, sexual violence and work-based intimidation, bullying, harassment, including sexual harassment. Such a document would need to lay out appropriate guidelines that protects survivors of all forms of violence against women and ensure that those who have suffered actions that are detrimental to their sense of dignity and respect feel able to come forward.

Summary of Welsh Women's Aid recommendations:

- Individuals should be signposted to the Wales Live Fear Free helpline when their complaint relates to any form of violence against women, domestic abuse or sexual violence - including sexual harassment.
- The new dignity and respect policy explicitly and thoroughly outlines a detailed violence against women policy - including sexual harassment - and includes clear guidance of the code of conduct around interpersonal relationships between colleagues in the National Assembly for Wales and with employees of the Assembly and external people.
- Include 'Dignity' and 'Respect' in the core principles in the Code of Conduct for AMs, alongside the additional seven principles.
- Simplify guidance and process so it is clear who to report complaint to, the timeframe and the support that complainants would receive, preferably into one portal.
- Appropriate policies and procedures are in place and effectively implemented to ensure that there are no barriers to making a complaint for people with protected

characteristics, and those with specific language needs etc.

- Ensure that those who currently work on the existing helpline and counselling services for the National Assembly for Wales' staff have a nuanced understanding of sexual harassment as a form of violence against women and where appropriate, signpost survivors to specialist VAWDASV services.
- One year limit changed to at least the length of the Assembly and one year prior to re-election, if applicable. In addition, complaint procedures that were dropped due to an AM not being re-elected should stay on file so that if that AM is re-elected in the future, this remains on their record for a period of one year.

Welsh Women's Aid would like to thank the Standards of Conduct Committee of the National Assembly for Wales for the opportunity to comment on this important issue. Welsh Women's Aid is also available to provide further written and oral evidence around this issue if required.

National Assembly for Wales: Standards of Conduct Committee
Creating the right culture: Inquiry into the Review of the Code of
Conduct for Assembly Members
SoC(5) RCC03
Evidence from Flintshire County Council

This response is submitted on behalf of Flintshire County Council. It is a response from professional officers given the current context for Flintshire, and nothing in this response is intended to refer specifically to recent events.

Would you feel comfortable making a complaint about an Assembly Member or somebody who works on the Assembly estate? If not, why?

Responding on behalf of an organisation it would inevitably be an easier and a more comfortable process to complain about an Assembly Member, though the chances of needing to make a complaint about personal behaviour are perhaps lower because interaction is principally via correspondence.

Would you know how to make a complaint about an Assembly Member or somebody who works on the Assembly estate?

I am not aware of any publications on the process for making a complaint. A quick internet search and a search of the Assembly website did not produce a simple and easy route for making a complaint about an AM. Whilst a process exists it is described in legalistic terms that are off-putting. If a process exists for complaining about someone who works on the Assembly estate that was less visible.

By contrast, if one examines the website of the Public Services Ombudsman for Wales the facility to make a complaint about a councillor features clearly on the homepage and is an easy to follow step by step process. Likewise, printed complaints leaflets exist. That is the level to which Assembly should aspire.

Do you feel there are any barriers to you raising concerns about the inappropriate behaviour of an Assembly Member or somebody who works on the Assembly estate?

The complexity of the process and lack of a readily locatable form would both be barriers

Do you have any suggestions regarding how the complaints procedure be simplified? Is the guidance clear? Is the language used simple to understand?

The language is legalistic, and off putting - eg "when is a complaint admissible?" with references to sections of legislation or paragraph by number without any explanation of the nature of that provision

Eg "If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which give rise to issues of general principle or of general practice relevant to the Clerk's functions under Section 138 of the Act as principal accounting officer, or could, upon further consideration by the Clerk give rise to a duty on the Clerk under Section 9, the Commissioner must also separately communicate those circumstances in writing to the Clerk."

There is no explanation even in summary form of the effect of sections 138 or 9, requiring cross referencing of a sort that might be common place for lawyers but which might simply confuse a more vulnerable client group.

Does the document help you understand who you should contact about different types of complaints?

Not in the least.

If you were a victim of inappropriate behaviour, would you feel confident in using the procedure as it currently stands?

There is no reason to believe that the process would not work but the difficulty in making the complaint would reduce confidence that the correct procedure was being followed. That would no doubt dissuade some from making a complaint at all.

As a further point, this consultation may be principally focused on personal behaviours but there is a wider context to the behaviours and actions of assembly members. As an organisation we struggle with persistent poor behaviour, inappropriate use of AM privilege to misrepresent facts and criticism without evidence by some members whilst carrying out their duties. These actions risk damaging not just the reputation of the council but also serve to undermine public confidence in the institution. Whilst political comment is protected under human rights legislation that protection is not absolute and there does not appear to be any provision within the current code of conduct to regulate how this

important right is to be responsibly exercised. There should perhaps be a clear, express provision that requires a Member's pronouncements to conform to acceptable standards, which would actually be likely to be expressed as a prohibition from bringing their position into disrepute.

National Assembly for Wales: Standards of Conduct Committee Creating the right culture: Inquiry into the Review of the Code of Conduct for Assembly Members

SoC(5) RCC04

Evidence from Equality and Human Rights Commission

1. The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: www.equalityhumanrights.com.

Introduction

2. The Commission welcomes the opportunity to respond to the Committee's Review of the Code of Conduct for Assembly Members: Creating the Right Culture.
3. The consultation asks questions relating to the complaints procedure, the development of a respect and dignity policy and the sanctions available to the Committee to deal with inappropriate behaviour. The Commission agrees that these are important areas to consider and welcomes the Committee's consultation. We suggest that the Committee considers setting

out more clearly what constitutes inappropriate behaviour and, in particular, uses this opportunity to refer directly to sexual harassment. Alongside this, we consider this an opportunity to set out how the Assembly intends to create an inclusive culture with workplace policies in place, and to set out the legal framework surrounding Freedom of Expression.

Sexual harassment in the workplace

4. Public concern about sexual harassment has pushed this issue sharply into focus. All employers are expected to demonstrate the steps they are taking to create a workplace where sexual harassment is not tolerated.
5. The consultation's questions primarily focus on the reporting procedures after an incident of misconduct. It is important that priority is given to preventing sexual harassment – or any form of misconduct – in the first instance.
6. The Commission notes that the Inquiry's Terms of Reference and the accompanying questions do not refer directly to sexual harassment. The current Code of Conduct for Assembly Members does not appear to refer to sexual harassment either. We consider this to be a missed opportunity to set out the steps that the National Assembly will take to protect workers. The Assembly should have in place an anti-harassment policy. As set out in Commission guidance, all employers are expected to have in place:
 - an anti-harassment policy that is communicated to workers and is effectively implemented, monitored and reviewed
 - an appropriate procedure for reporting harassment, protecting victims of harassment and taking action if harassment occurs.

7. It is important that sexual harassment is highlighted explicitly in guidance to create a culture in which harassment is talked about and can be eradicated.

Prevalence

8. TUC (Trades Union Congress) research, undertaken in 2016, found that:
 - 52 per cent of women had experienced unwanted behaviour at work – including groping, sexual advances and inappropriate jokes. Among young women aged 16 to 24, that proportion rose to 63 per cent
 - around one in eight women reported unwanted sexual touching of their breasts, buttocks or genitals, or attempts to kiss them at work, and 1 per cent said they had been raped or seriously sexually assaulted in their workplace
 - almost a fifth said they had been harassed by their line manager or another person with authority over them.
9. A 2014 study by the EU Agency for Fundamental Rights found that:
 - one in three women who had experienced sexual harassment felt fearful as a result, while a fifth felt ashamed.

Commission surveys

10. In December 2017, the Commission launched [surveys](#) into sexual harassment in the workplace. One survey was for individuals (women and men) and a separate survey for employers has been distributed across a number of sectors in Britain. We wanted to hear from people who had experienced, witnessed or supported others with workplace sexual harassment, to tell us

what might have helped in their case and what changes need to be made to tackle this issue. The surveys closed in January 2018.

11. We will use the evidence provided to understand what steps employers are taking to ensure that their workplaces are free from sexual harassment. We also want to find out if staff feel able to report sexual harassment without fear of victimisation and are confident that investigations will be conducted appropriately. We are due to report in March 2018 highlighting best practice and proposing recommendations for reform.
12. **The Committee should consider the findings and recommendations of the Commission's upcoming report into sexual harassment in the workplace.**

Sexual harassment and the law guidance

13. In 2017, the Commission published [Sexual harassment and the law: guidance for employers](#). This document contains practical guidance for employers on sexual harassment in the workplace, including:
 - definition and examples of what sexual harassment is
 - your responsibilities as an employer
 - what a sexual harassment policy should include
 - how to put the policy into practice
 - how to handle sexual harassment complaints
 - criminal behaviour
14. In setting out employers' obligations, the guidance states:
15. You have a duty of care to protect your workers and you will be legally liable for sexual harassment in the workplace if you have not taken reasonable steps to prevent it.

16. Sexual harassment is prohibited in all workplace contexts and related activities, including at office functions and parties, on training courses and at conferences. Sexual harassment can be perpetrated by other workers and non-workers, including contractors, agency staff, clients or customers.
17. There are no minimum requirements you can rely upon to demonstrate that you have taken reasonable steps to protect your workers, but all employers will be expected to have in place:
 - an anti-harassment policy that is communicated to workers and is effectively implemented, monitored and reviewed
 - an appropriate procedure for reporting harassment, protecting victims of harassment and taking action if harassment occurs.
18. The essential elements of an anti-harassment policy include:
 - a commitment to a zero-tolerance approach to sexual harassment
 - a statement that sexual harassment is unlawful
 - a clear definition of sexual harassment with examples relevant to the employer's working environment
 - defined reporting channels for staff who wish to report harassment
 - a range of approaches for dealing with harassment from informal resolution to formal disciplinary process
 - a range of appropriate consequences and sanctions if harassment occurs
 - a prohibition on victimisation or retaliation against a complainant
 - information about support and advice services.

19. Implementation of anti-harassment policies is crucial to the creation of a safe and positive workplace environment. If a policy is not properly implemented, you are likely to be liable for failing to take reasonable steps to prevent harassment.
20. Effective implementation of an anti-harassment policy includes:
 - anti-harassment training for all staff and the opportunity for ongoing reflection in the workplace
 - verbal communication of the policy during staff induction
 - discussion and reinforcement of the policy at staff meetings or through your usual line management processes
 - translation of the policy for a linguistically diverse workforce if necessary
 - evaluation of harassment in the workplace through regular staff surveys on dignity at work where these are in place.
21. You can choose to deal with sexual harassment complaints through your existing grievance policy or through your anti-harassment policy. However, you should be aware that complaints of sexual harassment are often very sensitive and complex. Anybody dealing with sexual harassment complaints should receive specialist training. The grievance process should:
 - address any complaint in a fair and timely manner
 - provide the opportunity for quick and informal resolution of less serious complaints
 - set out the investigation process in detail
 - state that disciplinary action up to and including dismissal may be taken under your disciplinary procedure if a complaint of sexual harassment is upheld
 - state that the alleged perpetrator may be suspended during the investigation as a precaution for the protection of the complainant or to prevent interference in the investigation

- ensure the confidentiality of employees, subject to any requirement to involve external agencies
 - respect the principles of procedural fairness
 - offer formal support to the complainant, including counselling in serious cases
 - give a guarantee that the complainant will not be disadvantaged by making the complaint
 - make adjustments to enable the complainant to participate in the disciplinary process without fear of victimisation.
22. It is important that clear policies and procedures are in place for both those making complaints and individuals who have had complaints made against them. As part of this, mental health support should be made available.
23. Support for those that have experienced sexual harassment is available through, for example, the Wales Live Fear Free helpline and local specialist violence against women and men services. It is important that the National Assembly has contact with relevant support organisations and that staff are made aware of the provision of these services.
24. **The Committee should consider the Commission's Sexual Harassment and the law guidance and put in place the procedures it outlines.**

Creating an inclusive culture and workplace policies

25. Creating an inclusive culture is central to improving conduct. Assembly Members and staff should be representative of a diverse Wales. A diverse workplace helps create a culture that promotes equality and one in which individuals do not become isolated.

26. The National Assembly has power dynamics between individuals that are particular to its nature as a political institution. Elected Members are in senior positions of power, and they work alongside political support staff who are directly employed by them and with Assembly staff whose role it is to assist them.
27. Furthermore, National Assembly and Welsh Government staff work closely with Assembly Members in the Senedd and Ty Hywel. It is important that the Code of Conduct aligns with Welsh Government guidance, such as the Ministerial Code. Relevant policies should cover volunteers and interns. Efforts must be made to ensure Assembly members, staff and others are fully aware of the procedures.
28. The National Assembly has taken many steps to be an inclusive employer, as has been recognised in the recent Stonewall Award. These steps are to be warmly welcomed. The National Assembly can take further steps to promote equality and tackle discrimination in the workplace, which will help foster a culture in which conduct is improved.
29. The Commission's [Working Forward campaign](#) aims to make workplaces the best they can be for pregnant women and new parents. By joining Working Forward, organisations show a commitment to diversity, inclusiveness and gender equality. The Welsh Government is a member of Working Forward and it would be welcome if the National Assembly followed suit.
30. The campaign follows research carried out by the Commission and the UK Government's Department for Business into

pregnancy and maternity related discrimination and disadvantage. Survey findings included that:

- 87% of employers in Wales feel it is in the best interests of organisations to support pregnant women and those on maternity leave
- 71% of mothers reported negative or discriminatory experiences
- 46% of mothers reported a negative impact on their career (opportunity, status, job security)
- 36% of mothers would have liked flexible working arrangements but were fearful to be viewed negatively.

31. Alongside [Working Forward](#), the Commission in Wales has worked closely with employers so that they take account of other equality and human rights concerns. For example, we have encouraged employers to adopt [workplace policies on mental health and violence against women and domestic abuse](#). And our [Fairness not favours report](#) explores why faith-friendly workplaces matter and what can be done to create them.

32. The Committee should consider the introduction of further workplace policies to help foster an inclusive and supportive workplace culture.

Freedom of Expression

33. In 2015, the Commission published our [Freedom of Expression Legal Framework guidance](#). This guide explains the legal framework that protects freedom of expression and the circumstances in which that freedom may be restricted in order to prevent violence, abuse or discrimination. It explores the boundaries between freedom of expression, unlawful discrimination and harassment, and hate speech. It also

considers various contexts in which freedom of expression is curtailed. The guide is intended for those who are interested in how the law regulates potentially offensive forms of expression. This guidance should be relevant should the Committee consider the language used by Assembly Members during Assembly business and events.

34. Key points from the guidance include:

- Freedom of expression is a fundamental right protected under the Human Rights Act 1998 by Article 10 of the European Convention on Human Rights. It is also protected under the common law.
- Protection under Article 10 extends to the expression of views that may shock, disturb or offend the deeply-held beliefs of others.
- Any restrictions on freedom of expression must always be clearly set out in law, necessary in a democratic society for a legitimate aim, and proportionate.
- Subject to these conditions, freedom of expression may be limited in some circumstances and in particular does not protect statements that unlawfully discriminate against or harass, or incite violence or hatred against, other persons and groups, particularly by reference to their race, religious belief, gender or sexual orientation.
- No one can rely on the human right to freedom of expression to limit or undermine the human rights of others.
- It is not always easy to draw the boundary between expressing intolerant or offensive views (which are afforded protection under Article 10) and hate speech or other very offensive communication so serious that it is not so protected. Factors likely to be relevant in making the distinction will include the intention of the person making the

statement, the context in which they make it, the intended audience, and the particular words and form of communication.

- Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech and debate during election campaigns.
- It is nonetheless a criminal offence to stir up hatred on racial or religious grounds or on the ground of sexual orientation. Offensive or insulting language may also constitute harassment, either under the Equality Act 2010, or if directed at an individual under the Protection from Harassment Act.
- In addition to the criminal law, there are a number of different contexts in which the law provides additional protection against offensive or harassing conduct. These contexts include employment, service delivery and education.

35. Public bodies must respect the rights to both freedom of expression and freedom from discrimination. They are also subject to particular duties which require them to have due regard to the need to promote good relations between different communities protected by equality law. This may require them actively to challenge the use of offensive communication.

36. The Committee may also want to be aware of the Commission's 'Delivering the Prevent duty in a proportionate and fair way in Wales' guidance. ¹This guidance is primarily relevant to higher education bodies, but it contains information relevant to identifying, challenging and addressing all forms of extremism in order to help prevent vulnerable people from being drawn into

¹ <https://www.equalityhumanrights.com/en/publication-download/delivering-prevent-duty-proportionate-and-fair-way-wales>

terrorism. The UK Government's intention is for the Prevent duty to be discharged in a sensitive and proportionate way that takes account of the Public Sector Equality Duty (PSED) and the need to maintain open and free speech. Our guidance sets out how to use equality and human rights law in the context of Prevent.

37. The Committee should consider the Commission's Freedom of Expression Legal Framework guidance with regard to the conduct of AMs.

Summary of recommendations

38. The Committee should consider the findings and recommendations of the Commission's upcoming report into sexual harassment in the workplace.
39. The Committee should consider the Commission's sexual harassment and the law guidance and put it place the procedures it outlines.
40. The Committee should consider the introduction of further workplace policies to help foster an inclusive and supportive workplace culture.
41. The Committee should consider the Commission's Freedom of Expression Legal Framework guidance with regard to the conduct of Assembly Members.