

Senedd Cymru
Y Pwyllgor Safonau Ymddygiad
[Ymchwiliad i Urddas a Pharch](#)

DR09

Ymateb gan: Comisiwn Cydraddoldeb a Hawliau Dynol

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Welsh Parliament
Standards of Conduct Committee
[Dignity and Respect Inquiry](#)

DR09

Evidence from: Equality and Human Rights Commission



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

Consultation response

Dignity and Respect

Consultation details

Title of consultation: Inquiry into Dignity and Respect

Source of consultation: Senedd Standards of Conduct Committee

Date: 22 January 2024

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Introduction

1. The Equality and Human Rights Commission (the Commission) is the independent equality regulator for England, Scotland and Wales and is a UN-recognised 'A' status National Human Rights Institution. The Commission has a statutory mandate to advise Government and Parliament on matters relating to equality and human rights, and to promote and protect equality and human rights across Britain.
2. We welcome the opportunity to provide advice to inform the Inquiry into dignity and respect.
3. We responded to the [Standards of Conduct Committee's Review of the Code of Conduct for Assembly Members: Creating the Right Culture](#) in 2018 and we request that this response is considered alongside our 2018 response as the substance of that response is relevant here. We have not responded to the consultation questions but have instead set out below relevant comments which come within our remit.
4. 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. As part of this role we highlight issues of concern, inform and guide good practice, engage others in solutions and influence change in employment practice.

Our response

Preventing discrimination & harassment

The primary focus of the consultation is on the reporting procedures after an instance of misconduct. It is important that greater priority is given to preventing discrimination and harassment – or any form of misconduct – in the first instance.

We are pleased to note that both the Code of Conduct for Senedd Members and the existing Dignity and Respect policy do now refer to discrimination and harassment, including sexual harassment, however we remain concerned at the lack of supporting policies and guidance. We would also suggest that specific reference is made to the fact that discrimination and harassment is unlawful under the Equality Act 2010.

In our 2018 response we commented that the Senedd should have in place a robust anti-harassment policy. As set out in our technical guidance, Sexual harassment and harassment at work¹ all employers should 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.

Employers should not conflate different forms of harassment. They should have different policies to deal with sexual harassment and harassment related to protected characteristics or have one policy which clearly distinguishes between the different forms of harassment. Employers should also consider preparing separate strategy documents to accompany their antiharassment policy or policies, setting out what measures they will take to tackle the different forms of harassment. These documents should take into account issues such as the different causes of different forms of harassment and the risk of different forms of harassment occurring in the employer's particular workforce.

¹ <https://www.equalityhumanrights.com/sites/default/files/2021/sexual-harassment-and-harassment-at-work.pdf>

Sexual harassment and harassment at work Technical Guidance

In 2020, the Commission published Technical Guidance which provides best practice for effective prevention and response relating to harassment and sexual harassment in the workplace and includes:

- 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

In setting out an employers' obligations, the guidance states:

Employers will be liable for harassment committed by their workers in the course of their employment unless they can rely on the 'reasonable steps' defence'. It does not matter whether or not the employer knows about the harassment.

There is no prescribed minimum about what an employer can do to prevent harassment and protect its workers. It is an objective test about what it is reasonable for the employer to do in the circumstances.

A good anti-harassment policy (or policies where, for example, an employer has separate policies to deal with sexual harassment and other forms of harassment) will:

- confirm who the policy covers
- state that sexual harassment, harassment and victimisation will not be tolerated
- state that sexual harassment, harassment and victimisation are unlawful
- state that harassment or victimisation may lead to disciplinary action up to and including dismissal if it is committed:
 - in a work situation
 - during any situation related to work such as at a social event with colleagues
 - against a colleague or other person connected to the employer outside of a work situation, including on social media or
 - against anyone outside of a work situation where the incident is relevant to their suitability to carry out the role. Sexual harassment and harassment at work

- state that aggravating factors such as abuse of power over a more junior colleague will be taken into account in deciding what disciplinary action to take
- define the protected characteristics that harassment may be related to
- define harassment related to protected characteristics, sexual harassment, less favourable treatment for rejecting or submitting to sexual harassment and victimisation separately. Different forms of harassment should not be conflated (if bullying is included within the same policy) distinguish between bullying and harassment
- provide clear examples to illustrate each definition of the different forms of harassment, which are relevant to the employer's working environment and which reflect the diverse range of people whom harassment may affect
- include an effective procedure for receiving and responding to complaints of harassment
- address third party harassment. This section should outline:
 - that third party harassment can result in legal liability
 - that it will not be tolerated
 - that workers are encouraged to report it
 - what steps will be taken to prevent it. For example, warning notices to customers or recorded messages at the beginning of telephone calls
 - what steps will be taken to remedy a complaint or prevent it happening again. For example, warning a customer about their behaviour, banning a customer, reporting any criminal acts to the police, or sharing information with other branches of the business
- include a commitment to review the policy at regular intervals and to monitor its effectiveness
- cover all areas of the employer's organisation, including any overseas sites, subject to any applicable local laws which impose any additional requirements on the employer.

We would strongly suggest that the Committee considers our Technical Guidance as part of this Inquiry and ensures that robust policies are in place to reflect the Senedd's responsibilities as an employer.

Freedom of expression

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.

Complaints process

The procedures for reporting discrimination, harassment or unwanted conduct should be as transparent and accessible as possible and any unnecessary barriers removed. We are concerned to note that only 61.7% of Member support staff would feel comfortable raising concerns using the existing process. This is indicative of a significant problem, and it will be necessary for any amendments to the policy to be communicated to all staff, and relevant training provided to ensure that it is universally utilised. We would also suggest that further work is undertaken to establish why employees do not feel comfortable using the existing complaints procedure.

Within the last 12 months we have had cause to correspond with the Llywydd, Senedd Standards Committee and the Standards Commissioner following a complaint made to us by a stakeholder about a discriminatory and offensive comment made by an MS about members of the Gypsy, Roma and Traveller communities during a Senedd Plenary session. Whilst the Llywydd immediately requested an apology from the MS, the Llywydd chose not to refer the matter to the Senedd Commissioner for Standards. The MS did not make a public apology to the communities that he had offended.

By virtue of paragraph 3 of the Code on the Standards of Conduct of Members of the Senedd, only the Llywydd or Committee Chair can refer a matter relating to the conduct of a Member during a Senedd plenary the Senedd Commissioner for Standards. As the Llywydd chose not to make a referral in this instance, the matter could not be progressed further. We would advise that this process be reviewed to ensure that there is a mechanism for a referral to be made to the Commissioner to investigate in situations where the Llywydd has not referred the matter.

Other Considerations

In the [Commission's March 2021 response to the WEC's \(Women and Equalities Committee'\) Gender Sensitive Parliament inquiry](#), we set out our suggestions how Government, Parliament and political parties can take steps to create a more inclusive and responsive working environment, including by preventing and responding to workplace harassment, increasing flexibility, and reforming parental leave. Much of this consultation response and recommendations will be useful to the Standards of Conduct Committee.

The Commission recommended that the UK Government should introduce a mandatory duty on employers to take reasonable steps to protect workers from harassment and victimisation in the workplace, enforceable by both individuals and the EHRC, and to reintroduce section 40 provisions on third party harassment to provide a greater degree of protection for individuals against harassment. A preventative duty would relieve the burden on MPs' staff who report harassment and instead put the onus on the employer to effectively prevent and resolve harassment. Reintroduction of this section of UK legislation would benefit the people of Wales.

One of the key challenges facing Members of the Senedd/Parliament is that they have no formal employment status, and as such are not protected against discrimination by the employment provisions in the Equality Act 2010. However, political parties have specific obligations to protect their members from discrimination, harassment and victimisation.

We agree with the findings of the WEC's earlier report into [Sexual Harassment in the Workplace](#) that there is no reason why an organisation that makes use of volunteers and interns should not be responsible for ensuring that they too can work in an environment free from harassment, especially as they can be some of the most vulnerable people in an organisation.

We believe that parliaments and political parties should be at the forefront of creating an exemplar environment for those working within them.

Part of ensuring respect and dignity in the Senedd is to encourage action in political parties. Political parties have obligations under the Equality Act 2010 to eliminate unlawful discrimination, harassment and victimisation. But our research into the barriers facing candidates in local elections showed that parties needed to be better at ensuring cultures and behaviours met the standards set out in formal party rules. We know that women in particular felt that this was not always done, and that a failure to respond to reports of discrimination, harassment, or inappropriate behaviour was a barrier to their participation and progression.

Further advice

Due to the wide-ranging scope of the subjects covered in this inquiry, we extend an invitation the Standards of Conduct Committee to meet with the EHRC, so we can give further and specific guidance. Our policy and legal teams are available to advise or give evidence beyond the limits of written evidence to the inquiry.

Further reading

[Diversity of candidates and elected officials in Great Britain](#) EHRC 2019

[Turning the Tables: ending sexual harassment at work](#)

[Response to Call for Evidence: Intimidation of Parliamentary candidates](#) EHRC 2017

[Barriers to participation in standing for election to local government in Scotland](#) EHRC 2019