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**Standards, Procedures and Public Appointments
Committee**
**Comataidh Inbhean, Dòighean-obrach is Cur-an-dreuchd
Poblach**

Annual Report 2018-19



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Contents

Introduction	1
Membership changes	1
Inquiries and Reports	2
Commission on Parliamentary Reform	2
Sexual harassment and inappropriate conduct	2
Confidentiality of reports from the Commissioner for Ethical Standards for Public Life in Scotland	3
Code of Conduct for MSPs – revisions to Rules on Confidentiality of the Complaints Process	4
Commissioner Complaints	4
Equalities	7
Sexual harassment and sexist behaviour	7
Cross-Party Groups	8
Meetings	9

Standards, Procedures and Public Appointments Committee

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

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



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



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Maureen Watt
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Introduction

1. This report covers the work of the Standards, Procedures and Public Appointments Committee (the Committee) during the Parliamentary year from 12 May 2018 to 11 May 2019.

Membership changes

2. Previous Members of the Committee during the reporting year:
 - Tom Arthur (SNP) (8 June 2016 - 6 September 2018)
 - Patrick Harvie (Green) (8 June 2016 – 4 September 2018)
 - Clare Haughey (SNP) (16 November 2017 - 28 June 2018)
 - Alexander Stewart (Conservative) (8 June 2016 - 17 May 2018)
 - David Torrance (SNP) (19 April 2018 - 6 September 2018)

Inquiries and Reports

Commission on Parliamentary Reform

3. The Committee was responsible for implementing some of the recommendations that were made by the Commission on Parliamentary Reform. The Presiding Officer established the Commission to consider how the Scottish Parliament could engage better with the people of Scotland and how its work could be improved to deliver better scrutiny.
4. The Committee considered a number of the recommendations made by the Commission and agreed the following:
 - **Speaking in Debates:** the Committee agreed that implementing the recommendation that the Presiding Officer should, in exceptional cases of high demand, be able to extend statements and decision time by up to 20 minutes to accommodate more speakers could be done without any specific changes to Standing Orders.
 - **First Ministers Questions:** the Committee agreed to endorse the recommendation that the practice of using scripted diary questions by party leaders should cease, with party leaders moving straight to their questions. In addition, the Committee agreed that the Guidance on Parliamentary Questions should be updated to place the opportunities for open questioning at First Ministers Questions on a more formal footing.
 - **Portfolio and general questions:** the Committee agreed that an additional portfolio question time should take place each week, with the three portfolio question times of 20 minutes providing the opportunity for each ministerial portfolio to be covered every three weeks. The Committee also agreed that the number of questions drawn for each portfolio would be reduced from ten to eight.
 - **Urgent questions:** the Committee agreed to progress Standing Order rule changes to give effect to the change from “emergency” to “urgent” questions.
 - **Standing Orders:** the Committee agreed to establish a log of Standing Order rule changes to provide a centralised system for recording non-urgent changes.
5. The rule changes agreed by the Committee will be set out in reports for agreement by the Parliament.

Sexual harassment and inappropriate conduct

6. The Committee concluded its inquiry into *Sexual Harassment and Inappropriate Conduct* and reported to Parliament on 5 June 2018.
7. The Committee reviewed current practices and procedures and took evidence on arrangements for preventing, reporting and investigating reports of sexual

harassment in the workplace. The Committee made the following key recommendations:

- A central policy on sexual harassment applying to all campus users;
 - Ongoing monitoring and reporting of work to reduce the incidence and promote the reporting of sexual harassment;
 - Regular reporting about complaint numbers and outcomes;
 - Encouraging positive culture change through mandatory training;
 - Further detailed consideration of whether to establish an independent investigatory body;
 - Further consideration of an ultimate sanction for MSPs akin to dismissal for gross misconduct; and
 - Further consideration of a process for suspension of MSPs.
8. The Committee agreed that it could not, itself, deliver a complete review and replacement of all existing policies and procedures which apply to sexual harassment as responsibility for the majority of these policies rests with the Scottish Parliamentary Corporate Body (the SPCB).
9. The report explored some of the weaknesses and shortcomings identified with current arrangements and proposed some possible solutions which would need to be developed by the relevant parties working together.
10. This report did not, therefore, represent the conclusion of the Parliament's work in this area but marked the beginning of further detailed work to deliver a new set of policies and procedures with the following aims:
- reducing the incidence of unacceptable behaviour;
 - encouraging reporting where unacceptable behaviour occurs;
 - providing greater clarity about the procedures which apply to such cases including greater clarity for both complainers and accused individuals; and
 - providing some consistency with regard to sanctions where possible.

Confidentiality of reports from the Commissioner for Ethical Standards for Public Life in Scotland

11. The Committee was concerned about breaches of the Code of Conduct in relation to disclosure and confidentiality. There had been several occasions where a Member publicised their intention to make a complaint against another Member in the media and there were leaks throughout the Committee's consideration of a high profile sexual harassment complaint.

12. At its meeting on 27 September 2018, the Committee agreed to issue a report to Parliament drawing its attention to the disclosure and confidentiality requirements surrounding the investigations and reports of the Commissioner for Ethical Standards in Public Life in Scotland.
13. The Committee stated its intention to take action against future breaches of these Code of Conduct provisions and indicated that it would not view ignorance of the Rules as a mitigating factor in deciding what action to take against a Member.
14. The Committee also stated its intention to amend the Code of Conduct to make it absolutely clear that confidentiality is expected until the Committee has reported on the outcome of a complaint.

Code of Conduct for MSPs – revisions to Rules on Confidentiality of the Complaints Process

15. This work was undertaken in response to the appearance in the media of reports about complaints which were being considered by the Committee. The Committee stated that “reporting of and commentary about details of complaints prior to and during the Committee's consideration can unhelpfully overshadow the Committee's work and may discourage victims from coming forward in the future.”
16. At its meeting on 14 March 2019 the Committee approved changes to the Code of Conduct to strengthen these rules. The changes to the Code were approved by Parliament on 2 April 2019 and came into force on 24 April 2019.

Commissioner Complaints

17. The Committee has considered five reports from the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) in this parliamentary year.
18. The first report was a complaint against Liz Smith MSP. The complaint was from complainers whose identity has not been disclosed at their own request and centred on Liz Smith's disclosure of information which was sent to her on a confidential basis by the complainers. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Liz Smith had not breached the Code of Conduct for MSPs.
19. The Committee was unanimous in the decisions it reached on the complaint. It agreed with the conclusion of the Commissioner that there had not been a breach of the Code of Conduct.
20. The Committee did differ from the Commissioner on one significant finding however. The Commissioner took the view that Liz Smith was not dealing with the correspondence provided by the complainers in her role as an MSP. The Committee took a different view on this point, since Liz Smith was approached in her capacity as a Committee member. However, the Committee accepted that this did not have a bearing on the Commissioner's final conclusion in relation to the Code of Conduct.

21. The second complaint the Committee considered was a complaint from James Dornan MSP about Mark McDonald MSP. The complaint alleged that a female member of staff employed by the complainer was a “targeted victim of harassment and sexual innuendo at the hands of” the respondent. In examining information relating to the complaint, the Commissioner was made aware of Mark McDonald’s conduct towards another staff member and decided that this was relevant to the complaint under consideration.
22. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Mark McDonald was in breach of section 7.2.3 of the Code of Conduct for MSPs (6th Edition, 29 April 2016).
23. The Committee was unanimous in the decisions reached on the complaint. Firstly, it agreed with both the findings in fact and the conclusion of the Commissioner that Mark McDonald failed to treat one witness with respect, and that his conduct towards her involved sexual harassment, and that he also failed to treat a second witness with respect in relation to a financial matter. The Committee agreed with the Commissioner’s finding that both behaviours were in breach of the Code of Conduct for MSPs. The Committee also considered that the breaches justified the imposition of sanctions on Mark McDonald.
24. The Committee recommended that the Parliament should agree to:
 - exclude Mark McDonald from proceedings of the Parliament for a period of one month which would not overlap with any period of recess;
 - withdraw his salary for a period of one month to coincide with his exclusion from proceedings of the Parliament;
 - withdraw his right of access as a member to the Holyrood Parliamentary complex for the period of one month to coincide with his exclusion from the proceedings of the Parliament; and
 - withdraw his rights to any representational, ceremonial and related privileges until dissolution.

These sanctions were agreed by Parliament.

25. The Committee also considered a complaint from Gail Ross MSP about Annie Wells MSP. The complaint was that Annie Wells sought political advantage by making advance public comment on the Equalities and Human Rights Committee’s report on “Prisoner Voting in Scotland”. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Annie Wells had breached paragraphs 12, 15 and 16 of Section 7 of the Code of Conduct for MSPs.
26. The Committee was unanimous in the decisions reached on the complaint. Firstly, it agreed with the findings in fact and conclusion of the Commissioner that Annie Wells breached paragraphs 12, 15 and 16 of Section 7 of the Code of Conduct for MSPs. Secondly, the Committee considered that the breaches justified the imposition of sanctions on Annie Wells. The Committee recommended that Annie Wells be excluded from all meetings of the Parliament and its committees for five sitting days. This sanction was agreed to by Parliament.

27. The fourth complaint the Committee considered was a complaint from Mr Ricky Taylor about Peter Chapman MSP. The complaint was that Peter Chapman may have breached the Code of Conduct for MSPs by failing to disclose his shareholding in Aberdeen Northern Marts Group (ANM Group) when making representations on behalf of the company to members of the Garioch Area Committee of Aberdeenshire Council. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Peter Chapman had not breached the Code of Conduct for MSPs.
28. The Committee was unanimous in the decision reached on the complaint. It agreed with the findings in fact and conclusion of the Commissioner that there was no evidence to suggest that Peter Chapman's actions amounted to paid advocacy, as prohibited by Section 4 of the Code of Conduct for MSPs and by the Interests of Members of the Scottish Parliament Act.
29. The final complaint the Committee considered in this Parliamentary year was a complaint from Kenny McCartney about Rachael Hamilton MSP. The complaint was that Rachael Hamilton failed to make an oral declaration of a registered interest when asking a Parliamentary Question. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Rachael Hamilton had not breached the Code of Conduct for MSPs.
30. The Committee was unanimous in the decisions reached on the complaint. It agreed with the findings in fact and conclusion of the Commissioner that Ms Hamilton did not breach the statutory requirements or the terms of the Code of Conduct for MSPs to make an oral declaration of her interests.

Equalities

Sexual harassment and sexist behaviour

31. In light of reports about sexual harassment in institutions such as the House of Commons, the Scottish Parliament launched a survey about sexual harassment and sexist behaviour. A Joint Working Group on sexual harassment (JWG) was then established to consider and agree any actions that need to be taken on a joint or individual basis between the Parliament and political parties in light of the survey. When the SPPA Committee conducted its inquiry into *Sexual Harassment and Inappropriate Conduct*, it recognised that it would need to consider changes to the Code of Conduct in order to respond to the JWG's recommendations.
32. The Committee is considering the following themes based upon the recommendations emerging from the JWG's report:
 - The Role of the SPPA Committee;
 - Anonymity and confidentiality;
 - Excluded complaints and Treatment of Members' own staff;
 - MSPs' responsibility for the conduct of their own staff;
 - Right to make representations; and
 - The procedure for considering older complaints.
33. The Committee will seek to revise the current conduct regime in a number of ways including:
 - Changes to the Code of Conduct which are formulated and recommended by the Committee for agreement by the Parliament as a whole;
 - Changes to the Guidance on the Code which can be made by the Committee;
 - Revisions to the Directions to the Commissioner which can be made by the Committee; and
 - Changes to the Commissioner's Act which would involve a Committee Bill.

Cross-Party Groups

34. A total of 106 Cross-Party Groups are now active and eight Groups have been accorded recognition by the Committee in this parliamentary year.
35. In December 2018 the Committee considered an annual monitoring report on Groups' compliance with the Code of Conduct. The Committee was pleased with the high level of compliance with the Code of Conduct but requested that Groups ensure they provide an explanation for any instances on non-compliance.

Meetings

36. The Committee met 20 times during the parliamentary year. Six meetings were held entirely in private, one meeting was held entirely in public and 13 meetings included items in private.
37. The items considered in private included the Committee's work programme, consideration of complaints, draft Committee reports and draft Standing Order rule changes.
38. Last year, SPICe research published details of the gender balance of witnesses giving formal evidence to Committees. This year, 58% of our witnesses were male and 42% were female.

