

# Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill, introduced in the Scottish Parliament on 13 November 2020. It has been prepared by Scottish Parliament officials on behalf of the Standards, Procedures and Public Appointments Committee, whose convener (Bill Kidd MSP) introduced the Bill.
2. The following other accompanying documents are published separately:
  - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 85–LC);
  - Explanatory Notes (SP Bill 85–EN);
  - a Policy Memorandum (SP Bill 85–PM).

### Overview

3. The Bill extends the remit of the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) to include complaints against an MSP alleging sexual harassment of a member of that MSP's staff occurring prior to 7 January 2020. It does this by deeming such sexual harassment to have been in breach of the Code even before the Code was revised (on that date) to say so. The Bill also removes one of the requirements that a complaint must normally meet to satisfy the admissibility tests set out in section 6 of the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act), as well as the requirement for a signature on complaints and on complaint withdrawals.

4. The additional costs attributable to the Bill will result predominantly from any new complaints which are made to the Commissioner alleging sexual harassment by an MSP of a member of their own staff, where the alleged harassment took place prior to a revision of the Code of Conduct for MSPs made on 7 January 2020. It will be possible for complaints to be made about current and former MSPs and a complaint could be made by anyone, not just the person who was allegedly harassed.

5. Under section 6 of the 2002 Act, one of the tests for whether a complaint is admissible is that it was “made within one year from the date when the complainer could reasonably have become aware of the conduct complained about” or that the Parliament (in practice, the Standards, Procedures and Public Appointments Committee) has directed the Commissioner to treat the complaint as if it had met that requirement. By removing this admissibility criterion, the Bill allows historic complaints to be investigated by the Commissioner without the need for a Parliamentary direction under Section 7(7) of the Act. This applies to all complaints, not just those relating to sexual harassment. It has been exceptionally rare for a complaint to be referred to the SPPA Committee for a direction since the Parliament was established. It would seem doubtful therefore that this change, in itself, would have a significant impact on the number of historic complaints that the Commissioner will be expected to investigate.

## Quantifying the number of complaints which may arise as a result of the Bill

6. The Scottish Parliamentary Corporate Body (SPCB) commissioned in 2017 a survey of people working in the Parliament (and in MSPs’ constituency and regional offices) to establish baseline data about (amongst other things) their experience of sexual harassment and sexist behaviour. Those invited to complete the survey questionnaire were MSPs, MSP staff (including interns), Parliament staff, Scottish Government staff working at Holyrood, agency workers, contractors and members of the media working at Holyrood. The results of the survey were published in 2018.<sup>1</sup>

7. A total of 1,039 individuals (from a known population of 1,685) responded to the survey. Of those responding, 20% (30% of women and

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<sup>1</sup> Available on the Scottish Parliament website at:  
[http://www.parliament.scot/StaffAndManagementResources/10130\\_Sexual\\_Harassment\\_Sexist\\_Behaviour\\_Survey\\_-\\_Final\\_Report\\_260218.pdf](http://www.parliament.scot/StaffAndManagementResources/10130_Sexual_Harassment_Sexist_Behaviour_Survey_-_Final_Report_260218.pdf)

6% of men) reported experiencing sexual harassment and/or sexist behaviour. Those who had experienced either type of behaviour were asked about the perpetrator(s) involved. Of the 137 respondents who said they had experienced sexual harassment, 45% (i.e. around 60 respondents) said the perpetrator was an MSP.

8. The survey results do not record how many of those (the 60 or so who reported sexual harassment by an MSP) were members of staff of the MSP in question, or even how many were in the “MSP staff” category (which accounted for 34% of those who responded, around 353 people). But the results do include some other relevant data:

- 44 members of MSP staff reported being sexually harassed, and 23 of those said the perpetrator was also a member of MSP staff (meaning that, at most, 21 members of MSP staff experienced sexual harassment by an MSP)
- 28% of those reporting sexual harassment (i.e. 38 or 39 people) said the perpetrator was “in a position of power or authority over” them or their work (a description that would presumably apply to any member of MSP staff experiencing harassment by the MSP for whom they worked).

9. It seems reasonable to assume that MSP staff are more likely than people in the other categories surveyed to have been sexually harassed by an MSP, and particularly by the MSP they work for, because of the amount of time spent working together and the nature of the working relationship. An estimate might therefore be that around 15-20 of the survey respondents were members of MSP staff who had experienced sexual harassment by the MSPs for whom they worked.

10. It is not possible to know how many, if any, of the incidents reported within the survey would translate into formal complaints. In the 21 years the Parliament has so far been in existence, only one (out of 40) formal complaints made about the conduct of MSPs has involved sexual harassment and was regarding conduct by an MSP towards a staff member of another MSP. The complaint was made within one year of the conduct complained about.

11. The fact that only one sexual harassment complaint has so far been made against any MSP suggests that the likely number of complaints coming forward about historical harassment by MSPs of their own staff is

liable to be low. It must be borne in mind that complaints of historical harassment of other staff groups – SPCB staff and the staff of other MSPs – have always been possible (albeit subject to the one-year admissibility criterion) but none has been made.

12. The removal, by section 2 of the Bill, of the one-year admissibility criterion for all types of complaint is unlikely to make a big difference to the likelihood of a complaint being made, even where the behaviour that might be complained of took place longer ago. This is because it has always been possible to make such historic complaints and for the Commissioner to be directed to disregard this admissibility criterion. For this reason, the number of additional complaints that will arise as a result of this provision alone is likely to be small.

13. Taken together, the changes to the complaints framework made by the Bill, and the publicity generated during the passage of the Bill, may result in a small increase in the number of complaints being made to the Commissioner.

## Costs on the Scottish Parliament

### **The Standards, Procedures and Public Appointments Committee**

14. As set out above, the Bill may result in an increase in the number of complaints made to the Commissioner for Ethical Standards in Public Life in Scotland and, if so, these would be referred to the Standards, Procedures and Public Appointments Committee for consideration. If a complaint results in a recommendation by the Committee that a sanction be applied, then this would be debated by the Parliament as a whole. Some staff time among clerks and solicitors will be involved in preparing the Committee and the Parliament for this consideration.

15. It may be informative to look at the numbers of complaints which have been dealt with by the Parliament to date. This table sets out the total number of complaints about MSPs which have been considered by the Standards, Procedures and Public Appointments Committee or its predecessors in each session:

This document relates to the Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill (SP Bill 85) as introduced in the Scottish Parliament on 13 November 2020

<b>Session</b>	<b>Number of complaints</b>
1 (4 years)	9
2 (4 years)	13
3 (4 years)	5
4 (5 years)	2
5 (5 years)	11
Total	40 (average 8 per session)

16. These numbers relate to all complaints about MSPs and, overwhelmingly, are concerned with such matters as compliance with the requirement to register or declare financial interests or general conduct in meetings. As stated above, only one of a total of 40 relates to sexual harassment.

17. The numbers set out above demonstrate that there is a great deal of fluctuation in the volume of work in this area. The Parliament has always placed a priority on a robust and credible complaints process, and historic fluctuations in the number of complaints received have always been managed by the Scottish Parliamentary Service (SPS) and the Standards, Procedures and Public Appointments Committee alongside its other responsibilities. Should there be any increases in the number of complaints, this effect is likely to be temporary since if individuals are prompted to make complaints when they hear about the Bill, they are most likely to do so shortly after the Bill comes into force. With low numbers anticipated, the SPS will be in a position to redirect resource in the normal manner if it proves necessary. It is anticipated therefore that any additional work for MSPs and Parliament staff will be absorbed within the Parliament's normal running costs.

## **SPCB budget for officeholders**

18. The Commissioner is a Scottish Parliamentary Corporate Body (SPCB) supported officeholder and her budget forms part of the SPCB's overall budget. Any changes to the Commissioner's functions which could increase the workload of her office and so increase pressure on the Commissioner's budget may, in turn, have implications for the SPCB's overall budget.

19. The Commissioner's office is demand-led, with a small staffing complement. In addition to dealing with complaints about MSPs, Councillors, members of devolved public bodies and lobbying, the Commissioner also regulates public appointments. Her budget is based on an average number of complaints, investigations and appointment rounds, so any significant increase to her workload is liable to impact on timescales or prompt her to seek additional resources from the SPCB for additional staff. However, the Commissioner's broad remit means that even quite large fluctuations in the number of complaints against MSPs would have a relatively small impact on the overall workload of her office.

20. The Commissioner's estimates of the potential cost implications of the Bill are set out below.

## **Costs on the Scottish Administration**

21. It is not anticipated that there will be any additional costs on the Scottish Administration.

## **Costs on local authorities**

22. There are no cost implications for local authorities.

## **Costs on other bodies, individuals and businesses Commissioner for Ethical Standards in Public Life in Scotland**

23. The Commissioner has provided estimates of the costs of implementing the Bill that will fall to her office. The Commissioner included a range of costs. The minimum reflects base preparatory costs including:

- time and resources for drafting procedures to cover complaints from MSPs' own staff

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- legal advice confirming her office’s statutory powers, for example the inter-relation with employment law
- updating complaint forms and the case management system to ensure that relevant data is captured
- staff training to ensure awareness of the expanded remit and its effect on processes.

24. These are the fixed costs that will be required in preparation for receiving any additional complaints that result from the Bill’s provisions. In earlier passages of this Memorandum, it is estimated that in the region of 15-20 of staff survey respondents were members of MSP staff who had experienced sexual harassment by the MSPs for whom they worked. The estimated average figures in the table below indicate the likely costs that would arise if the estimated number of complaints are received.

25. The Commissioner further indicated that, should a number of high profile or complex complaints relating to MSPs’ own staff arise, the costs will be significant and additional funding would be required. In these circumstances the Commissioner would seek additional resources from the SPCB. While it is difficult to anticipate the nature and complexity of any future complaints, it is worth noting that the only sexual harassment complaint which has resulted in a full investigation and report to the Parliament to date, was dealt with within existing staffing resources.

<b>Costs</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>Totals</b>
Minimum	£14,625	£7,485	£7,400	£400	£29,910
Average	£24,375	£25,425	£23,975	£1,000	£74,775

Source: Commissioner for Ethical Standards in Public Life in Scotland

## **Individuals**

26. MSPs who are the subject of complaints may choose to seek legal advice and representation (from a solicitor and possibly also an advocate) at their own personal expense. The Legal Services Office in the Scottish Parliament does not directly advise MSPs on how to respond to a complaint. Any cost incurred by an MSP getting (external) legal advice about a complaint against them could not be claimed back under the Members’ Expenses Scheme.

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27. There are, in theory, cost implications for those making complaints but these are likely to be insignificant since the complaints process is already straightforward and low cost. The removal of the need for complaints to be signed may make the process slightly cheaper for some complainants since it will be possible to do everything online.





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