

Jurisdiction	Application
AB	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Employee to Member complaints</li> <li>– Employee to employee complaints</li> </ul> <p><i>Note: Does not apply to complaints between Member</i></p>
SK	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Member to Member complaints</li> </ul>
QB	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Member to Member complaints</li> <li>– Employee to Member complaints</li> <li>– Employee to employee complaints</li> </ul>
NS	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Member to Member complaints</li> <li>– Employee to Member complaints</li> <li>– Volunteer (of Member) to Member complaints</li> <li>– Employee to employee complaints</li> </ul> <p><i>Note: “Employee” includes permanent, contract, casual, interns, Pages or other paid from Legislative Services budget; and contract staff whose salary is paid from budgets other than Legislative Services, who work at the workplace (defined in the policy).</i></p>
NU	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Member to Member complaints</li> <li>– Employee to Member complaints</li> <li>– Employee to Employee</li> </ul>
NWT	<p>Applies to:</p> <ul style="list-style-type: none"> <li>– Member to Member complaints</li> <li>– Employee to Member complaints</li> </ul> <p><i>Note: Follows policy of Executive branch for complaints between employees</i></p>
House of Commons	<p><b>For Member to Member Complaints:</b></p> <ul style="list-style-type: none"> <li>– Code of Conduct for Members of the House of Commons: Sexual Harassment (appendix to Standing Orders)</li> </ul> <p style="text-align: right;"><i>Continued next page</i></p>

Jurisdiction	Application
	<p data-bbox="298 291 760 323"><b><i>For Member to Employee Complaints:</i></b></p> <p data-bbox="298 365 1471 428">Bill C-65 – An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1</p> <p data-bbox="298 470 1471 606">Part 2 amends Part III of the Parliamentary Employment and Staff Relations Act with respect to the application of Part II of the Canada Labour Code to parliamentary employers and employees, without limiting in any way the powers, privileges and immunities of the Senate and the House of Commons and their members.</p> <p data-bbox="298 648 773 680"><i>Current status – Third reading in Senate</i></p>



# Respectful Workplace Policy for Legislative Assembly Office Employees

## Policy Statement

The Legislative Assembly Office (LAO) is committed to a work environment where employees feel engaged and safe from disrespectful behaviour.

The demonstration of respect is the responsibility of every person within the LAO. Disrespectful behaviour, including bullying and harassment, will not be tolerated in our workplace.

From a policy perspective, the LAO parallels the Alberta Public Service in the principles and application of the Respectful Workplace Policy.

## Definitions

**Bullying** is a repeated pattern of negative behaviour aimed at a specific person or group.

**Workplace harassment** is unwelcome conduct based on race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

**Workplace violence**, according to the Occupational Health and Safety Code, Part 1, means: “the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury”. Employees must notify their supervisor of all incidents of workplace violence even if there was no physical injury as per the LAO Health and Safety Program.

# Guiding Values

The LAO is committed to a work environment where employees feel engaged and safe from disrespectful behaviour.

## OUR MISSION

To provide nonpartisan parliamentary support to the Speaker and Members of the Legislative Assembly as they carry out their roles as elected representatives.

## OUR VISION

Respect Tradition | Exemplify Service | Promote Innovation

## OUR VALUES

Employees of the Legislative Assembly Office (LAO) are proud to provide services to the Legislative Assembly on behalf of the citizens of Alberta. We are guided in our work and conduct by a core set of principles that motivate us as individuals and reflect the qualities of the Legislative Assembly Office as a whole.

### *Improvement*

Encouraging a commitment to the ongoing development of skills and services that enhance the operations of the LAO while respecting the traditions of the office.

### *Impartiality*

Acting in an impartial and objective manner at all times to support the unique and politically neutral role of the LAO.

### *Integrity*

Providing services in an accountable, responsive, ethical and dedicated manner.

### *Involvement*

Promoting awareness and engagement in the democratic process.

These values provide a common understanding of the behaviours expected of the LAO. They describe how we go about doing our best work and ensure that this is as important as delivering on our targets.

## Responsibilities

1. We are all responsible for ensuring that our actions and words contribute to a respectful work environment.
2. We are all accountable for the results of our actions, regardless of our intent.
3. We all understand that disrespectful behaviours will not be tolerated.
4. Whenever appropriate, we will address issues of disrespectful behaviour with the person or people directly involved.

For more detailed information regarding the application of the LAO Respectful Workplace Policy, please reference the Guide to Understanding the Respectful Workplace Policy for Legislative Assembly Office Employees.



# **Guide to Understanding the Respectful Workplace Policy for Legislative Assembly Office Employees**

**January 2017**

The Legislative Assembly Office (LAO) is committed to a work environment where employees feel engaged and safe from disrespectful behaviour. The demonstration of respect is the responsibility of every person within the LAO. Disrespectful behaviour, including bullying and harassment, will not be tolerated in our workplace.

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## Guiding Values

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## Responsibilities

1. We are all responsible for ensuring that our actions and words contribute to a respectful work environment.
2. We are all accountable for the results of our actions, regardless of our intent.
3. We all understand that disrespectful behaviours will not be tolerated.
4. Whenever appropriate, we will address issues of disrespectful behaviour with the person or people directly involved.



## Intent

The LAO is an organization that seeks to foster an environment in which each individual is valued and heard. We sometimes hear people attempt to excuse disrespectful behaviours by saying “that’s just the way they are” or “they didn’t mean it”. However, it is important that everyone take into consideration how their actions impact others.

The intent of the behaviour is not as relevant as the impact the behaviour has on the individual. Whether the behaviour was intentional or not may be difficult to determine. Certainly if it is found that someone has willfully done something to harm a co-worker, subordinate or someone they report to, this will be considered a serious aggravating factor in determining whether discipline is appropriate.

## Workplace Bullying

Bullying is a repeated pattern of negative behaviour aimed at a specific person or group.

The LAO is committed to a work environment where employees feel engaged and safe from disrespectful behaviour. The demonstration of respect is the responsibility of every person within the LAO. Disrespectful behaviour, including bullying and harassment, will not be tolerated in our workplace.

## Workplace Harassment

Workplace harassment is unwelcome conduct based on race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

Workplace harassment may include a single incident or a series of events.

## Workplace Violence

According to the *Occupational Health and Safety Code*, Part 1, workplace violence means: "the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury". Employees must notify their supervisor of all incidents of workplace violence even if there was no physical injury as per the LAO Health and Safety Program. Examples of workplace violence include the following:

- Threatening behaviour such as shaking fists, destroying property or throwing objects
- Verbal or written threats (any expression of intent to cause harm)
- Physical attacks such as hitting, shoving, pushing or kicking



## Continuum of Behaviours

It can be difficult to isolate workplace behaviours into strict categories of acceptable or unacceptable. Oftentimes, real life encounters expose us to behaviours that fall somewhere in the middle of these two categories. To better understand the expectation of working together with respect, it is helpful to imagine a continuum of behaviours where one end demonstrates our ideal state of interaction and the other end demonstrates unacceptable behaviours. For example, being kind would be on one end of this continuum and bullying and harassment would be on the opposite end. This continuum concept shows us that it is less important to evaluate behaviours against a strict definition of harassment, or bullying, and more important to evaluate whether an action or inaction has negatively (or positively) impacted someone else. The following are examples of behaviours that fall at either end of the continuum. An opportunity exists to intervene or self-correct if we find that behaviours are moving away from those identified as contributing to our ideal state. For a visual example of the continuum of behaviours, please refer to Appendix 4.

## Respectful Behaviours

The following behaviours describe our ideal state of interaction. Taking time to ensure we are all exemplifying the following behaviours will move us closer to achieving the respectful workplace we are trying to create:

- Allowing one person to speak at a time
- Expressing appreciation
- Being accountable for your own mistakes
- Seeking input from others
- Being asked for an opinion
- Praising good work
- Giving timely recognition of people's efforts and accomplishments
- Providing positive reinforcement
- Offering assistance when someone needs help
- Saying “please” and “thank you”
- Communicating openly
- Providing opportunities for input and participation
- Giving constructive feedback
- Demonstrating sympathy and a show of support when someone is having a difficult time
- Listening openly to other points of view, even when you disagree
- Seeking consensus
- Providing clear expectations
- Sharing knowledge and information
- Being inclusive
- Mentoring/coaching: Taking the time to develop others
- Acting honestly
- Empowering others
- Sharing laughs
- Social banter



## Disrespectful Behaviours

Understanding the types of behaviours that can be considered disrespectful is the key to identifying these behaviours when we see them being displayed and, in turn, evaluating and adjusting our own actions accordingly. Demonstrating the following behaviours in our workplace can negatively impact individuals' self-worth. Therefore, it is important to note the following behaviours and ensure that we do not demonstrate or tolerate them in our workplace:

- Eye rolling, finger wagging, or other physical gestures that are used to make fun of, express frustration with or isolate another employee
- Workplace violence/assault
- Intimidation, leering or other objectionable and insulting gestures
- Threats, including coercion
- Angry outbursts
- Unwanted physical contact such as touching, patting, pinching or punching
- Display of pornographic, racist or offensive pictures or materials
- Taunting, ridiculing or belittling
- Unwelcome remarks, jokes, innuendo or taunting about a person's race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person
- Abuse of authority that undermines someone's performance or threatens his or her career
- Spreading false information about an employee
- Practical jokes that result in awkwardness or embarrassment
- Unwelcome enquiries or comments about an individual's personal life
- Unwelcome remarks about a person's physical attributes or appearance
- Humiliation in front of others
- Taking credit for someone else's or a team's work
- False accusations of disrespectful behaviour
- Gossiping
- Purposely and/or regularly interrupting people when they are speaking
- Refusing to converse or work with an employee

## What are NOT Considered Disrespectful Behaviours?

The following are considered legitimate workplace actions so long as they are carried out in good faith, in a professional manner, and in a nonarbitrary fashion:

- Direct supervision, including discussions about performance expectations
- Assignment of work and direction on how it is to be accomplished
- Requests by supervisors for updates or status reports
- One-on-one discussions between managers, supervisors and their staff
- Approval or denial of time off

The above noted actions are encompassed by management's legitimate right to run the business and direct the workforce.



## Support for All Employees

An allegation of disrespectful conduct at work is serious and has the potential to significantly impact one's career and/or personal well-being. All employees are encouraged to speak to a colleague, supervisor or manager for support or advice when needed. In many instances, open and honest dialogue can go a long way in reaching an informal resolution.

More information regarding the informal and formal resolution options available for all employees is provided in the Options for Resolution section of this guidebook as well as in the Resolution Processes provided in Appendix 1 and 2.

## False Allegations

Making a false allegation against another employee is a serious offense and is considered another form of disrespectful behaviour that will not be tolerated. False allegations are particularly egregious because they force the accused individuals to defend their integrity. The allegations and subsequent investigation can be traumatic and costly regardless of the findings.

Where accusations are found to be false, disciplinary action may be taken against the person who made the accusation. Disciplinary action may include termination.

## Frivolous Complaints

Allegations that are frivolous in nature may have a serious impact on individuals within the work area. In such instances, all those involved may be subject to an investigation, which they may find frustrating and traumatic. Investigations are often an emotionally charged exercise, and the amount of time spent fact-finding means time spent away from the valuable work that is being done for the benefit of Albertans. Frivolous complaints may result in disciplinary action against the complainant. Any disciplinary action will be assessed on a case-by-case basis.

This does not imply that employees should avoid dealing with workplace conflict or feel dissuaded from making a complaint about disrespectful behaviour. It does, however, draw attention to the fact that filing a complaint is a serious matter. Therefore, employees are asked to think carefully and not act impulsively when considering filing a complaint. All employees are encouraged to explore the Informal Resolution Process outlined in Appendix 1 before considering a formal complaint. The Informal Resolution Process promotes open dialogue between the parties and this may result in a common understanding and resolution.



## Requesting Anonymity or That No Action Be Taken

Approaching your manager with concerns about another employee is not helpful unless you are asking them to address the issue. It is not acceptable for a manager to be asked to listen to someone who they believe has a serious issue but then be asked not to do anything about it. Therefore, if you feel the issue is significant enough to bring to the attention of your manager, you should be aware that your manager may take action to ensure the issue will be addressed. Action taken may involve your manager providing you with advice on next steps.

Anonymity will not be granted when a complaint is filed as the respondent has the right to know and respond to the allegations made. That said, efforts will be made to protect confidentiality and respect the privacy of all those involved.

## The Role of the Bystander

Employees who witness disrespectful behaviour have a responsibility to take action. Bystanders who do not take action may contribute to creating a toxic work environment. If an employee witnesses other employees acting disrespectfully, there is an expectation that this information will be brought forward for resolution.

## Resolution

### Informal Issue Resolution Process (Appendix 1):

- Speak to the individual directly, if possible, or write them a note or send them an e-mail if you are not comfortable speaking to them. These are difficult conversations to have, but employees are expected in most instances to do their best to work things out with each other before escalating to a higher level.
- If speaking to the individual does not resolve the issue or if you are not comfortable in approaching the individual, employees can speak to their supervisor or manager. Employees are encouraged to work with their supervisor or manager to develop a plan for how the situation can be addressed moving forward.
- Employees may also speak to LAO Human Resource Services or the Clerk of the Legislative Assembly for coaching to assist with these conversations.
- Employees may request their supervisor or manager to assist in coaching/mediating an informal resolution.
- If the matter involves an employee's supervisor, an employee may also bring concerns to their supervisor's manager or alternatively to Human Resources in an effort to find a solution prior to filing a formal complaint. For more information, please reference the Informal Issue Resolution Process provided in Appendix 1.
- Failing a successful informal resolution, an employee may consider pursuing the formal complaint process.



## Formal Issue Resolution Process (Appendix 2):

- The formal process must be initiated within 30 days from the date of the incident.
- In extenuating circumstances, the Clerk has the authority to extend timelines.
- A formal complaint can be filed in accordance with the Formal Issue Resolution Process provided in Appendix 2.
- After an initial review of the complaint it may proceed to an investigation through the Formal Issue Resolution Process, during which all individuals with relevant information to share will be interviewed.
- Once the investigation is completed and the findings are reviewed by the appropriate party as determined by the LAO, a decision will be made regarding appropriate action.

## Type of Complaint

### a) Complaint against an employee

The Clerk may bring in external qualified mediators or investigators to assist with the informal and formal resolution processes.

### b) Complaint by an employee involving a Member of the Legislative Assembly of Alberta

When a Member is the respondent in a complaint, the employee has the option to report the matter to the Member's Whip and/or the Director of Human Resource Services and the Clerk, who may appoint an independent investigator if required. If the Member involved is the Whip, then the employee has the option to report the matter to the House Leader of that caucus and/or the Director of Human Resource Services and the Clerk, who may appoint an independent investigator if required. For Independent Members, the employee has the option to report the matter to the Speaker and/or the Director of Human Resource Services, who may appoint an independent investigator if required.

Complaints by an employee involving the Speaker stand referred to the Ethics Commissioner.

## Looking Forward

A respectful workplace is the responsibility of every employee within the LAO. It is an ongoing and evolving process that requires conscious action on a daily basis. Through collective efforts we will continue to move towards a workplace environment where every employee feels valued and engaged and thrives in their workplace.



## Questions and Answers

**Q: Are there time limits for making a formal complaint?**

A: The formal process must be initiated within 30 days from the date of the incident. In extenuating circumstances, the Clerk has the authority to extend timelines.

**Q: Perhaps I am making a big deal out of nothing. How do I know when I should deal with the issue?**

A: If someone's actions have made you feel uncomfortable, the processes as outlined in this guidebook can assist you in addressing the issue and reaching a resolution.

**Q: How can joking around be considered inappropriate if I was just having some fun?**

A: Humour is healthy, can help relieve tension and can create a bond between people. However, humour can get out of hand if it offends others and/or hurts feelings. Get to know your colleagues so that you can better understand where that line is drawn. Every person has a different way of dealing with certain subject matters, and every workplace has their own unique cultural norms. Take note of your work environment, and err on the side of caution with humour.

**Q: How do I let someone know that they have done something that offends me?**

A: A good course of action is to ask to speak to the individual in private and to explain to them what they did, how it made you feel and why. Clarify how you propose moving forward or what you need to see change. Communicate that if the behaviours continue, you will escalate.

**Q: What options do I have in dealing with disrespectful behaviour?**

A: The sooner you do something, the better. Not doing anything is condoning the behaviours and the person may not know that what they are doing is impacting you. You can:

- tell the person to stop
- write them a note or send them an e-mail if you are not comfortable speaking to them
- speak to a colleague, supervisor, manager or Human Resource Services
- file a formal complaint if you cannot resolve this matter informally

**Q: Do I have to wait for something serious to happen to do anything?**

A: Disrespectful behaviours, including bullying and harassment, often occurs incrementally in small doses over time. You do not have to wait for a culminating incident to do something. It is best to deal with the situation as it arises.



## Resources

- **Employee and Family Assistance Program (EFAP)**

The EFAP is a confidential service designed to assist employees and their immediate family who experience personal problems and replaces the internal counselling service known as the Employee Assistance Program (EAP). Enhanced services include increased access to face-to-face counselling; telephone and e-counselling; support services for elder care, child care and parenting; as well as the provision of health and wellness information.

Employees wishing to access the services can contact Shepell•fgi directly by calling 1-800-268-5211 or by requesting an appointment online at Shepell•fgi's website, [workhealthlife.com](http://workhealthlife.com) (user name: government; password: alberta).

- **Human Resource Services**

Legislative Assembly Office  
#4106, 9820 – 107 Street  
Edmonton, Alberta T5K 1E7  
780.427.1364  
[hr@assembly.ab.ca](mailto:hr@assembly.ab.ca)



# Appendices

**Appendix 1: Informal Issue Resolution Process**

**Appendix 2: Formal Issue Resolution Process**

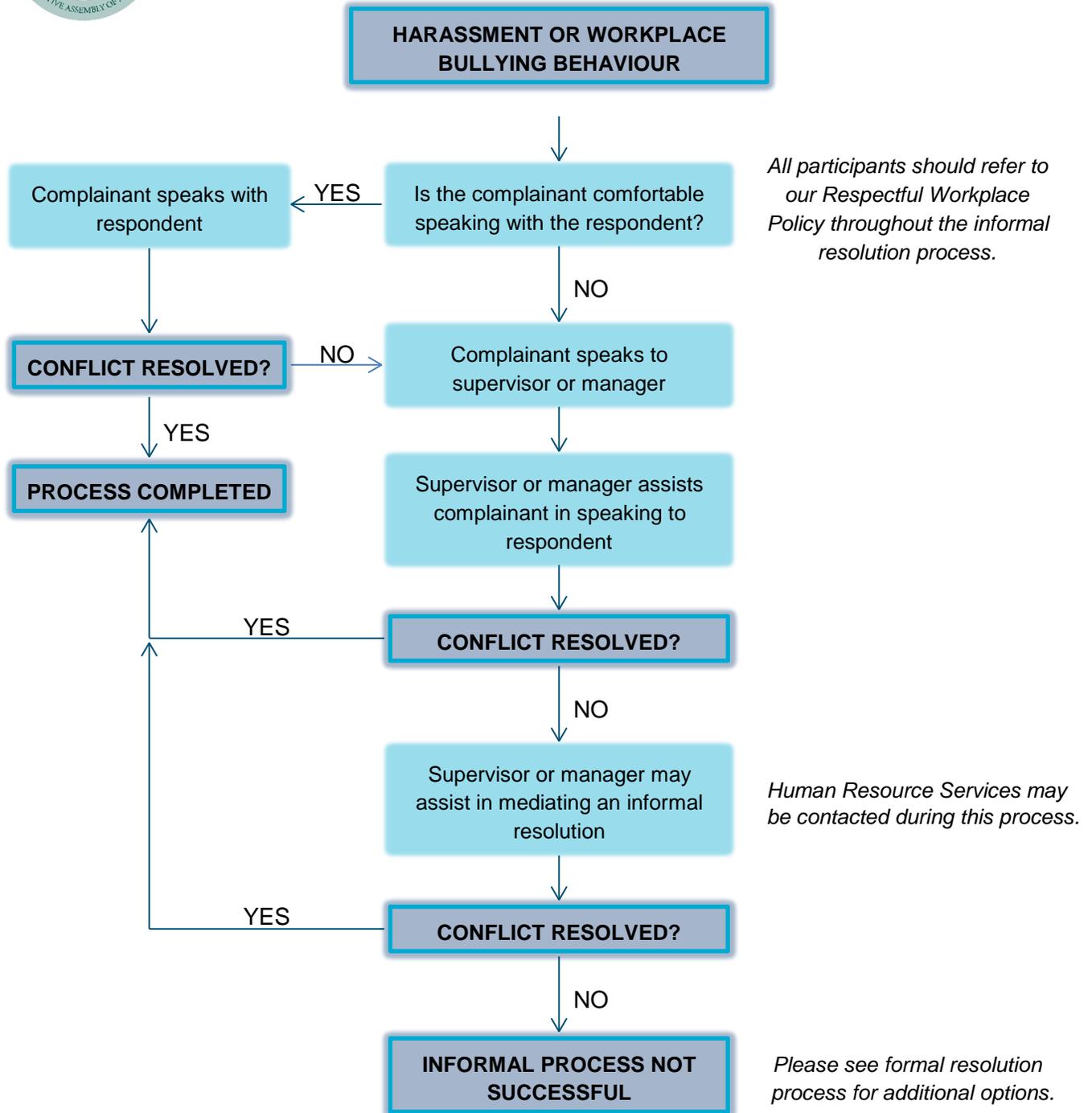
**Appendix 3: Respectful Workplace Information Form**

**Appendix 4: Continuum of Behaviours**





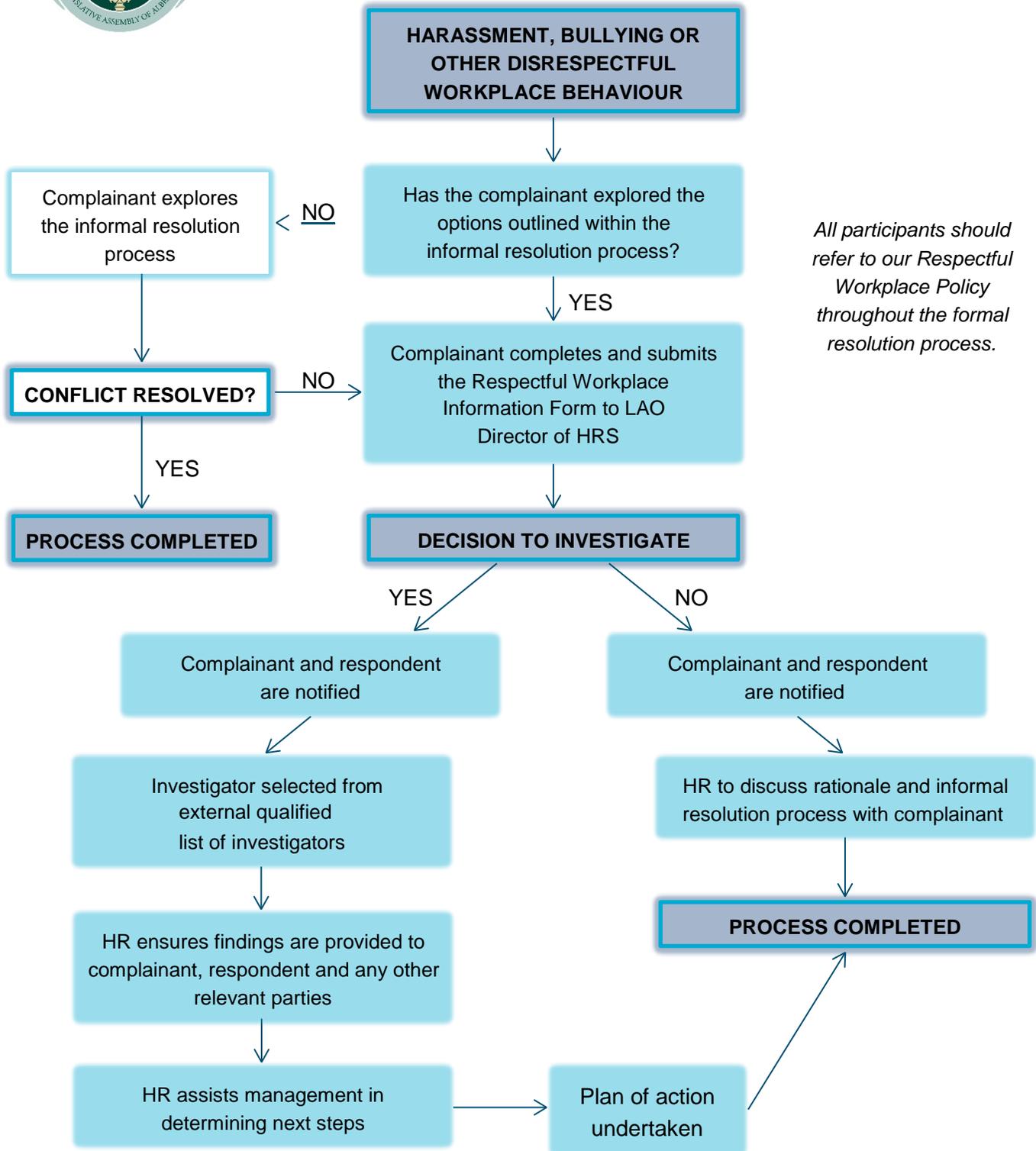
# Informal Issue Resolution Process



Complainant - An individual who submits a Complaint of harassment or bullying.

Respondent - The individual against whom a Complaint is submitted

# Formal Issue Resolution Process



Complainant - An individual who submits a Complaint of harassment or bullying.

Respondent - The individual against whom a Complaint is submitted



## Respectful Workplace Information Form

This form can be utilized to provide information on situations involving harassment, bullying or other disrespectful workplace behaviour(s) that were not resolved through the Informal Issue Resolution Process.

Prior to completing this form, please consider which of the following informal resolution options you have explored:

- Have you spoken directly to the individual(s) involved with the situation?
- Have you spoken to your Supervisor and/or Manager regarding the situation?
- Have you spoken to your Human Resources consultant regarding the situation?
- Have you requested your Supervisor and/or Manager, Human Resource Consultant or another appropriate resource to mediate the situation in order to reach an informal resolution?

If you choose to move forward with submitting this form, please note that every effort will be made to maintain confidentiality; however, anonymity cannot be guaranteed. For more information please reference our Respectful Workplace Policy.

### Complainant Contact Information

<i>Name</i>	<i>Position</i>
<i>Branch/Caucus/Constituency Office</i>	
<i>Telephone</i>	<i>Email</i>
<i>Immediate Supervisor/Member</i>	<i>Immediate Supervisor's Position</i>

## Respondent Contact Information

Please complete the following information for any respondent(s) associated with this complaint.

<i>Name</i>	<i>Position</i>
<i>Branch/Caucus/Constituency Office</i>	
<i>Telephone</i>	<i>Email</i>
<i>Working relationship to complainant</i>	
<i>Name</i>	<i>Position</i>
<i>Branch</i>	<i>Department</i>
<i>Telephone</i>	<i>Email</i>
<i>Working relationship to complainant</i>	
<i>Name</i>	<i>Position</i>
<i>Branch</i>	<i>Department</i>
<i>Telephone</i>	<i>Email</i>
<i>Working relationship to complainant</i>	

## **Situation Details**

Please use the following space to outline the details of the disrespectful workplace situation that you have encountered. Be sure to include the date, time and location of any incidents that may have occurred as well as information on who was involved or who may have witnessed any related incidents.

A large, empty rectangular box with a thin black border, intended for the user to write the details of a disrespectful workplace situation. The box is currently blank.

Have you discussed this situation and the impact that it has had with the respondent(s)?

Yes

No

Have you discussed this situation and the impact that it has had with your direct supervisor/manager?

Yes

No

Please use the following space to outline your desired outcome related to the above noted situation.

## Next Steps

Providing information that has no merit or is frivolous may result in disciplinary action. Please reference the Guide to Understanding the Respectful Workplace Policy for Legislative Assembly Office Employees for more information.

Once this form has been completed in its entirety, please print, sign and send a hard copy to the attention of the Director of Human Resource Services or the Clerk of the Legislative Assembly. You will be contacted to discuss next steps within five working days of this form being received.

---

*Complainant Signature*

---

*Date*

# Toward a respectful workplace

Where are you on the continuum of behaviours?

## Green zone

Respectful, professional and values-based behaviours contribute to a respectful workplace. You are encouraged to maintain awareness of your behaviours and to continue modelling the LAO values of improvement, impartiality, integrity, and involvement.

### Behaviours include:

- Random acts of kindness
- Timely recognition of people's efforts
- Positive reinforcement
- Constructive feedback
- Listening/being attentive
- Checking In
- Sharing knowledge, information
- Seeking input from others
- Being accountable

## Yellow zone

Unprofessional, careless and disruptive behaviours can harm others, make them uncomfortable and affect the overall well-being of staff in the workplace. You are asked to re-evaluate your behaviour and make changes to support a respectful workplace.

### Behaviours include:

- Interrupting
- Not doing what you say you will do
- Careless humour
- Not permitting input
- Practical jokes that result in embarrassment
- Angry outburst

## Red zone

Intentional, targeted, prohibited and/or illegal behaviours are unacceptable. They harm others and create an unsafe workplace. You must stop this behaviour immediately!

### Behaviours include:

- Gossiping
- False accusations
- Threats, including coercion
- Bullying
- Harassment
- Workplace violence/assault



Adopted by the Board of Internal Economy November 28, 2017

DIRECTIVE # 31  
(s.68(2.1) – c. L-11.3)

**ANTI-HARASSMENT POLICY**

**AUTHORITY**

- (1) Every Member is subject to the anti-harassment policy established by this directive in accordance with Subsection 68(2.1) of *The Legislative Assembly Act, 2007*.

**GOVERNING PRINCIPLES**

- (2) Every Member shall commit to contributing to an environment free of personal harassment and sexual harassment and will make every reasonably practicable effort to that end. In furtherance of this commitment, a Member shall not personally harass or sexually harass another Member.

The policy established under the authority of this directive is governed by the following principles:

- (a) The policy aims to create an environment that allows all Members to excel in their public duties and functions and that is free of personal harassment and sexual harassment;
- (b) The policy aims to encourage reporting by Members of instances of personal harassment and sexual harassment; and
- (c) The policy establishes a resolution process that deals with complaints of personal harassment or sexual harassment, as far as reasonably practicable, in a discrete, timely, and confidential manner.

**SCOPE OF APPLICATION**

- (3) The policy established by this directive applies only to allegations of personal harassment or sexual harassment between Members. Pursuant to section 28 of *The Legislative Assembly Act, 2007*, the policy does not apply to anything said by a Member before the Legislative Assembly or any of its committees.

ANTI-HARASSMENT POLICY

- (4) The “*Code of Conduct for Members of the Legislative Assembly of Saskatchewan: Anti-Harassment Policy*” (anti-harassment policy) is established.
- (a) The anti-harassment policy shall be published with the directives of the Board of Internal Economy;
  - (b) The confidentiality of the process and records of any anti-harassment case will be protected by the Board;
  - (c) The Board will fulfil its responsibilities under the policy in a timely manner as far as reasonably practicable; and
  - (d) The Board will review this policy and its procedures, as is required by the anti-harassment policy, or otherwise, and make necessary adjustments to ensure that it meets the needs of all Members.
  - (e) For incidents prior to the implementation of this directive and policy, complaints shall be filed within 90 days of the date of implementation.
- (5) Any costs associated with the administration of this policy shall be provided by the Legislative Assembly of Saskatchewan.

**Code of Conduct for Members of the  
Legislative Assembly of Saskatchewan: Anti-Harassment Policy**

**1. Preamble**

Every Member shall commit to contributing to an environment free of personal harassment and sexual harassment and will make every reasonably practicable effort to that end. In furtherance of this commitment, a Member shall not personally harass or sexually harass another Member.

**2. Statement of Governing Principles**

This policy is governed by the following statement of principles:

1. This policy aims to create an environment that allows all Members to excel in their public duties and functions and that is free of personal harassment and sexual harassment;
2. This policy aims to encourage reporting by Members of instances of personal harassment and sexual harassment; and
3. This policy establishes a resolution process that deals with complaints of personal harassment or sexual harassment, as far as reasonably practicable, in a discrete, timely, and confidential manner.

**3. Scope of Application of the Policy**

This Policy applies only to allegations of personal harassment or sexual harassment between Members. Pursuant to section 28 of *The Legislative Assembly Act, 2007*, this Policy does not apply to anything said by a Member before the Legislative Assembly or any of its committees.

**4. Definitions:**

The following definitions apply in this policy:

- (a) "**Complainant**" means a Member who reports allegations of personal harassment or sexual harassment in accordance with this policy.
- (b) "**Intake Officer**" means the individual who is the initial point of contact for Members for filing complaints of personal harassment or sexual harassment in accordance with this policy. The Intake Officer is responsible for coordinating the work of the mediator and/or external investigator. The Intake Officer is the Law Clerk and Parliamentary Counsel.

- (c) "**Investigator**" means an external investigator engaged by the Intake Officer to conduct an investigation of a formal complaint of personal harassment or sexual harassment. In consultation with the Chief Justice of the Court of Queen's Bench, the Intake Officer shall select a Member of the Law Society of Saskatchewan or a retired Judge who is acceptable to the Intake Officer, the complainant and the respondent. If no agreement can be reached regarding who the investigator should be, the Intake Officer shall ask the Chief Justice of the Court of Queen's Bench to decide who will be engaged as the investigator.
- (d) "**Member**" means a Member of the Legislative Assembly of Saskatchewan.
- (e) "**Participants**" means the complainant, respondent and any other individuals involved in the resolution process.
- (f) "**Personal Harassment**" means any inappropriate conduct, comment, display, action or gesture by a person:
- i. that either:
    1. is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry, or place of origin; or
    2. adversely affects an individual's psychological or physical well-being and that the person knows, or ought reasonably to know, would cause an individual to be humiliated or intimidated; and
  - ii. that constitutes a threat to the health or safety of the individual;
- Personal harassment must involve repeated conduct, comments, displays, actions or gestures or a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that causes a lasting harmful effect on the individual.
- (g) "**Resolution Process**" means the reporting of allegations of personal harassment or sexual harassment, the filing of a formal complaint, the mediation process, the investigation, as well as any corrective action that may be imposed.
- (h) "**Respondent**" means a Member who is the subject of allegations of personal harassment or sexual harassment reported in accordance with this policy.
- (i) "**Sexual Harassment**" means any behaviour or action of a sexual nature that:
- i. abuses, humiliates or undermines the personal dignity of an individual, endangers the well-being and security of an individual, interferes with work performance, or creates an intimidating or hostile environment; and

- ii. is made by a person who knows, or ought reasonably to know, that such behaviour or action is unwelcome.

Sexual harassment may include, but is not limited to, unwelcome sexual advances, request for sexual favours, gender-based insults and taunting, the display of sexually explicit and offensive pictures or materials, unnecessary and unwanted touching, and leering or whistling in a suggestive way.

## **5. Confidentiality**

Confidentiality is of the utmost importance.

Participants shall not disclose information related to the resolution process or any personal information relating to any participant unless otherwise provided for in this policy. Given the personal nature of the matters addressed by this policy, and given the potential negative consequences of confidential matters being made public before all facts are known, participants will commit to respecting confidentiality throughout the process and to respecting the privacy of all participants.

Once a matter is resolved, part of the resolution may require that certain information be disclosed publicly. Any public disclosure of personal information or of information related to the resolution process shall only be made in accordance with the terms of this policy, and shall be no more than is sufficient for the public to understand the circumstances and consequences of the resolution.

## **6. Resolution Process**

### **Step 1 – Reporting Inappropriate Behaviour**

A Member may report allegations of personal harassment or sexual harassment by filing a formal complaint with the Intake Officer. The complaint shall be in writing, signed by the complainant and include a description of the nature of the alleged harassment and the identity of the respondent. The complaint shall also include detailed information including, but not limited to, time, date and location of alleged harassment and identification of any witnesses.

The complaint should be filed as soon as possible but no later than 90 calendar days after the last incident of perceived harassment, unless extenuating circumstances exist.

For incidents prior to the implementation of this policy, complaints shall be filed within 90 days of the date of implementation.

Upon receipt of a formal complaint, the Intake Officer shall:

- acknowledge the complaint in writing;

- notify in writing the Member against whom the complaint has been made that a complaint has been filed and provide a copy of the written formal complaint, including the name of the complainant; and
- notify the Speaker of the Legislative Assembly of Saskatchewan that a complaint under this policy has been filed by a Member. No further information, including but not limited to the names of the Members involved, will be provided to the Speaker.
- Members shall participate in the resolution process set out in this policy.

## **Step 2 – Mediation**

Wherever appropriate and possible, the parties to the harassment complaint will be offered the opportunity to attempt a resolution through voluntary mediation prior to proceeding with a harassment investigation. If the Members agree, the Intake officer shall make arrangements within a reasonable timeframe for voluntary mediation with a mediator acceptable to the Members involved.

All materials prepared for, and information exchanged at, mediation shall be confidential. An agreement to mediate will be signed by the parties attending the voluntary mediation to outline their specific obligations of confidentiality and privacy during the mediation process.

## **Step 3 – Investigation**

If mediation is not pursued, or is unsuccessful, the Intake Officer may retain the services of an Investigator to investigate the facts related to the alleged complaint of harassment and to prepare a draft investigation report.

The Investigator is responsible for conducting the investigation in a fair, impartial and timely manner. Once the Investigator is seized with the matter, the investigation shall continue notwithstanding a dissolution of the Legislative Assembly of Saskatchewan.

The Clerk of the Legislative Assembly and the Law Clerk and Parliamentary Counsel will serve as resources for any issues which arise relating to the parliamentary process. The Investigator will prepare a draft investigation report that will include:

- a description of the allegations;
- the response of the Member the complaint was made against;
- a summary of information learned from witnesses (if applicable); and
- a decision about whether, on a balance of probabilities, harassment did occur.

The Intake Officer shall distribute the draft investigation report to the complainant and respondent for their review. Both have 15 business days after receipt of the draft investigation report to submit their comments, in writing, to the Intake Officer. Following the receipt of any

comments provided by the complainant and/or respondent, the Investigator will prepare a final investigation report that includes any such comments.

The preparation of the draft and final investigation reports will be treated in a manner that respects the privacy of the Members involved and other individuals who provided evidence. The Intake Officer will provide a copy of the final report to the complainant and the respondent.

### **Referral to the Board of Internal Economy**

The final report shall be provided to the Board of Internal Economy (the "BOIE") through the Chair of the BOIE to determine appropriate next steps.

At any time during the investigation, the parties may agree to suspend the investigation and return to mediation.

Following an investigation of a complaint, the final investigation report will be provided to the BOIE through the Chair of the BOIE. Within five business days of the receipt of the final investigation report, the Chair of the BOIE shall designate a date for a BOIE meeting within the next 30 calendar days, provided that at least 48 hours' notice is given of the meeting. During a writ period, no investigative report shall be filed with the BOIE and shall be filed after the writ period.

The BOIE shall hold its proceedings *in camera* when discussing the subject of the final investigation report. The complainant and respondent shall have the opportunity to appear before the BOIE in relation to the final investigation report.

In the event that the complainant or the respondent is a Member of the BOIE, the Speaker shall write to the President of the Executive Council and request that the Member of the BOIE who is either the complainant or the respondent be replaced with another Member of the Legislative Assembly pursuant to section 67(3) of the Legislative Assembly Act, 2007.

### **Step 4 – Corrective Action**

#### **Report of the Board of Internal Economy to the Legislative Assembly**

The BOIE may recommend any sanctions that the Legislative Assembly of Saskatchewan has available to it to address the findings of the final investigation report. The BOIE will prepare a report within 90 calendar days of receiving the final investigation report, unless extenuating circumstances exist, to refer the matter to the Legislative Assembly of Saskatchewan. The BOIE report will include:

- a decision with respect to sanctions to be implemented;
- the name of the Member being sanctioned;
- a summary of the reasons for any conclusions and recommendations;

- a motion prepared in accordance with the *Rules and Procedures of the Legislative Assembly of Saskatchewan*. The motion shall declare that a harassment has been committed and propose a sanction for the consideration of the Legislative Assembly.

The report to the Legislative Assembly shall not disclose the identity of any of the participants except the respondent in order to respect the privacy of the complainant and other individuals who provided evidence.

Prior to referring the matter to the Legislative Assembly of Saskatchewan, the BOIE shall inform the complainant and respondent of the proposed course of action by providing a copy of the BOIE report.

### **Referral to the Legislative Assembly**

Forthwith following the completion of the BOIE report, the Chair of the BOIE shall provide the BOIE report to the Government House Leader and Opposition House Leader. In the event that the complainant or the respondent is a House Leader, the BOIE report shall be provided to the respective Deputy House Leader.

Within five sitting days of receiving the BOIE report, the Government House Leader, in consultation with the Opposition House Leader, shall table the report and propose a motion for corrective action to the Legislative Assembly.

If the Legislative Assembly is not sitting, the Government House Leader, in consultation with the Opposition House Leader, shall table the report and propose a motion for corrective action at the earliest opportunity.

Statements regarding a matter related to this policy must respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence in the course of an investigation.

Following the presentation of the BOIE report to the House Leaders, if the complainant is no longer a Member, the matter is deemed withdrawn and no further action shall be taken by the Legislative Assembly.

## **7. Suspension of Resolution Process**

The Intake Officer shall immediately suspend the resolution process if:

- (a) there are reasonable grounds to believe that a Member has committed an offence under an Act of Parliament or provincial legislation, in which case the Intake Officer shall notify the proper authorities; or
- (b) it is discovered that the conduct under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament or provincial legislation has been committed or that a charge has been laid with respect to that Act.

The Intake Officer shall not continue the resolution process until the other investigation has been completed or there has been a final disposition of the charge laid with respect to that conduct at the initial stage.

## **8. Effect of Resignation and Dissolution of the Assembly**

The processes of this policy shall not lapse by the vacancy of the complainant's seat as a result of resignation or dissolution. The resolution process will continue as long as the respondent remains a Member of the Legislative Assembly.

Any of the procedural steps of this policy may be postponed during a period of dissolution at the discretion of the Investigator and Intake Officer. The Speaker shall not be presented with a report during a period of dissolution. The dissolution of the Assembly shall not affect the standing of any case under this policy if the respondent is re-elected to the Assembly.

The authority of this policy becomes *ultra vires* if the respondent ceases to be Member of the Legislative Assembly. Consequently the investigation, or the BOIE's review of the final investigation report, shall be suspended and the case deemed withdrawn and no further action taken under this policy and shall be continued as a harassment complaint where the process was interrupted even if the member is no longer an MLA

## **9. Fraudulent/Malicious Complaints**

Where a complaint of personal harassment or sexual harassment is not substantiated, no action will be taken against a complainant who made the complaint in good faith. Where, however, a complaint is fraudulent, malicious or otherwise made in bad faith, the complainant may be subject to any sanctions that the Legislative Assembly of Saskatchewan has available to it.

In a case where a complaint is found to be fraudulent, malicious or otherwise made in bad faith, the BOIE may apply the processes outlined in this policy for corrective action, but no report shall be made to the Legislative Assembly. The BOIE shall deal with the matter. In such cases the name of the complainant and not the respondent shall be included in the report to the Assembly.

## **10. Appeal**

If the complainant or respondent have participated in the resolution process and believe that it has failed at some point, or that the sanctions are not consistent with the incident(s) that led to the original complaint, a request for an appeal shall be filed within 30 calendar days of receiving the BOIE report. The request for an appeal must be submitted, in writing, to the Intake Officer. It shall be signed by the Member requesting the appeal and include a description of the nature of the complaint with respect to how the resolution process failed and how the sanctions are not consistent with the incidents that led to the original complaint. The Intake Officer shall forward the request for an appeal regarding the sanction to the Ombudsman. . The Ombudsman shall decide whether an appeal is warranted. If the Ombudsman decides that an appeal is warranted, the appeal will be conducted by an individual who is selected as outlined in Article 4(c) of this

policy. No appeal with respect the facts will be allowed. The individual hearing the appeal may set aside, confirm or vary the decision as to penalty.

### **11. Other Legal Rights**

Nothing in the policy is intended to discourage or prevent a Member or former Member from exercising any legal rights that a Member or former Member may have pursuant to any law.

For greater certainty, where a Member or former Member decides to exercise their legal rights, no action shall be taken pursuant to this policy.

For greater certainty, if the policy does not address an unusual or particular situation, the Intake Officer shall determine the appropriate course of action. This determination will be made after the Intake Officer receives the complaint but before an investigation takes place or after the investigation takes place but before the report is made.

### **12. Review**

The Steering Committee of the BOIE will review this policy and its procedures prior to each election, or as required, and will make necessary adjustments to ensure that it meets the needs of all Members.

### **13. Education and Sensitivity Training**

Every Member shall, within a year of becoming a member, or the implementation of this policy, be provided with the opportunity to take harassment sensitivity training.

The Legislative Assembly Service shall undertake to brief Members on the contents of this policy at the start of each new Legislature.

### **14. Coming into Force**

The Directive establishing an anti-harassment policy for members shall come into force on the day the Legislative Assembly adopts standing orders for proceedings on board reports and subsidiary remedial motions.

**POLICY ON  
PREVENTING  
AND MANAGING  
SITUATIONS INVOLVING  
HARASSMENT IN  
THE WORKPLACE**



The *Policy on Preventing and Managing Situations Involving Harassment in the Workplace* came into force on June 4, 2015 by regulation of the Office of the National Assembly (Decision 1809) and with the approval of the Secretary General.

**POLICY** ON  
**PREVENTING**  
AND **MANAGING**  
SITUATIONS INVOLVING  
**HARASSMENT** IN  
THE **WORKPLACE**



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# 1 Context, purpose and scope

**1.1** The *Policy on Preventing and Managing Situations Involving Harassment in the Workplace* (Policy) is the result of recommendations from the Working Group on Harassment, created at the request of the President of the National Assembly and chaired by one of the Assembly's Vice-Presidents. The Working Group, which includes men and women Members from all parties represented in the National Assembly, was mandated to propose measures to prevent and manage situations involving harassment at the National Assembly, a workplace shared by Members, Members' employees and administrative employees. Although these three groups are governed by different employment conditions and, in some cases, different employment relationships, the Policy emphasizes the desire of the political and administrative authorities that the Assembly constitute a healthy, harmonious workplace, free from harassment.

**1.2 In this context, the Policy governs:**

- All Members of the National Assembly<sup>1</sup>;
- All Members' employees<sup>2</sup>;
- All administrative employees.

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- Applies to people's professional relationships in the course of their duties, regardless of the location;
  - Applies to Members as employers and also covers situations involving harassment between Members;
  - Applies to harassment by a third party (client, supplier, visitor, etc.).

**1.3** The Policy is an offshoot of the *Policy on the health of persons employed at the National Assembly* (French only) and complements existing legislative provisions on rights and obligations related to harassment.

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<sup>1</sup> However, the Policy does not apply to Members in the context of parliamentary proceedings, where the Standing Orders of the National Assembly apply, under the authority of the Assembly's President and Vice-Presidents and its committees.

<sup>2</sup> For readability and the application of this Policy, "Member's employees" includes House officers' employees and MNAs' employees, including those in the ridings. These employees are hired under the provisions of the *Act respecting the National Assembly*. Ministers' staff, including those in riding offices, are not governed by this Policy because they are appointed under the provisions of the *Executive Power Act*.

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## 2 Definition of psychological harassment<sup>3</sup>

- 2.1** **PSYCHOLOGICAL HARASSMENT:** Any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that undermines a person's dignity or psychological or physical integrity and that results in a harmful work environment for the person. A single serious incidence of such behaviour that has a lasting harmful effect on a person may also constitute psychological harassment<sup>4</sup>.
- 2.2** The definition of psychological harassment in the *Act respecting labour standards* (CQLR, chapter N 1.1) includes sexual harassment in the workplace and harassment based on any of the grounds listed in section 10 of the *Charter of human rights and freedoms* (CQLR, chapter C 12) (discriminatory harassment): race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. For the purposes of this Policy, this definition also includes harassment based on grounds of identity and gender expression.

## 3 Commitment

- 3.1** As separate employers, each Member and the administration of the National Assembly recognize it is their responsibility to have healthy management practices to prevent and stop psychological harassment of their respective employees. They also recognize that conflict situations can harm the work environment and people's health, and directly affect their ability to carry out the employer's mission.
- 3.2** Members must abide by the value "respect" (*Code of ethics and conduct of the Members of the National Assembly* (CQLR, chapter C-23.1, s. 6)), as must Members' employees (*Rules of conduct applicable to the staff of Members and House officers of the National Assembly* (French only) (s. 3)) and administrative employees (*Declaration of values of the Québec public administration* (French only)). This Policy is a restatement of that value.

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<sup>3</sup> Appendix 1 lists other definitions of inappropriate behaviours.

<sup>4</sup> Appendix 2 lists examples of what does not constitute harassment.

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- 3.3** Because every person deserves a healthy, harmonious workplace, free from harassment, all Members and the administration of the National Assembly agree:
- to take reasonable steps to foster a healthy work environment that contributes to people’s physical and psychological health;
  - to offer a workplace free from harassment and violence, not to tolerate any inappropriate behaviour and to implement any preventive and corrective measures;
  - to recognize every person’s right to be protected, helped and supported fairly and discreetly;
  - to promote a culture of civility;
  - to swiftly resolve conflict situations that impact the work environment and, potentially, people’s health, in order to prevent situations involving harassment;
  - to offer the support necessary to people who feel they are victims of harassment through problem-solving mechanisms and a formal harassment complaint process that is effective, impartial and adapted to the workplace.

## **4** CONFIDENTIALITY

- 4.1** Any person directly or indirectly involved in a situation governed by this Policy must adhere to the principle of confidentiality.
- 4.2** However, the obligation to maintain confidentiality to which the Policy refers is not absolute: people who deal with situations brought to their attention may disclose information if necessary in the context of processing the file. Concerned parties, as well as witnesses called as part of the complaint process, have the right to consult the resource person of their choice. Although disclosure is allowed under the Policy, it must occur with the greatest possible discretion, respectfully and without unjustly tarnishing people’s reputations.
- 4.3** Information about a complaint, including the identities of the parties and witnesses, must be kept confidential by all parties, including those involved in the complaint process. The people involved (parties and witnesses) must sign a confidentiality agreement at the beginning of the process.

## Resolution of situations resembling harassment

### 5.1 Definitions

**PERSON WHO FEELS HE OR SHE IS A VICTIM OF HARASSMENT:** A person who experiences a situation which he or she perceives, in good faith, to potentially be harassment.

**COMPLAINANT:** Person who makes a harassment complaint.

**RESPONDENT:** Person considered responsible for the harassment by the person who feels he or she is a victim of harassment.

**PERSON IN AUTHORITY:** Given that the National Assembly is a workplace shared by Members, Members' employees and administrative employees, and that these three groups are not all governed by the same employment relationships, the standard term "superior" is not always appropriate. For the purposes of this Policy, the term "person in authority" is considered more fitting.

In certain cases, it is understood that informing the person in authority or referring the complainant to that person is not appropriate (i.e. when the person in authority is the respondent). Another person in authority is then designated (Whip, Party leader or hierarchical superior).

The following act as persons in authority, where applicable:

COMPLAINANT OR RESPONDENT	PERSON(S) IN AUTHORITY
Member	<b>Whip</b> , or if the situation requires it, <b>Party leader</b> .
Independent Member	<b>Secretary General</b> .
Member's employee	<b>Member</b> , or if the situation requires it, <b>Whip</b> or <b>Party leader</b> .
Administrative employee	<b>Immediate superior</b> , or if the situation requires it, <b>hierarchical superior</b> .

**REFERENCE PERSON FOR HARASSMENT CASES (REFERENCE PERSON):** A person who can offer support during the informal process and answer questions related to the Policy. The reference person also assists those involved in a complaint and refers them to the appropriate resources and services, following up with the external resource person and mediator, if applicable. The reference person is a Human Resources Directorate employee designated by the Secretary General to ensure application of and follow-up to the harassment complaint process.

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**EXTERNAL RESOURCE PERSON:** A specialized, impartial resource person from outside the organization to whom the reference person sends complaints. The external resource person determines whether a complaint is admissible and, if applicable, refers the parties to mediation or conducts an investigation. When the investigation is finished, the external resource person drafts a report that includes an analysis, findings on the complaint (substantiated, unsubstantiated or in bad faith) and recommended corrective measures. The external resource person submits the report to the reference person.

**COMPLAINT ADMISSIBILITY:** Preliminary analysis by the external resource person to determine if the nature of the complaint is serious enough to warrant follow-up. The analysis allows the external resource person to determine whether the complaint is admissible (**not** whether it is substantiated)

**MEDIATION:** Discussions between the parties in the presence of a neutral, impartial external mediator.

**INVESTIGATION:** Process carried out by the external resource person to gather facts, meet the parties and witnesses, and reach a conclusion on whether the complaint is substantiated.

**BAD FAITH COMPLAINT (FRIVOLOUS COMPLAINT):** Complaint whose sole purpose is to harm and undermine another person's integrity, harm the employer or gain some sort of advantage.

## 5.2 Informal process

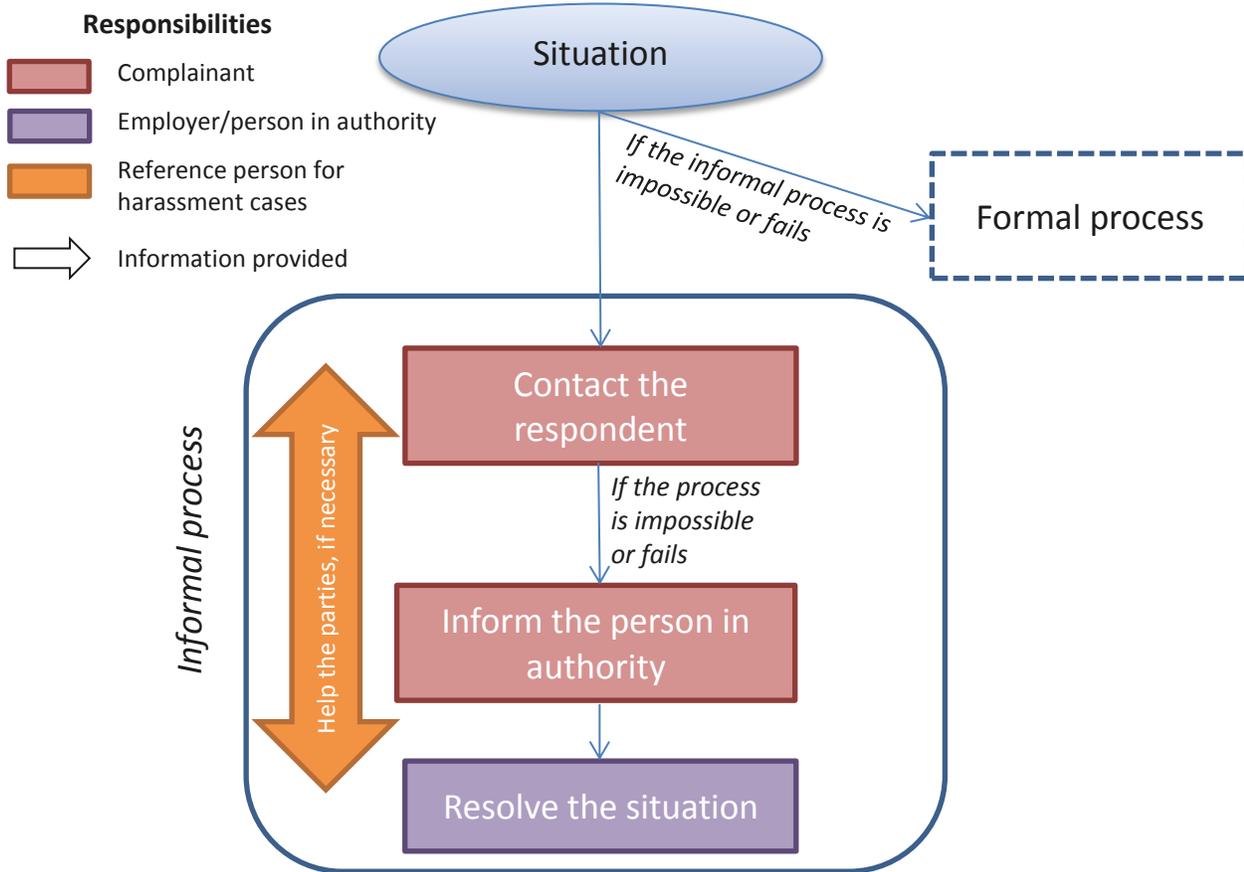
Several avenues are open to a person who feels he or she is a victim of harassment:

1. Speak to the person whose behaviour is objectionable as soon as possible, to explain that this conduct is unwanted and needs to stop.
2. Go to the designated person in authority (see chart in 5.1) to get information, try to identify and define the nature and scope of the situation and explore possible solutions, including referral to other resources, if applicable (e.g. employee assistance program).

The person in authority tries to determine if the situation falls within the scope of this Policy. If not, he or she can contact the reference person for guidance on the appropriate resources or tools. The person in authority may also refuse to act if he or she believes that the allegations are unsubstantiated or in bad faith.

3. Contact the reference person for support during the informal process or for information on the Policy.

## INFORMAL PROCESS



### 5.3 Formal process

The Policy details the formal complaint process for situations involving harassment and the responsibilities of each of the parties involved, depending on whether the complainant is a Member (A), a Member's employee (B) or an administrative employee (C). It is understood that psychological harassment complaints are to be dealt with promptly, with particular attention to impartiality and confidentiality.

**A. PROCESS – FOR A MEMBER WHO FEELS HE OR SHE IS A VICTIM OF HARASSMENT**

STEPS	PROCESS
<p><b>STEP 1</b> Complaint</p>	<p>A person who feels he or she is a victim of harassment can file a complaint with the reference person for harassment cases (reference person).</p>
<p><b>STEP 2</b> Acknowledgement of receipt and interim measures</p>	<p>The reference person acknowledges receipt of the complaint within seven working days and informs and assists the complainant's Whip or Party leader, as applicable. The Whip or Party leader determines whether interim measures are required.</p> <p>The reference person forwards the complaint to the external resource person.</p>
<p><b>STEP 3</b> Admissibility analysis</p>	<p>The external resource person analyzes the complaint's admissibility.</p> <p><b>Admissible complaint:</b> The external resource person notifies the complainant, the complainant's Whip or Party leader, as applicable, and the respondent. If the respondent is</p> <ul style="list-style-type: none"> <li>• an employee (Member's or administrative): the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p><b>Inadmissible complaint:</b> The external resource person notifies the complainant and the complainant's Whip or Party leader. The complainant is referred to other resources.</p> <p><b>Bad faith complaint:</b> The external resource person notifies the complainant and the complainant's Whip or Party leader. Measures may be taken (see section 7).</p> <p>The external resource person notifies the reference person.</p>
<p><b>STEP 4</b> Mediation</p>	<p>If the complaint is admissible and mediation is an option, the external resource person proposes it to the respondent and the complainant. If both parties agree to it, an external mediator is assigned to the file.</p>
<p><b>STEP 5</b> Investigation</p>	<p>If mediation is impossible or fails, the external resource person conducts an investigation.</p>
<p><b>STEP 6</b> Findings</p>	<p>When the investigation is finished, the external resource person relays the findings (complaint substantiated, unsubstantiated or in bad faith) to the complainant, the complainant's Whip or Party leader, as applicable, and the respondent. If the respondent is</p> <ul style="list-style-type: none"> <li>• an employee (Member's or administrative): the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p>The external resource person notifies the reference person.</p> <p>The respondent's employer, Whip or Party leader and the complainant's Whip or Party leader decide as soon as possible what measures to take, based on the external resource person's recommendations. The reference person is informed of the measures taken so that they can be entered in the file.</p>

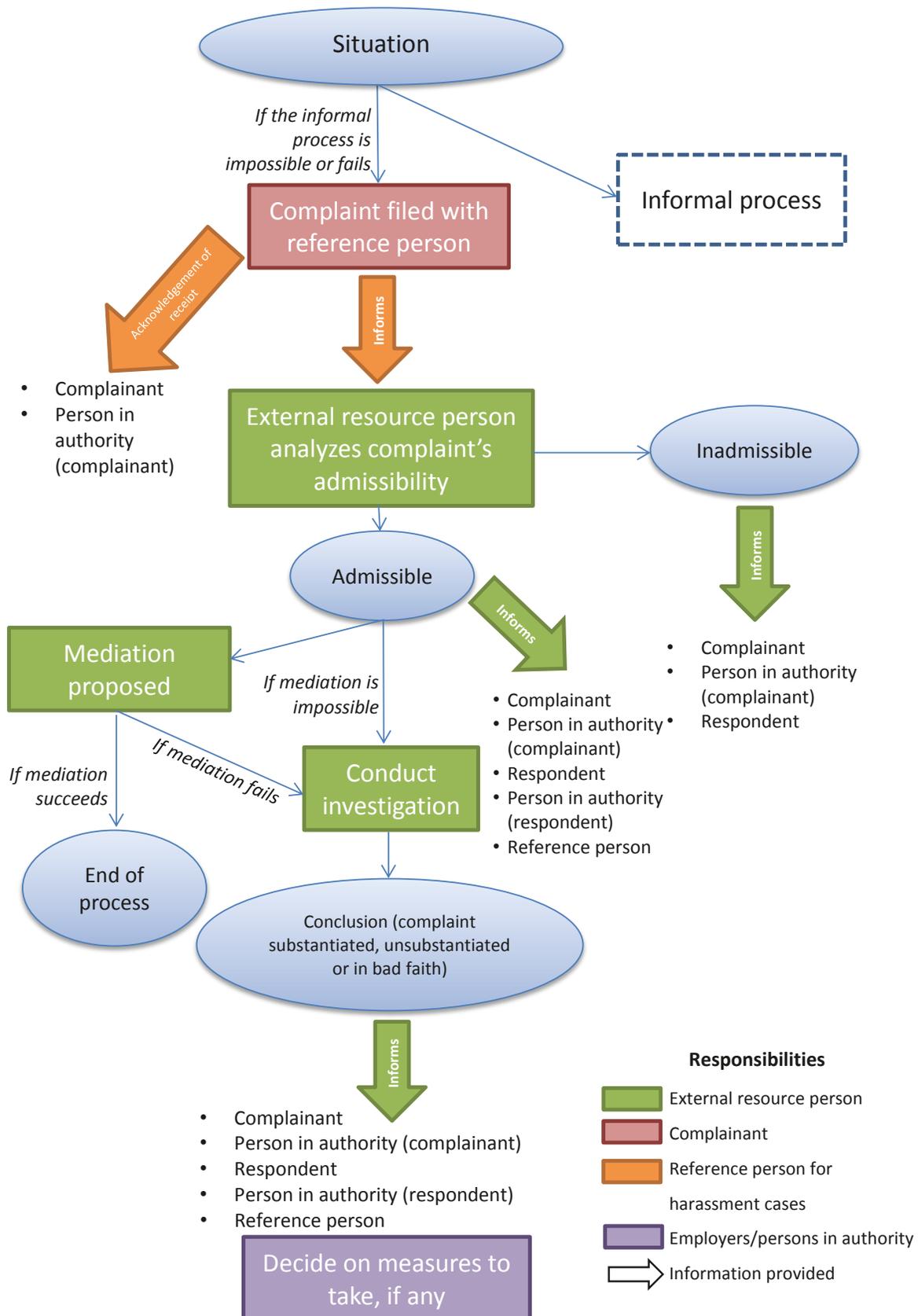
**B. PROCESS – FOR A MEMBER’S EMPLOYEE WHO FEELS HE OR SHE IS A VICTIM OF HARASSMENT**

STEPS	PROCESS
<p><b>STEP 1</b> Complaint</p>	<p>A person who feels he or she is a victim of harassment can file a complaint with the reference person for harassment cases (reference person).</p>
<p><b>STEP 2</b> Acknowledgement of receipt and interim measures</p>	<p>The reference person acknowledges receipt of the complaint within seven working days and informs and assists the complainant’s Member, Whip or Party leader, as applicable. The Member, Whip or Party leader determines whether interim measures are required.</p> <p>The reference person forwards the complaint to the external resource person.</p>
<p><b>STEP 3</b> Admissibility analysis</p>	<p>The external resource person analyzes the complaint’s admissibility.</p> <p><b>Admissible complaint:</b> The external resource person notifies the complainant, the complainant’s Member, Whip or Party leader, as applicable, and the respondent. If the respondent is</p> <ul style="list-style-type: none"> <li>• an employee (Member’s or administrative): the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p><b>Inadmissible complaint:</b> The external resource person notifies the complainant and the complainant’s Member, Whip or Party leader. The complainant is referred to other resources.</p> <p><b>Bad faith complaint:</b> The external resource person notifies the complainant and the complainant’s Member, Whip or Party leader. Measures may be taken (see section 7).</p> <p>The external resource person notifies the reference person.</p>
<p><b>STEP 4</b> Mediation</p>	<p>If the complaint is admissible and mediation is an option, the external resource person proposes it to the respondent and the complainant. If both parties agree to it, an external mediator is assigned to the file.</p>
<p><b>STEP 5</b> Investigation</p>	<p>If mediation is impossible or fails, the external resource person conducts an investigation.</p>
<p><b>STEP 6</b> Findings</p>	<p>When the investigation is finished, the external resource person relays the findings (complaint substantiated, unsubstantiated or in bad faith) to the complainant, the complainant’s Member, Whip or Party leader, as applicable, and the respondent. If the respondent is</p> <ul style="list-style-type: none"> <li>• an employee (Member’s or administrative): the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p>The external resource person notifies the reference person.</p> <p>The respondent’s employer, Whip or Party leader and the complainant’s employer must decide as soon as possible on what measures to take, based on the external resource person’s recommendations. The reference person is informed of the measures taken so that they can be entered in the file.</p>

**C. PROCESS – FOR AN ADMINISTRATIVE EMPLOYEE WHO FEELS HE OR SHE IS THE VICTIM OF HARASSMENT**

<b>STEPS</b>	<b>PROCESS</b>
<b>STEP 1</b> Complaint	A person who feels he or she is a victim of harassment can file a complaint with the reference person for harassment cases (reference person).
<b>STEP 2</b> Acknowledgement of receipt and interim measures	<p>The reference person acknowledges receipt of the complaint within seven working days and informs and assists the complainant's immediate superior or hierarchical superior, as applicable. The immediate superior or hierarchical superior determines whether interim measures are required.</p> <p>The reference person forwards the complaint to the external resource person.</p>
<b>STEP 3</b> Admissibility analysis	<p>The external resource person analyzes the complaint's admissibility.</p> <p><b>Admissible complaint:</b> The external resource person notifies the complainant, the respondent and their immediate superior or hierarchical superior, as applicable. If the respondent is</p> <ul style="list-style-type: none"> <li>• a Member's employee: the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p><b>Inadmissible complaint:</b> The external resource person notifies the complainant and the complainant's immediate superior or hierarchical superior. The complainant is referred to other resources.</p> <p><b>Bad faith complaint:</b> The external resource person notifies the complainant and the complainant's immediate superior or hierarchical superior. Measures may be taken (see section 7).</p> <p>The external resource person notifies the reference person.</p>
<b>STEP 4</b> Mediation	If the complaint is admissible and mediation is an option, the external resource person proposes it to the respondent and the complainant. If both parties agree to it, an external mediator is assigned to the file.
<b>STEP 5</b> Investigation	If mediation is impossible or fails, the external resource person conducts an investigation.
<b>STEP 6</b> Findings	<p>When the investigation is finished, the external resource person relays the findings (complaint substantiated, unsubstantiated or in bad faith) to the complainant, the respondent and their immediate superior or hierarchical superior, as applicable. If the respondent is</p> <ul style="list-style-type: none"> <li>• a Member's employee: the employer is notified;</li> <li>• a Member: the Whip or Party leader is notified.</li> </ul> <p>The external resource person notifies the reference person.</p> <p>The respondent's employer, Whip or Party leader and the complainant's employer decide as soon as possible on what measures to take, based on the external resource person's recommendations. The reference person is informed of the measures taken so that they can be entered in the file.</p>

## FORMAL PROCESS



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## **6** Responsibilities

This Policy refers to various parties, whose responsibilities are detailed below:

### **6.1 Office of the National Assembly**

- Adopt this Policy, jointly with the Secretary General;
- Adopt any subsequent amendments, jointly with the Secretary General.

### **6.2 Secretary General**

- Adopt this Policy, jointly with the Office of the National Assembly;
- Adopt any subsequent amendments, jointly with the Office of the National Assembly;

#### *For administrative employees*

- Ensure the Policy is implemented;
- Prevent and stop harassment and violence;
- Support a culture of prevention and civility;
- Not tolerate any form of violence or harassment;
- Intervene to resolve any at-risk conflict situations;
- Ensure that situations are dealt with discreetly;
- Ensure that supervisors under the Secretary General's authority properly assume their responsibilities under this Policy;
- Decide on measures to be taken;
- Ensure that employees are not subject to reprisals;
- After intervening in a conflict situation, restore a positive work environment and ensure follow-up on the problem situation.

### **6.3 Members**

#### *As employers*

- Ensure the Policy is implemented among their employees;
- Prevent and stop harassment and violence;
- Support a culture of prevention and civility;
- Not tolerate any form of violence or harassment;
- Intervene to resolve any at-risk conflict situations;
- Ensure that situations are dealt with discreetly;

- Ensure that supervisors under their authority properly assume their responsibilities under this Policy;
- Decide on measures to be taken for their employees;
- Ensure that employees are not subject to reprisals;
- After intervening in a conflict situation, restore a positive work environment and ensure follow-up on the problem situation.

*As colleagues (relations between Members)*

- Abstain from any form of harassment or violence;
- Conduct themselves so as to foster a workplace free from violence, incivility or psychological harassment;
- Maintain confidentiality;
- Show respect for people with whom they interact in the course of their duties;
- When required, cooperate in verifying alleged facts if harassment is reported.

#### 6.4 Person in authority

Since the standard term “superior” is not always appropriate in the context of this Policy, the term “person in authority” was considered more fitting. The following act as persons in authority, as applicable:

COMPLAINANT OR RESPONDENT	PERSON(S) IN AUTHORITY
Member	<b>Whip</b> , or if the situation requires it, <b>Party leader</b> .
Independent Member	<b>Secretary General</b> .
Member’s employee	<b>Member</b> , or if the situation requires it, <b>Whip</b> or <b>Party leader</b> .
Administrative employee	<b>Immediate superior</b> , or if the situation requires it, <b>hierarchical superior</b> .

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*With regard to persons for whom they are the person of authority*

- Prevent and stop harassment and violence;
- Not tolerate any form of violence or harassment;
- Ensure that situations are dealt with discreetly;
- Support a culture of prevention and civility;
- Intervene to resolve any at-risk conflict situations;
- Note situations brought to his or her attention;
- Ensure that people are not subject to reprisals;
- Ensure that measures are applied;
- If the Whip, Party leader or Secretary General is the person in authority, he or she also decides on measures to be taken, even if he or she is not considered the complainant's or respondent's employer;
- After intervening in a conflict situation, restore a positive work environment and ensure follow-up on the problem situation.

## **6.5 Whip**

- If the Whip is the person in authority, his or her responsibilities are those listed under point 6.4.
- As the person responsible for cohesion within a parliamentary group, the Whip must support a culture of prevention and civility within it, in particular by setting an example and being sensitive to inappropriate situations that colleagues may experience.

## **6.6 Human Resources Directorate**

- Ensure that the Policy is reviewed;
- Train, inform and raise awareness about harassment among Members, superiors, Members' employees and administrative employees;
- Ensure that situations are dealt with discreetly;
- Keep harassment files confidential.

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## **6.7 Reference person for harassment cases**

- Advise, inform and raise awareness among people governed by the Policy;
- Receive requests or complaints under the Policy;
- Ensure that situations are dealt with promptly and discreetly;
- Refer employees to specialized resources for support (e.g. employee assistance program);
- Maintain confidentiality.

## **6.8 Members' employees and administrative employees**

- Abstain from any form of harassment or violence;
- Conduct themselves so as to contribute to a workplace free from violence, incivility or psychological harassment;
- Maintain confidentiality;
- Show respect for people with whom they interact in the course of their duties;
- When required, cooperate in verifying alleged facts if harassment is reported.

## **6.9 Person who feels he or she is a victim of harassment (complainant)**

- If possible, clearly tell the respondent to stop the objectionable behaviour;
- Inform his or her Member, Whip, Party leader, immediate superior, hierarchical superior or the reference person for harassment cases, as applicable;
- Maintain confidentiality;
- Note all the facts related to the unwanted situation(s): date, time, witnesses, nature of the behaviour;
- Cooperate with the complaint process and measures implemented to resolve the situation;
- Actively participate in finding solutions;
- If necessary, go to the person responsible for the employee assistance program.

## **6.10 Respondent**

- Cooperate with the complaint process and measures implemented to resolve the situation;
- Change his or her conduct and correct any inappropriate or harassing behaviours, if applicable;
- Maintain confidentiality;
- If necessary, go to the person responsible for the employee assistance program.

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## 7 Measures

A person who harasses another person, files a complaint in bad faith or attempts to prevent resolution of a complaint by threats, intimidation or retaliation may be subject to measures.

## 8 Coming into force and review of the Policy

- 8.1 This Policy comes into force through a regulation passed by the Office of the National Assembly, after approval by the Secretary General. Any amending provision must be passed in the same manner.
- 8.2 The Policy is open to review every three years as of the date it is passed. Until it is reviewed, the most recent Policy passed remains in force.
- 8.3 This Policy replaces the National Assembly's *Program on prevention and controlling harassment and violence in the workplace* (French only).



Secretary General

June 4, 2015

Date



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## APPENDIX 1

### Other definitions of inappropriate behaviours

While the following behaviours do not in themselves constitute harassment, they could become harassment if they were to correspond to the definition of psychological harassment outlined in section 2. Regardless, they are inappropriate behaviours that can impact the work environment.

**ABUSE OF AUTHORITY:** Improper use of authority for the purpose of hindering a person's job performance, threatening the person's livelihood or negatively interfering with his or her career.

**CONFLICT:** Any form of disagreement or dispute involving two or more people that causes negative repercussions for them and, as a result, the work environment.

**CYBERBULLYING:** Using information technology (Internet, social networking sites, websites, email, text messaging, instant messaging) to undermine the dignity of another person.

**INCIVILITY:** Conduct that infringes on the standards of mutual respect, cooperation, courtesy and good manners that can reasonably be expected in a workplace.

**VIOLENCE:** Conduct, acts, speech or gestures that undermine a person's dignity or physical or psychological well-being, or use force to make a person act against their will. Violence can be physical (assault, confinement, abduction), verbal or written (threats, bullying, libel, insulting or abusive remarks).

## APPENDIX 2

### Examples of what does not constitute harassment

**The following situations do not constitute harassment:**

- Managerial rights: The employer's right to supervise employees and make decisions related to the employer's mission, including:
  - Managing employee discipline;
  - Managing absenteeism;
  - Managing employee job performance and organization;
  - Implementing disciplinary measures, whether verbal or written;
  - Making changes to work organization or working conditions.
- Conflicts at work (work conflict is not one-way, but harassment is);
- Victimization ("enjoying" one's role as a victim);
- Stress at work;
- Difficult social relationships.

Communications, Educational Programs and Visitor Services Directorate  
Photocopying and Printing Services  
of the National Assembly of Québec  
June 2015







**POLICY ON  
PREVENTING  
AND MANAGING  
SITUATIONS INVOLVING  
HARASSMENT IN  
THE WORKPLACE**

# **Nova Scotia House of Assembly Policy on the Prevention and Resolution of Harassment in the Workplace (Policy).**

Approved by the Nova Scotia House of Assembly on May 19, 2016.

Effective date May 20, 2016.

**STATEMENT: The Nova Scotia House of Assembly is committed to providing a workplace that is free of harassment.**

## **1. Name**

This Policy is called “Nova Scotia House of Assembly Policy on the Prevention and Resolution of Harassment in the Workplace.”

## **2. Context**

Everyone has a right to be treated with respect and has a responsibility to treat others the same way. It is in the best interests of everyone to foster a workplace that supports respect and dignity and prevents harassment by promoting awareness of and early informal resolution of harassment complaints.

To prevent harassment all communications and interactions should be professional and respectful. Showing courtesy and politeness can go a long way to preventing misunderstandings that could be perceived as harassment.

Behaviour considered harmless by one person may be considered offensive by another. Individuals should be sensitive to how others react to their remarks and behaviour. Body language is important: non-verbal behaviour, such as facial expressions, posture, tone of voice or silence, may indicate that another person is not comfortable with the behaviour.

## **3. Workplace**

The workplace is any place where the business of the House of Assembly is being carried out including, but not limited to;

- all offices, premises and locations that are used by persons identified at Section 4 of this Policy as their workplace;
- all premises where the business of the House of Assembly is being conducted; and
- all locations and situations, including business travel, conferences and work-related social gatherings, where House of Assembly-related activities are carried out.

#### **4. Application**

This Policy applies to

- every elected Member of the House of Assembly (MLA);
- every staff person, be he or she permanent, contract, casual, intern, page or other, whose salary or remuneration is paid from the Legislative Services budget of the House of Assembly;
- any contract staff person whose salary is paid from budgets other than the Legislative Services budget of the House of Assembly and who works at the workplace defined under Section 3 including security staff; and
- volunteers who work with MLAs.

For greater certainty, this Policy applies to employees who are subject to a collective agreement and whose salary or remuneration is paid from the Legislative Services budget of the House of Assembly. Employees who are subject to a collective agreement are also subject to the Government of Nova Scotia Respectful Workplace Policy.

For greater certainty, this Policy does not apply to debate and proceedings in the House of Assembly (including Committee of the Whole on Supply, the Subcommittee on Supply and the Committee of the Whole House on Bills) and does not apply to debate and proceedings before the Committee on Assembly Matters, the Standing, the Select and the Special Committees of the House of Assembly.

#### **5. Harassment**

Harassment means any behaviour, act, conduct or comment, whether sexual in nature or not, whether occurring on a one-time or recurring basis, by a person to whom this Policy applies, directed at and offensive to another person to whom this Policy applies, and that the person knew or ought reasonably to have known

- would be unwelcome and cause offence or harm;
- would demean, belittle, intimidate, threaten, distress, humiliate or embarrass;
- would affect a person's reputation;
- would endanger a person's job, undermine job performance, threaten economic livelihood or interfere with one's career;
- would be discrimination on account of one or more factors listed in the *Human Rights Act*;
- would be bullying as defined under the *Education Act*; or
- would be cyberbullying as defined under the *Cyber-safety Act* or under another Act.

## **6. Purpose**

The purpose of this Policy is to

- encourage open communication to ensure that the workplace is free of harassment and that persons in the workplace are respectful of each other;
- prevent harassment between persons to whom this Policy applies;
- encourage early identification and reporting of harassment complaints;
- promote and encourage both informal and formal reporting of instances of harassment;
- initiate early and informal resolution of harassment situations, whenever possible;
- establish a resolution process that is complainant-driven, that is one where it is the complainant's choice as to whether the complaint brought forward is informal or formal and it is also the complainant's discretion to bring an end to the complaint process at any given time in the process;
- ensure that any allegation of harassment is taken seriously and provide procedures for the speedy and effective resolution of allegations;
- make everyone aware of each person's responsibilities;
- ensure confidentiality throughout the complaint resolution process, unless otherwise provided for in this Policy; and
- provide, in situations where harassment is found to have occurred, remedial, corrective or disciplinary measures, up to and including termination of employment in the case of staff or in the case of an elected Member, a referral and motion by the Internal Affairs Committee to the House of Assembly.

## **7. General Guidelines and Directives**

### **7.1 Confidentiality**

Appropriate steps will be taken to ensure the confidentiality of all inquiries, complaints and related records is respected, subject to procedural fairness or to any disclosure required by this Policy or by law. Disciplinary measures may be taken against an individual who inappropriately discloses information. No person shall disclose information related to the resolution process or any information related to any participant.

All persons associated with a complaint including witnesses are responsible for limiting discussion of the complaint and the disclosure of related information to those people who need to know.

**7.2 Confirmation of receipt and reading of Policy**

A) All persons to whom this policy applies as set out in Section 4, **except** contract staff persons whose salary is paid from budgets other than the Legislative Services budget of the House of Assembly and who work at the workplace defined under Section 3 including security staff and volunteers, are to be provided with a copy of this Policy.

Within 5 business days of receiving the Policy, each person must individually sign and return to the person providing them with a copy of this Policy, a form acknowledging receipt of the Policy and confirming they have read the Policy. Each signed confirmation form will immediately be remitted by the person collecting them to the Chief Clerk for filing.

<b>Person providing the Policy and collecting the confirmation of receipt</b>	<b>Person receiving the Policy and signing acknowledgment</b>
Party Whip	Each and every caucus MLA in the Whip’s political party
Chief Clerk	Each Independent MLA; the Director of Administration – Speaker’s Office; an Assistant Clerk; the Sergeant-at-Arms; the Chief Legislative Counsel; the Legislative Librarian; the Manager – House of Assembly Operations; the Hansard Editor; the Manager of Legislative Television Broadcast and Recording Services; the Coordinator – House of Assembly Operations; the Chief Clerk.
Director of Administration – Speaker’s Office	Every staff person be it permanent, contract, casual, intern, page or other, whose salary or remuneration is paid from the Legislative Services budget of the House of Assembly and who is not listed in this chart.
Sergeant-at-Arms	Contract staff and service providers

B) As a condition of their contract, all contract staff persons whose salary is paid from budgets other than the Legislative Services budget of the House of Assembly and who work at the workplace defined under Section 3 including security staff, are to be informed of the Policy by the employer as identified in their contract of service. Where possible, reference to this Policy will be noted in the contract of employment of the staff person and will be included as a condition of the general contract for service with the service provider.

The Sergeant-at-Arms will provide copies of the Policy and a one-page summary brochure of the Policy to the employer identified in the contract of service for distribution to each contract staff person working at the workplace defined under Section 3. The Sergeant-at-Arms will obtain from the employer identified in the service contract a form acknowledging that that person has informed all contract staff of the Policy. The Sergeant-at-Arms will immediately remit the signed form to the Chief Clerk for filing.

C) When an MLA retains a volunteer to work with them, the MLA is responsible for informing the volunteer of this Policy by providing a one-page summary brochure of the Policy and directing the volunteer to the location on The Nova Scotia Legislature's website where the Policy is posted.

### **7.3 Criminal Conduct**

When there are reasonable grounds to believe that an MLA or other person to whom this Policy applies has committed an offence under the *Criminal Code* or provincial legislation, the Speaker of the House of Assembly, in consultation with the Chief Clerk and the Chief Legislative Counsel shall notify the proper authorities.

The resolution process under this policy remains pending until the proper authorities advise the Speaker that no charges will be laid or that there has been a final disposition of the charges with respect to the conduct.

### **7.4 Dissemination of Policy**

This Policy will be included and form part of the Members' Manual – Members' Compensation, Expenses and Constituency Administration.

This Policy and a summary thereof will be posted in a prominent place on the Nova Scotia Legislature's website.

Within 10 business days of the election of a new MLA, it is the responsibility of that MLA's Whip to provide a copy of the Policy to the new MLA and to obtain from the MLA a form acknowledging receipt of the Policy and confirming the Policy has been read. That form is to be filed immediately by the Whip with the Chief Clerk.

It is the responsibility of the Chief Clerk to provide a copy of the Policy to an Independent MLA and to obtain from the MLA a form acknowledging receipt of the Policy and confirming the Policy has been read.

Each person hiring a staff person be it permanent, contract, casual, intern, page or other, whose salary or remuneration is paid from the Legislative Services budget of the House of Assembly is responsible for informing the Director of Administration – Speaker’s Office of the hire and the Director will provide a copy of the Policy to that person and file the form acknowledging receipt of the Policy and confirming that the Policy has been read with the Chief Clerk.

### **7.5 Education and Orientation**

The Chief Clerk or the Chief Clerk’s delegate shall develop and offer appropriate orientation and ongoing training sessions to all persons to whom this Policy applies, to assist them in understanding their respective duties and responsibilities and, in particular, in applying and complying with this Policy.

### **7.6 Indemnification**

The House of Assembly shall indemnify each person who acts under this Policy against all costs, charges and expenses actually and reasonably incurred by that person, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of the duties carried out under this Policy, if the person acted in good faith with a view to the best interests of the House of Assembly and had reasonable grounds for believing that his or her conduct was lawful.

No action or other proceeding for damages lies or may be instituted against the House of Assembly for an act or omission done in good faith in the execution or intended execution of any duty pursuant to this Policy.

### **7.7 Informal Resolution**

Informal resolution should be attempted prior to the submission of a formal complaint except where the complainant refuses to participate or has been advised, by the person designated in the Policy to receive the complainant’s complaint, not to participate in the informal process.

### **7.8 Policy Updates**

Each person who is responsible under this Policy to provide copies of the Policy and obtain forms acknowledging receipt and reading of the Policy are also responsible for the distribution of all Policy updates in the same manner.

### **7.9 Procedural Fairness**

The parties to a complaint made under this Policy have the right to be informed, to be heard and to obtain an impartial decision.

## **7.10 Support Person**

A complainant and a respondent can each be accompanied by a support person at all steps of the informal or formal complaint process. For the purpose of this Policy a support person is a personal friend or confidant.

## **7.11 Timeliness**

All complaints should be dealt with in keeping with the time lines under this Policy and any remedial, corrective or disciplinary action should be implemented expeditiously and consistently.

The complaint process, up to and including Step 7 under Section 11 of this Policy, must be completed, without undue delay, no more than 6 months from the date the formal complaint is made unless an investigation extension has been granted under Section 11.5.5.

## **8. Definitions**

### **8.1 Complainant**

A person to whom this Policy applies and who initiates an informal or a formal harassment complaint under this Policy.

### **8.2 Formal Complaint**

A complaint that is filed in writing under Step 2 of Section 11 of this Policy.

### **8.3 Informal Complaint**

A complaint that is not formally filed under Step 2 of Section 11 of this Policy and that is resolved under Step 1 of Section 11.

### **8.4 Informal Resolution**

Practices, including counselling, coaching, facilitation or mediation that may assist the parties to resolve their differences in a timely and appropriate fashion.

### **8.5 Mediation**

A voluntary process used to resolve conflict by having a third party help the disputing persons arrive at a mutually acceptable solution.

### **8.6 Respondent**

A person to whom this Policy applies and who is named as a respondent to an informal or a formal harassment complaint by the complainant under this Policy.

**9. To whom are complaints both formal and informal made?**

<p style="text-align: center;"><b>When the Respondent named in the complaint is:</b></p>	<p style="text-align: center;"><b>The Complainant makes the complaint to:</b></p>
<p>(a) • an MLA</p>	<p>the Whip of the MLA’s political party</p>
<p>(b) • a Whip</p>	<p>the House Leader of the Whip’s political party</p>
<p>(c) • an Independent MLA; • a House Leader; • the Director of Administration – Speaker’s Office; • an Assistant Clerk; • the Sergeant-at-Arms; • the Legislative Librarian; • the Manager – House of Assembly Operations; • the Hansard Editor; • the Manager of Legislative Television Broadcast and Recording Services; • the Coordinator – House of Assembly Operations</p>	<p>the Chief Clerk</p>
<p>(d) • the Chief Clerk; • the Chief Legislative Counsel</p>	<p>the Speaker</p>
<p>(e) • the Speaker</p>	<p>the Chair of the Internal Affairs Committee</p>
<p>(f) • a person to whom this Policy applies and who is not listed at paragraphs (a), (b), (c), (d), (e) or (g) of this chart</p>	<p>Director of Administration – Speaker’s Office</p>

(g) • contract staff including security staff whose salary is paid from budgets other than the Legislative Services budget	the Sergeant-at-Arms
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**9.1** When a complainant lacks confidence that the person designated to receive the complaint will process the complaint fairly or give it the attention it deserves, the complainant may choose, in those circumstances, to make the complaint directly to the Chief Clerk or the Chief Clerk’s designate.

**10. Roles and Responsibilities**

<b>10.1 Person receiving complaint</b>	<b>Action to be taken</b>
<ul style="list-style-type: none"> <li>(a) a Whip;</li> <li>(b) a House Leader;</li> <li>(c) the Chief Clerk;</li> <li>(d) the Speaker; or</li> <li>(e) the Chair of the Internal Affairs Committee</li> </ul>	<ol style="list-style-type: none"> <li>1. Confirm with the complainant whether the complaint being made is an informal or a formal complaint.</li> <li>2. Inquire as to whether any resolution efforts were undertaken before making the complaint.</li> <li>3. Inform the complainant of available alternative resolution processes and time restrictions such as possible complaints to the Human Rights Commission, etc.</li> <li>4. Inform the respondent of the complaint.</li> <li>5. Explore, as appropriate, informal resolution or mediation options to resolve the complaint. Participation in an informal resolution process is voluntary and only after the complainant agrees to participate will the respondent be asked whether that person wishes to participate in an informal resolution process.</li> </ol>

	<ul style="list-style-type: none"><li>6. Remind the complainant and the respondent that informal resolution and/or mediation options are available at all stages of the resolution process.</li><li>7. Where the complainant has confirmed that the complaint is a formal complaint, review and accept or reject the filing of the formal complaint as required by Section 11.3 of this Policy. When the filing is rejected for technical reasons only, provide an opportunity for the technical error to be corrected.</li><li>8. Refer a filed formal complaint to the Office of the Ombudsman for investigation.</li><li>9. Request that the Office of the Ombudsman's investigation report contain one of the following conclusions:<ul style="list-style-type: none"><li>(a) there is sufficient evidence to support a claim that the respondent has engaged in a conduct that constitutes harassment as defined by this Policy;</li><li>(b) there is insufficient evidence to support a claim of harassment as defined by this Policy; or</li><li>(c) there is insufficient evidence to support a claim of harassment as defined by this Policy, and the complaint was frivolous or vexatious or was not made in good faith.</li></ul></li></ul> <p>The report may make recommendations as deemed appropriate by the Office of the Ombudsman to address issues identified during the investigation.</p>
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	<p>10. Where the investigation report concludes there is sufficient evidence to support the claim of harassment <b>or</b> the complaint is frivolous, vexatious or not made in good faith, the person receiving the report may</p> <ul style="list-style-type: none"><li>(a) recommend and implement any remedial, corrective or other measures against the MLA, the Whip, the Independent MLA, the House Leader or the Speaker, as the case may be;</li><li>(b) in the alternative and in exceptional cases where the person receiving the report believes that the appropriate measure to be taken in that case is a referral and motion by the Internal Affairs Committee to the House of Assembly, that person shall immediately refer the matter to the Chair of the Internal Affairs Committee without first determining a measure to be taken;</li><li>(c) recommend and implement any remedial, corrective or other measures up to and including suspension or termination of employment against the Director of Administration – Speaker’s Office, an Assistant Clerk, the Sergeant-at-Arms, the Legislative Librarian, the Manager – House of Assembly Operations, the Hansard Editor, the Manager of Legislative Television Broadcast and Recording Services, the Coordinator – House of Assembly Operation, the Chief Clerk or the Chief Legislative Counsel, as the case may be.</li></ul>
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	<p>11. Where the investigative report from the Office of the Ombudsman has made recommendations to address issues identified during the investigation, the person receiving the report will determine the manner in which to address the recommendations.</p>
<p>When the complaint is received by the Director of Administration – Speaker’s Office</p>	<ol style="list-style-type: none"> <li>1. Confirm with the complainant whether the complaint being made is an informal or a formal complaint.</li> <li>2. Inquire as to whether any resolution efforts were undertaken before making the complaint.</li> <li>3. Inform the complainant of available alternative resolution processes and time restrictions such as possible complainants to the Human Rights Commission, etc.</li> <li>4. Inform the respondent and the complainant’s supervisor of the complaint.</li> <li>5. Explore, as appropriate, informal resolution or mediation options to resolve the complaint. Participation in an informal resolution process is voluntary and only after the complainant agrees to participate will the respondent be asked whether that person wishes to participate in an informal resolution process. Retain the services of mediators of other professionals as required in consultation with the Public Service Commission and the Office of the Ombudsman to assist in resolving the complaint.</li> <li>6. Remind the complainant and the respondent that informal resolution and/or mediation options are available at all stages of the resolution process.</li> </ol>

	<p>7. Where the complainant has confirmed that the complaint is a formal complaint, review and accept or reject the filing of the formal complaint as required by Section 11.3 of this Policy. When the filing is rejected for technical reasons only, provide an opportunity for the technical error to be corrected.</p> <p>8. Refer a filed formal complaint to an investigator or the Office of the Ombudsman for investigation.</p> <p>9. Direct that the investigation report contain one of the following conclusions:</p> <ul style="list-style-type: none"><li>(a) there is sufficient evidence to support a claim that the respondent has engaged in a conduct that constitutes harassment as defined by this Policy;</li><li>(b) there is insufficient evidence to support a claim of harassment as defined by this Policy; or</li><li>(c) there is insufficient evidence to support a claim of harassment as defined by this Policy, and the complaint was frivolous or vexatious or was not made in good faith.</li></ul> <p>The report may make recommendations as deemed appropriate by the Office of the Ombudsman to address issues identified during the investigation.</p> <p>10. Where the investigation report concludes there is sufficient evidence to support the claim of harassment <u>or</u> the complaint is frivolous, vexatious or not made in good faith, the Director in consultation with the person's appropriate manager and/or supervisor and the Public Service Commission, recommend and implement</p>
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	<p>any remedial, corrective or other measures up to and including suspension or termination of the person’s employment.</p> <p>11. Where the investigative report from the Office of the Ombudsman has made recommendations to address issues identified during the investigation, the person receiving the report will determine the manner in which to address the recommendations.</p>
<p>When a complaint is received by the Sergeant-at-Arms</p>	<p>Where the respondent named in the complaint is a contract staff person, the Sergeant-at-Arms will resolve the complaint by involving the parties to the contract.</p> <p>This means that these complaints do not proceed any further under this Policy as they are resolved outside this Policy.</p>

<p><b>10.2 Person or Office receiving an investigative referral</b></p>	<p><b>Action to be taken</b></p>
<p>When the Office of the Ombudsman or a private investigator receives a request to conduct an investigation under this Policy</p>	<p>The Office of the Ombudsman or the private investigator will conduct an investigation and the investigation report will contain one of the following conclusions:</p> <ul style="list-style-type: none"> <li>(a) there is sufficient evidence to support a claim that the respondent has engaged in a conduct that constitutes harassment as defined by this Policy;</li> <li>(b) there is insufficient evidence to support a claim of harassment as defined by this Policy; or</li> </ul>

	<p>(c) there is insufficient evidence to support a claim of harassment as defined by this Policy, and the complaint was frivolous or vexatious or was not made in good faith.</p> <p>The report may make recommendations as deemed appropriate to address issues identified during the investigation.</p>
<p><b>10.3 The Committee on Assembly Matters</b></p>	<p style="text-align: center;"><b>Action to be taken</b></p>
	<ul style="list-style-type: none"> <li>• adopting this Policy and recommending its approval to the House of Assembly;</li> <li>• recommending to the House of Assembly that it adopt any legislative and rule changes required to give effect to this Policy;</li> <li>• adopting amendments to the Policy and recommending the approval of any amendments to the House of Assembly; and</li> <li>• ensuring that the Policy is implemented and appropriately applied.</li> </ul>
<p><b>10.4 The Internal Affairs Committee</b></p>	<p style="text-align: center;"><b>Action to be taken</b></p>
	<ul style="list-style-type: none"> <li>• in exceptional cases receiving a referral from a person who believes, when reviewing an investigation report that the appropriate measure to be taken in that particular case is a referral and motion by the Internal Affairs Committee to the House of Assembly;</li> <li>• deciding the exceptional cases referred to the Committee and implementing any remedial, corrective or other measures against the MLA, the Whip, the Independent MLA, the House Leader or the Speaker, as the case may be;</li> </ul>

	<ul style="list-style-type: none"> <li>• receiving appeals limited to the remedial, corrective, disciplinary or other measures imposed, including the final investigative report and the appellant’s written submissions setting out the sufficiency of the remedial, corrective or other measures imposed on the respondent or an appeal from a measure imposed on the complainant because the complaint was frivolous, vexatious or not made in good faith;</li> <li>• conducting an appeal process in accordance with this Policy;</li> <li>• receiving complaints under Section 9 naming the Speaker as the respondent and taking action as required under Section 10 of this Policy; and</li> <li>• when the appeal relates to the measures imposed on an MLA, preparing a report for the House of Assembly containing a summary of the final investigative report and any recommendations regarding appropriate sanctions to be imposed by the House of Assembly on the MLA.</li> </ul>
<b>10.5 The House of Assembly</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• adopting a motion approving and declaring this Policy in force;</li> <li>• adopting all additional resolutions, rule and legislative amendments required to authorize the persons, offices or Committees named in the Policy to carry out their duties as required by the Policy;</li> <li>• adopting by motion any Policy amendments as recommended by the Committee on Assembly Matters;</li> <li>• receiving reports from the Internal Affairs Committee, debating and voting on any</li> </ul>

	<p>recommendations made by the Committee to the House regarding appropriate sanctions to be imposed on an MLA.</p>
<b>10.6 The Chief Clerk</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly Administration;</li> <li>• providing the Policy to persons as required under Section 7.2 of this Policy and receiving and filing forms acknowledging receipt and confirming that the Policy has been read by these persons;</li> <li>• disseminating the Policy and updates as required under Section 7.4 and Section 7.8 of this Policy;</li> <li>• developing and offering appropriate orientation and ongoing training sessions and to all persons to whom this Policy applies; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10 of this Policy.</li> </ul>
<b>10.7 The Director of Administration - Speaker's Office</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly Administration;</li> <li>• providing the Policy to persons as required under Section 7.2 of this Policy, receiving forms acknowledging receipt and confirming that the Policy has been read by these persons and filing the forms with the Chief Clerk;</li> </ul>

	<ul style="list-style-type: none"> <li>• disseminating the Policy and updates as required under Section 7.4 and Section 7.8 of this Policy; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10 of this Policy.</li> </ul>
<b>10.8 The Whip</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly;</li> <li>• providing the Policy to persons as required under Section 7.2 of this Policy, receiving forms acknowledging receipt and confirming that the Policy has been read by these persons and filing the forms with the Chief Clerk;</li> <li>• disseminating the Policy and updates as required under Section 7.4 and Section 7.8 of this Policy; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10 of this Policy.</li> </ul>
<b>10.9 The MLA</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly; and</li> <li>• when retaining a volunteer to work with the MLA, informing the volunteer of this Policy, providing a one-page summary of the Policy as required under Section 7.2 and directing the volunteer to the location on The Nova Scotia Legislature’s website where the Policy is posted.</li> </ul>

<b>10.10 The Speaker</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly;</li> <li>• notifying, after consultation with the Chief Clerk and the Chief Legislative Counsel, the proper authorities when there are reasonable grounds to believe a person to whom this Policy applies has committed an offence under the <i>Criminal Code</i> or provincial legislation; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10 of this Policy.</li> </ul>
<b>10.11 Complainants</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• assessing the possibility of a misunderstanding arising out of lack of knowledge, misconstrued intent or differing values;</li> <li>• informing, in a timely manner, personally if comfortable in doing so, or through an appropriate intermediary, the individual whose conduct is of concern, that such conduct is objectionable and unwelcome;</li> <li>• keeping a record of the incident(s), including a description of the offensive conduct, date(s), time(s), location(s) and the names of witnesses, if any;</li> <li>• seeking advice from a qualified and trusted person;</li> <li>• participating if appropriate in the circumstances and in the complainants discretion in informal resolution processes up to and including mediation before lodging a formal complaint;</li> </ul>

	<ul style="list-style-type: none"> <li>• making the complaint in accordance with this Policy;</li> <li>• may withdraw a complaint at any step of the complaint process including at any time during Step 7 and Step 8 of the Procedures under this Policy; and</li> <li>• cooperating with persons designated to mediate, review, or investigate complaints.</li> </ul>
<b>10.12 Respondents</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• discussing the matter with the complainant as soon as possible, if asked;</li> <li>• stopping the conduct that is considered to be offensive to the complainant and remedying the situation with an appropriate gesture given the circumstances, such as an apology;</li> <li>• seeking advice from a qualified and trusted person; and</li> <li>• cooperating with persons designated to mediate, review or investigate complaints.</li> </ul>
<b>10.13 All Persons</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• ensuring that their own conduct contributes to a harassment free work environment;</li> <li>• acting in a respectful manner in dealings with others;</li> <li>• being familiar with this Policy and its related procedures;</li> <li>• informing individuals, if possible, whose conduct is offensive that their behaviour is objectionable and unwelcome and asking them to stop;</li> </ul>

	<ul style="list-style-type: none"> <li>• making every effort to resolve any conflicts in which they may be involved, as soon as they arise and before they escalate;</li> <li>• respecting the confidentiality of complainants and respondents by avoiding any informal discussion of harassment complaints of which they have knowledge;</li> <li>• bringing to the attention of the appropriate person identified in this Policy any harassment to which they are subjected or of which they become aware; and</li> <li>• cooperating in the resolution or investigation of harassment cases.</li> </ul>
<b>10.14 The House Leader</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10.</li> </ul>
<b>10.15 The Sergeant-at-Arms</b>	<b>Action to be taken</b>
	<ul style="list-style-type: none"> <li>• fostering a work environment free of harassment within the House of Assembly;</li> <li>• ensure where possible, reference to this Policy will be noted in the contract of employment of the contract staff person and will be included as a condition of the general contract for service with the service provider;</li> <li>• will provide copies of the Policy and a one-page summary brochure to the employer identified in the contract of service for distribution to each contract staff person</li> </ul>

	<p>working at the workplace defined under Section 3;</p> <ul style="list-style-type: none"> <li>• will obtain from the employer identified in the service contract a form acknowledging that that person has informed all contract staff of the Policy and will file the signed form with the Chief Clerk; and</li> <li>• receiving complaints under Section 9 and taking action as required under Section 10.</li> </ul>
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## 11. PROCEDURES

### 11.1 Step 1 – Informal Resolution

11.1.1 The objective of informal resolution is to correct any situation, problem or conflict as soon as possible and in a fair and respectful manner. Every effort should be made to resolve the problem as quickly as possible with open communications and cooperation. Participation in an informal resolution process is voluntary.

11.1.2 If a person believes that he or she has been harassed and that person chooses to address the matter informally, the following actions should be taken:

- make it known to the other party as soon as possible that such conduct is offensive in an attempt to resolve the problem before it can escalate; and
- if the problem is not resolved or if the offended person does not wish to speak directly with the other person, the offended person should meet with the person designated in this Policy to receive the complaint or seek advice from a qualified and trusted person.

11.1.3 Every effort to resolve the issue between the parties as quickly as possible is to be made and if necessary, with the assistance of a resource person.

11.1.4 Problem resolution mechanisms such as coaching, counselling, facilitation and mediation can in many instances resolve the issue and prevent the situation from escalating to the point where a formal complaint is filed.

11.1.5 The complainant and the respondent must both agree on a mutually acceptable mediator before mediation can take place.

## **11.2 Step 2 – Filing a Formal Complaint**

11.2.1 When the complainant determines the informal process for dealing with the harassment situation does not succeed or the complainant chooses not to proceed with the informal complaint procedure, the complainant may file a formal written complaint.

11.2.2 Mediation remains available at any point in the formal complaint process. The formal investigation will be suspended if both parties agree to mediation during the formal process. Should the complainant determine that efforts to mediate a formal complaint fail, the investigation resumes.

11.2.3 Complainants and respondents may each have with them, during meetings and interviews related to the resolution of the complaint, one support person of their choice who has agreed to accompany them and who is not a party to the process. Such persons must adhere to the confidentiality provisions of this Policy.

11.2.4 A formal complaint must be submitted, in writing, to the appropriate person identified in this Policy no later than 6 months after the alleged incident(s) leading to the complaint.

11.2.5 Formal complaints must be based on allegations of harassment as defined in this Policy, be signed, dated and include

- (a) the complainant's name;
- (b) the name of the respondent and the relationship of the respondent to the complainant,
- (c) the nature of the allegations;
- (d) date and description of the incident(s);
- (e) where the incident(s) occurred;
- (f) names of witnesses, if any; and
- (g) whether another external resolution process has been initiated by the complainant.

## **11.3 Step 3 – Acknowledgement and Filing of a Formal Complaint**

11.3.1 Within 5 business days of receipt the formal complaint will be reviewed and accepted for filing by the person designated in the Policy to receive the complaint where

- (a) the complaint meets the requirements of a formal complaint as set out in Section 11.2.5 of this Policy; and

- (b) the allegations as described in writing in the formal complaint meet the definition of harassment as set out in Section 5 of this Policy.

11.3.2 When the complaint is accepted for filing under Section 11.3.1, the person designated to receive that complaint will send an acknowledgement of receipt to the complainant and will provide a copy of the complaint to the respondent.

11.3.3 When the complainant has made a complaint under Section 9.1, the Chief Clerk shall acknowledge receipt of the complaint and inform the complainant's Whip and House Leader of the complaint.

11.3.4 When a formal complaint names an employee as a respondent, the Director of Administration – Speaker's Office shall notify that employee's supervisor.

11.3.5 If a complaint is not accepted for filing, the complainant will be advised of the reasons for rejecting the filing and if appropriate, other means may be suggested for resolving the issue raised in the complaint. Where the rejection is based solely on a technical error, an opportunity to correct the technical error is to be provided to the complainant and the complaint is to be re-submitted for filing.

#### **11.4 Step 4 – Review of a Formal Complaint**

11.4.1 Within 15 business days of the date when the formal complaint is accepted for filing, the person designated in this Policy will either

- appoint a private investigator to conduct an investigation; or
- refer the complaint to the Office of the Ombudsman for investigation.

#### **11.5 Step 5 – Investigation**

11.5.1 The steps taken and the procedures used by the investigator are at their discretion, subject to the rules of procedural fairness.

11.5.2 If during the course of the investigation, the investigator is presented with what is deemed to be a new allegation of harassment, the investigator will consult with the person who has engaged the investigator to determine whether

- the new allegation falls within the existing mandate;
- the mandate will be modified to address the new allegation; or
- the new allegation should be addressed separately.

11.5.3 Communications with an investigator are confidential except in so far as it may be necessary to disclose them in the investigation report, to ensure procedural fairness or as may be required by this Policy or by law.

11.5.4 The investigator shall provide a draft report to the complainant and the respondent within 30 business days of being appointed. Once received, the complainant and the respondent will have 5 business days to submit any comments, in writing, in response to the investigator.

11.5.5 Where the investigator is unable to meet the 30 business day deadline under Section 11.5.4, an extension request detailing reasons may be made to the person who engaged the investigator.

11.5.6 The person receiving the extension request shall in that person's sole discretion respond to the request.

11.5.7 The final report will be submitted to the person who engaged the investigator, no later than 5 business days after the date the complainant and respondent responses under Section 11.5.4 are due. Both the complainant and the respondent will be provided with a copy of the final report by the person who receives the final report from the investigator.

## **11.6 Step 6 – Decision**

11.6.1 Within 15 business days of receipt of the final report, the person designated under this Policy to receive that complaint, shall where the final report concludes that there was sufficient evidence to support a claim of harassment or the claim is frivolous, vexatious or not made in good faith, determine and implement any remedial, corrective or other measures against the respondent or the complainant, as the case may be.

11.6.2 In exceptional cases where the person receiving the report believes that the matter should be referred to the Internal Affairs Committee to the House of Assembly to determine the appropriate measure to be taken, that person shall immediately refer the matter to the Chair of the Internal Affairs Committee without first determining a measure to be imposed.

11.6.3 The complainant, respondent, as well as their supervisors, as appropriate, will be informed of the decision. The terms of any settlement of a complaint will only be made known to the extent required by the settlement itself.

11.6.4 Where the report concludes that there is insufficient evidence to support a claim of harassment, no further action is taken, no measures are to be imposed and that determination is final and is not subject to appeal.

## **11.7 Step 7 – Appeal**

11.7.1 An appeal can be made by either the complainant or the respondent, but is limited to the remedial, corrective, disciplinary or other measures imposed by the person who received the final investigative report.

This means a complainant may appeal

- the sufficiency of the measure imposed on the respondent; or
- a measure imposed on the complainant because the complaint was frivolous, vexatious or not made in good faith.

A respondent may appeal because the measures imposed were too severe.

11.7.2 The appeal must be made to the Chair of the Internal Affairs Committee, within 10 business days of the imposition of the measures.

11.7.3 The appeal must be in writing and must set out the grounds for the appeal. A copy of the final investigation report and any other relevant documentation must be included with the appeal.

11.7.4 Within 5 business days of receipt of the appeal, the Chair of the Internal Affairs Committee must set a committee meeting date that must be within 25 calendar days of receipt of the appeal. The Internal Affairs Committee shall hold its meeting “in camera”.

11.7.5 At the “in camera” meeting the Committee shall firstly determine whether all or part of the final investigation report or a summary of it may be used as evidence before the Committee and at the same meeting, shall hear the appeal.

11.7.6 The complainant and the respondent shall be provided with an opportunity to appear before the Internal Affairs Committee on the appeal hearing.

11.7.7 The person who initiates the appeal to the Committee may indicate in writing that the matter will not be pursued further and it will be deemed withdrawn from the Committee.

11.7.8 When the appeal relates to the measures imposed on a person who is not an elected MLA, the appeal decision of the Internal Affairs Committee is final and not subject to any further appeal.

11.7.9 When the appeal relates to the measures imposed on a person who is an MLA, the Internal Affairs Committee shall prepare a report for the House of Assembly within 15 business days of the “in camera” meeting under Section 11.7.5 that shall contain a summary of the final investigation report and a recommended sanction motion against the MLA for debate by the House of Assembly.

## **11.8 Step 8 – House of Assembly**

11.8.1 Within 10 sitting days following the presentation of the report and recommended sanction motion of the Internal Affairs Committee to the House of Assembly and the inscription of the matter on the Order Paper, the matter shall be called for debate.

11.8.2 The MLA who is referred to in the motion shall have the right to make a statement in the House of no more than 10 minutes in length in response to the report when the motion is called for debate by the House. All statements made in the House of Assembly must respect the confidentiality of the resolution process and the privacy of the persons involved.

11.8.3 A motion to adopt the report and recommended sanction motion from the Internal Affairs Committee shall be made and shall be considered for no more than 1 hour including the response time referred to under Section 11.8.2, by the House of Assembly after which time the question shall be put to the House of Assembly by the Speaker.

11.8.4 In the event that the MLA who is the subject of the sanction motion ceases to be an MLA following the presentation of the report of the Internal Affairs Committee to the House and before the motion is called for debate before the House, the entire matter is deemed withdrawn and shall be removed from the Order Paper.

11.8.5 Following a prorogation or dissolution of the House of Assembly, provided that the MLA who is the subject of the sanction motion remains an elected member, the appropriate Whip with the consent of the complainant, may resubmit the matter to the attention of the Chair of the Internal Affairs Committee in writing and the process at that level will recommence following the steps under this Policy.

## **11.9 Step 9 – General Provisions**

11.9.1 If a complainant or a respondent has concerns with the administration of their complaint, that person may, at any time during the resolution process, request that the Chief Clerk look into the concerns and report his or her findings and any recommended course of action in response to the concerns to the Internal Affairs Committee.

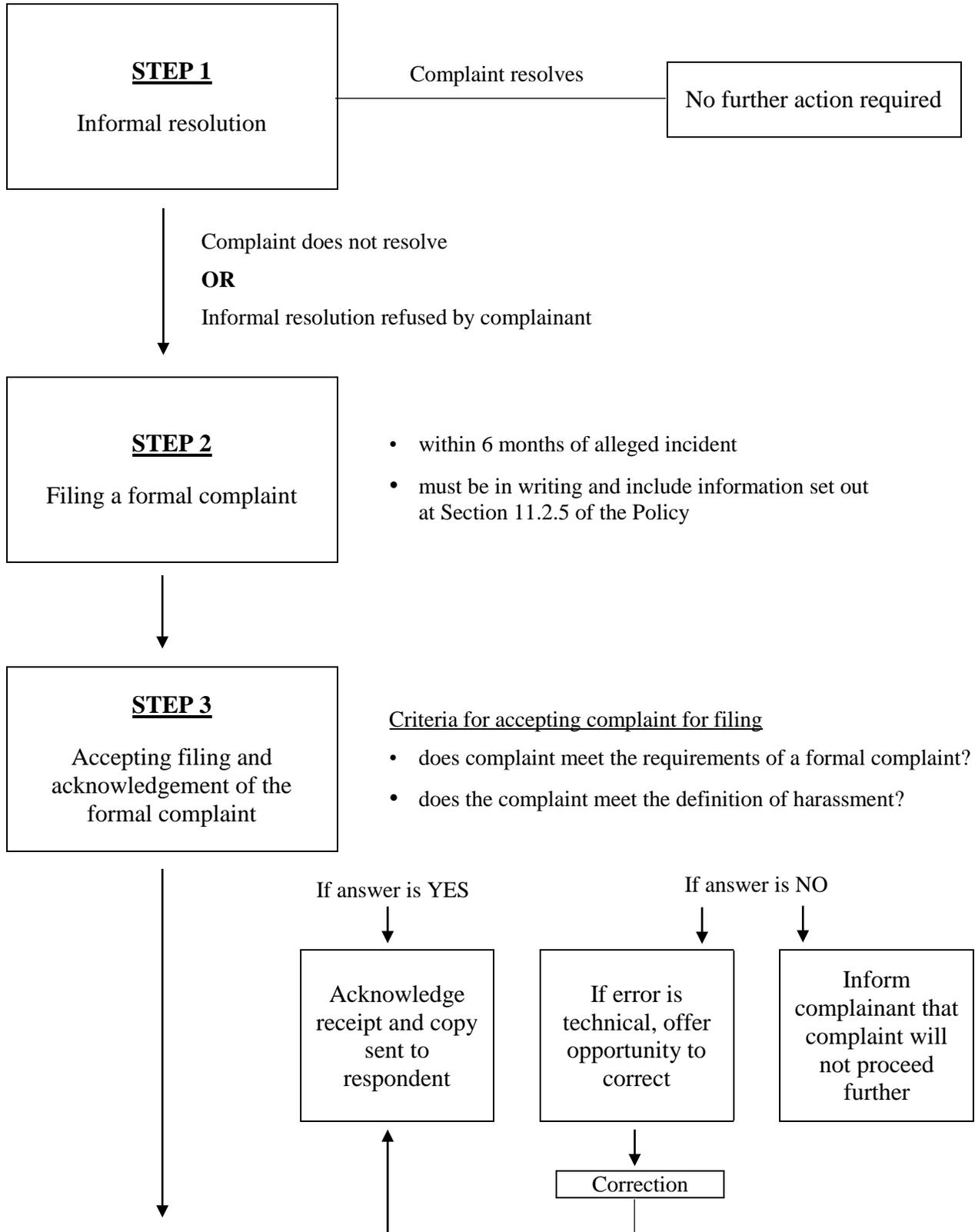
11.9.2 The Director of Administration will present statistical reports, as required, to the Chief Clerk on the incidence and disposition of harassment complaints and the Director may make recommendations for changes to the Policy.

11.9.3 The Chief Clerk shall present statistical reports and recommendations for changes to the Policy, if any, to the Committee on Assembly Matters once every 5 years commencing on the fifth anniversary date of the adoption of the Policy by the House of Assembly. The Chief Clerk must inform the Committee if there are no reports or recommended changes.

11.9.4 Any and all file materials or information received or prepared by a Whip, a House Leader, the Chief Clerk, the Speaker, the Chair of the Internal Affairs Committee, the Director of Administration – Speaker’s Office or the Sergeant-at-Arms, including the complaint, a written submission, informal and formal resolution details, investigative reports, electronic recordings of “in camera” meetings, etc. are to be provided to the Chief Clerk for secure confidential storage.

11.9.5 All costs associated with this Policy and its implementation including the retention of mediators, investigators and others are to be paid from the Legislative Services budget of the House of Assembly.

## PROCEDURES AND PROCESS



**STEP 4**  
Appoint investigator



**STEP 5**  
Investigation



**STEP 6**  
Decision

**STEP 7**  
APPEAL  
INTERNAL AFFAIRS  
COMMITTEE



- within 15 business days of accepting a formal complaint at Step 3 – investigator is appointed under Section 11.4.1

- draft investigation report to the complainant and respondent within 30 business days of appointment
- complainant and respondent response within 10 business days of receipt of draft investigation report
- final report no later than 5 business days from the date responses at Section 11.5.4 are due

A) Final Report concludes that harassment has occurred or complaint is frivolous



Decision – corrective measures to be taken

B) Final Report concludes that harassment has not occurred



No further action under this Policy – decision is final

- appeal is limited to the nature of the corrective measure taken and the appellant may be the original complainant or the original respondent.
- appeal must be filed in writing within 10 business days of the imposition of corrective measures with the Chair of the Internal Affairs Committee
- There are two types of appeals:
  - 1) Respondent to the appeal is not an MLA; or
  - 2) Respondent to the appeal is an MLA.
- appeal is heard in accordance with Section 11.7.
- When respondent to the appeal is not an MLA, the appeal decision of the Internal Affairs Committee is final and not subject to any further appeal.
- When respondent to the appeal is an MLA, report and recommended sanction motion forwarded to House of Assembly.

**STEP 8**

House of Assembly

- Report of Internal Affairs Committee to be placed before the House of Assembly within 15 business days of the “in camera” meeting under Section 11.7.5
- Procedure before the House of Assembly set out at Section 11.8

**Nova Scotia House of Assembly Policy on the Prevention  
and Resolution of Harassment in the Workplace**

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## Legislative Assembly of Nunavut

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# Workplace Harassment Policy

**Authority** Subsections 40(3)(c) and (j) of the *Legislative Assembly and Executive Council Act*

## Preamble

- ▶ The Legislative Assembly of Nunavut is committed to a healthy, harassment-free and non-discriminatory workplace. There is an expectation that all Members of the Legislative Assembly, officers and employees of the Legislative Assembly, Independent Officers of the Legislative Assembly and their employees, Ministerial staff, Members' constituency assistants, employees of the Government of Nunavut whose positions are located within the Legislative Assembly and contract service providers working within the Legislative Assembly will work towards maintaining a workplace environment where all persons in it are treated with respect and dignity. A respectful workplace will not only promote well-being, but will reinforce those values of integrity and trust that are the foundations of this institution.

## Policy Statement

- ▶ Harassment in the Legislative Assembly of Nunavut is unacceptable and will not be tolerated.

## Application

- ▶ This policy covers all forms of harassment that may occur in or away from the workplace, including, but not limited to, the Legislative Assembly Precinct, constituency office of Members of the Legislative Assembly, offices of Independent Officers of the Legislative Assembly, Legislative Assembly social functions, work-related conferences, work-related travel, correspondence, e-mail and telephone conversations. There is a sufficient connection with the Legislative Assembly for the purposes of this policy if the behaviour interferes, or could reasonably be regarded as being capable of interfering, with the proper functioning of the Legislative Assembly or with any person's dignity or privacy in respect of matters connected with the person's employment relationship with the Legislative Assembly.

- This Policy applies to:
- Members of the Legislative Assembly;
  - Officers and Employees of the Office of the Legislative Assembly, appointed pursuant to section 49 of the *Legislative Assembly and Executive Council Act*;
  - Individuals performing functions under the direction of officers or employees of the Legislative Assembly within the physical premises of the Legislative Assembly Precinct on a contractual basis with the Office of the Legislative Assembly<sup>1</sup>;
  - Employees in the Public Service of the Government of Nunavut, appointed pursuant to the *Public Service Act*, working on a seconded basis in the offices of the Premier and members of the Executive Council as Ministerial staff or as employees of the Department of Executive and Intergovernmental Affairs within the premises of the Legislative Assembly Precinct;
  - Individuals working on a contractual basis for the Offices of the Premier and members of the Executive Council as Ministerial staff;
  - Constituency Assistants to Members of the Legislative Assembly, engaged pursuant to section 31 of the *Legislative Assembly and Executive Council Act*; and
  - Independent Officers of the Legislative Assembly and those employees of their offices who are members of the Public Service;
    - Languages Commissioner of Nunavut and her office's employees, appointed pursuant to sections 18-19 of the *Official Languages Act*
    - Chief Electoral Officer of Nunavut and her office's employees, appointed pursuant to sections 188 and 194 of the *Nunavut Elections Act*
    - Information and Privacy Commissioner of Nunavut, appointed pursuant to section 61 of the *Access to Information and Protection of Privacy Act*
    - Integrity Commissioner of Nunavut, appointed pursuant to section 24 of the *Integrity Act*

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<sup>1</sup> For illustrative purposes, these positions include, but are not limited to, interpreter-translators, audio-visual technicians, custodial staff and security personnel.

# 1. Definitions

## *Harassment*

For the purposes of this policy, harassment is any improper conduct by an individual,

- ▶ that is directed at and offensive to another person or persons; and
- ▶ that the individual knew or ought reasonably to have known would cause offence or harm.

Harassment includes conduct, comment or display, made on either a one-time or an ongoing basis, that demeans, belittles, or causes personal humiliation or embarrassment and any act of intimidation or threat.

There may be circumstances where a single incident would not be considered to be harassment but a series of such incidents would constitute harassment.

Harassment may be based upon personal characteristics, including, but not limited to, race, language used, creed, colour, sex, marital status, nationality, ancestry, place of origin, age, disability, family status, political beliefs, sexual orientation or religion.

Harassment includes retaliation against a person for having exercised his or her rights under this policy, for having participated in procedures under this policy as a witness, or for having otherwise assisted a person who has exercised his or her rights under this policy or participated in these procedures.

Harassment may have the effect of creating an intimidating, hostile or negative work environment, impacting on an individual's ability to work and learn.

Harassment may or may not be intentional, but the lack of intent on the part of the harasser is not a defence. The impact of the behaviour on the recipient and the workplace is of primary importance.

## ***Sexual Harassment***

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents, that:

- a. might reasonably be expected to cause offence or humiliation;
- b. might reasonably be perceived as placing a condition of a sexual nature on employment or the business relationship or on an opportunity for training or promotion;
- c. might reasonably be perceived as a promise of reward for complying with a sexually oriented request or as a threat, reprisal or denial of opportunity for refusal to comply with a sexually oriented request; or
- d. might reasonably be perceived as creating an intimidating, hostile or negative work environment.

## ***Discrimination***

Discrimination is an act, behaviour or practice which may be intentional or unintentional that has the purpose or effect of making an adverse distinction against a person or a group of persons based on a prohibited ground of discrimination under human rights legislation.

See Appendix 1 for further guidelines in determining what may constitute harassment.

## ***Complaint***

A complaint is a formal allegation respecting:

- a. actions defined as harassment, sexual harassment or discrimination;
- b. retaliation for the making of a complaint; or
- c. a breach of an undertaking made in the context of a complaint process as to future conduct.

## 2. Roles, Rights and Responsibilities

### ***Individuals in the workplace***

All Members of the Legislative Assembly, officers and employees of the Legislative Assembly, Independent Officers of the Legislative Assembly and their employees, Ministerial staff, Members' constituency assistants, employees of the Government of Nunavut whose positions are located within the Legislative Assembly and contract service providers working within the Legislative Assembly are responsible for fostering and maintaining a workplace environment that is respectful of all persons in it.

### ***Managers/Supervisors***

Managers and supervisors are responsible for ensuring that employees are not exposed to harassment in the workplace. Managers and supervisors are responsible for ensuring a harassment-free workplace and adherence to the Policy. Managers and supervisors may be delegated by the Clerk to assist in the implementation of this Policy.

### ***Clerk of the Legislative Assembly***

The ultimate responsibility and authority for this policy rests with the Clerk of the Legislative Assembly and his or her authorized representative(s).

### ***Proper Exercise of Member's Functions***

Nothing in this Policy shall be construed so as to prevent or impede the proper exercise of a Member's functions as a Member of the Legislative Assembly, including the ordinary and proper representation of constituents in accordance with parliamentary convention.

### ***Employer's Right to Manage***

The proper exercise of one's authority or responsibility does not generally constitute harassment. This policy does not limit or constrain the employer's right to manage the workplace. For example, work assignments, reviews, evaluations and disciplinary measures taken by a manager or supervisor, in good faith for valid reasons, do not constitute harassment in the workplace.

### ***Individual Rights***

Nothing in this policy shall be construed so as to prevent persons who allege harassment or discrimination from seeking alternative routes to resolve harassment issues, including remedies available under human rights legislation and remedies available in either the civil or criminal courts.

### 3. Processes and Procedures

#### **A. *Informal Resolution***

The objective of an informal resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the formal complaint process.

##### ***Informing the Person***

If possible, and if reasonable and appropriate in the circumstances, a person who believes that he or she is being harassed or discriminated against should inform the alleged harasser, either personally or with the assistance of another person, and as soon as reasonably possible, that his or her behaviour is unwelcome and request that it end. A person who believes that he or she is being harassed or discriminated against may ask another individual to communicate on his or her behalf with the alleged harasser.

##### ***Documentation***

Any person who believes that he or she is being harassed or discriminated against is strongly encouraged to keep a written record of the date, time and nature of the incident(s), making note of what was said and how he or she felt, as well as the names of any witnesses.

##### ***Support Services***

A person who believes that he or she is being harassed or discriminated against may contact a delegated manager or supervisor, the Clerk or his/her authorized representative to discuss the situation. The Clerk or his/her authorized representative will give the complainant a copy of this Policy. Every effort will be made to assist the person to reach an informal resolution of the matter as quickly as possible.

## **B. Complaint Procedure**

A complaint may be resolved at any point of the procedure.

### ***Step 1 - Filing a Complaint***

If the behaviour continues after the person complained of is informed that it is unwelcome, or if direct communication with him or her by the complainant is not reasonable and appropriate, a person who believes that he or she is being harassed or discriminated against may file a written complaint with a delegated manager or supervisor or with the Clerk. The written complaint must include the nature of the allegations, the identity of the respondent, a date and description of the incident(s) and, if applicable, the names of witnesses.

### ***Step 2 - Acknowledgement and Review of Complaint***

Upon receiving a written complaint from the complainant, the delegated manager or supervisor or the Clerk will acknowledge, in writing, receipt of the complaint. The complaint will be reviewed to ascertain that it contains the information described above and, if necessary, additional information will be sought to determine whether the content of the allegations constitute harassment under this Policy and what efforts have been made to resolve the problem.

If the content of the allegations are found not to constitute harassment, the complainant will be informed of such and the complaint will be considered resolved. If the complainant is not satisfied with this outcome, the complainant may request another review by the Clerk.

If the content of the allegations are found to constitute harassment and no further avenues for resolution are identified, the complaint will be referred to the Clerk who will determine whether or not the complainant consents to mediation, if applicable.

### ***Step 3 - Written Notification of a Complaint***

The Clerk will notify, in writing, the person complained of that a complaint has been made, outline the substance of the complaint, and provide that person a copy of this Policy. The person complained of will have the opportunity to respond to the complaint within 5 working days.

#### ***Step 4 - Consent to Mediation***

The Clerk will advise the person complained of whether the complainant has consented to mediation. Where the complainant has consented to mediation, the Clerk will advise the person complained of that he or she may indicate his or her consent to mediation within 10 working days.

#### ***Step 5 - Appointment of Mediator***

Where both parties have consented to mediation, the Clerk will, as soon as is practicable, select an independent mediator who has completed recognized training in mediation and who is agreed to by both parties. The cost of the mediator will be paid by the Legislative Assembly. If the parties are unable to agree on the selection of a mediator after reasonable effort, the matter will be referred to arbitration.

#### ***Exclusion from Mediation***

Complaints received in the following circumstances must be excluded from mediation. The Clerk shall determine if any or all of the circumstances apply.

- ▶ there is a significant power imbalance between the parties;
- ▶ there is such a significant disparity between the parties' accounts of the events with which the complaint is concerned that mediation would be unworkable; or
- ▶ the severity of the alleged behaviour or the public interest requires an investigation of the complaint and arbitration.

#### ***Mediation Without Prejudice***

Mediation will be conducted on a "without prejudice" basis.

#### ***Step 6 - Conclusion of Mediation***

The mediation period will be concluded within a period of 20 working days of the appointment of the mediator, unless this period of time is extended at the discretion of the mediator. If a resolution is achieved as a result of mediation, a written copy of the resolution will be signed by both parties and forwarded to the Clerk. The resolution may include undertakings as to future conduct.

### **Step 7 - Arbitration**

If mediation is not practical or appropriate, if the mediation process is concluded with no resolution, or if the unwelcome behaviour continues after mediation is concluded, the complainant may request that the matter proceed to arbitration.

### **Step 8 - Appointment of Arbitrator**

Where the complainant has requested arbitration, the Clerk will, after giving reasonable notice to the person complained of and the complainant, appoint an independent arbitrator to adjudicate the matter, from a list of eligible persons approved by the Management and Services Board. The cost of arbitration will be paid by the Legislative Assembly.

#### ***Inquiry Process***

The arbitrator shall conduct the arbitration in private. Both parties must be advised of the right to be represented independently, including by legal counsel. An arbitrator:

- a. has the powers of a Board under the *Public Inquiries Act*, including the power to engage the services of counsel, experts and other persons referred to in section 10 of that *Act*, and
- b. is not subject to technical rules of evidence.

#### ***Evidence***

~~The person complained of may not refuse to give evidence during arbitration.~~

### **Step 9 - Disposition of Complaint**

At the conclusion of the arbitration, the arbitrator shall, within 20 working days, submit a disposition report outlining the arbitrator's recommendations for disposition of the complaint, with reasons, to the Management and Services Board, the person complained of and the complainant.

### **Step 10 - Consideration of Report by Management and Services Board**

The Management and Services Board shall consider a disposition report made under this policy within 20 working days of receipt. If a member of the Management and Services Board was one of the parties to the complaint, he or she shall not take part in any deliberations of the Board on the matter. Payment of legal costs shall be at the discretion of the Management and Services Board.

## ***Step 11 - Disposition by Management and Services Board***

The Board may decide to take no further action in the matter, may reprimand the person complained of or the complainant, or may recommend to the Legislative Assembly or the Clerk any further disciplinary action to be taken.

### ***C. Handling of Complaints***

#### ***Expedience***

All complaints will be dealt with as quickly as practicable.

#### ***Confidential Information***

Subject to this Policy, the Clerk, officers and employees of the Legislative Assembly, mediators and persons employed in, or engaged by, the Office of the Legislative Assembly, or by a mediator or arbitrator, shall maintain the confidentiality of any confidential information received in the course of the administration of this policy.

#### ***Disclosure of Information***

Confidential information received in the course of the administration of this policy may be disclosed:

- a. to a person who is the subject of a complaint;
- b. to a complainant;
- c. for the purposes of an inquiry under this policy, unless the information relates to mediation provided for by this policy;
- d. where there is reason to believe that an individual or group is at risk of physical harm; and
- e. as required by law.

#### ***Subsequent Events***

Events that take place after a complaint has been made may, without the filing of a further complaint, but with due notice to the complainant or the person complained of, be included in a mediation or arbitration.

#### ***Anonymity***

Upon the request of the complainant, and where the mediator or arbitrator considers it reasonable and appropriate in the circumstances, the anonymity of the complainant or the person complained of may be protected in the disposition report. Where the complainant or person complained of is not identified in the report, no person may disclose their identity, except:

- a. for the purposes of an arbitration under this policy;
- b. where there is reason to believe that an individual or group is at risk of physical harm; and
- c. as required by law.

### ***File Management***

All information relevant to a complaint filed under this policy will be “received in confidence.” Information, records and reports relating to complaints will be maintained in a secure master file in the human resources section of the corporate services division of the Legislative Assembly. Records of complaints will be placed in the personnel file of the complainant and the person being complained of.

# Appendix 1

## Guide for Determining What Constitutes Harassment

(Adapted from the *Policy on the Prevention and Resolution of Harassment in the Workplace*, Treasury Board of Canada Secretariat, June 1, 2001)

*Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:*

- *Is the behaviour unwelcome or offensive?*
- *Would a reasonable person view the conduct as unwelcome or offensive?*
- *Did it demean, belittle or cause personal humiliation or embarrassment?*
- *Is it a single incident?*
- *Is it a series of incidents over time?*

*It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is based on grounds of discrimination prohibited under the Human Rights Act. The prohibited grounds include, but are not limited to, race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, marital status, family status, pregnancy, lawful source of income and pardoned conviction.*

*The following are some examples, but not an exhaustive list, to illustrate what is meant by harassment.*

<b>What generally constitutes harassment</b>	<b>What may constitute harassment (*highly dependent on context and situation)</b>	<b>What does not generally constitute harassment</b>
<ul style="list-style-type: none"> <li>• <i>Serious or repeated rude, degrading, or offensive remarks, such as jokes or teasing about a person's physical characteristics or appearance, put-downs, taunts or insults.</i></li> <li>• <i>Insulting gestures, jokes, disparaging written materials based on race or gender.</i></li> <li>• <i>Displaying sexist, racist or other offensive materials, posters, or sending e-mails related to one of the grounds of discrimination under the <i>Human Rights Act</i>.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Criticizing an employee in public.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Allocating work.</i></li> <li>• <i>Following-up on work absences.</i></li> <li>• <i>Requiring performance to job standards.</i></li> <li>• <i>Taking disciplinary measures.</i></li> <li>• <i>A single or isolated incident such as an inappropriate remark or abrupt manner.</i></li> </ul>

What generally constitutes harassment	What may constitute harassment (*highly dependent on context and situation)	What does not generally constitute harassment
<ul style="list-style-type: none"> <li>• <i>Repeatedly</i> singling out an employee for meaningless or degrading jobs that are not part of their normal duties.</li> <li>• Isolating an employee from his or her colleagues through physical separation</li> <li>• Persistently excluding an employee from meetings at which his or her attendance would normally be expected</li> </ul>	<ul style="list-style-type: none"> <li>• Periodic exclusion from collective work activities or assignments.</li> </ul>	<ul style="list-style-type: none"> <li>• Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.</li> </ul>
<ul style="list-style-type: none"> <li>• Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.</li> <li>• Verbal or physical abuse or threats.</li> </ul>	<ul style="list-style-type: none"> <li>• Statements damaging to a person's reputation.</li> </ul>	<ul style="list-style-type: none"> <li>• Formal disciplinary measures taken in relation to an employee who contravenes prescribed workplace rules and/or codes of conduct.</li> </ul>
<ul style="list-style-type: none"> <li>• Refusal to work with a person because of gender, racial background or other personal characteristics.</li> </ul>	-	-
<ul style="list-style-type: none"> <li>• Unwelcome social invitations, with sexual overtones or flirting.</li> <li>• Unwelcome sexual advances, propositions, or inquiries and/or comments about a person's sex life.</li> <li>• Inappropriate physical contact or touching (may be one time only or persistent)</li> <li>• Stalking.</li> </ul>	<ul style="list-style-type: none"> <li>• Making sexually suggestive remarks.</li> <li>• Physical contact such as touching or pinching.</li> <li>• Jokes and humour.</li> </ul>	<ul style="list-style-type: none"> <li>• A social relationship welcomed by both individuals.</li> <li>• Friendly gestures among co-workers such as a pat on the back.</li> </ul>

## 5. WORKPLACE HARASSMENT POLICY

The Legislative Assembly of the Northwest Territories is committed to a healthy, harassment-free and non-discriminatory workplace for all Members of the Assembly, employees of the Assembly and Constituency Assistants. All Members are responsible for fostering and maintaining an environment that is free of harassment and discrimination.

Persons who allege harassment or discrimination by a Member are also advised that they may have alternative routes to resolve harassment issues, including policies in place with the Government of the Northwest Territories, remedies available under the *Human Rights Act* and remedies available in either the civil or criminal courts.

### 5.1 DEFINITIONS

#### HARASSMENT

For the purposes of this policy, harassment means any improper behaviour by a Member:

- that is directed to and is offensive to any Member, Constituency Assistant, employee of the Legislative Assembly or contractor performing work for the Legislative Assembly; and
- which the Member knew or ought reasonably to have known would be unwelcome.

Harassment includes conduct, comment or display, made on either a one-time or an on-going basis that demeans, belittles or causes personal humiliation or embarrassment to a Member, Constituency Assistant, employee or contractor. Harassment includes sexual harassment.

There may be circumstances where a single incident would not be considered to be harassment but a series of such incidents would constitute harassment.

Harassment may be based upon personal characteristics including race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital status, family status, family affiliation, political association or social condition, and without regard to whether he or she has had a conviction for which a pardon has been granted.

Harassment includes retaliation against a person for having invoked this policy, for having participated in

procedures under this policy as a witness, or for having otherwise assisted a person who has invoked this policy or participated in these procedures.

#### SEXUAL HARASSMENT

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents that:

- might reasonably be expected to cause offence or humiliation to any Member, constituency assistant, employee or contractor;
- might reasonably be perceived as placing a condition of a sexual nature on employment or the business relationship or on an opportunity for training or promotion;
- might reasonably be perceived as a promise of reward for complying with a sexually oriented request or as a threat, reprisal or denial of opportunity for refusal to comply with a sexually oriented request; and/or
- might reasonably be perceived as creating an intimidating, hostile or negative work environment.

#### DISCRIMINATION

Discrimination is an act, behaviour or practice, which may be intentional or unintentional, that has the purpose or effect of making an adverse distinction against a person or a group of persons based on a prohibited ground of discrimination under the *Human Rights Act*.

#### COMPLAINT

A complaint includes a complaint respecting:

- harassment, sexual harassment or discrimination;
- retaliation for the lodging of a complaint;
- breach of an undertaking made in the context of a complaint process as to future conduct.

### 5.2 EXAMPLES OF HARASSMENT

Harassment can include, but is not limited to, the following:

- Unwelcome remarks, jokes, innuendoes or taunts of a sexual or racial nature, causing embarrassment or offence;
- Display of objectionable materials that are sexually explicit;

- Refusal to work with a person because of gender, racial background or other personal characteristics;
- Insulting gestures, jokes, disparaging written materials based on race or gender;
- Degrading or derogatory remarks;
- Unwelcome sexual advances, propositions, or inquiries and/or comments;
- Persistent, unwanted contact or attention after the end of a consensual relationship;
- Inappropriate physical contact or touching or seeking sexual favours; and
- Verbal or physical abuse or threats.

### 5.3 LOCALE OF HARASSMENT

This policy applies to any harassment that may occur at, but is not limited to, the Legislative Assembly building, Legislative Assembly social functions, work-related conferences, work-related travel and over the telephone. There is a sufficient connection with the Legislative Assembly for the purposes of this policy if the behaviour interferes, or could reasonably be regarded as being capable of interfering, with the proper functioning of the Legislative Assembly or with a person's dignity or privacy in respect of matters connected with the person's relationship with the Legislative Assembly.

### 5.4 INTENT

Lack of intent on the part of the harasser is not a defense. The impact of the behaviour on the recipient is of primary importance.

### 5.5 COMPLAINT PROCEDURE

#### INFORMING MEMBER

If possible, and if reasonable and appropriate under the circumstances, a person who believes that he or she is being harassed or discriminated against by a Member should tell the Member, either personally or with the assistance of another person, that the Member's behaviour is unwelcome and ask the Member to stop.

#### DOCUMENTATION

Any person who believes that he or she is being harassed or discriminated against by a Member is encouraged to keep a written record of the date, time and nature of the incident(s), as well as the names of any witnesses.

#### SUPPORT SERVICES

A person who believes that he or she is being harassed or discriminated against by a Member may contact the Clerk to discuss the situation. The Clerk will give the complainant a copy of this policy and upon request, will assist the person to reach an informal resolution of the matter with the Member.

#### WRITTEN COMPLAINT

If the behaviour continues after the Member is informed that it is unwelcome, or if direct communication with the Member by the complainant is not reasonable and appropriate, a person who believes that he or she is being harassed or discriminated against by a Member may make a written complaint to the Clerk.

#### CONSENT TO MEDIATION

Upon receiving a written statement from the complainant, the Clerk will determine whether the complainant consents to mediation.

#### NOTIFICATION OF MEMBER

Within five working days of receiving a written statement, the Clerk will notify the Member in writing that a complaint has been made, outline the substance of the complaint and provide the Member a copy of this policy. The Clerk will advise the Member whether the complainant has consented to mediation. Where the complainant has consented to mediation, the Clerk will advise the Member that the Member may indicate his or her consent to mediation within ten working days.

#### APPOINTMENT OF MEDIATOR

Where both parties have consented to mediation, the Clerk will, as soon as is practicable, select an independent mediator who has completed recognized training in mediation and who is agreed to by both parties. The Legislative Assembly will pay the cost of the mediator. If the parties are unable to agree on the selection of a mediator after reasonable effort, the matter will be referred to arbitration.

## EXCLUSION FROM MEDIATION

The mediator must exclude from mediation complaints received in the following circumstances:

- Where there is a significant power imbalance between the complainant and the Member;
- Where there is such a significant disparity between the complainant's and the Member's accounts of the events with which the complaint is concerned that mediation would be unworkable; or
- Where the severity of the alleged behaviour or the public interest requires an investigation of the complaint and arbitration.

## MEDIATION WITHOUT PREJUDICE

Mediation will be conducted without prejudice.

## CONCLUSION OF MEDIATION

The mediation period will be concluded within a period of 20 working days of the appointment of the mediator, unless this period of time is extended by mutual agreement of the parties. If a resolution is achieved as a result of mediation, a written copy of the resolution will be signed by both parties and forwarded to the Clerk. The resolution may include undertakings as to future conduct.

## 5.6 ARBITRATION

If mediation is not feasible or appropriate, if the mediation process is concluded with no resolution, or if the unwelcome behaviour continues after mediation is concluded, the complainant may request that the matter proceed to arbitration.

## APPOINTMENT OF ARBITRATOR

Where the complainant has requested arbitration, the Clerk will, after giving reasonable notice to the Member complained of and the complainant, appoint an independent arbitrator to adjudicate the matter, from a list of eligible persons approved by the Board of Management. The Legislative Assembly will pay the costs for arbitration.

## INQUIRY PROCESS

The arbitrator shall conduct the arbitration in private. Both parties must be advised of the right to be represented independently, including by legal counsel. An arbitrator:

- has the powers of a Board under the *Public Inquiries Act*, including the power to engage the services of counsel, experts and other persons referred to in section 10 of that Act; and
- is not subject to technical rules of evidence.

## EVIDENCE OF MEMBER

The Member complained of may not refuse to give evidence during the arbitration.

## DISPOSITION OF COMPLAINT

At the conclusion of the arbitration, the arbitrator shall submit a disposition report outlining the arbitrator's recommendations for disposition of the complaint, with reasons, to the Board, the Member complained of and the complainant.

## ANONYMITY OF COMPLAINANT

Upon the request of the complainant, and where the arbitrator considers it reasonable and appropriate in the circumstances, the arbitrator may protect the anonymity of the complainant in the disposition report. Where the complainant is not identified in the report, no person may disclose the identity of the complainant, except:

- for the purposes of an arbitration under this policy;
- where there is reason to believe that an individual or group is at risk of physical harm; and
- as required by law.

## CONSIDERATION OF REPORT BY BOARD OF MANAGEMENT

The Board shall consider a disposition report made under this policy within 30 days of receipt.

## DISPOSITION BY BOARD OF MANAGEMENT

The Board may decide to take no further action in the matter, may reprimand the Member or the complainant, or may recommend to the Legislative Assembly any further disciplinary action to be taken against the Member.

## 5.7 HANDING OF COMPLAINTS

### CONFIDENTIAL INFORMATION

Subject to this policy, the Clerk and officers of the Legislative Assembly, mediators and persons employed or engaged in the Office of the Legislative Assembly or by a mediator or arbitrator shall maintain the confidentiality of any confidential information received in the course of the administration of this policy.

### DISCLOSURE OF INFORMATION

Confidential information received in the course of the administration of this policy may be disclosed:

- to a Member who is the subject of a complaint;
- to a complainant;
- for the purposes of an inquiry under this policy, unless the information relates to mediation provided for by this policy;
- where there is reason to believe that an individual or group is at risk of physical harm; and
- as required by law.

### EXPEDIENCE

All complaints will be dealt with as quickly as practicable.

### SUBSEQUENT EVENTS

Events that take place after a complaint has been made may, without the filing of a further complaint but with due notice to the complainant or the Member, be included in a mediation or an arbitration.

## 5.8 PROTECTION OF MEMBERS' FUNCTION

Nothing in this policy shall be construed so as to prevent or impede the proper exercise of a Member's function as a Member of the Legislative Assembly, including the ordinary and proper representation of members of the public.

## 5.9 LEGAL COSTS

### COMPLAINT SUBSTANTIATED

If the complaint is substantiated, the Legislative Assembly will reimburse the complainant for the costs of legal representation. The Legislative Assembly will not reimburse the Member for any expenses incurred or damages assessed.

### COMPLAINT NOT SUBSTANTIATED

If the complaint is not substantiated, the Legislative Assembly will reimburse the Member for his/her costs of representation. The Legislative Assembly will not reimburse the complainant for any portion of expenses incurred in the pursuit of the complaint.

## 6. CONFLICT OF INTEREST

The *Legislative Assembly and Executive Council Act* governs conflict of interest matters for Members of the Legislative Assembly. It sets out the definition of conflict of interest, the obligations of all Members, the disclosure requirements of Members, the complaint process regarding Members alleged to be in a position of conflict and the role of the Conflict of Interest Commissioner. Members should refer to Part 3 of the *Act*, Conflict of Interest, in its entirety.

As described in Section 74 of the *Act*, a conflict exists when a Member participates in decision-making that would directly affect his or her private business interests or that of a spouse or dependant child. Members should refer to Section 1 of the *Act* for the definition of spouse and Section 73 for the definition of dependant child. Members should also refer to Section 74 (2) and (3) to be familiar with those situations that are not considered to be a conflict of interest.

The following duties are imposed on Members by Sections 75 to 78 of the *Legislative Assembly and Executive Council Act*:

- perform duties and arrange private affairs in a manner that maintains public confidence and trust in the integrity, objectivity and impartiality of the Member;
- refrain from accepting gifts, remuneration or benefits which would erode public confidence;
- arrange his or her private affairs in compliance with the Act and to avoid conflict;
- not use information gained as an elected Member that is not generally available to the public to further your own interest or those of a spouse or child;

## APPENDIX II

## CODE OF CONDUCT FOR MEMBERS

## OF THE HOUSE OF COMMONS:

## SEXUAL HARASSMENT BETWEEN MEMBERS

## MISSION

1.

## Purposes.

The purposes of this Code are to

- (a)** create an environment at the House of Commons that allows all Members to excel in their public duties and functions and that is free of sexual harassment;
- (b)** encourage reporting, by Members, of instances of sexual harassment;
- (c)** establish a resolution process that is complainant-driven and that the complainant can bring to an end at any point;
- (d)** ensure confidentiality throughout the resolution process, unless otherwise provided for in this Code; and
- (e)** implement the recommendations of the 38th report of the Second Session of the 41st Parliament of the Standing Committee on Procedure and House Affairs.

## INTERPRETATION

2.

## Definitions.

The following definitions apply in this Code.

“day” « jour »

“day” means a working day.

## ANNEXE II

## CODE DE CONDUITE POUR LES DÉPUTÉS

## DE LA CHAMBRE DES COMMUNES :

## HARCÈLEMENT SEXUEL ENTRE DÉPUTÉS

## MISSION

1.

## Objet.

Le présent code a pour objet :

- a)** de créer un milieu qui permet aux députés d'exceller dans l'exercice de leurs fonctions officielles et qui est exempt de harcèlement sexuel;
- b)** d'encourager les députés à signaler les cas de harcèlement sexuel;
- c)** d'établir un processus de résolution axé sur le plaignant auquel celui-ci peut mettre fin en tout temps;
- d)** de préserver la confidentialité tout au long du processus de résolution, sauf disposition contraire du présent code;
- e)** de mettre en œuvre les recommandations contenues dans le 38<sup>e</sup> rapport du Comité permanent de la procédure et des affaires de la Chambre, deuxième session, 41<sup>e</sup> législature.

## DÉFINITIONS

2.

## Définitions.

Les définitions qui suivent s'appliquent au présent code.

« défendeur » “respondent”

« défendeur » Le député qui fait l'objet des allégations de harcèlement sexuel soulevées conformément à l'article 14.

**“CHRO” « dirigeant principal »**

“CHRO” means the Chief Human Resources Officer of the House of Commons Administration.

**“complainant” « plaignant »**

“complainant” means a Member who is the subject of alleged sexual harassment and

**(a)** who reports the alleged sexual harassment in accordance with section 14; or

**(b)** in respect of whom a third party reports the alleged sexual harassment in accordance with that section.

**“investigator” « enquêteur »**

“investigator” means an external investigator engaged by the CHRO to conduct an investigation of a formal complaint of sexual harassment on his or her behalf.

**“participant” « participant »**

“participant” means the complainant, respondent or any other individual involved in the resolution process.

**“personal information” « renseignement personnel »**

“personal information” means any information that would enable someone to identify an individual.

**“resolution process” « processus de résolution »**

“resolution process” includes the reporting of allegations of sexual harassment and the initiating of informal discussions, the mediation process, and the filing of a formal complaint and its investigation, as well as any disciplinary action that may be imposed.

**« dirigeant principal » “CHRO”**

« dirigeant principal » Le dirigeant principal des ressources humaines de l'Administration de la Chambre des communes.

**« enquêteur » “investigator”**

« enquêteur » L'enquêteur externe engagé par le dirigeant principal afin de faire enquête en son nom sur une plainte officielle.

**« harcèlement sexuel » “sexual harassment”**

« harcèlement sexuel » Comportement à connotation sexuelle, notamment les commentaires, gestes ou contacts, qu'il s'agisse d'un incident unique ou d'une série d'incidents, dont il est raisonnable de penser qu'il puisse choquer ou humilier.

Un déséquilibre des forces entre le plaignant et le défendeur ou un abus de pouvoir par le défendeur est un facteur pertinent pour établir si les allégations de harcèlement sexuel s'avèrent fondées, mais il ne s'agit pas d'un élément nécessaire pour en venir à cette conclusion.

**jour “day”**

« jour » Jour ouvrable.

**« participant » “participant”**

« participant » Le plaignant, le défendeur ou toute autre personne qui prend part au processus de résolution.

**« plaignant » “complainant”**

« plaignant » Le député qui aurait fait l'objet de harcèlement sexuel et, selon le cas :

**a)** qui soulève les allégations de harcèlement sexuel conformément à l'article 14;

**b)** à l'égard de qui un tiers soulève les allégations de harcèlement sexuel conformément à l'article 14.

**“respondent” « défendeur »**

“respondent” means a Member who is the subject of allegations of sexual harassment reported in accordance with section 14.

**“sexual harassment” « harcèlement sexuel »**

“sexual harassment” means any conduct of a sexual nature, including, a comment, gesture or contact, whether on a one-time or recurring basis, that might reasonably be expected to cause offence or humiliation.

A power imbalance between a complainant and a respondent or an abuse of power by the respondent is a relevant factor for a finding of sexual harassment; however, it is not a necessary element.

**“third party” « tiers »**

“third party” means a Member other than the complainant.

**« processus de résolution » “resolution process”**

« processus de résolution » Processus qui commence lorsque des allégations de harcèlement sexuel sont soulevées et qui comprend les discussions informelles, la médiation, le dépôt de la plainte officielle, l’enquête qui s’ensuit ainsi que toute mesure disciplinaire.

**« renseignement personnel » “personal information”**

« renseignement personnel » Tout renseignement qui permettrait à quiconque d’identifier une personne.

**« tiers » “third party”**

« tiers » Député autre que le plaignant.

**SCOPE****3.****Application.**

This Code applies only to allegations of sexual harassment between Members.

**4.****On behalf of the House.**

The CHRO, in carrying out his or her functions under this Code, is acting for and on behalf of the House of Commons.

**5.****Member ceases to serve.**

**(1)** Subject to subsections (2) and (3), no further measures are to be taken under this Code if the complainant or respondent ceases to be a Member.

**PORTÉE****3.****Application.**

Le présent code s’applique uniquement aux allégations de harcèlement sexuel entre députés.

**4.****Au nom de la Chambre.**

Le dirigeant principal exerce ses fonctions aux termes du présent code au nom de la Chambre des communes.

**5.****Député cesse ses fonctions parlementaires.**

**(1)** Sous réserve des paragraphes (2) et (3), si le plaignant ou le défendeur cesse ses fonctions parlementaires, aucune autre mesure n’est prise au titre du présent code.

**Exception – complainant.**

**(2)** A complainant who ceases to be a Member may continue the resolution process and the referral to the Standing Committee on Procedure and House Affairs if the respondent has not ceased to be a Member.

**Exception – respondent.**

**(3)** A respondent who ceases to be a Member may, in respect of a complaint that is alleged to be potentially vexatious or in bad faith, continue the resolution process and the referral to the Standing Committee on Procedure and House Affairs if the complainant has not ceased to be a Member.

**Dissolution.**

**(4)** For the purposes of this Code, a Member does not cease to be a Member during a dissolution period.

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**RULES OF CONDUCT**


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**6.****Sexual harassment prohibited.**

A Member shall not sexually harass another Member.

**7.****Educational examples.**

Sexual harassment is defined in section 2, and this section does not add to, nor detract from, that definition and is included solely for educational purposes. Without limiting the definition of sexual harassment in any manner, sexual harassment may include the following:

- (a)** demands for sexual favours or sexual assault;
- (b)** inappropriate or unwanted physical contact such as touching, patting or pinching;

**Exception – plaignant.**

**(2)** Le plaignant qui cesse ses fonctions parlementaires peut continuer de participer au processus de résolution et au renvoi au Comité permanent de la procédure et des affaires de la Chambre si le défendeur n'a pas cessé ses fonctions parlementaires.

**Exception – défendeur.**

**(3)** Le défendeur qui cesse ses fonctions parlementaires peut, à l'égard d'une plainte visée par une allégation selon laquelle elle serait vexatoire ou entachée de mauvaise foi, continuer de participer au processus de résolution et au renvoi au Comité permanent de la procédure et des affaires de la Chambre si le plaignant n'a pas cessé ses fonctions parlementaires.

**Dissolution.**

**(4)** Pour l'application du présent code, les députés ne cessent pas leurs fonctions parlementaires en cas de dissolution.

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**RÈGLES DE CONDUITE**


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**6.****Harcèlement sexuel interdit.**

Il est interdit aux députés de harceler sexuellement d'autres députés.

**7.****Exemples.**

Le présent article n'apporte ni ajout ni autre modification à la définition de harcèlement sexuel énoncée à l'article 2 et il n'est inclus qu'à des fins pédagogiques. Sans limiter d'aucune manière la définition de harcèlement sexuel, le harcèlement sexuel peut prendre, entre autres, les formes suivantes :

- a)** demandes de faveurs sexuelles ou agressions sexuelles;
- b)** contact physique malséant ou non désiré tel que des attouchements, tapotements ou pincements;

**(c)** insulting comments, gestures or practical jokes of a sexual nature that cause discomfort or embarrassment; and

**(d)** inappropriate enquiries or comments about an individual's sex life.

Sexual harassment can occur, for example, while Members are travelling or at a social function.

**c)** commentaires ou gestes insultants ou blagues de nature sexuelle qui gênent ou rendent mal à l'aise;

**d)** questions ou commentaires malséants au sujet de la vie sexuelle d'une personne.

Le harcèlement sexuel peut notamment se produire lorsque les députés sont en déplacement ou lors d'activités sociales.

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## 8.

### Respect confidentiality and privacy.

A Member or any other person involved in the process shall not disclose information related to the resolution process or any personal information related to any participant, unless otherwise provided for in this Code.

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## 9.

### For greater certainty.

For greater certainty, the obligation described in section 8 to maintain confidentiality and privacy also applies before a formal complaint is filed.

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## 10.

### Retaliation.

**(1)** A Member shall not retaliate or threaten retaliation against any individual because that individual has been a participant or potential participant in the resolution process under this Code.

### For greater certainty.

**(2)** For greater certainty, retaliation includes the taking of any adverse measures against an individual under subsection (1).

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## 8.

### Protection de la confidentialité et de la vie privée.

Il est interdit aux députés et à toute autre personne participant au processus de communiquer des renseignements concernant le processus de résolution ou des renseignements personnels concernant l'un ou l'autre des participants, sauf disposition contraire du présent code.

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## 9.

### Précision.

Il est entendu que l'obligation de protéger la confidentialité du processus et des renseignements personnels prévue à l'article 8 s'applique avant même le dépôt d'une plainte officielle.

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## 10.

### Représailles.

**(1)** Il est interdit aux députés d'exercer ou de menacer d'exercer des représailles contre une personne au motif que cette dernière a participé ou pourrait participer au processus de résolution prévu au présent code.

### Précision.

**(2)** Il est entendu que, pour l'application du paragraphe (1), est assimilée à des représailles la prise de mesures préjudiciables contre une personne.

11.

**Pledge.**

Every Member shall commit to contributing to a work environment free of sexual harassment by signing the pledge in the form set out in Form 1 and returning it to the CHRO within 60 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette*, or within the first 30 sitting days of the ensuing Parliament or, in the case of a Member elected at a by-election, within the first 30 sitting days following the Member's introduction in the House, whichever is later.

**RESOLUTION PROCESS****LEGAL COUNSEL AND SUPPORT PERSONS**

12.

**Legal counsel and support person.**

**(1)** During the resolution process, the complainant and the respondent are entitled to be represented by legal counsel and to be accompanied by a support person, as long as the support person is a Member of Parliament. However, in any referral to the Standing Committee on Procedure and House Affairs, the Committee shall make a decision regarding whether or not the complainant or respondent is entitled to be represented by legal counsel or accompanied by a support person.

**No representations.**

**(2)** In supporting a complainant or respondent, a support person shall not make representations and shall respect confidentiality at all times.

**TIMELINES**

13.

**Extension.**

Any timelines set out in this Code may be extended by the CHRO, in exceptional circumstances, or by mutual agreement of the complainant and the respondent.

11.

**Engagement.**

Chaque député s'engage à créer un milieu de travail exempt de harcèlement sexuel en prenant l'engagement figurant au modèle 1, qu'il signe et remet au dirigeant principal dans les soixante jours suivant l'annonce de son élection à la Chambre des communes dans la *Gazette du Canada* ou dans les trente premiers jours de séance d'une nouvelle législature ou, dans le cas d'un député élu lors d'une élection partielle, dans les trente jours de séance suivant la présentation du député à la Chambre, selon la plus tardive de ces dates.

**PROCESSUS DE RÉOLUTION****AVOCAT ET PERSONNE DE CONFIANCE**

12.

**Avocat et personne de confiance.**

**(1)** Pendant le processus de résolution, le plaignant et le défendeur peuvent être représentés par avocat et être accompagnés par une personne de confiance, laquelle doit être un député. Cependant, dans le cadre des renvois au Comité permanent de la procédure et des affaires de la Chambre, ce dernier décide si le plaignant ou le défendeur peut être représenté par avocat ou accompagné par une personne de confiance.

**Observations.**

**(2)** Lorsqu'elle joue son rôle de soutien, la personne de confiance ne peut présenter d'observation et doit en tout temps respecter la confidentialité.

**ÉCHÉANCES**

13.

**Prorogation.**

Toute échéance prévue au présent code peut être prorogée soit par le dirigeant principal dans des circonstances exceptionnelles, soit du consentement du plaignant et du défendeur.

**REPORTING ALLEGATIONS OF SEXUAL HARASSMENT  
AND INITIATING DISCUSSIONS**

**14.**

**Report by complainant or third party.**

**(1)** Allegations of sexual harassment may be reported by the complainant or a third party; they must not be reported anonymously.

**Report within one year.**

**(2)** The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

**Report to CHRO or Whip – complainant.**

**(3)** The complainant may report the allegations to the CHRO or, if the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

**Report to CHRO or Whip – third party.**

**(4)** A third party may report the allegations to the CHRO or, if the third party, the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

**Exception – Independent Members.**

**(5)** If the complainant or the respondent is an independent Member, any sexual harassment allegations involving them shall be dealt with by the CHRO or an individual designated by the CHRO.

**Authority over discussions.**

**(6)** The CHRO or Whip, as the case may be, shall manage the discussions relating to the allegations of sexual harassment.

**CHRO or Whip to discuss.**

**(7)** The CHRO or Whip, as the case may be, shall inform the respondent of the allegations reported and may request additional information from the respondent.

**ALLÉGATIONS DE HARCÈLEMENT SEXUEL ET  
DISCUSSIONS**

**14.**

**Signalement par le plaignant ou un tiers.**

**(1)** Les allégations de harcèlement sexuel peuvent être soulevées par le plaignant ou un tiers et ne peuvent être soulevées de façon anonyme.

**Délai de prescription – un an.**

**(2)** Les allégations doivent être soulevées dans l'année suivant le dernier incident allégué. Le dirigeant principal peut proroger le délai s'il estime que des circonstances exceptionnelles le justifient.

**Signalement au dirigeant principal ou au whip – plaignant.**

**(3)** Le plaignant peut soulever les allégations auprès du dirigeant principal ou, si le plaignant et le défendeur appartiennent au même caucus, auprès de leur whip.

**Signalement au dirigeant principal ou au whip – tiers.**

**(4)** Un tiers peut soulever les allégations auprès du dirigeant principal ou, si le tiers, le plaignant et le défendeur appartiennent au même caucus, auprès de leur whip.

**Exception – députés indépendants.**

**(5)** Les allégations de harcèlement sexuel pour lesquelles le plaignant ou le défendeur est un député indépendant sont soulevées auprès du dirigeant principal ou une personne désignée par celui-ci.

**Direction des discussions.**

**(6)** Le dirigeant principal ou le whip, selon le cas, dirige les discussions sur les allégations de harcèlement sexuel.

**Dirigeant principal ou whip – informer.**

**(7)** Le dirigeant principal ou le whip, selon le cas, informe le défendeur des allégations soulevées et peut lui demander des renseignements supplémentaires.

**CHRO or Whip to facilitate.**

**(8)** The CHRO or Whip, as the case may be, may facilitate discussions between the complainant and the respondent in order to resolve the issue.

**CHRO participation.**

**(9)** If the sexual harassment allegations are reported to the Whip, the Whip may invite the CHRO to participate in the discussions.

**15.****Notification – no further measures.**

**(1)** The complainant may, at any time, notify the CHRO or the Whip, as the case may be, that they do not wish any further measures to be taken under this Code in respect of the matter.

**Effect of notification.**

**(2)** If notice is given under subsection (1), the CHRO or the Whip, as the case may be, shall not take any further measures under this Code in respect of the matter, unless the complainant is being investigated for having filed a potential vexatious or bad faith complaint.

**16.****Decision respected.**

All participants shall be bound to the complainant's choice of the CHRO or Whip under section 14.

**17.****Whip involved.**

Despite section 14, if the Whip of a party is either the complainant or the respondent, the House Leader of that party shall assume the role of the Whip.

**18.****Matter dealt with by CHRO.**

With regard to sexual harassment allegations that are reported to a Whip under section 14, the complainant may, at any time during the resolution process, choose to have the matter dealt with by the CHRO.

**Dirigeant principal ou whip – faciliter.**

**(8)** Le dirigeant principal ou le whip, selon le cas, facilite les discussions entre le plaignant et le défendeur afin de résoudre la situation.

**Participation du dirigeant principal.**

**(9)** Dans le cas où les allégations de harcèlement sexuel sont soulevées auprès du whip, le whip peut inviter le dirigeant principal à participer aux discussions.

**15.****Avis – aucune autre mesure.**

**(1)** Le plaignant peut, à tout moment, aviser le dirigeant principal ou le whip, selon le cas, qu'il souhaite qu'aucune autre mesure ne soit prise au titre du présent code concernant l'affaire.

**Effet de l'avis.**

**(2)** Le cas échéant, le dirigeant principal ou le whip, selon le cas, ne prend aucune autre mesure au titre du présent code concernant l'affaire, sauf si le plaignant fait l'objet d'une enquête parce que sa plainte serait vexatoire ou entachée de mauvaise foi.

**16.****Décision respectée.**

Les participants sont liés par le choix du plaignant de s'adresser au dirigeant principal ou au whip en vertu de l'article 14.

**17.****Whip impliqué.**

Malgré l'article 14, dans le cas où le whip d'un parti est le plaignant ou le défendeur, le leader à la Chambre de ce parti assume le rôle du whip.

**18.****Dirigeant principal saisi de l'affaire.**

En ce qui concerne les allégations de harcèlement sexuel soulevées auprès du whip en vertu de l'article 14, le plaignant peut, à tout moment au cours du processus de résolution, décider de saisir le dirigeant principal de l'affaire.

19.

**Administration of process.**

If the sexual harassment allegation is first reported to a Whip under section 14, the Whip may communicate with the CHRO for the purpose of aiding in the administration of the resolution process, including record-keeping.

20.

**Whip involvement.**

The complainant and the respondent may choose to be assisted by their respective Whips at any time during the resolution process.

*MEDIATION*

21.

**Encourage mediation.**

The CHRO or Whip, as the case may be, shall offer mediation at all stages of the resolution process and, in particular, before a formal complaint is filed.

22.

**Mediation.**

**(1)** Upon the completion of the discussions described in section 14, the CHRO or Whip, as the case may be, shall raise with the complainant and respondent the possibility of resolution through mediation.

**Arrangements.**

**(2)** If the complainant and respondent agree to mediation, the CHRO shall make arrangements for confidential mediation with a mediator acceptable to the complainant and respondent.

**Agreement to mediate.**

**(3)** If the complainant and respondent agree to mediation, they shall sign a mediation agreement that outlines their specific obligations of confidentiality and privacy during the mediation process.

19.

**Administration du processus.**

Dans le cas où les allégations de harcèlement sexuel ont été soulevées d'abord auprès du whip en vertu de l'article 14, le whip peut demander l'aide du dirigeant principal pour la gestion du processus de résolution, notamment pour la tenue de dossiers.

20.

**Assistance du whip.**

Le plaignant et le défendeur peuvent demander l'assistance de leur whip respectif en tout temps durant le processus de résolution.

*MÉDIATION*

21.

**Médiation favorisée.**

Le dirigeant principal ou le whip, selon le cas, offre la médiation à toutes les étapes du processus de résolution, en particulier avant le dépôt d'une plainte officielle.

22.

**Médiation.**

**(1)** À la fin des discussions visées à l'article 14, le dirigeant principal ou le whip, selon le cas, invite le plaignant et le défendeur à tenter de résoudre l'affaire par la médiation.

**Mesures.**

**(2)** Si le plaignant et le défendeur acceptent la médiation, le dirigeant principal prend les mesures nécessaires pour entreprendre le processus de médiation confidentielle avec un médiateur qui convient au plaignant et au défendeur.

**Entente de médiation.**

**(3)** Si le plaignant et le défendeur acceptent la médiation, ils signent une entente de médiation qui énonce leurs obligations spécifiques en matière de confidentialité et de respect de la vie privée durant le processus de médiation.

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**23.****Materials and information confidential.**

All materials prepared for, and information exchanged at, mediation shall be confidential.

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**24.****Mediation paid from central budget.**

Where the mediator is engaged from outside the House of Commons Administration, the costs of the mediation shall be paid from a central budget of the House of Commons Administration.

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**25.****Facilitation services.**

Members have access at all times to the House of Commons Administration's program which provides facilitation services and which is presently called *Finding Solutions Together*.

**FORMAL COMPLAINT, PRELIMINARY REVIEW,  
REFERRAL, AND INVESTIGATION**

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**26.****Formal complaint filed.**

**(1)** If the complainant and respondent do not agree to proceed by mediation, or if the matter is not resolved to the complainant's satisfaction, the complainant may file a formal complaint with the CHRO that the respondent has engaged in sexual harassment.

**Form of complaint.**

**(2)** The complaint shall be in writing, shall be signed by the complainant and shall include a description of the nature of the alleged sexual harassment and the identity of the respondent.

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**23.****Confidentialité des documents et renseignements.**

Tous les documents préparés pour la médiation ainsi que tous les renseignements échangés lors de la médiation sont confidentiels.

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**24.****Coût de la médiation imputé au budget central.**

Lorsque l'Administration de la Chambre des communes retient les services d'un médiateur externe, le coût de la médiation est imputé au budget central de l'Administration de la Chambre des communes.

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**25.****Services de facilitation.**

Les députés peuvent recourir en tout temps au programme de l'Administration de la Chambre des communes qui fournit des services de facilitation et qui, présentement, se nomme *Ensemble, trouvons des solutions*.

**PLAINTE OFFICIELLE, EXAMEN PRÉLIMINAIRE,  
RENVOI ET ENQUÊTE**

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**26.****Dépôt d'une plainte officielle.**

**(1)** Si le plaignant et le défendeur n'acceptent pas la médiation, ou si l'affaire n'est pas résolue à la satisfaction du plaignant, celui-ci peut déposer auprès du dirigeant principal une plainte officielle selon laquelle le défendeur s'est livré à du harcèlement sexuel.

**Forme de la plainte.**

**(2)** Le plaignant présente par écrit et signe sa plainte, dans laquelle il détaille les allégations de harcèlement sexuel et nomme le défendeur.

**27.****Preliminary review.**

(1) On receipt of a formal complaint, the CHRO shall review the complaint to determine whether the alleged facts, if proven, could constitute sexual harassment.

**Decision on preliminary review.**

(2) If the CHRO determines that the alleged facts, if proven, could not constitute sexual harassment, the CHRO shall provide the complainant with a report that sets out the reasons for the decision.

**Copies of complaint.**

(3) After having reviewed the complaint and having determined that the alleged facts, if proven, could constitute sexual harassment, the CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26(1). The CHRO shall also inform the Whip of the complainant and the Whip of the respondent and provide them with a copy of the complaint.

**Informing complainant and respondent.**

(4) Within 15 days of providing the complaint to the respondent, the CHRO shall inform the complainant and the respondent that an investigator is to be engaged under section 35.

**28.****Referral to the Standing Committee on Procedure and House Affairs.**

(1) If the complainant is not satisfied with a decision made under subsection 27(2), the complainant may, within 15 days of being advised of the decision, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render a decision on the matter.

**Notification.**

(2) The Chair of the Standing Committee on Procedure and House Affairs shall notify the CHRO of the referral. The CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26(1), and a copy of the report issued under subsection 27(2).

**27.****Examen préliminaire.**

(1) Sur réception d'une plainte officielle, le dirigeant principal l'examine afin d'établir si les faits allégués pourraient constituer du harcèlement sexuel s'ils étaient prouvés.

**Décision.**

(2) S'il établit que les faits allégués ne pourraient pas constituer du harcèlement sexuel s'ils étaient prouvés, le dirigeant principal remet au plaignant un rapport exposant les motifs de sa décision.

**Copies de la plainte.**

(3) Après examen de la plainte, s'il établit que les faits allégués pourraient constituer du harcèlement sexuel s'ils étaient prouvés, le dirigeant principal remet sans délai au défendeur une copie de la plainte déposée en vertu du paragraphe 26(1). Il en informe également les whips du plaignant et du défendeur et leur remet une copie de la plainte.

**Avis.**

(4) Dans les quinze jours après avoir remis la plainte au défendeur, le dirigeant principal avise le plaignant et le défendeur qu'un enquêteur sera engagé en application de l'article 35.

**28.****Renvoi au Comité permanent de la procédure et des affaires de la Chambre.**

(1) S'il n'est pas satisfait d'une décision prise au titre du paragraphe 27(2), le plaignant peut, dans les quinze jours après avoir été avisé de la décision, demander au président du Comité permanent de la procédure et des affaires de la Chambre que le Comité statue sur l'affaire.

**Avis.**

(2) Le président du Comité permanent de la procédure et des affaires de la Chambre avise le dirigeant principal du renvoi. Le dirigeant principal remet sans délai au défendeur une copie de la plainte déposée en vertu du paragraphe 26(1) et une copie du rapport établi en application du paragraphe 27(2).

**Request by the Whip – consent.**

(3) For the purpose of subsection (1), the Whip of the complainant may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant.

**Written request.**

(4) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (3) shall be made in writing and shall include a copy of the CHRO's preliminary review report.

**Chair to convene meeting upon written request – 48 hours' notice required.**

(5) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

**29.****Proceedings to be *in camera*.**

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*.

**Retention of documents.**

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its proceedings for a period of five years following the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 31 or 32 of this Code, as the case may be.

**Destruction of documents.**

(3) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's proceedings, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

**Demande par le whip – consentement.**

(3) Pour l'application du paragraphe (1), le whip du plaignant peut, avec le consentement du plaignant, présenter la demande au président du Comité permanent de la procédure et des affaires de la Chambre.

**Demande par écrit.**

(4) Le député ou le whip qui soumet l'affaire au président du Comité permanent de la procédure et des affaires de la Chambre aux termes des paragraphes (1) ou (3) le fait par écrit et joint à sa demande une copie du rapport préliminaire d'enquête du dirigeant principal.

**Le président convoque une réunion à la suite d'une demande par écrit – avis de quarante-huit heures.**

(5) Dans les cinq jours qui suivent la réception de la demande, le président du Comité permanent de la procédure et des affaires de la Chambre convoque une réunion du Comité à huis clos qui doit se tenir dans les soixante jours qui suivent. Le président avise dès que possible les membres du Comité de la tenue de cette réunion, mais il ne peut donner un avis de moins de quarante-huit heures de cette réunion.

**29.****Huis clos.**

(1) Les délibérations du Comité permanent de la procédure et des affaires de la Chambre tenues au titre du présent code se tiennent à huis clos.

**Archives.**

(2) Le Comité conserve les témoignages et les documents, y compris la transcription des délibérations à huis clos, relatifs à l'étude pendant une période de cinq ans suivant la dernière étape possible du renvoi ou suivant la date à laquelle l'affaire est réputée retirée du Comité en vertu de l'article 31 ou 32 du présent code, selon le cas.

**Destruction de documents.**

(3) À la fin de la période prévue au paragraphe (2), le Greffier de la Chambre fait détruire les témoignages et les documents relatifs à l'étude du Comité, y compris la transcription des délibérations à huis clos, sauf indication contraire du Comité.

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**30.****Appearance of complainant and respondent.**

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to any matter referred to it pursuant to section 28.

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**31.****Withdrawal of matter from Committee.**

Until the Standing Committee on Procedure and House Affairs has rendered its decision, the complainant may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

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**32.****Respondent ceases to be a Member.**

In the event that a respondent ceases to be a Member during the course of the Committee's consideration of the matter, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code, unless the measures to be taken are in response to a potentially vexatious or bad faith complaint and the complainant has not ceased to be a Member.

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**33.****Decision.**

At the conclusion of the Committee's consideration of the matter referred to it pursuant to section 28, the decision of the Standing Committee on Procedure and House Affairs will be one of the following:

- (a)** to uphold the CHRO's decision; or
- (b)** to request that the CHRO engage an investigator under section 35.

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**30.****Comparution du plaignant et du défendeur.**

Le plaignant et le défendeur peuvent comparaître devant le Comité permanent de la procédure et des affaires de la Chambre relativement à l'affaire qui lui a été renvoyée en vertu de l'article 28.

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**31.****Retrait de l'affaire devant le Comité.**

Tant que le Comité permanent de la procédure et des affaires de la Chambre n'a pas rendu sa décision, le plaignant peut aviser par écrit le président du Comité qu'il souhaite mettre un terme à l'étude. L'affaire est alors réputée retirée du Comité.

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**32.****Défendeur cesse ses fonctions parlementaires.**

Si le défendeur cesse ses fonctions parlementaires pendant l'étude du Comité permanent de la procédure et des affaires de la Chambre, l'affaire est alors réputée retirée du Comité et aucune autre mesure n'est prise au titre du présent code, sauf si la mesure fait suite à une plainte qui serait vexatoire ou de mauvaise foi et que le plaignant n'a pas cessé ses fonctions parlementaires.

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**33.****Décision.**

Aux termes de l'étude de l'affaire qui lui a été renvoyée en vertu de l'article 28, le Comité permanent de la procédure et des affaires de la Chambre rend l'une ou l'autre des décisions suivantes :

- a)** il confirme la décision du dirigeant principal;
- b)** il demande au dirigeant principal d'engager un enquêteur en application de l'article 35.

**34.****Final decision.**

The decision of the Standing Committee on Procedure and House Affairs shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals. The decision of the Standing Committee on Procedure and House Affairs shall be the final decision on the preliminary review.

**35.****Investigator engaged.**

(1) Subject to section 27, the CHRO shall engage an investigator to investigate the complaint filed under section 26.

**Adjustment – scope of investigation.**

(2) The investigator may determine to adjust the scope of the investigation when some or all of the facts are not in dispute.

**36.****Conduct of investigation.**

(1) The investigator shall investigate the allegations that are the subject of the complaint in a fair, impartial and timely manner and in accordance with Schedule 2.

**Informing complainant.**

(2) The complainant should be advised at the earliest opportunity if he or she is being investigated for having filed a potentially vexatious or bad faith complaint.

**37.****Draft investigation report – findings of fact.**

(1) Within 30 days of the completion of the interviews conducted in accordance with Schedule 2, the investigator shall prepare a draft investigation report containing the proposed findings of fact and provide the CHRO, the complainant and the respondent with copies for their review.

**34.****Décision finale.**

La décision du Comité permanent de la procédure et des affaires de la Chambre protège l'anonymat des participants et respecte la vie privée du plaignant et de toute autre personne. La décision du Comité constitue la décision finale sur l'examen préliminaire.

**35.****Embauche d'un enquêteur.**

(1) Sous réserve de l'article 27, le dirigeant principal engage un enquêteur chargé de faire enquête sur la plainte déposée en vertu de l'article 26.

**Modification - portée de l'enquête.**

(2) L'enquêteur peut modifier la portée de l'enquête si tout ou partie des faits ne sont pas contestés.

**36.****Tenue de l'enquête.**

(1) L'enquêteur enquête sur les allégations faisant l'objet de la plainte de manière juste et impartiale en temps opportun et en conformité avec l'annexe 2.

**Avis.**

(2) Le plaignant qui fait l'objet d'une enquête parce que sa plainte serait vexatoire ou entachée de mauvaise foi devrait en être avisé dès que possible.

**37.****Rapport préliminaire d'enquête – conclusions de fait.**

(1) Dans les trente jours suivant la conclusion des interrogatoires menés en conformité avec l'annexe 2, l'enquêteur établit un rapport préliminaire d'enquête exposant les conclusions de fait envisagées et en remet un exemplaire au dirigeant principal, au plaignant et au défendeur pour qu'ils l'examinent.

**Errors of fact.**

(2) The complainant and the respondent may, within 15 days following receipt of the draft report, provide the investigator with written submissions on any alleged errors of fact.

**Reasons – witness not interviewed.**

(3) If applicable, the draft report must also include the reasons why a witness whose name was proposed by the complainant or the respondent was not interviewed by the investigator.

**Review by investigator.**

(4) The investigator shall review any submissions made by the complainant and the respondent.

**38.****Draft investigation report.**

(1) Within 30 days of receipt of the submissions made under subsection 37(2), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare a draft investigation report containing the revised findings of fact, if applicable, the investigator's proposed conclusions, and the reasons for the conclusions and shall provide the CHRO, the complainant and the respondent with copies for their review.

**Conclusions.**

(2) The draft report must contain one of the following conclusions:

(a) on a balance of probabilities, the respondent engaged in sexual harassment;

(b) on a balance of probabilities, the respondent did not engage in sexual harassment; or

(c) on a balance of probabilities, the respondent did not engage in sexual harassment, and the complaint was vexatious or made in bad faith.

**Submissions.**

(3) The complainant and the respondent may, within 15 days of receipt of the draft report, provide the investigator with written submissions regarding the conclusions.

**Erreurs de fait.**

(2) Le plaignant et le défendeur peuvent, dans les quinze jours suivant la réception du rapport, présenter à l'enquêteur des observations écrites concernant toute erreur de fait alléguée.

**Motifs – témoin non interrogé.**

(3) Le rapport expose en outre les motifs pour lesquels l'enquêteur n'a pas interrogé un témoin proposé par le plaignant ou le défendeur, le cas échéant.

**Examen des observations par l'enquêteur.**

(4) L'enquêteur examine toute observation présentée par le plaignant ou le défendeur.

**38.****Rapport préliminaire d'enquête.**

(1) Dans les trente jours suivant la réception des observations présentées en vertu du paragraphe 37(2) ou à l'expiration de la période de quinze jours prévue pour la présentation d'observations, l'enquêteur établit un rapport préliminaire d'enquête exposant les conclusions de fait révisées, le cas échéant, ses conclusions proposées et les motifs de ses conclusions et il en remet un exemplaire au dirigeant principal, au plaignant et au défendeur pour qu'ils l'examinent.

**Conclusions.**

(2) Le rapport comporte l'une des conclusions suivantes, à savoir que, selon la prépondérance des probabilités :

a) le défendeur s'est livré à du harcèlement sexuel;

b) le défendeur ne s'est pas livré à du harcèlement sexuel;

c) le défendeur ne s'est pas livré à du harcèlement sexuel et la plainte était vexatoire ou entachée de mauvaise foi.

**Observations.**

(3) Le plaignant et le défendeur peuvent, dans les quinze jours suivant la réception du rapport préliminaire, fournir à l'enquêteur des observations écrites concernant les conclusions.

**Review by investigator.**

(4) The investigator shall review any submissions made by the complainant and the respondent.

**39.****Final investigation report.**

Within 30 days of receipt of submissions made under subsection 38(3), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare the final investigation report containing the findings of fact, the investigator's conclusions and the reasons for the conclusions and provide the complainant, the respondent and the CHRO with copies.

**40.****Next steps.**

The CHRO shall inform the complainant and the respondent of the various courses of action available to them to address the conclusions set out in the final investigation report.

**41.****Mediation.**

At any time during the investigation, the complainant and the respondent may agree to suspend the investigation and resolve the issue through mediation.

*DECISION***REFERRAL TO THE WHIP****42.****Further actions.**

(1) If the final investigation report in relation to a formal complaint indicates that, on a balance of probabilities, the respondent engaged in sexual harassment, the complainant may notify the CHRO, in writing, within 15 days of receiving the final investigation report that he or she believes the matter warrants further action.

**Examen par l'enquêteur.**

(4) L'enquêteur examine toute observation présentée par le plaignant et le défendeur.

**39.****Rapport final d'enquête.**

Dans les trente jours suivant la réception des observations présentées au titre du paragraphe 38(3) ou à l'expiration de la période de quinze jours prévue pour la présentation d'observations, l'enquêteur établit le rapport final d'enquête comportant les conclusions de fait, ses conclusions et les motifs de ses conclusions et il en remet un exemplaire au plaignant, au défendeur et au dirigeant principal.

**40.****Mesures.**

Le dirigeant principal informe le plaignant et le défendeur des diverses mesures pouvant être prises afin de donner suite aux conclusions exposées dans le rapport final d'enquête.

**41.****Médiation.**

À tout moment au cours de l'enquête, le plaignant et le défendeur peuvent convenir de suspendre l'enquête et de résoudre l'affaire par la médiation.

*DÉCISION***RENOI AU WHIP****42.****Mesures supplémentaires.**

(1) S'il est conclu dans le rapport final d'enquête sur la plainte officielle que, selon la prépondérance des probabilités, le défendeur s'est livré à du harcèlement sexuel, le plaignant peut, dans les quinze jours suivant la réception du rapport final d'enquête, aviser le dirigeant principal par écrit qu'il croit que l'affaire justifie la prise de mesures supplémentaires.

**Attention of the Whip.**

(2) On receiving a notice under subsection (1), the CHRO shall inform the respondent's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

**43.****Vexatious complaints or complaints made in bad faith.**

(1) If the final investigation report in relation to a formal complaint indicates that the complaint was vexatious or made in bad faith, the respondent may notify the CHRO, in writing, within 15 days of receiving the final investigation report, that he or she believes the matter warrants further action.

**Attention of the Whip.**

(2) On receiving a notice under subsection (1), the CHRO shall inform the complainant's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

**44.****Proposed discipline.**

(1) Within 15 days of receiving a notice under subsection 42(2) or 43(2), the Whip concerned shall provide the CHRO with a proposed course of disciplinary action.

**Inform.**

(2) The CHRO shall inform the following individuals of the proposed course of disciplinary action:

(a) the complainant, in the case where the final investigation report indicates that, on a balance of probabilities, the respondent engaged in sexual harassment; and

(b) the respondent, in the case where the final investigation report indicates that a complaint was vexatious or made in bad faith.

**Additional remedies.**

(3) If the disciplinary action proposed by the Whip under subsection (1) is not satisfactory to the complainant or the respondent, as the case may be, the complainant or the respondent may suggest a further course of disciplinary action to the CHRO within 15 days of being informed under subsection (2).

**Obligation d'informer le whip.**

(2) S'il reçoit l'avis visé au paragraphe (1), le dirigeant principal en informe par écrit le whip du défendeur et lui remet le rapport final d'enquête.

**43.****Plainte vexatoire ou entachée de mauvaise foi.**

(1) S'il est conclu dans le rapport final d'enquête sur la plainte officielle que cette dernière est vexatoire ou entachée de mauvaise foi, le défendeur peut, dans les quinze jours suivant la réception du rapport, aviser le dirigeant principal par écrit qu'il croit que l'affaire justifie la prise de mesures supplémentaires.

**Obligation d'informer le whip.**

(2) S'il reçoit l'avis visé au paragraphe (1), le dirigeant principal en informe par écrit le whip du plaignant et lui remet le rapport final d'enquête.

**44.****Proposition de mesures disciplinaires.**

(1) Dans les quinze jours suivant la réception de l'avis visé aux paragraphes 42(2) ou 43(2), le whip concerné propose une mesure disciplinaire au dirigeant principal.

**Obligation d'informer l'intéressé.**

(2) Le dirigeant principal informe les personnes suivantes de la mesure disciplinaire proposée :

a) s'il est conclu dans le rapport final d'enquête que, selon la prépondérance des probabilités, le défendeur s'est livré à du harcèlement sexuel, le plaignant;

b) s'il est conclu dans le rapport final d'enquête que la plainte est vexatoire ou entachée de mauvaise foi, le défendeur.

**Autres recours.**

(3) Si la mesure disciplinaire proposée par le whip en application du paragraphe (1) ne convient pas au plaignant ou au défendeur, selon le cas, ces derniers peuvent, dans les quinze jours après avoir été informés de la mesure disciplinaire proposée au titre du paragraphe (2), proposer au dirigeant principal une autre mesure disciplinaire.

**Communicate.**

(4) The CHRO shall inform the Whip concerned of the further course of disciplinary action suggested under subsection (3).

**Deemed to be resolved.**

(5) If there is agreement on the course of disciplinary action pursuant to subsection (2) or (4), the matter is deemed to be resolved.

**Discipline.**

(6) Once the matter is deemed to be resolved, the Whip in question shall implement the course of disciplinary action.

45.

**Independent Member.**

If the respondent, or complainant who was found to have filed a vexatious or bad faith complaint, is an independent Member, the CHRO shall propose a course of disciplinary action to both the complainant and the respondent. Where there is agreement on the course of disciplinary action, the matter is deemed to be resolved, and the course of disciplinary action shall be implemented.

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**REFERRAL TO THE STANDING COMMITTEE  
ON PROCEDURE AND HOUSE AFFAIRS**

46.

**Request to the Standing Committee on Procedure and House Affairs.**

(1) If the complainant or the respondent is not satisfied with the investigation process, the final investigation report or the course of proposed disciplinary action the complainant or respondent may, within 15 days of being advised of the final proposed disciplinary action, or the final applicable step in the process for the particular matter, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render decisions or make recommendations on one or more of the matters listed above.

**Avis.**

(4) Le dirigeant principal avise le whip concerné de toute mesure disciplinaire proposée en vertu du paragraphe (3).

**Consensus.**

(5) Si la mesure disciplinaire proposée en application des paragraphes (2) ou (4) fait consensus, l'affaire est tenue pour résolue.

**Mesure disciplinaire.**

(6) Une fois l'affaire tenue pour résolue, le whip concerné applique la mesure disciplinaire.

45.

**Député indépendant.**

Si le défendeur ou le plaignant dont la plainte a été jugée vexatoire ou entachée de mauvaise foi est un député indépendant, le dirigeant principal propose une mesure disciplinaire au plaignant et au défendeur. Si la mesure disciplinaire proposée fait consensus, l'affaire est tenue pour résolue, et la mesure disciplinaire est appliquée.

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**RENOVI AU COMITÉ PERMANENT DE LA PROCÉDURE  
ET DES AFFAIRES DE LA CHAMBRE**

46.

**Demande au Comité permanent de la procédure et des affaires de la Chambre.**

(1) S'il n'est pas satisfait du processus d'enquête ou du rapport final d'enquête ou si la mesure disciplinaire proposée ne lui convient pas, le plaignant ou le défendeur peut, dans les quinze jours après avoir été avisé de la dernière proposition de mesure disciplinaire ou après la dernière étape possible du processus concerné, demander au président du Comité permanent de la procédure et des affaires de la Chambre que le Comité statue sur une ou plusieurs questions mentionnées ci-dessus ou fasse des recommandations à leur égard.

**Request by the Whip – consent.**

(2) For the purpose of subsection (1), the Whip of the complainant or the respondent may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant or the respondent.

**Written request.**

(3) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (2) shall be made in writing and shall include a copy of the final investigation report.

**Chair to convene meeting upon written request – 48 hours' notice required.**

(4) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

47.

**Inquiry to be *in camera*.**

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*. The Committee shall determine whether all or part of the final investigation report – or a summary of it – may be used as evidence before the Committee.

**Retention of documents.**

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its inquiry for a period of five years following the date of the presentation of its report to the House of Commons, pursuant to section 54 of this Code, or the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 49 or 50 of this Code, as the case may be.

**Demande par le whip – consentement.**

(2) Pour l'application du paragraphe (1), le whip du plaignant ou du défendeur, selon le cas, peut, avec le consentement de son député, présenter la demande au président du Comité permanent de la procédure et des affaires de la Chambre.

**Demande par écrit.**

(3) Le député ou le whip qui soumet l'affaire au président du Comité permanent de la procédure et des affaires de la Chambre aux termes des paragraphes (1) ou (2) le fait par écrit et joint à sa demande une copie du rapport final d'enquête.

**Le président convoque une réunion à la suite d'une demande par écrit – avis de quarante-huit heures.**

(4) Dans les cinq jours suivant la réception de la demande, le président du Comité permanent de la procédure et des affaires de la Chambre convoque une réunion du Comité à huis clos qui doit se tenir dans les soixante jours qui suivent. Le président avise dès que possible les membres du Comité de la tenue de cette réunion, mais il ne peut donner un avis de moins de quarante-huit heures de cette réunion.

47.

**Huis clos.**

(1) Les délibérations du Comité permanent de la procédure et des affaires de la Chambre tenues au titre du présent code se tiennent à huis clos. Le Comité détermine si tout ou partie du rapport final d'enquête – ou un résumé de celui-ci – peut être utilisé pendant son étude.

**Archives.**

(2) Le Comité conserve les témoignages et les documents, y compris la transcription des délibérations à huis clos, relatifs à l'étude pendant une période de cinq ans suivant la présentation de son rapport à la Chambre des communes en vertu de l'article 54 du présent code, suivant la dernière étape possible du processus concerné ou suivant la date à laquelle l'affaire est réputée retirée du Comité en vertu de l'article 49 ou 50 du présent code, selon le cas.

**Destruction of documents.**

**(3)** At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's inquiry, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

48.

**Appearance of complainant and respondent.**

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to the report.

49.

**Withdrawal of matter from Committee.**

Until the Standing Committee on Procedure and House Affairs presents its report to the House of Commons under section 54, the Member who requested that the Committee study the matter may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

50.

**Respondent ceases to be a Member.**

**(1)** In the event that a respondent, or a complainant who was found to have filed a vexatious or bad faith complaint, ceases to be a Member during the course of the Committee's study, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code.

**Potentially vexatious or bad faith complaint.**

**(2)** In the event that a respondent who alleges that a complaint is potentially vexatious or in bad faith ceases to be a Member during the course of the Committee's study, he or she can choose to continue the Committee's study if the complainant has not ceased to be a Member.

**Destruction de documents.**

**(3)** À la fin de la période prévue au paragraphe (2), le Greffier de la Chambre fait détruire les témoignages et les documents relatifs à l'étude du Comité, y compris la transcription des délibérations à huis clos, sauf indication contraire du Comité.

48.

**Comparution du plaignant et du défendeur.**

Le plaignant et le défendeur peuvent comparaître devant le Comité permanent de la procédure et des affaires de la Chambre relativement au rapport.

49.

**Retrait de l'affaire devant le comité.**

Tant que le Comité permanent de la procédure et des affaires de la Chambre n'a pas fait rapport à la Chambre des communes en vertu de l'article 54, le député qui a soumis l'affaire au Comité peut aviser par écrit le président du Comité qu'il souhaite mettre un terme à l'étude. L'affaire est alors réputée retirée du Comité.

50.

**Défendeur cesse ses fonctions parlementaires.**

**(1)** Si le défendeur ou le plaignant dont la plainte a été jugée vexatoire ou entachée de mauvaise foi cesse ses fonctions parlementaires pendant l'étude du Comité permanent de la procédure et des affaires de la Chambre, l'affaire est alors réputée retirée du Comité et aucune autre mesure n'est prise au titre du présent code.

**Allégation de plainte vexatoire ou de mauvaise foi.**

**(2)** Si le défendeur qui allègue qu'une plainte serait vexatoire ou de mauvaise foi cesse ses fonctions parlementaires pendant l'étude du Comité, il peut décider de continuer de participer à l'étude par le Comité si le plaignant n'a pas cessé ses fonctions parlementaires.

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**51.****Reasons.**

The Standing Committee on Procedure and House Affairs shall include in the report the reasons for any conclusions and recommendations.

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**52.****Report.**

The report of the Standing Committee on Procedure and House Affairs shall contain only a summary of the final investigation report, shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals who provided evidence.

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**53.****Sanctions.**

In its report, the Standing Committee on Procedure and House Affairs may recommend any appropriate sanctions available to the House of Commons. The Member being sanctioned may be named in the report.

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**REFERRAL TO THE HOUSE OF COMMONS**

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**54.****Reports from Committee.**

Following the adoption of a report by the Standing Committee on Procedure and House Affairs regarding the potential discipline of a Member pursuant to this Code, the Chair of the Committee shall present this report to the House forthwith, pursuant to Standing Order 35(1).

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**51.****Motifs.**

Le Comité permanent de la procédure et des affaires de la Chambre motive ses conclusions et recommandations dans son rapport.

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**52.****Rapport.**

Le rapport du Comité permanent de la procédure et des affaires de la Chambre ne contient qu'un résumé du rapport final d'enquête; il protège l'anonymat des participants et respecte la vie privée du plaignant et des témoins.

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**53.****Sanctions.**

Le Comité permanent de la procédure et des affaires de la Chambre, dans son rapport, peut recommander l'application de sanctions appropriées et que la Chambre des communes est en droit d'imposer. Le rapport peut nommer le député faisant l'objet des sanctions.

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**RENOI À LA CHAMBRE DES COMMUNES**

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**54.****Rapport du comité.**

À la suite de l'adoption d'un rapport par le Comité permanent de la procédure et des affaires de la Chambre concernant d'éventuelles mesures disciplinaires imposées au titre du présent code, le président du Comité présente sans délai le rapport à la Chambre des communes conformément à l'article 35(1) du Règlement.

55.

**Member may address House – confidentiality respected.**

Within 10 sitting days after the presentation of the report of the Standing Committee on Procedure and House Affairs, either party has the right to make a statement in the House, provided that he or she does not speak for more than 20 minutes and that he or she respects the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

56.

**Motion to concur in a report.**

**(1)** A motion to concur in a report of the Standing Committee on Procedure and House Affairs made pursuant to this Code may be moved during Routine Proceedings, provided that the notice period, pursuant to Standing Order 54(1), is respected and that any motion to concur in the report shall not be moved until either the Member has made a statement pursuant to section 55 or ten sitting days have elapsed since the presentation of the report.

**Debate on concurrence in a Committee report.**

**(2)** A motion moved pursuant to subsection (1) shall be considered for no more than three hours, after which time, unless previously disposed of, the Speaker shall interrupt any proceedings then before the House and put all questions necessary to dispose of the motion without further debate or amendment. During debate on the motion, no Member shall speak more than once or longer than ten minutes and if the debate is adjourned or interrupted:

**(a)** the motion shall again be considered on a day designated by the Speaker after consultation with the House Leaders of the recognized parties, but in any case not later than the tenth sitting day after the adjournment or interruption;

**(b)** debate on the motion shall be resumed at the ordinary hour of daily adjournment on the day designated pursuant to paragraph (a) and shall not be further adjourned or interrupted; and

55.

**Député peut s'adresser à la Chambre – respect de la confidentialité.**

Dans les dix jours de séance suivant la présentation du rapport du Comité permanent de la procédure et des affaires de la Chambre, les deux parties ont le droit de faire une déclaration à la Chambre, sous réserve que leur intervention ne dépasse pas vingt minutes et qu'elles respectent la confidentialité du processus de résolution et la vie privée des députés visés et des témoins.

56.

**Motion portant adoption d'un rapport.**

**(1)** Une motion portant adoption du rapport que le Comité permanent de la procédure et des affaires de la Chambre a établi en vertu du présent code peut être proposée pendant la période réservée aux affaires courantes, à condition que la période d'avis prévue à l'article 54(1) du Règlement soit respectée et que le député ait fait la déclaration visée à l'article 55 ou que dix jours de séance se soient écoulés depuis la présentation du rapport.

**Débat sur une motion portant adoption d'un rapport de comité.**

**(2)** La motion proposée en vertu du paragraphe (1) est prise en considération durant au plus trois heures; après cette période, à moins qu'on en ait disposé auparavant, le Président interrompt les délibérations de la Chambre et met aux voix toute question nécessaire pour disposer de la motion, sans autre débat ni amendement. Pendant le débat sur la motion, aucun député ne peut parler plus d'une fois, ni plus de dix minutes; cependant, si le débat est ajourné ou interrompu :

**a)** la motion est de nouveau étudiée lors d'une journée désignée par le Président, après consultation avec les leaders des partis reconnus, et, dans tous les cas, au plus tard le dixième jour de séance suivant l'ajournement ou l'interruption;

**b)** le débat sur la motion sera repris à l'heure ordinaire de l'ajournement quotidien le jour désigné en vertu de l'alinéa a) et ne sera plus ajourné ni interrompu;

**(c)** when no Member rises to speak or after a total of three hours of debate, whichever is earlier, the Speaker shall put all questions necessary to dispose of the motion, provided that, if a recorded division is requested on the motion considered on a day designated pursuant to paragraph (a) of this subsection, it shall stand deferred to an appointed time on the next Wednesday, no later than the expiry of the time provided for Government Orders on that day.

**Vote.**

**(3)** If no motion pursuant to this section has been moved and disposed of, a motion to concur in the report shall be deemed to have been proposed on the 30th sitting day after the day on which the report was presented to the House. At the expiry of the time provided for Government Orders, the Speaker shall put forthwith every question necessary to dispose of the motion, provided that either the Chief Government Whip or the Chief Opposition Whip may ask the Speaker to defer the division to an appointed time no later than the ordinary hour of daily adjournment on the next sitting day that is not a Friday.

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**57.**

**Confidentiality.**

Statements made in the House of Commons regarding a specific matter related to this Code must respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

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**58.**

**Referral back to Committee.**

At any time before the House has concurred in the report, the House may refer the report back to the Standing Committee on Procedure and House Affairs for further consideration.

**c)** lorsque personne ne demande plus à intervenir ou trois heures après le début du débat, selon la première éventualité, le Président met aux voix toute question nécessaire pour disposer de la motion, sous réserve que; si un vote par appel nominal est demandé à l'égard de la motion étudiée lors d'une journée désignée en vertu de l'alinéa a) du présent paragraphe, il est réputé différé à un moment désigné le mercredi suivant au plus tard à la fin de la période prévue pour les Ordres émanant du gouvernement lors de cette séance.

**Vote.**

**(3)** Si aucune motion proposée aux termes du présent article n'a fait l'objet d'une décision dans les trente jours de séance qui suivent la présentation du rapport à la Chambre, une motion portant adoption du rapport est réputée proposée à la fin de cette période. Le Président, à la fin de la période prévue pour les Ordres émanant du gouvernement, met immédiatement aux voix toute question nécessaire pour disposer de la motion; toutefois, le whip en chef du gouvernement ou le whip en chef de l'Opposition peut demander au Président de différer le vote à un autre moment désigné qui ne dépasse pas l'heure ordinaire de l'ajournement quotidien du jour de séance suivant, qui n'est pas un vendredi.

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**57.**

**Confidentialité.**

Les déclarations faites à la Chambre des communes sur des affaires spécifiques liées au présent code doivent respecter la confidentialité du processus de résolution et la vie privée des députés concernés ainsi que des témoins.

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**58.**

**Renvoi au comité.**

À tout moment avant l'adoption du rapport, la Chambre peut le renvoyer au Comité permanent de la procédure et des affaires de la Chambre pour qu'il l'examine à nouveau.

59.

**Vacancy.**

In the event that the Member who is the subject of potential discipline ceases to be a Member of the House of Commons following the presentation of the report of the Standing Committee on Procedure and House Affairs to the House, any motion to concur in the report is deemed withdrawn and dropped from the *Order Paper*.

60.

**Effect of prorogation or dissolution.**

Following a prorogation or dissolution of Parliament, provided that the respondent, or a complainant who was found to have filed a vexatious or bad faith complaint, remain Members of the House:

**(a)** the complainant or respondent, or the appropriate Whip with the consent of the Member involved, may resubmit the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs in writing, at which time the procedures outlined in section 46 shall apply; and

**(b)** once seized of the matter in accordance with paragraph (a), the Standing Committee on Procedure and House Affairs may present the report of findings to the House anew, provided that the House had not concurred in the Committee's report in the previous session or Parliament.

**SUSPENSION OF THE RESOLUTION PROCESS**

61.

**Suspension of resolution process.**

**(1)** The CHRO shall immediately suspend the resolution process if:

**(a)** there are reasonable grounds to believe that a Member has committed an offence under an act of Parliament or provincial legislation, in which case the CHRO shall, in consultation with the Law Clerk and Parliamentary Counsel, notify the proper authorities of his or her belief; or

**(b)** it is discovered that the conduct under investigation is also the subject of an investigation to determine if an offence under an act of Parliament or provincial legislation has been committed or that a charge has been laid with respect to that act.

59.

**Vacance.**

Dans le cas où le député visé par de possibles mesures disciplinaires cesse ses fonctions parlementaires après la présentation à la Chambre du rapport du Comité permanent de la procédure et des affaires de la Chambre, la motion portant adoption du rapport est réputée retirée et rayée du *Feuilleton*.

60.

**Effet d'une prorogation ou d'une dissolution.**

À la suite d'une prorogation ou dissolution du Parlement, dans la mesure où le défendeur ou le plaignant dont la plainte a été jugée vexatoire ou entachée de mauvaise foi demeurent députés :

**a)** le plaignant ou le défendeur, ou un whip avec le consentement de son député, peut resoumettre l'affaire par écrit au président du Comité permanent de la procédure et des affaires de la Chambre, auquel cas la procédure prévue à l'article 46 s'applique;

**b)** le Comité permanent de la procédure et des affaires de la Chambre, une fois saisi de l'affaire au titre de l'alinéa a), peut présenter à nouveau son rapport à la Chambre, à condition que la Chambre ne l'ait pas adopté lors de la session ou de la législature précédentes.

**SUSPENSION DU PROCESSUS DE RÉOLUTION**

61.

**Sursis.**

**(1)** Le dirigeant principal suspend sans délai le processus de résolution :

**a)** s'il y a des motifs raisonnables de croire qu'un député a commis une infraction à une loi fédérale ou provinciale, auquel cas, après consultation du légiste et conseiller parlementaire, il en avise les autorités compétentes;

**b)** s'il est constaté que l'acte visé par l'enquête fait l'objet soit d'une autre enquête visant à établir s'il constitue une infraction à une loi fédérale ou provinciale, soit d'une accusation.

**Resolution process continued.**

(2) The CHRO shall not continue the resolution process until the other investigation has been completed or there has been a final disposition of the charge laid with respect to that conduct.

**Dissolution period.**

(3) The resolution process is suspended during the dissolution period.

**RETALIATION****62.****Report by complainant of retaliation.**

(1) Allegations of retaliation may be reported by the complainant to the CHRO.

**Report within one year.**

(2) The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

**63.****Application.**

The resolution process, as well as the provisions of this Code relating to referral to the Standing Committee on Procedure and House Affairs and those relating to referral to the House of Commons apply, with such modifications as may be required, in respect of any allegations of retaliation brought by a complainant.

**CONFIDENTIALITY****64.****Information publicly disclosed.**

Any public disclosure, by the CHRO, of personal information or of information related to the resolution process shall only be made in accordance with the terms of the resolution of a complaint, and shall be no more than is sufficient for the public to understand the circumstances and consequences of the resolution.

**Reprise du processus de résolution.**

(2) Le dirigeant principal ne peut poursuivre son enquête qu'à l'issue de l'autre enquête ou que s'il a été statué en dernier ressort sur l'accusation.

**Dissolution.**

(3) En cas de dissolution, le processus de résolution est suspendu.

**REPRÉSAILLES****62.****Signalement de représailles par le plaignant.**

(1) Les allégations de représailles peuvent être soulevées par le plaignant auprès du dirigeant principal.

**Délai de prescription – un an.**

(2) Les allégations doivent être soulevées dans l'année suivant le dernier incident allégué. Le dirigeant principal peut proroger le délai s'il estime que des circonstances exceptionnelles le justifient.

**63.****Application.**

Le processus de résolution ainsi que les dispositions du présent code portant sur le renvoi au Comité permanent de la procédure et des affaires de la Chambre et celles portant sur le renvoi à la Chambre des communes s'appliquent, avec les adaptations nécessaires, aux allégations de représailles soulevées par un plaignant.

**CONFIDENTIALITÉ****64.****Divulgence d'information.**

Le dirigeant principal ne peut divulguer de renseignements personnels ou d'information sur le processus de résolution qu'en conformité avec les conditions de la résolution de la plainte; seul ce qui est nécessaire pour permettre au public de comprendre les circonstances et les conséquences de la résolution est divulgué.

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**65.****Sanctions against Member.**

Where the House of Commons takes action against a Member, the House may only disclose information if it is necessary to explain any consequences for a Member.

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**66.****Reference to the Standing Committee on Procedure and House Affairs.**

If confidential information has been communicated to the public in violation of this Code or the pledge, the matter shall be referred to the Standing Committee on Procedure and House Affairs to be dealt with in any manner that the Committee deems appropriate.

**EDUCATIONAL ACTIVITIES**

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**67.****Educational activities.**

The CHRO shall undertake educational activities for Members on the content of this Code and on matters related to the prevention of sexual harassment.

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**68.****New Parliament.**

The CHRO shall brief Members on the contents of this Code at the start of each new Parliament.

**MISCELLANEOUS**

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**69.****Retention of documents by CHRO.**

The CHRO shall retain all documents relating to an allegation raised or a formal complaint filed under this Code for a period of five years from the date the matter was resolved, after which the documents shall be destroyed, unless a charge has been laid against the respondent under an act of Parliament and the documents may be relevant to that matter.

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**65.****Mesures contre un député.**

Dans le cas où la Chambre des communes prend des mesures contre un député, elle ne peut divulguer des renseignements qu'en fonction de ce qui est nécessaire pour expliquer les conséquences des mesures prises à l'encontre du député.

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**66.****Renvoi au Comité permanent de la procédure et des affaires de la Chambre.**

Si des renseignements confidentiels sont rendus publics en violation du présent code ou de l'engagement, le Comité permanent de la procédure et des affaires de la Chambre prend toute mesure qu'il estime indiquée pour régler l'affaire.

**ACTIVITÉS ÉDUCATIVES**

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**67.****Activités éducatives.**

Le dirigeant principal organise des activités afin de renseigner les députés sur le présent code et la prévention du harcèlement sexuel.

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**68.****Nouvelle législature.**

Dès le début de chaque législature, le dirigeant principal informe les députés du contenu du présent code.

**DISPOSITIONS DIVERSES**

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**69.****Archives.**

Le dirigeant principal garde les documents relatifs aux allégations soulevées ou à la plainte officielle déposée au titre du présent code pendant les cinq ans suivant la résolution de l'affaire. Ces documents sont ensuite détruits, sauf si une accusation a été portée contre le défendeur au titre d'une loi fédérale et que les documents peuvent être pertinents.

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**70.****Review after implementation.**

The Standing Committee on Procedure and House Affairs shall undertake a review of this Code no more than two years after its coming into force.

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**71.****Part of the Standing Orders.**

This Code shall form part of the Standing Orders of the House of Commons.

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**70.****Examen.**

Le Comité permanent de la procédure et des affaires de la Chambre procède à un examen du présent code au plus tard deux ans après son entrée en vigueur.

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**71.****Règlement.**

Le présent code fait partie du Règlement de la Chambre des communes.

**SCHEDULE 1***FORM 1*

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As part of the House of Commons' mission to create an environment in which all individuals can excel, I,....., Member of Parliament, commit to contribute to a work environment free of sexual harassment. I recognize that part of our mission is to create a workplace free of sexual harassment and that sexual harassment among Members of Parliament is strictly prohibited. I further commit to following the *Code of Conduct for Members of the House of Commons: Sexual Harassment between members*, and to respect confidentiality in accordance with the principles set out in this Code.

**ANNEXE 1***MODÈLE 1*

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Dans le cadre de la mission de la Chambre des communes qui consiste à créer un milieu favorisant l'excellence, je ....., député, m'engage à assurer un milieu de travail exempt de harcèlement sexuel. Je reconnais que notre mission consiste notamment à maintenir un milieu de travail où le harcèlement sexuel n'a pas sa place et que le harcèlement sexuel entre députés est strictement interdit. Je m'engage en outre à respecter le *Code de conduite pour les députés de la Chambre des communes : harcèlement sexuel entre députés* ainsi que les principes de confidentialité établis dans le présent code.

**SCHEDULE 2***CONDUCT OF INVESTIGATIONS***General Guidelines**

1. The investigator shall conduct the investigation in accordance with the principles of procedural fairness as set out in this Code while using his or her discretionary power to conduct the investigation in the most appropriate manner.
2. The investigator shall review the allegations and ensure that all relevant documentation has been identified. The investigator shall also review all documentation and responses, as applicable.
3. The CHRO shall assist with the administrative aspect of the investigation, including by providing contact information of the complainant, the respondent and the witnesses to be interviewed and arranging meeting locations.
4. The investigator shall ensure that the complainant and the respondent have been notified of their right to be represented by legal counsel and accompanied by a support person, as long as the support person is a Member of Parliament, during the investigation process and of the importance of maintaining confidentiality.
5. The investigator shall provide the complainant, the respondent and any witnesses with the opportunity to be heard and shall conduct all interviews in a fair, impartial and professional manner. He or she shall ensure that the complainant, the respondent and any witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.
6. The investigator shall take all necessary precautions to ensure that the investigative process is carried out with due diligence, and shall respect confidentiality in accordance with the principles set out in this Code.

**Investigation Process**

7. The investigator shall contact the complainant and the respondent and explain to them the investigator's mandate and role and the investigation process.

**ANNEXE 2***TENUE DES ENQUÊTES***Directives générales**

1. L'enquêteur mène l'enquête conformément aux principes de l'équité procédurale énoncés dans le présent code tout en usant de son pouvoir discrétionnaire pour le faire de la manière la plus appropriée.
2. L'enquêteur examine les allégations en veillant à disposer de tous les documents pertinents. Il passe en revue l'intégralité du dossier et les réponses, le cas échéant.
3. Le dirigeant principal apporte un soutien administratif à l'enquête, notamment en fournissant les coordonnées du plaignant, du défendeur et des témoins qui doivent être interrogés ou en réservant des salles de réunion.
4. L'enquêteur voit à ce que le plaignant et le défendeur soient avisés de leur droit d'être représentés par avocat et de se faire accompagner par une personne de confiance, laquelle doit être un député, au cours de la procédure d'enquête ainsi que de l'importance du respect de la confidentialité.
5. L'enquêteur donne l'occasion au plaignant, au défendeur et aux témoins de s'exprimer et mène les interrogatoires de manière juste, impartiale et professionnelle. Il s'assure que l'on demande au plaignant, au défendeur et aux témoins de signer et dater leur déclaration après qu'ils ont eu la possibilité de passer les notes d'interrogatoire en revue afin d'en confirmer l'exactitude.
6. L'enquêteur prend toutes les précautions raisonnables nécessaires afin d'appliquer la procédure d'enquête avec la diligence voulue et de respecter les principes de confidentialité établis dans le présent code.

**Processus d'enquête**

7. L'enquêteur communique avec le plaignant et le défendeur pour leur expliquer son mandat, son rôle et la procédure d'enquête.

**8.** The investigator shall interview the complainant, the respondent and any witnesses in person or, if it is not practicable to do so in the circumstances, by any other means, including by telephone or other means of telecommunication.

**9.** The complainant and the respondent have the right to identify witnesses. If the name of a witness is proposed and the investigator decides not to interview that person, the investigator must keep a written record of the reasons for the decision.

**10.** The investigator shall advise witnesses that:

- they must respect the confidentiality of the investigation process;
- their name and all information they provide will be part of the record;
- the investigator is not authorized to conceal relevant information or the source of information;
- investigation reports do not unnecessarily include damaging or personal information;
- their names will be used in the investigation reports; and
- they will be requested to sign their statements.

**11.** The investigator may interview any person who, in the investigator's opinion, could provide any additional information relevant to the determination of the facts relating to the allegations.

**12.** The investigator may request all relevant documents and files related to the investigation.

**13.** The investigator shall provide the CHRO with a report on the status of the investigation on a regular basis or at the request of the CHRO.

**8.** L'enquêteur interroge le plaignant, le défendeur et les témoins en personne ou, si ce n'est pas possible de le faire pour des considérations pratiques compte tenu des circonstances, de toute autre façon, notamment par téléphone ou tout autre moyen de télécommunication.

**9.** Le plaignant et le défendeur ont le droit de nommer des témoins. Le cas échéant, l'enquêteur qui décide de ne pas interroger un témoin ainsi proposé consigne par écrit les motifs de sa décision et les verse au dossier.

**10.** L'enquêteur avise le témoin de ce qui suit :

- la confidentialité de la procédure d'enquête doit être respectée;
- son nom et tout renseignement fourni seront versés au dossier;
- l'enquêteur n'est pas autorisé à dissimuler un renseignement pertinent ni sa source;
- les rapports d'enquête ne fournissent pas indûment de renseignements préjudiciables ou personnels;
- le nom du témoin paraît dans les rapports d'enquête;
- tous les témoins sont tenus de signer leur déclaration.

**11.** L'enquêteur peut interroger toute personne qui, à son avis, pourrait fournir des renseignements supplémentaires utiles pour l'examen des faits ayant trait aux allégations.

**12.** L'enquêteur a le pouvoir de réclamer tous les documents et tous les dossiers pertinents qui se rapportent à l'enquête.

**13.** L'enquêteur fournit au dirigeant principal, sur une base régulière ou à la demande de celui-ci, un rapport sur l'état d'avancement de l'enquête.



41<sup>st</sup> Parliament, Second Session

The Standing Committee on Procedure and House Affairs has the honour to present its

### **THIRTY-EIGHTH REPORT**

Your Committee, which has received an Order of Reference from the House of Commons on November 27, 2014, is pleased to report as follows:

#### **Order of Reference**

On November 27, 2014, the House of the House of Commons unanimously adopted the following motion: “That it be an instruction to the Standing Committee on Procedure and House Affairs to: (a) examine policy options for addressing complaints of harassment between Members of the House of Commons; (b) make recommendations concerning a code of conduct for Members for the prevention and resolution of harassment in the workplace, including a clear definition of harassment; (c) make recommendations concerning a fair, impartial and confidential process, including options for the role of an independent third party, for resolving complaints made under the code; and (d) make recommendations concerning training and education initiatives to ensure compliance with the code; and that the Committee report its findings and recommendations to the House with all due haste.”

Subsequently, on December 4, 2014, the Committee adopted the following motion: “That, pursuant to the Order of Reference of Thursday, November 27, 2014, and also pursuant to Standing Orders 108.(1)(a) and 108.(1)(b), a Subcommittee on a Code of Conduct for Members be established to: (a) examine policy options for addressing complaints of harassment between Members of the House of Commons; (b) make recommendations concerning a code of conduct for Members for the prevention and resolution of harassment in the workplace, including a clear definition of harassment; (c) make recommendations concerning a fair, impartial and confidential process, including options for the role of an independent third party, for resolving complaints made under the code; (d) make recommendations concerning training and education initiatives to ensure compliance with the code;

That the Subcommittee be composed of seven (7) members, of which four (4) shall be from the Government party, two (2) shall be from the Official Opposition, and one (1) shall be from the Liberal Party, to be named following the usual consultations with the Whips; that the

Subcommittee be chaired by a member of the Government party and that the Member for Elgin-Middlesex-London be named Chair of the Subcommittee; and

That the Subcommittee be empowered to send for persons, papers and records, to receive evidence, to sit during a time when the Committee is not sitting in Ottawa, to sit when the Committee is sitting outside the Parliamentary Precinct and to sit during periods when the House stands adjourned.”

## **Introduction**

During its study, the Subcommittee on a Code of Conduct for Members (SCCC) held ten meetings and heard from the following witnesses: Mr. Richard Denis, Deputy Law Clerk and Parliamentary Counsel, House of Commons; Mr. Pierre Parent, Chief Human Resources Officer, House of Commons; Ms. Anne-Marie Genin-Charette, Parliamentary Counsel (Legal), House of Commons, Mr. Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons; Ms. Catherine Beagan Flood, Partner, Blake, Cassels & Graydon LLP; Mr. Andrew Heard, Associate Professor, Department of Political Science, Simon Fraser University.

The Subcommittee wishes to thank all of the witnesses for their important contributions and invaluable assistance on this study.

**The Subcommittee recommends that the following report be developed into a Code of conduct on preventing and addressing sexual harassment between Members of the House of Commons.**

## **Mission**

The SCCC proposes that all Members take the following pledge by signing and returning this document to House Administration:

As part of our mission to create an environment in which all individuals can excel, as a Member of the Parliament of Canada, I commit to contribute to a work environment free of sexual harassment. Part of our mission is to create a workplace free of sexual harassment. Sexual harassment is strictly prohibited. I commit to following the *Code of Conduct for Members of the House of Commons: Sexual Harassment*.

## **Scope**

The Member-to-Member sexual harassment Code applies only to allegations of non-criminal sexual harassment between Members. If it becomes apparent that there are reasonable grounds to believe a Member has committed a criminal offence, the office of the Law Clerk and Parliamentary Counsel is advised, and the matter will be referred to the appropriate law enforcement agency, following the agreement from the complainant.

## **Definition**

The SCCC proposes that the basic definition of sexual harassment in the Member-to-Member sexual harassment Code be modelled on the following statement:

A Member shall not sexually harass any person. Sexual harassment, in this context, means unwanted conduct of a sexual nature that detrimentally affects the work environment.

## **Confidentially**

Given the personal nature of the matters of this Code, and given the potential negative consequences of confidential matters being made public before all facts are known, participants will commit to respecting confidentiality throughout the process and to respecting the privacy of all participants.

Once a matter has been resolved, part of the resolution may require that certain information, but no more than is sufficient for the public to understand the circumstances and consequences of the resolution, be disclosed publicly.

At all stages of the process, all participants should proceed in a manner that protects the privacy and personal information of all participants. Personal information includes any information that would enable someone to identify an individual.

Except in the case where the House takes action against a Member, if at any time when a mutually acceptable resolution has been achieved, the process shall cease and any public disclosure of information shall only be made in accordance with the terms of any resolution, or as may be required to explain any consequences for a Member.

Under this Code, any instances of confidential information being communicated to the public can be referred immediately to the Standing Committee on Procedure and House Affairs (PROC) to be dealt with in any manner that the Committee deems appropriate.

## **Roles and Responsibilities**

A goal of the Member-to-Member sexual harassment Code is to create a culture in which ongoing deterrents to reporting are diminished and complainants feel as safe as possible in coming forward with a complaint. It is a complainant-driven process; when a complainant is satisfied, the process ends.

Confidentiality is of the utmost importance.

### **1. Whips**

Whips:

- May facilitate informal conversations with the complainant and respondent from their party.

- May be involved in coordination of mediation and investigations, and where appropriate involve the Chief Human Resources Officer of the House of Commons (CHRO).
- As part of a resolution, may coordinate any disciplinary and/or accommodation measures deemed necessary.

## **2. Chief Human Resources Officer**

Acting on behalf of Members, the CHRO will provide training and education initiatives to Members on matters related to sexual harassment between Members, as outlined in the section below “Training and Education”.

In the event of a sexual harassment complaint between Members of the House of Commons, the CHRO, acting on behalf of the House, will:

- Act as an initial point of contact for Members for complaints of sexual harassment between Members. Members may also decide to approach their Whip as the initial point of contact.
- Hold discussions between Members, and with their consent facilitate the resolution of the situation.
- Offer mediation at all stages of the resolution process, and in particular at early stages before a formal complaint is filed. The CHRO may make arrangements for confidential mediation if he or she is of the view that it would be best to attempt a resolution through a form of mediation with a mediator acceptable to both Members.
- Direct Members to the dispute resolution options.
- Receive formal complaint and acknowledge receipt in writing to all parties.
- If applicable, coordinate the work of the mediator and/or external investigator.
- In cases where mediation is unsuccessful, and with the consent of the complainant, initiate a process to investigate the facts related to the complaint. For that purpose, the CHRO may retain the services of an external investigator. That investigator conducts the investigation.
- Maintain, in a confidential manner, all records and documentation related to sexual harassment complaints, including the original complaint, any third party report, and all evidence gathered during an investigation.

Such records will be kept for five years from the date the complaint was resolved.

## **3. External Investigator**

When the services of an external investigator are required, the investigator will be retained by the CHRO. The investigator is responsible for:

- Conducting the investigation in a fair, impartial and timely manner.
- Informing the parties involved of the protocol that will be followed and of their roles in the investigation process.
- Where applicable, stating in the report that there was insufficient facts for a finding of sexual harassment.

- Where applicable, stating in the report that there are facts to support a conclusion that the respondent has engaged in behaviour that would constitute sexual harassment.
- Where applicable, stating in the report that the formal complaint made by the complainant was frivolous or vexatious or not made in good faith.

## **Resolution Process**

### **Step 1 – Reporting Inappropriate Behaviour and Initiating Informal Discussions**

#### **A. Sexual Harassment Allegation, Members of Same Political Party**

For a sexual harassment concern within a political party, the complainant may choose to communicate directly with their party Whip. The Whip shall discuss the matter with the respondent in order to obtain further information. The CHRO can act as a resource during such discussions.

The decision of a complainant to go directly to the CHRO or Whip must be respected. A goal of the Member-to-Member sexual harassment Code is to create a culture in which ongoing deterrents to reporting are diminished and complainants feel as safe as possible in coming forward with a complaint. Confidentiality is of the utmost importance.

For sexual harassment concerns where the complainant or respondent is a Whip, the party's House Leader will assume the role of the Whip as set out in this process.

If there is no satisfactory resolution, the complainant can then choose to communicate with the CHRO. For the purposes of initial intake, record-keeping, arranging mediation and conducting an investigation, the Whip may communicate with the CHRO, provided the complainant consents.

#### **B. Sexual Harassment Allegation, Members of Different Political Party**

Where the complainant and respondent are members of different caucuses, the CHRO, or a party designated by the CHRO, shall discuss the matter with the respondent. The CHRO or their designate shall meet with the complainant and respondent respectively to discuss how to proceed. The complainant and respondent may choose to involve their respective party Whips in the process.

The decision of a complainant to go directly to the CHRO or Whip must be respected. A goal of the Member-to-Member sexual harassment Code is to create a culture in which ongoing deterrents to reporting are diminished and complainants feel as safe as possible in coming forward with a complaint. Confidentiality is of the utmost importance.

In cases where Members decide to allow their party Whip to coordinate the resolution process, the Whip may communicate with the CHRO for the purposes of record keeping, provided the complainant consents.

### **C. Sexual Harassment Allegation Involving an Independent Member**

Where the complainant or respondent is an Independent member, the CHRO, or a party designated by the CHRO, shall perform all coordination duties for the purposes of the process.

#### **Step 2 – Mediation**

If the CHRO, or Whip if involved, is of the view that it would be best to attempt a resolution through a form of voluntary mediation, the CHRO or Whip shall raise that option with the Members and, if they agree, the CHRO shall make arrangements for confidential mediation with a mediator acceptable to the Members involved.

All materials prepared for and information exchanged at mediation are confidential. An agreement to mediate will be signed by the parties attending mediation to outline their specific obligations of confidentiality and privacy during the mediation process.

Where the mediator is engaged from outside the House Administration, the costs of the mediation will be paid for out of a central budget of the House Administration.

Members have access to the services of the *Finding Solutions Together* program of the House of Commons Administration, including facilitation services.

#### **Step 3 – Formal Complaint and Investigation**

If mediation is not pursued, or is unsuccessful, the CHRO may request that the complainant prepare a formal complaint and that the CHRO retain the services of a third party investigator to investigate the facts related to the alleged complaint of sexual harassment and to prepare a draft report.

If the investigator concludes that there is insufficient evidence to support a claim of sexual harassment, the investigator shall so state in the draft report. If the investigator concludes that the respondent has engaged in behaviour that constitutes sexual harassment or is of the opinion that the formal complaint made by the complainant was frivolous or vexatious or was not made in good faith, the investigator shall so state in the draft report.

The CHRO distributes the draft report to the complainant and respondent for their review. Both have 15 days to submit their comments on the draft report, in writing, to the CHRO. Following the reception of any comments provided by the complainant and/or respondent, the investigator will prepare a final report that includes any such comments. The preparation of the draft and final reports will be treated in a manner that respects the privacy of the Members involved and other individuals who provided evidence. The CHRO provides a copy of the final investigation report to the complainant and the respondent.

The final report shall be provided to the CHRO to determine appropriate next steps, in consultation with the parties. At any time during the investigation, the parties may agree to suspend the investigation and return to mediation.

## Step 4 – Discipline

**Referral to the appropriate Whip:** Following an investigation in which a complaint was substantiated, the complainant may advise the CHRO in writing within 15 days of receiving the report that they believe the matter warrants further action against the respondent. In cases where there was a finding that a complaint was frivolous or vexatious or not made in good faith, the respondent may advise the CHRO in writing within 15 days of receiving the report that they believe the matter warrants further action against the complainant.

The CHRO will bring the matter to the attention of the appropriate Whip, in writing, and submit the report to the Whip. Within 15 days of receiving the report, the Whip will provide the CHRO with a proposed course of disciplinary action. The CHRO would then share that proposed action with the complainant to determine if that proposed disciplinary action would result in the matter being resolved to the satisfaction of the complainant.

If the proposed disciplinary action is not deemed satisfactory to the complainant, the complainant may then suggest additional remedies to the CHRO that would be communicated with the respondent's party Whip. If the respondent's party Whip agrees to those measures then the matter would be deemed satisfactory to the complainant.

If there is not a satisfactory resolution, the matter would be referred to PROC.

**Referral to PROC:** If a Member involved believes the course of action proposed by the appropriate Whip would not resolve the matter to their satisfaction or if the appropriate Whip, with the consent of the Member involved, believes the matter warrants further action against any Member, they may bring the matter to the attention of the Chair of PROC, in writing, including a copy of the investigation report.

The Members who are the subject of the investigation report have the right to address PROC on the subject of the investigation report, as well as have access to view the evidence and documentation.

PROC may recommend any sanctions that the House of Commons has available to it to address the findings of the investigation report.

PROC must include in any report the reasons for any conclusions and recommendations.

Until PROC tables its report in the House of Commons, the Member who referred the matter to the Committee may indicate in writing to the Chair that they no longer wish to pursue the investigation, at which time the matter is deemed withdrawn.

PROC will hold its proceedings *in camera*. The Committee will also determine whether some, all, or a summary of the investigator's report may be used as evidence before the Committee.

In the event that a complainant or respondent is a Member of the Committee, the respondent or complainant shall not participate, as a Member of the Committee, in the proceedings of the Committee on the inquiry, provided that the Member's Whip may designate one of the same

party's associate members, or another member of the party's caucus, to act as a Member of the Committee, for the purposes of those proceedings, as if that second member had been originally appointed as a Member of the Committee.

The report PROC presents to the House of Commons may contain only a summary of the investigation report that will be anonymized and will respect the privacy of the complainant and other individuals who provided evidence. In a case where a Member was found to have made a complaint that was frivolous or vexatious or not made in good faith, the respondent is not identified.

**Referral to the House of Commons:** The Chair of the Standing Committee on Procedure and House Affairs shall table the report on the study of the investigation in the House when it next sits.

Within ten sitting days after the tabling of the report of the Standing Committee on Procedure and House Affairs, the Member that is subject of the report shall have the right to make a statement in the House.

Any motion in the House respecting a Committee report ought to not be moved until the member who was the subject of the report has made a statement or the ten sitting days allowed for the statement have lapsed, whichever is earlier.

A motion to concur in a report of the Standing Committee on Procedure and House Affairs may be moved during Routine Proceedings, when it shall be considered for no more than three hours, after which the Speaker shall interrupt any proceedings then before the House and put forthwith and successively, without further debate or amendment, every question necessary to dispose of the motion. During debate on the motion, no Member shall speak more than once or longer than ten minutes.

If no motion pursuant to the adoption of a report of the Standing Committee on Procedure and House Affairs has been previously moved and disposed of, a motion to concur in the report shall be deemed to have been moved on the 30th sitting day after the day on which the report was tabled, and the Speaker shall immediately put every question necessary to dispose of the motion.

At any point before the House has dealt with the report, whether by deemed disposition or otherwise, the House may refer it back to the Standing Committee on Procedure and House Affairs for further consideration, with instruction.

Any statements made in the House of Commons regarding a matter related to the Code should respect the confidentiality of the resolution process and the privacy of the Members involved and other individuals who provided evidence in the course of an investigation.

### **Suspension of Inquiry**

The Chief Human Resources Officer shall immediately suspend the resolution process into a matter if:

1. there are reasonable grounds to believe that a Member has committed an offence under an Act of Parliament, in which case the Chief Human Resources Officer shall, in consultation with the Law Clerk and Parliamentary Counsel, notify the proper authorities of his or her belief or
2. it is discovered that the act or omission under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament has been committed, or a charge has been laid with respect to that act or omission.

The Chief Human Resources Officer shall not continue the resolution process until the other investigation or the charge regarding the act or omission has been finally disposed of.

### **Training and Education**

The SCCC considers that it is important that all members be briefed on the contents of this Code at the start of each new Parliament.

The CHRO proposes the following Education and Awareness Program for Members:

- The IntraParl home page now includes an icon for accessing the new Harassment Prevention section.
- Presentations will be made available to the various caucuses to discuss the application of the Code.
- CHRO is currently working with training experts to design more formal presentations for Members and staff.
- The following activities are being planned as part of the Members' Orientation Program after the next election:
  - Information to be included in the initial material provided to Members after the election;
  - Possible presentations during the administrative orientation session; and
  - Distribution of information at the service fair.
- CHRO will work with the Whips to establish an approach for delivering information and refresher sessions throughout the next Parliament.
- CHRO will use the *iBulletin* to remind Members of their responsibilities in preventing harassment.
- This strategy was developed in the context of the *House of Commons Policy on Preventing and Addressing Harassment*, which applies to Members as employers. This strategy can be easily modified to include awareness of the Code applicable between Members.

The *Finding Solutions Together* program may be extended to Members, as was done in the case of the *House of Commons Policy on Preventing and Addressing Harassment*.

### **Review**

Without prejudice to the Committee sooner reviewing the *Code of Conduct for Members of the*

*House of Commons: Sexual Harassment*, or adjusting elements of the process, the Committee should undertake a review of the Code once two years has passed since its implementation.

## **CHANGES TO THE STANDING ORDERS**

**The Committee recommends that the *Standing Orders of the House of Commons* be amended:**

**(a) by adding the following new subparagraph to Standing Order 108(3)(a):**

**“(ix) the review of and report on all matters relating to the *Code of Conduct for Members of the House of Commons: Sexual Harassment*.”;**

**(b) by adding as an appendix the *Code of Conduct for Members of the House of Commons: Sexual Harassment* set out in the appendix of this report;**

**That the changes to the Standing Orders come into effect at the beginning of the 42<sup>nd</sup> Parliament; and**

**That the Clerk of the House be authorized to make any required editorial and consequential alterations to the Standing Orders, provided that the Clerk of the House inform the Committee, in writing, of any editorial and consequential alterations they make.**

A copy of the relevant *Minutes of Proceedings* of the Committee ([Meeting No. 86](#)) is tabled and a copy of the relevant *Minutes of Proceedings* of the Subcommittee on a Code of Conduct for Members ([Meetings Nos. 1 to 10](#)) is tabled.

Respectfully submitted,

JOE PRESTON  
Chair

# APPENDIX – AMENDMENTS TO THE STANDING ORDERS

## CODE OF CONDUCT FOR MEMBERS OF THE HOUSE OF COMMONS: SEXUAL HARASSMENT

### **Mission**

#### Purposes

**1.** The purposes of this Code are to

(a) create an environment at the House of Commons that allows all Members to excel in their public duties and functions and that is free of sexual harassment;

(b) encourage reporting, by Members, of instances of sexual harassment;

(c) establish a resolution process that is complainant-driven and that the complainant can bring to an end at any point;

(d) ensure confidentiality throughout the resolution process, unless otherwise provided for in this Code; and

(e) implement the recommendations of the 38<sup>th</sup> report of the Second Session of the 41<sup>st</sup> Parliament of the Standing Committee on Procedure and House Affairs.

### **Interpretation**

#### Definitions

**2.** The following definitions apply in this Code.

“CHRO”  
« dirigeant principal »

“CHRO” means the Chief Human Resources Officer of the House of Commons Administration.

“complainant”  
« plaignant »

“complainant” means a Member who reports allegations of sexual harassment in accordance with section 8.

“investigator”  
« enquêteur »

“investigator” means an external investigator engaged by the CHRO to conduct an investigation of a formal complaint of sexual harassment on his or her behalf.

“participant”  
« participant »

“participant” means the complainant, respondent or any other individual involved in the resolution process.

“personal information”  
« renseignement personnel »

“personal information” means any information that would enable someone to identify an individual.

“resolution process”  
« processus de résolution »

“resolution process” includes the reporting of allegations of sexual harassment and the initiating of informal discussions, the mediation process, and the filing of a formal complaint and its investigation, as well as any disciplinary action that may be imposed.

“respondent”  
« défendeur »

“respondent” means a Member who is the subject of allegations of sexual harassment reported in accordance with section 8.

“sexual harassment”  
« harcèlement sexuel »

“sexual harassment” means unwanted conduct of a sexual nature that detrimentally affects the work environment.

## Scope

### Application

3. This Code applies only to allegations of sexual harassment between Members.

### On behalf of the House

4. The CHRO, in carrying out his or her functions under this Code, is acting for and on behalf of the House of Commons.

## Rules of Conduct

### Sexual harassment prohibited

5. A Member shall not sexually harass another Member.

### Respect confidentiality and privacy

6. A Member shall not disclose information related to the resolution process or any personal information related to any participant, unless otherwise provided for in this Code.

Pledge

7. Every Member shall commit to contributing to a work environment free of sexual harassment by signing the pledge in the form set out in Form 1 and returning it to the CHRO within 60 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette*, or within the first 30 sitting days of the ensuing Parliament or, in the case of a Member elected at a by-election, within the first 30 sitting days following the Member's introduction in the House, whichever is later.

## **Resolution Process**

### *Reporting Allegations of Sexual Harassment and Initiating Discussions*

Report to CHRO or Whip

8. (1) A Member may report allegations of sexual harassment

(a) to the CHRO; or

(b) to his or her Whip, if the respondent is a member of the same caucus.

Exception: Independent Members

(2) Despite subsection (1), if the complainant or the respondent is an independent Member, any sexual harassment allegations involving them shall be dealt with by the CHRO or an individual designated by the CHRO.

Authority over discussions

(3) The CHRO or Whip, as the case may be, shall manage the discussions relating to the allegations of sexual harassment.

CHRO or Whip to discuss

(4) The CHRO or Whip, as the case may be, shall inform the respondent of the allegations reported under subsection (1) and may request additional information from the respondent.

CHRO or Whip to facilitate

(5) The CHRO or Whip, as the case may be, may facilitate discussions between the complainant and the respondent in order to resolve the issue.

CHRO participation

(6) If the sexual harassment allegations are reported to the Whip under subsection (1), the Whip may, with the complainant's consent, invite the CHRO to participate in the discussions described in subsection (4).

Decision respected

**9.** All participants shall be bound to the complainant's choice of the CHRO or Whip under subsection (1).

Whip involved

**10.** Despite section 8, if the Whip of a party is either the complainant or respondent, the House Leader of that party shall assume the role of the Whip.

Matter dealt with by CHRO

**11.** The complainant who chose to report sexual harassment allegations to his or her Whip under paragraph 8(1)(b) may, at any time during the resolution process, choose to have the matter dealt with by the CHRO.

Administration of process

**12.** If the sexual harassment concern is first reported to the Whip under section 8, the Whip may, with the complainant's consent, communicate with the CHRO for the purpose of aiding in the administration of the resolution process, including record-keeping.

Whip involvement

**13.** The complainant and the respondent may choose to be assisted by their respective Whips at any time during the resolution process.

### *Mediation*

Encourage mediation

**14.** The CHRO or Whip, as the case may be, shall offer mediation at all stages of the resolution process and, in particular, before a formal complaint is filed.

Mediation

**15.** (1) Upon the completion of the discussions described in section 8, the CHRO or Whip, as the case may be, shall raise with the complainant and respondent the possibility of resolution through mediation.

Arrangements

(2) If the complainant and respondent agree to mediation, the CHRO shall make arrangements for confidential mediation with a mediator acceptable to the complainant and respondent.

Agreement to mediate

(3) If the complainant and respondent agree to mediation, they shall sign a mediation agreement that outlines their specific obligations of confidentiality and privacy during the mediation process.

Materials and information confidential

**16.** All materials prepared for, and information exchanged at, mediation shall be confidential.

Mediation paid from central budget

**17.** Where the mediator is engaged from outside the House of Commons Administration, the costs of the mediation shall be paid from a central budget of the House of Commons Administration.

*Finding Solutions Together*

**18.** Members have access at all times to the House of Commons Administration's program called *Finding Solutions Together*, which provides facilitation services.

#### *Formal Complaint and Investigation*

Formal complaint filed

**19.** (1) If the complainant and respondent do not agree to proceed by mediation, or if the matter is not resolved to the complainant's satisfaction, the complainant may file a formal complaint with the CHRO that the respondent has engaged in sexual harassment.

Form of complaint

(2) The complaint shall be in writing, shall be signed by the complainant and shall include a description of the nature of the alleged sexual harassment and the identity of the respondent.

Investigator retained

**20.** Upon receipt of a formal complaint, the CHRO shall acknowledge the complaint in writing and retain the services of an investigator to investigate the facts related to the allegations of sexual harassment filed under section 19.

Fair, impartial investigation

**21.** (1) The investigator shall conduct the investigation in a fair, impartial and timely manner.

Protocol

(2) The investigator shall inform the participants of the protocol that will be followed and of the role of the participants in the investigation process.

#### Respect confidentiality

(3) The investigation of a formal complaint shall be conducted in a manner that respects the confidentiality and privacy of the Members involved and of any other individuals who provide evidence.

#### Report

**22.** The investigator shall submit a report to the CHRO that contains one of the following conclusions:

- (a) there is sufficient evidence to support a claim that the respondent has engaged in a conduct that constitutes sexual harassment;
- (b) there is insufficient evidence to support a claim of sexual harassment; or
- (c) there is insufficient evidence to support a claim of sexual harassment, and the complaint was frivolous or vexatious or was not made in good faith.

#### CHRO to distribute report

**23.** (1) The CHRO shall provide a draft copy of the report to the complainant and the respondent for their review.

#### Comments

(2) The complainant and the respondent shall provide their written comments on the draft report to the CHRO within 15 days of receiving the report.

#### Final investigation report

(3) The CHRO shall transmit to the investigator any comments received under subsection (2), along with his or her observations on the comments, as well as instructions for the preparation of the final investigation report.

#### CHRO to provide final investigation report

**24.** (1) The CHRO shall provide a copy of the final investigation report to the complainant and to the respondent.

#### Next steps

(2) The CHRO shall inform the complainant and the respondent of the various courses of action to address the findings in the final investigation report.

#### Mediation

**25.** At any time during the investigation, the complainant and the respondent may agree to suspend the investigation and resolve the issue through mediation.

## *Decision*

### Referral to the Whip

#### Further actions

**26.** (1) Where the final investigation report in relation to a formal complaint indicates that there is sufficient evidence to support a claim of sexual harassment, the complainant may notify the CHRO, in writing, within 15 days of receiving the final investigation report that he or she believes the matter warrants further action.

#### Attention of the Whip

(2) Upon receiving a notice under subsection (1), the CHRO shall inform the respondent's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

#### Frivolous, vexatious or not in good faith complaint

**27.** (1) Where the final investigation report in relation to a formal complaint indicates that a complaint was frivolous or vexatious or not made in good faith, the respondent may notify the CHRO, in writing, within 15 days of receiving the final investigation report that he or she believes the matter warrants further action.

#### Attention of the Whip

(2) Upon receiving a notice under subsection (1), the CHRO shall inform the complainant's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

#### Proposed discipline

**28.** (1) Within 15 days of receiving a notice under subsection 26(2) or 27(2), the Whip concerned shall provide the CHRO with a proposed course of disciplinary action.

#### Inform

(2) The CHRO shall inform the following individuals of the proposed course of disciplinary action:

(a) the complainant, in the case where the final investigation report indicates that there is sufficient evidence to support a claim of sexual harassment; and

(b) the respondent, in the case where the final investigation report indicates that a complaint was frivolous or vexatious or not made in good faith.

#### Additional remedies

(3) If the disciplinary action proposed by the Whip under subsection (1) is not satisfactory to the complainant or the respondent, as the case may be, the complainant or the respondent may suggest a further course of disciplinary action to the CHRO.

Communicate

(4) The CHRO shall inform the Whip concerned of the further course of disciplinary action suggested under subsection (3).

Deemed satisfactory

(5) Where there is agreement on the course of disciplinary action pursuant to subsection (2) or (4), the matter shall be deemed to be resolved.

Discipline

(6) Once the matter is deemed to be resolved, the Whip in question shall implement the course of disciplinary action.

### Referral to the Standing Committee on Procedure and House Affairs

Request to the Standing Committee on Procedure and House Affairs

**29.** (1) If either Member is not satisfied with the course of disciplinary action pursuant to subsection 28(2) or (3), the complainant or respondent may bring the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs.

Request by the Whip. Consent

(2) For the purpose of subsection (1), the Whip of the complainant or the respondent may bring the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant or the respondent.

Written request

(3) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (2) shall be made in writing and shall include a copy of the final investigation report.

Chair to convene meeting upon written request—Forty-eight hours' notice required

(4) Within five days of the receipt of the request pursuant to subsection (3), the Chair of the Standing Committee on Procedure and House Affairs shall designate a date for a meeting within the next 60 days, provided that forty-eight hours' notice is given of the meeting.

Inquiry to be *in camera*

**30.** (1) The Standing Committee on Procedure and House Affairs shall hold its proceedings *in camera*. The Committee shall determine whether all or part of the final investigation report – or a summary of it – may be used as evidence before the Committee.

#### Retention of documents

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its inquiry for a period of five years following the date of the presentation of its report to the House of Commons, pursuant to section 37 of this Code, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 32 or 33 of this Code, as the case may be.

#### Destruction of documents

(3) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's inquiry, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

#### Appearance of Members

**31.** The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to the report.

#### Withdrawal of matter from Committee

**32.** Until the Standing Committee on Procedure and House Affairs presents its report to the House of Commons pursuant to section 37, the Member who requested that the Committee study the matter may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

#### Member ceases to be a Member

**33.** In the event that a complainant or a respondent is no longer a Member of the House of Commons during the course of the Committee's study, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs.

#### Reasons

**34.** The Standing Committee on Procedure and House Affairs shall include in the report the reasons for any conclusions and recommendations.

#### Report

**35.** (1) The report of the Standing Committee on Procedure and House Affairs shall contain only a summary of the final investigation report, shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals who provided evidence.

#### Sanctions

**36.** In its report, the Standing Committee on Procedure and House Affairs may recommend any appropriate sanctions available to the House of Commons. The Member being sanctioned may be named in the report.

## Referral to the House of Commons

Reports from Committee—Succinct explanation allowed

**37.** Forthwith following an inquiry, the Chair of the Standing Committee on Procedure and House Affairs shall present its report to the House, pursuant to Standing Order 35(1).

Member may address House—Confidentiality respected

**38.** Within ten sitting days after the presentation of the report of the Standing Committee on Procedure and House Affairs, the Member who is the subject of the report shall have the right to make a statement in the House, provided that he or she shall not speak for more than 20 minutes and that he or she shall respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

Motion to concur in a report

**39.** (1) A motion to concur in a report of the Standing Committee on Procedure and House Affairs made pursuant to this Code may be moved during Routine Proceedings, provided that the notice period, pursuant to Standing Order 54(1), is respected and that any motion to concur in the report shall not be moved until either the Member has made a statement pursuant to section 38 or ten sitting days have elapsed since the presentation of the report.

Debate on concurrence in a committee report

(2) A motion moved pursuant to subsection (1) shall be considered for no more than three hours, after which time, unless previously disposed of, the Speaker shall interrupt any proceedings then before the House and put all question necessary to dispose of the motion without further debate or amendment. During debate on the motion, no Member shall speak more than once or longer than ten minutes and if the debate is adjourned or interrupted:

- (a) the motion shall again be considered on a day designated by the Speaker after consultation with the House Leaders of the recognized parties, but in any case not later than the tenth sitting day after the adjournment or interruption;
- (b) debate on the motion shall be resumed at the ordinary hour of daily adjournment on the day designated pursuant to paragraph (a) and shall not be further adjourned or interrupted; and
- (c) when no Member rises to speak or after a total of three hours of debate, whichever is earlier, the Speaker shall put all questions necessary to dispose of the motion, provided that, if a recorded division is requested on the motion considered on a day designated pursuant to paragraph (a) of this subsection, it shall stand deferred to an appointed time on the next Wednesday, no later than the expiry of the time provided for Government Orders on that day.

Vote

(3) If no motion pursuant to this section has been moved and disposed of, a motion to concur in the report shall be deemed to have been proposed on the 30th sitting day after the day on which the report was presented to the House. At the expiry of the time provided for Government Orders, the Speaker shall put forthwith every question necessary to dispose of the motion, provided that either the Chief Government Whip or the Chief Opposition Whip may ask the Speaker to defer the division to an appointed time no later than the ordinary hour of daily adjournment on the next sitting day that is not a Friday.

Confidentiality

**40.** Statements made in the House of Commons regarding a specific matter related to this Code must respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

Referral back to Committee

**41.** At any time before the House has concurred in the report, the House may refer the report back to the Standing Committee on Procedure and House Affairs for further consideration.

Vacancy

**42.** In the event that the complainant or the respondent ceases to be a Member of the House of Commons following the presentation of the report of the Standing Committee on Procedure and House Affairs to the House, any motion to concur in the report is deemed withdrawn and dropped from the *Order Paper*.

Effect of prorogation or dissolution

**43.** Following a prorogation or dissolution of Parliament, provided that the complainant and respondent remain Members of the House:

(a) any Member involved, or the appropriate Whip with the consent of the Member involved, may resubmit the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs in writing, at which time the procedures outlined in section 29 shall apply; and

(b) once seized of the matter in accordance with paragraph (a), the Standing Committee on Procedure and House Affairs may present the report of findings to the House anew, provided that the House had not concurred in the Committee's report in the previous session or Parliament.

### Suspension of the Resolution Process

Suspension of resolution process

**44.** (1) The CHRO shall immediately suspend the resolution process if:

- (a) there are reasonable grounds to believe that a Member has committed an offence under an Act of Parliament or provincial legislation, in which case the CHRO shall, in consultation with the Law Clerk and Parliamentary Counsel, notify the proper authorities of his or her belief; or
- (b) it is discovered that the conduct under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament or provincial legislation has been committed or that a charge has been laid with respect to that act.

Resolution process continued

(2) The CHRO shall not continue the resolution process until the other investigation has been completed or there has been a final disposition of the charge laid with respect to that conduct.

### **Confidentiality**

Information publicly disclosed

**45.** Any public disclosure, by the CHRO, of personal information or of information related to the resolution process shall only be made in accordance with the terms of the resolution of a complaint, and shall be no more than is sufficient for the public to understand the circumstances and consequences of the resolution.

Sanctions against Member

**46.** Where the House of Commons takes action against a Member, the House may only disclose information if it is necessary to explain any consequences for a Member.

Reference to the Standing Committee on Procedure and House Affairs

**47.** If confidential information has been communicated to the public in violation of this Code, the matter shall be referred to the Standing Committee on Procedure and House Affairs to be dealt with in any manner that the Committee deems appropriate.

### **Educational Activities**

Educational activities

**48.** The CHRO shall undertake educational activities for Members on the content of this Code and on matters related to the prevention of sexual harassment.

New Parliament

**49.** The CHRO shall brief Members on the contents of this Code at the start of each new Parliament.

### **Miscellaneous**

Retention of documents by CHRO

**50.** The CHRO shall retain all documents relating to an allegation raised or a formal complaint filed under this Code for a period of five years from the date the matter was resolved,

after which the documents shall be destroyed, unless a charge has been laid against the respondent under an Act of Parliament and the documents may be relevant to that matter.

Review after implementation

**51.** The Standing Committee on Procedure and House Affairs shall undertake a review of this Code no more than two years after its coming into force.

Part of the Standing Orders

**52.** This Code shall form part of the Standing Orders of the House of Commons.

## **SCHEDULE**

### *FORM 1*

As part of the House of Commons' mission to create an environment in which all individuals can excel, I, ....., Member of Parliament, commit to contribute to a work environment free of sexual harassment. I recognize that part of our mission is to create a workplace free of sexual harassment and that sexual harassment among Members of Parliament is strictly prohibited. I further commit to following the *Code of Conduct for Members of the House of Commons: Sexual Harassment*.

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Published under the authority of the Speaker of the House of Commons

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42<sup>nd</sup> Parliament, First Session

## **REPORT OF THE COMMITTEE**

The Standing Committee on Procedure and House Affairs

has the honour to present its

### **SIXTY-FOURTH REPORT**

Your Committee is pleased to report as follows:

#### **Introduction**

On February 1, 2018, the Standing Committee on Procedure and House Affairs (the Committee) unanimously adopted the following motion: “Pursuant to Standing Orders 108(1)(a) and 108(1)(c), a Subcommittee on a Code of Conduct for Members be established to conduct a thorough review of the Code of Conduct for Members of the House of Commons: Sexual Harassment; that the Subcommittee be composed of seven (7) members, of which four (4) shall be from the Government party, two (2) from the Official Opposition, and one (1) from the NDP; that the Whip of each party deposit with the Clerk of the Standing Committee on Procedure and House Affairs a list of his or her party’s members to serve on the Subcommittee; that the Whip of each party submit his or her initial list of members to serve on the Subcommittee no later than February 5, 2018; that membership substitutions be permitted from time to time, if required, in the manner provided for in Standing Order 114(2); that the Subcommittee be chaired by a member of the Government party and that the member for Yukon be named Chair of the Subcommittee; that the Subcommittee be granted all the powers of the Committee pursuant to Standing Order 108(1); and that the Subcommittee have confidential access to the evidence taken by the Committee in camera during its review of the Code in September and October 2017.”

During its study, the Subcommittee on the Code of Conduct for Members of the House of Commons: Sexual Harassment (the Subcommittee) held 10 meetings and heard testimony from the following witnesses: Ms. Catherine Beagan Flood, Partner, Blake,

Cassels & Graydon LLP; Mr. Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons; Mr. Pierre Parent, Chief Human Resources Officer, House of Commons; Ms. Anne Merritt, President of Quintet Consulting Corporation, Mr. Raphael Szajnfarder, Associate at Quintet Consulting Corporation; and Christine Thomlinson, Co-Founder and Co-Managing Partner Rubin-Thomlinson LLP.

The members of the Subcommittee wished to thank all of the witnesses for their important contributions and invaluable assistance during this study.

## **Background**

In November 2014, the House of Commons adopted a motion instructing the Committee to, among other things, examine policy options for addressing complaints of harassment between members of the House of Commons and make recommendations for the prevention and resolution of harassment in the workplace. Subsequently, in December 2014, the Committee established a subcommittee to undertake such a study. The subcommittee's report was adopted by the Committee on June 4, 2014, presented in the House of Commons as Report 38, on June 8, 2014 and concurred in by the House on June 9, 2014.

In accordance with the report, the Standing Orders of the House of Commons were amended to include the Code of Conduct for Members of the House of Commons: Sexual Harassment (the Code) as an appendix. This change to the Standing Orders came into effect at the beginning of the 42nd Parliament on December 3, 2015. Furthermore, section 51 of the newly implemented Code called for the Committee to undertake a review of the Code no more than two years after its coming into force, or by December 2, 2017. As per section 51, on September 21, 2017, the Committee commenced a review of the Code. The study resulted in a report which was adopted by the Committee on October 24, 2017. Report 42 was presented to the House on October 25, 2017. While this report was not concurred in by the House, its contents were taken into account during the February 2018 review of the Code.

## **Summary of proposed new amendments to the existing Code**

Following its February 2018 review under section 51 of the Code, the Subcommittee proposed a number of changes to the existing Code. The Committee agrees with these changes. This section provides a brief synopsis of the proposed amendments, grouped by theme.

### ***a. Amending the Definition of Sexual Harassment***

The Committee proposes that the existing definition of sexual harassment found in the Code be replaced by a modified version of the definition of sexual harassment found in the *House of Commons Policy on Preventing and Addressing Harassment*. This would create consistency between harassment policies in effect in the House. The new definition is based on a standard of reasonableness and has been expanded to state that, for greater certainty, an abuse of power or a power imbalance between two members is a

relevant factor but is not a necessary element for a finding of sexual harassment. The Committee also proposes that examples of sexual harassment be included in the Code, but that these do not form part of the definition.

***b. Adopting a Screen for Initial Complaints***

The Committee proposes that the Chief Human Resource Officer of the House of Commons (CHRO) should be allowed to screen out complaints where the alleged conduct clearly does not meet the definition of sexual harassment under the Code. Absent a screening process, the existing Code foresees an investigation for every formal complaint where mediation has either not been considered or has failed. This could potentially lead to investigations where the alleged conduct does not demonstrate a prima facie case of sexual harassment.

***c. Inclusion of Legal Counsel/Support Person***

The Committee proposes that the Code be clarified to state that the complainant and/or respondent are entitled to legal counsel and/or a support person, provided that the support person is a member of Parliament. The support person would be bound by the confidentiality requirements set out in the Code and subject to discipline by the House if he or she breaches confidentiality.

***d. Clarifying Third Party Reporting***

The Committee proposes that the Code be amended to clarify that a third party may initiate a complaint on behalf of a member of Parliament who has been the alleged target of sexual harassment. However, the subject of the alleged sexual harassment may halt the process at any time.

***e. Creating a Limitation Period***

The Committee proposes that a limitation period to report allegations of sexual harassment be established. The suggested limitation period is one year after the last occurrence of the alleged sexual harassment. The Committee also proposes that the CHRO be allowed to extend this deadline in extenuating circumstances. Imposing such a limitation period would reduce the risk of evidence “getting stale,” while allowing some flexibility in extenuating circumstances.

***f. Inclusion of an Investigation Protocol***

The Committee proposes that the Code be amended to include an investigation protocol. This protocol would place a number of obligations on the investigator and specify, among other things, the order and manner of interviews and the information that must be communicated to those who participate in the formal investigation process. Absent direction from the Code, the investigation protocol could be created at the

discretion of the investigator, which could result in a lack of consistency between investigations.

***g. Removing CHRO Instructions and Observations from Preparation of the Final Investigation Report***

The Committee proposes that the external investigator engaged by the CHRO to conduct investigations of formal complaints of sexual harassment draft his or her report and determine whether the allegations have been made out without receiving observations or instructions from the CHRO. The existing Code allows the CHRO to provide observations and instructions for the final report.

***h. Expanding the Appeal Process at Various Stages***

The Committee proposes that the appeal process during various stages of the resolution process be expanded so that a complainant or respondent can challenge any final administrative decision in the investigation process, final investigation report, or proposed discipline by bringing the matter to the attention of the Standing Committee on Procedure and House Affairs.

***i. Investigation to Continue Only as Long as the Respondent Remains a Member***

The Committee proposes that, in the event that a complainant ceases to be a member of Parliament during the course of an investigation, the complainant may elect to continue the resolution process. In this situation, a respondent who remains a member of Parliament could still be subject to discipline from the House if the allegation is proven. Similarly, if a complainant is accused of a vexatious or bad faith complaint, and the respondent ceases to be a member of Parliament, the complainant could still be subject to discipline from the House if there is a positive finding that the complaint was vexatious or was made in bad faith. If a member is the subject of an allegation under this Code but ceases to be a member, the investigation would be halted.

***j. Prohibiting Retaliation***

The Committee proposes that the Code be amended to specifically prohibit retaliation against participants or potential participants in the Code's resolution process. Retaliation is defined as taking adverse measures against participants or potential participants.

**Recommendation to Study Non-Sexual Harassment**

**The Committee recommends that the Standing Committee on Procedure and House Affairs consider whether mechanisms should be put in place to deal with allegations of non-sexual harassment between members, having regard to the specific context of members of Parliament's functions and realities.**

## **Proceedings in Relation to the 42nd Report of the Standing Committee on Procedure and House Affairs**

**The Committee recommends that, notwithstanding any Standing Order or usual practice of the House, upon concurrence of this report, there be no further proceedings in relation to the 42nd Report of the Standing Committee on Procedure and House Affairs (Review of the Code of Conduct for Members of the House of Commons: Sexual Harassment); and accordingly, that notices of motion to concur in the 42nd Report be dropped from the Order Paper.**

### **Changes to the Standing Orders**

**The Committee recommends that the Standing Orders be amended by replacing Appendix II, Code of Conduct for Members of the House of Commons: Sexual Harassment with the appendix set out in this report;**

**That the title of Appendix II be amended to read as follows: Code of Conduct for Members of the House of Commons: Sexual Harassment Between Members; and**

**That the Clerk of the House be authorized to make any required editorial and consequential alterations to the Standing Orders.**

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 107 and 108](#)) is tabled.

Respectfully submitted,

Hon. Larry Bagnell, P.C., M.P.  
Chair

**APPENDIX –  
AMENDMENTS TO THE STANDING ORDERS**

**APPENDIX II  
CODE OF CONDUCT FOR MEMBERS OF THE HOUSE OF COMMONS: SEXUAL HARASSMENT  
BETWEEN MEMBERS**

**MISSION**

1.

Purposes.

The purposes of this Code are to

(a) create an environment at the House of Commons that allows all Members to excel in their public duties and functions and that is free of sexual harassment;

(b) encourage reporting, by Members, of instances of sexual harassment;

(c) establish a resolution process that is complainant-driven and that the complainant can bring to an end at any point;

(d) ensure confidentiality throughout the resolution process, unless otherwise provided for in this Code; and

(e) implement the recommendations of the 38th report of the Second Session of the 41st Parliament of the Standing Committee on Procedure and House Affairs.

**INTERPRETATION**

2.

Definitions.

The following definitions apply in this Code.

“day” « *jour* »

“day” means a working day.

“CHRO” « *dirigeant principal* »

“CHRO” means the Chief Human Resources Officer of the House of Commons Administration.

“complainant” « *plaignant* »

“complainant” means a Member who is the subject of alleged sexual harassment and

(a) who reports the alleged sexual harassment in accordance with section 14; or

(b) in respect of whom a third party reports the alleged sexual harassment in accordance with that section.

“investigator” « *enquêteur* »

“investigator” means an external investigator engaged by the CHRO to conduct an investigation of a formal complaint of sexual harassment on his or her behalf.

“participant” « *participant* »

“participant” means the complainant, respondent or any other individual involved in the resolution process.

“personal information” « *renseignement personnel* »

“personal information” means any information that would enable someone to identify an individual.

“resolution process” « *processus de résolution* »

“resolution process” includes the reporting of allegations of sexual harassment and the initiating of informal discussions, the mediation process, and the filing of a formal complaint and its investigation, as well as any disciplinary action that may be imposed.

“respondent” « *défendeur* »

“respondent” means a Member who is the subject of allegations of sexual harassment reported in accordance with section 14.

“sexual harassment” « *harcèlement sexuel* »

“sexual harassment” means any conduct of a sexual nature, including, a comment, gesture or contact, whether on a one-time or recurring basis, that might reasonably be expected to cause offence or humiliation.

A power imbalance between a complainant and a respondent or an abuse of power by the respondent is a relevant factor for a finding of sexual harassment; however, it is not a necessary element.

“third party” « *tiers* »

“third party” means a Member other than the complainant.

## SCOPE

3.

Application.

This Code applies only to allegations of sexual harassment between Members.

4.

On behalf of the House.

The CHRO, in carrying out his or her functions under this Code, is acting for and on behalf of the House of Commons.

5.

Member ceases to serve.

(1) Subject to subsections (2) and (3), no further measures are to be taken under this Code if the complainant or respondent ceases to be a Member.

Exception – complainant.

(2) A complainant who ceases to be a Member may continue the resolution process and the referral to the Standing Committee on Procedure and House Affairs if the respondent has not ceased to be a Member.

Exception – respondent.

(3) A respondent who ceases to be a Member may, in respect of a complaint that is alleged to be potentially vexatious or in bad faith, continue the resolution process and the referral to the Standing

Committee on Procedure and House Affairs if the complainant has not ceased to be a Member.

Dissolution.

(4) For the purposes of this Code, a Member does not cease to be a Member during a dissolution period.

## **RULES OF CONDUCT**

6.

Sexual harassment prohibited.

A Member shall not sexually harass another Member.

7.

Educational examples.

Sexual harassment is defined in section 2, and this section does not add to, nor detract from, that definition and is included solely for educational purposes. Without limiting the definition of sexual harassment in any manner, sexual harassment may include the following:

(a) demands for sexual favours or sexual assault;

(b) inappropriate or unwanted physical contact such as touching, patting or pinching;

(c) insulting comments, gestures or practical jokes of a sexual nature that cause discomfort or embarrassment;  
and

(d) inappropriate enquiries or comments about an individual's sex life.

Sexual harassment can occur, for example, while Members are travelling or at a social function.

8.

Respect confidentiality and privacy.

A Member or any other person involved in the process shall not disclose information related to the resolution process or any personal information related to any participant, unless otherwise provided for in this Code.

9.

For greater certainty.

For greater certainty, the obligation described in section 8 to maintain confidentiality and privacy also applies before a formal complaint is filed.

10.

Retaliation.

(1) A Member shall not retaliate or threaten retaliation against any individual because that individual has been a participant or potential participant in the resolution process under this Code.

For greater certainty.

(2) For greater certainty, retaliation includes the taking of any adverse measures against an individual under subsection (1).

11.

Pledge.

Every Member shall commit to contributing to a work environment free of sexual harassment by signing the pledge in the form set out in Form 1 and returning it to the CHRO within 60 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette*, or within the first 30 sitting days of the ensuing Parliament or, in the case of a Member elected at a by-election, within the first 30 sitting days following the Member's introduction in the House, whichever is later.

## **RESOLUTION PROCESS**

### *LEGAL COUNSEL AND SUPPORT PERSONS*

12.

Legal counsel and support person.

(1) During the resolution process, the complainant and the respondent are entitled to be represented by legal counsel and to be accompanied by a support person, as long as the support person is a Member of Parliament. However, in any referral to the Standing Committee on Procedure and House Affairs, the Committee shall make a decision regarding whether or not the complainant or respondent is entitled to be represented by legal counsel or accompanied by a support person.

No representations.

(2) In supporting a complainant or respondent, a support person shall not make representations and shall respect confidentiality at all times.

### *TIMELINES*

13.

Extension.

Any timelines set out in this Code may be extended by the CHRO, in exceptional circumstances, or by mutual agreement of the complainant and the respondent.

### *REPORTING ALLEGATIONS OF SEXUAL HARASSMENT AND INITIATING DISCUSSIONS*

14.

Report by complainant or third party.

(1) Allegations of sexual harassment may be reported by the complainant or a third party; they must not be reported anonymously.

Report within one year.

(2) The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

Report to CHRO or Whip – complainant.

(3) The complainant may report the allegations to the CHRO or, if the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

Report to CHRO or Whip – third party.

(4) A third party may report the allegations to the CHRO or, if the third party, the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

Exception – Independent Members.

(5) If the complainant or the respondent is an independent Member, any sexual harassment allegations involving them shall be dealt with by the CHRO or an individual designated by the CHRO.

Authority over discussions.

(6) The CHRO or Whip, as the case may be, shall manage the discussions relating to the allegations of sexual harassment.

CHRO or Whip to discuss.

(7) The CHRO or Whip, as the case may be, shall inform the respondent of the allegations reported and may request additional information from the respondent.

CHRO or Whip to facilitate.

(8) The CHRO or Whip, as the case may be, may facilitate discussions between the complainant and the respondent in order to resolve the issue.

CHRO participation.

(9) If the sexual harassment allegations are reported to the Whip, the Whip may invite the CHRO to participate in the discussions.

15.

Notification – no further measures.

(1) The complainant may, at any time, notify the CHRO or the Whip, as the case may be, that they do not wish any further measures to be taken under this Code in respect of the matter.

Effect of notification.

(2) If notice is given under subsection (1), the CHRO or the Whip, as the case may be, shall not take any further measures under this Code in respect of the matter, unless the complainant is being investigated for having filed a potential vexatious or bad faith complaint.

16.

Decision respected.

All participants shall be bound to the complainant's choice of the CHRO or Whip under section 14.

17.

Whip involved.

Despite section 14, if the Whip of a party is either the complainant or the respondent, the House Leader of that party shall assume the role of the Whip.

18.

Matter dealt with by CHRO.

With regard to sexual harassment allegations that are reported to a Whip under section 14, the complainant may, at any time during the resolution process, choose to have the matter dealt with by the CHRO.

19.

Administration of process.

If the sexual harassment allegation is first reported to a Whip under section 14, the Whip may communicate with the CHRO for the purpose of aiding in the administration of the resolution process, including record-keeping.

20.

Whip involvement.

The complainant and the respondent may choose to be assisted by their respective Whips at any time during the resolution process.

### *MEDIATION*

21.

Encourage mediation.

The CHRO or Whip, as the case may be, shall offer mediation at all stages of the resolution process and, in particular, before a formal complaint is filed.

22.

Mediation.

(1) Upon the completion of the discussions described in section 14, the CHRO or Whip, as the case may be, shall raise with the complainant and respondent the possibility of resolution through mediation.

Arrangements.

(2) If the complainant and respondent agree to mediation, the CHRO shall make arrangements for confidential mediation with a mediator acceptable to the complainant and respondent.

Agreement to mediate.

(3) If the complainant and respondent agree to mediation, they shall sign a mediation agreement that outlines their specific obligations of confidentiality and privacy during the mediation process.

23.

Materials and information confidential.

All materials prepared for, and information exchanged at, mediation shall be confidential.

24.

Mediation paid from central budget.

Where the mediator is engaged from outside the House of Commons Administration, the costs of the mediation shall be paid from a central budget of the House of Commons Administration.

25.

Facilitation services.

Members have access at all times to the House of Commons Administration's program which provides facilitation services and which is presently called *Finding Solutions Together*.

### *FORMAL COMPLAINT, PRELIMINARY REVIEW, REFERRAL, AND INVESTIGATION*

26.

Formal complaint filed.

(1) If the complainant and respondent do not agree to proceed by mediation, or if the matter is not resolved to the complainant's satisfaction, the complainant may file a formal complaint with the CHRO that the respondent has engaged in sexual harassment.

Form of complaint.

(2) The complaint shall be in writing, shall be signed by the complainant and shall include a

description of the nature of the alleged sexual harassment and the identity of the respondent.

27.

Preliminary review.

(1) On receipt of a formal complaint, the CHRO shall review the complaint to determine whether the alleged facts, if proven, could constitute sexual harassment.

Decision on preliminary review.

(2) If the CHRO determines that the alleged facts, if proven, could not constitute sexual harassment, the CHRO shall provide the complainant with a report that sets out the reasons for the decision.

Copies of complaint.

(3) After having reviewed the complaint and having determined that the alleged facts, if proven, could constitute sexual harassment, the CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26(1). The CHRO shall also inform the Whip of the complainant and the Whip of the respondent and provide them with a copy of the complaint.

Informing complainant and respondent.

(4) Within 15 days of providing the complaint to the respondent, the CHRO shall inform the complainant and the respondent that an investigator is to be engaged under section 35.

28.

Referral to the Standing Committee on Procedure and House Affairs.

(1) If the complainant is not satisfied with a decision made under subsection 27(2), the complainant may, within 15 days of being advised of the decision, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render a decision on the matter.

Notification.

(2) The Chair of the Standing Committee on Procedure and House Affairs shall notify the CHRO of the referral. The CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26 (1), and a copy of the report issued under subsection 27(2).

Request by the Whip – consent.

(3) For the purpose of subsection (1), the Whip of the complainant may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant.

Written request.

(4) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (3) shall be made in writing and shall include a copy of the CHRO's preliminary review report.

Chair to convene meeting upon written request – 48 hours' notice required.

(5) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

29.

Proceedings to be *in camera*.

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*.

Retention of documents.

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its proceedings for a period of five years following the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 31 or 32 of this Code, as the case may be.

Destruction of documents.

(3) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's proceedings, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

30.

Appearance of complainant and respondent.

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to any matter referred to it pursuant to section 28.

31.

Withdrawal of matter from Committee.

Until the Standing Committee on Procedure and House Affairs has rendered its decision, the complainant may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

32.

Respondent ceases to be a Member.

In the event that a respondent ceases to be a Member during the course of the Committee's consideration of the matter, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code, unless the measures to be taken are in response to a potentially vexatious or bad faith complaint and the complainant has not ceased to be a Member.

33.

Decision.

At the conclusion of the Committee's consideration of the matter referred to it pursuant to section 28, the decision of the Standing Committee on Procedure and House Affairs will be one of the following:

- (a) to uphold the CHRO's decision; or
- (b) to request that the CHRO engage an investigator under section 35.

34.

Final decision.

The decision of the Standing Committee on Procedure and House Affairs shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals. The decision of the Standing Committee on Procedure and House Affairs shall be the final decision on the preliminary review.

35.

Investigator engaged.

(1) Subject to section 27, the CHRO shall engage an investigator to investigate the complaint filed under section 26.

Adjustment – scope of investigation.

(2) The investigator may determine to adjust the scope of the investigation when some or all of the facts are not in dispute.

36.

Conduct of investigation.

(1) The investigator shall investigate the allegations that are the subject of the complaint in a fair, impartial and timely manner and in accordance with Schedule 2.

Informing complainant.

(2) The complainant should be advised at the earliest opportunity if he or she is being investigated for having filed a potentially vexatious or bad faith complaint.

37.

Draft investigation report – findings of fact.

(1) Within 30 days of the completion of the interviews conducted in accordance with Schedule 2, the investigator shall prepare a draft investigation report containing the proposed findings of fact and provide the CHRO, the complainant and the respondent with copies for their review.

Errors of fact.

(2) The complainant and the respondent may, within 15 days following receipt of the draft report, provide the investigator with written submissions on any alleged errors of fact.

Reasons – witness not interviewed.

(3) If applicable, the draft report must also include the reasons why a witness whose name was proposed by the complainant or the respondent was not interviewed by the investigator.

Review by investigator.

(4) The investigator shall review any submissions made by the complainant and the respondent.

38.

Draft investigation report.

(1) Within 30 days of receipt of the submissions made under subsection 37(2), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare a draft investigation report containing the revised findings of fact, if applicable, the investigator's proposed conclusions, and the reasons for the conclusions and shall provide the CHRO, the complainant and the respondent with copies for their review.

Conclusions.

(2) The draft report must contain one of the following conclusions:

(a) on a balance of probabilities, the respondent engaged in sexual harassment;

(b) on a balance of probabilities, the respondent did not engage in sexual harassment; or

(c) on a balance of probabilities, the respondent did not engage in sexual harassment, and the complaint was vexatious or made in bad faith.

Submissions.

(3) The complainant and the respondent may, within 15 days of receipt of the draft report, provide the investigator with written submissions regarding the conclusions.

Review by investigator.

(4) The investigator shall review any submissions made by the complainant and the respondent.

39.

Final investigation report.

Within 30 days of receipt of submissions made under subsection 38(3), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare the final investigation report containing the findings of fact, the investigator's conclusions and the reasons for the conclusions and provide the complainant, the respondent and the CHRO with copies.

40.

Next steps.

The CHRO shall inform the complainant and the respondent of the various courses of action available to them to address the conclusions set out in the final investigation report.

41.

Mediation.

At any time during the investigation, the complainant and the respondent may agree to suspend the investigation and resolve the issue through mediation.

## *DECISION*

### **REFERRAL TO THE WHIP**

42.

Further actions.

(1) If the final investigation report in relation to a formal complaint indicates that, on a balance of probabilities, the respondent engaged in sexual harassment, the complainant may notify the CHRO, in writing, within 15 days of receiving the final investigation report that he or she believes the matter warrants further action.

Attention of the Whip.

(2) On receiving a notice under subsection (1), the CHRO shall inform the respondent's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

43.

Vexatious complaints or complaints made in bad faith.

(1) If the final investigation report in relation to a formal complaint indicates that the complaint was vexatious or made in bad faith, the respondent may notify the CHRO, in writing, within 15 days of receiving the final investigation report, that he or she believes the matter warrants further action.

Attention of the Whip.

(2) On receiving a notice under subsection (1), the CHRO shall inform the complainant's Whip

of the notice, in writing, and shall submit the final investigation report to the Whip.

44.

Proposed discipline.

(1) Within 15 days of receiving a notice under subsection 42(2) or 43(2), the Whip concerned shall provide the CHRO with a proposed course of disciplinary action.

Inform.

(2) The CHRO shall inform the following individuals of the proposed course of disciplinary action:

(a) the complainant, in the case where the final investigation report indicates that, on a balance of probabilities, the respondent engaged in sexual harassment; and

(b) the respondent, in the case where the final investigation report indicates that a complaint was vexatious or made in bad faith.

Additional remedies.

(3) If the disciplinary action proposed by the Whip under subsection (1) is not satisfactory to the complainant or the respondent, as the case may be, the complainant or the respondent may suggest a further course of disciplinary action to the CHRO within 15 days of being informed under subsection (2).

Communicate.

(4) The CHRO shall inform the Whip concerned of the further course of disciplinary action suggested under subsection (3).

Deemed to be resolved.

(5) If there is agreement on the course of disciplinary action pursuant to subsection (2) or (4), the matter is deemed to be resolved.

Discipline.

(6) Once the matter is deemed to be resolved, the Whip in question shall implement the course of disciplinary action.

45.

Independent Member.

If the respondent, or complainant who was found to have filed a vexatious or bad faith complaint, is an independent Member, the CHRO shall propose a course of disciplinary action to both the complainant and the respondent. Where there is agreement on the course of disciplinary action, the matter is deemed to be resolved, and the course of disciplinary action shall be implemented.

## **REFERRAL TO THE STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS**

46.

Request to the Standing Committee on Procedure and House Affairs.

(1) If the complainant or the respondent is not satisfied with the investigation process, the final investigation report or the course of proposed disciplinary action the complainant or respondent may, within 15 days of being advised of the final proposed disciplinary action, or the final applicable step in the process for the particular matter, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render decisions or make recommendations on one or more of the matters listed

above.

Request by the Whip – consent.

(2) For the purpose of subsection (1), the Whip of the complainant or the respondent may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant or the respondent.

Written request.

(3) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (2) shall be made in writing and shall include a copy of the final investigation report.

Chair to convene meeting upon written request – 48 hours' notice required.

(4) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

47.

Inquiry to be *in camera*.

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*. The Committee shall determine whether all or part of the final investigation report – or a summary of it – may be used as evidence before the Committee.

Retention of documents.

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its inquiry for a period of five years following the date of the presentation of its report to the House of Commons, pursuant to section 54 of this Code, or the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 49 or 50 of this Code, as the case may be.

Destruction of documents.

(3) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's inquiry, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

48.

Appearance of complainant and respondent.

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to the report.

49.

Withdrawal of matter from Committee.

Until the Standing Committee on Procedure and House Affairs presents its report to the House of Commons under section 54, the Member who requested that the Committee study the matter may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

50.

Respondent ceases to be a Member.

(1) In the event that a respondent, or a complainant who was found to have filed a vexatious or bad

faith complaint, ceases to be a Member during the course of the Committee's study, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code.

Potentially vexatious or bad faith complaint.

(2) In the event that a respondent who alleges that a complaint is potentially vexatious or in bad faith ceases to be a Member during the course of the Committee's study, he or she can choose to continue the Committee's study if the complainant has not ceased to be a Member.

51.

Reasons.

The Standing Committee on Procedure and House Affairs shall include in the report the reasons for any conclusions and recommendations.

52.

Report.

The report of the Standing Committee on Procedure and House Affairs shall contain only a summary of the final investigation report, shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals who provided evidence.

53.

Sanctions.

In its report, the Standing Committee on Procedure and House Affairs may recommend any appropriate sanctions available to the House of Commons. The Member being sanctioned may be named in the report.

## **REFERRAL TO THE HOUSE OF COMMONS**

54.

Reports from Committee.

Following the adoption of a report by the Standing Committee on Procedure and House Affairs regarding the potential discipline of a Member pursuant to this Code, the Chair of the Committee shall present this report to the House forthwith, pursuant to Standing Order 35(1).

55.

Member may address House – confidentiality respected.

Within 10 sitting days after the presentation of the report of the Standing Committee on Procedure and House Affairs, either party has the right to make a statement in the House, provided that he or she does not speak for more than 20 minutes and that he or she respects the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

56.

Motion to concur in a report.

(1) A motion to concur in a report of the Standing Committee on Procedure and House Affairs made pursuant to this Code may be moved during Routine Proceedings, provided that the notice period, pursuant to Standing Order 54(1), is respected and that any motion to concur in the report shall not be moved until either the Member has made a statement pursuant to section 55 or ten sitting days have elapsed since the presentation of the report.

Debate on concurrence in a Committee report.

(2) A motion moved pursuant to subsection (1) shall be considered for no more than three hours, after which time, unless previously disposed of, the Speaker shall interrupt any proceedings then before the House and put all questions necessary to dispose of the motion without further debate or amendment. During debate on the motion, no Member shall speak more than once or longer than ten minutes and if the debate is adjourned or interrupted:

(a) the motion shall again be considered on a day designated by the Speaker after consultation with the House Leaders of the recognized parties, but in any case not later than the tenth sitting day after the adjournment or interruption;

(b) debate on the motion shall be resumed at the ordinary hour of daily adjournment on the day designated pursuant to paragraph (a) and shall not be further adjourned or interrupted; and

(c) when no Member rises to speak or after a total of three hours of debate, whichever is earlier, the Speaker shall put all questions necessary to dispose of the motion, provided that, if a recorded division is requested on the motion considered on a day designated pursuant to paragraph (a) of this subsection, it shall stand deferred to an appointed time on the next Wednesday, no later than the expiry of the time provided for Government Orders on that day.

Vote.

(3) If no motion pursuant to this section has been moved and disposed of, a motion to concur in the report shall be deemed to have been proposed on the 30th sitting day after the day on which the report was presented to the House. At the expiry of the time provided for Government Orders, the Speaker shall put forthwith every question necessary to dispose of the motion, provided that either the Chief Government Whip or the Chief Opposition Whip may ask the Speaker to defer the division to an appointed time no later than the ordinary hour of daily adjournment on the next sitting day that is not a Friday.

57.

Confidentiality.

Statements made in the House of Commons regarding a specific matter related to this Code must respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

58.

Referral back to Committee.

At any time before the House has concurred in the report, the House may refer the report back to the Standing Committee on Procedure and House Affairs for further consideration.

59.

Vacancy.

In the event that the Member who is the subject of potential discipline ceases to be a Member of the House of Commons following the presentation of the report of the Standing Committee on Procedure and House Affairs to the House, any motion to concur in the report is deemed withdrawn and dropped from the *Order Paper*.

60.

Effect of prorogation or dissolution.

Following a prorogation or dissolution of Parliament, provided that the respondent, or a complainant who was found to have filed a vexatious or bad faith complaint, remain Members of the House:

(a) the complainant or respondent, or the appropriate Whip with the consent of the Member involved, may resubmit the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs in writing, at which time the procedures outlined in section 46 shall apply; and

(b) once seized of the matter in accordance with paragraph (a), the Standing Committee on Procedure and House Affairs may present the report of findings to the House anew, provided that the House had not concurred in the Committee's report in the previous session or Parliament.

## **SUSPENSION OF THE RESOLUTION PROCESS**

61.

Suspension of resolution process.

(1) The CHRO shall immediately suspend the resolution process if:

(a) there are reasonable grounds to believe that a Member has committed an offence under an Act of Parliament or provincial legislation, in which case the CHRO shall, in consultation with the Law Clerk and Parliamentary Counsel, notify the proper authorities of his or her belief; or

(b) it is discovered that the conduct under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament or provincial legislation has been committed or that a charge has been laid with respect to that act.

Resolution process continued.

(2) The CHRO shall not continue the resolution process until the other investigation has been completed or there has been a final disposition of the charge laid with respect to that conduct.

Dissolution period.

(3) The resolution process is suspended during the dissolution period.

## **RETALIATION**

62.

Report by complainant of retaliation.

(1) Allegations of retaliation may be reported by the complainant to the CHRO.

Report within one year.

(2) The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

63.

Application.

The resolution process, as well as the provisions of this Code relating to referral to the Standing Committee on Procedural and House Affairs and those relating to referral to the House of Commons apply, with such modifications as may be required, in respect of any allegations of retaliation brought by a complainant.

## **CONFIDENTIALITY**

64.

Information publicly disclosed.

Any public disclosure, by the CHRO, of personal information or of information related to the resolution process shall only be made in accordance with the terms of the resolution of a complaint, and shall be no more than is sufficient for the public to understand the circumstances and consequences of the resolution.

65.

Sanctions against Member.

Where the House of Commons takes action against a Member, the House may only disclose information if it is necessary to explain any consequences for a Member.

66.

Reference to the Standing Committee on Procedure and House Affairs.

If confidential information has been communicated to the public in violation of this Code or the pledge, the matter shall be referred to the Standing Committee on Procedure and House Affairs to be dealt with in any manner that the Committee deems appropriate.

## **EDUCATIONAL ACTIVITIES**

67.

Educational activities.

The CHRO shall undertake educational activities for Members on the content of this Code and on matters related to the prevention of sexual harassment.

68.

New Parliament.

The CHRO shall brief Members on the contents of this Code at the start of each new Parliament.

## **MISCELLANEOUS**

69.

Retention of documents by CHRO.

The CHRO shall retain all documents relating to an allegation raised or a formal complaint filed under this Code for a period of five years from the date the matter was resolved, after which the documents shall be destroyed, unless a charge has been laid against the respondent under an Act of Parliament and the documents may be relevant to that matter.

70.

Review after implementation.

The Standing Committee on Procedure and House Affairs shall undertake a review of this Code no more than two years after its coming into force.

71.

Part of the Standing Orders.

This Code shall form part of the Standing Orders of the House of Commons.

## **SCHEDULE 1**

## FORM 1

As part of the House of Commons' mission to create an environment in which all individuals can excel, I,....., Member of Parliament, commit to contribute to a work environment free of sexual harassment. I recognize that part of our mission is to create a workplace free of sexual harassment and that sexual harassment among Members of Parliament is strictly prohibited. I further commit to following the *Code of Conduct for Members of the House of Commons: Sexual Harassment*, and to respect confidentiality in accordance with the principles set out in this Code.

## SCHEDULE 2

### Conduct of Investigations

#### General Guidelines

1. The investigator shall conduct the investigation in accordance with the principles of procedural fairness as set out in this Code while using his or her discretionary power to conduct the investigation in the most appropriate manner.
2. The investigator shall review the allegations and ensure that all relevant documentation has been identified. The investigator shall also review all documentation and responses, as applicable.
3. The CHRO shall assist with the administrative aspect of the investigation, including by providing contact information of the complainant, the respondent and the witnesses to be interviewed and arranging meeting locations.
4. The investigator shall ensure that the complainant and the respondent have been notified of their right to be represented by legal counsel and accompanied by a support person, as long as the support person is a Member of Parliament, during the investigation process and of the importance of maintaining confidentiality.
5. The investigator shall provide the complainant, the respondent and any witnesses with the opportunity to be heard and shall conduct all interviews in a fair, impartial and professional manner. He or she shall ensure that the complainant, the respondent and any witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.
6. The investigator shall take all necessary precautions to ensure that the investigative process is carried out with due diligence, and shall respect confidentiality in accordance with the principles set out in this Code.

#### Investigation Process

7. The investigator shall contact the complainant and the respondent and explain to them the investigator's mandate and role and the investigation process.
8. The investigator shall interview the complainant, the respondent and any witnesses in person or, if it is not practicable to do so in the circumstances, by any other means, including by telephone or other means of telecommunication.

9. The complainant and the respondent have the right to identify witnesses. If the name of a witness is proposed and the investigator decides not to interview that person, the investigator must keep a written record of the reasons for the decision.

10. The investigator shall advise witnesses that:

- they must respect the confidentiality of the investigation process;
- their name and all information they provide will be part of the record;
- the investigator is not authorized to conceal relevant information or the source of information;
- investigation reports do not unnecessarily include damaging or personal information;
- their names will be used in the investigation reports; and
- they will be requested to sign their statements.

11. The investigator may interview any person who, in the investigator's opinion, could provide any additional information relevant to the determination of the facts relating to the allegations.

12. The investigator may request all relevant documents and files related to the investigation.

13. The investigator shall provide the CHRO with a report on the status of the investigation on a regular basis or at the request of the CHRO.

## House Government Bill

## 42nd Parliament, 1st Session

December 3, 2015 - Present

Navigate Bills

[\(BillDetails.aspx?](#)

Language=E&amp;billId=9197605)

## C-65

An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1

[\(BillDetails.aspx?Language=E&billId=9273414\)](#)

Sponsor

**Minister of Employment, Workforce Development and Labour**[//www.ourcommons.ca/Parliamentarians/en/members/profileredirect?affiliationId=229214](http://www.ourcommons.ca/Parliamentarians/en/members/profileredirect?affiliationId=229214)

Last Stage Completed

**Third Reading in the Senate** (2018-06-18)Progress: 

## Status of the Bill

[Show Details \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&view=1\)](#)[Hide Details \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&view=0\)](#)

## House of Commons

## First Reading

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Introduction and First Reading****2017-11-07**

## Second Reading

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)[Show Votes \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Second Reading and Referral to Committee****2018-01-29**

## Committee

**STANDING COMMITTEE ON HUMAN RESOURCES, SKILLS AND SOCIAL DEVELOPMENT AND THE STATUS OF PERSONS WITH DISABILITIES**  
[//www.ourcommons.ca/Committees/en/HUMA?PARL=42&SESSION=1](http://www.ourcommons.ca/Committees/en/HUMA?PARL=42&SESSION=1)[Show Meetings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Committee Reporting the Bill with Amendments****2018-04-23**[//www.ourcommons.ca/Committees/en/HUMA/StudyActivityId=9932999](http://www.ourcommons.ca/Committees/en/HUMA/StudyActivityId=9932999)

## Report Stage

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Concurrence at Report Stage****2018-05-07**

## Third Reading

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)[Show Votes \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Third Reading****2018-05-07**

## Senate

## First Reading

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**First Reading****2018-05-08**

## Second Reading

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Second Reading****2018-06-07****Referral to Committee****2018-06-07**

## Committee

**STANDING SENATE COMMITTEE ON HUMAN RIGHTS** ([HTTPS://SENCANADA.CA/SENRESOLVER/COMMITTEE/COMMITTEEHOME?COMM\\_ID=1077&PARL=42&SES=1&LANGUAGE=E](https://sencanada.ca/senresolver/committee/committeehome?comm_id=1077&PARL=42&SES=1&LANGUAGE=E))[Show Meetings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Committee Report Presented with Amendments****2018-06-18**[https://sencanada.ca/senresolver/committee/comm\\_id=1077&Parl=42&Ses=1&Language=e](https://sencanada.ca/senresolver/committee/comm_id=1077&Parl=42&Ses=1&Language=e)

## Consideration of Committee Report

[Show Sittings \(/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1\)](#)**Committee Report Adopted****2018-06-18**

**Third Reading**

Show Sitings (/LegisInfo/BillDetails.aspx?billId=9220285&Language=E&View=1)

**Third Reading**

**2018-06-18**

***Bill passed by the Senate without amendment***

**Messages**

**Consideration of Messages between the Senate and the House of Commons**

Message Sent to the House of Commons

2018-06-18

(<https://sencanada.ca/Content/Sen/Chamber/421/06-18-e.htm?Language=E>)

First Session, Forty-second Parliament,  
64-65-66-67 Elizabeth II, 2015-2016-2017-2018

Première session, quarante-deuxième législature,  
64-65-66-67 Elizabeth II, 2015-2016-2017-2018

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

## BILL C-65

## PROJET DE LOI C-65

An Act to amend the Canada Labour Code  
(harassment and violence), the  
Parliamentary Employment and Staff  
Relations Act and the Budget  
Implementation Act, 2017, No. 1

Loi modifiant le Code canadien du travail  
(harcèlement et violence), la Loi sur les  
relations de travail au Parlement, et la Loi  
n° 1 d'exécution du budget de 2017

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**AS PASSED**

BY THE HOUSE OF COMMONS

MAY 7, 2018

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**ADOPTÉ**

PAR LA CHAMBRE DES COMMUNES

LE 7 MAI 2018

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## SUMMARY

Part 1 of this enactment amends the *Canada Labour Code* to strengthen the existing framework for the prevention of harassment and violence, including sexual harassment and sexual violence, in the work place.

Part 2 amends Part III of the *Parliamentary Employment and Staff Relations Act* with respect to the application of Part II of the *Canada Labour Code* to parliamentary employers and employees, without limiting in any way the powers, privileges and immunities of the Senate and the House of Commons and their members.

Part 3 amends a transitional provision in the *Budget Implementation Act, 2017, No. 1*.

## SOMMAIRE

La partie 1 modifie le *Code canadien du travail* afin de renforcer le régime visant à prévenir le harcèlement et la violence dans les lieux de travail, notamment le harcèlement et la violence qui sont de nature sexuelle.

La partie 2 modifie la partie III de la *Loi sur les relations de travail au Parlement* concernant l'application de la partie II du *Code canadien du travail* aux employeurs et aux employés du Parlement sans toutefois restreindre de quelque façon les pouvoirs, privilèges et immunités du Sénat, de la Chambre des communes, des sénateurs et des députés.

La partie 3 modifie une disposition transitoire de la *Loi n° 1 d'exécution du budget de 2017*.

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## TABLE OF PROVISIONS

### **An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1**

	<b>PART 1</b>	<b>Canada Labour Code</b>
		Amendments to the Act
<b>0.1</b>		
		Transitional Provision
<b>18</b>		Requests received before coming into force
		Coordinating Amendments
<b>19</b>		2017, c. 20
		Coming into Force
<b>20</b>		Order in council
	<b>PART 2</b>	<b>Parliamentary Employment and Staff Relations Act</b>
		Amendments to the Act
<b>21</b>		
		Coordinating Amendment
<b>22</b>		2017, c. 20
		Coming into Force
<b>23</b>		2017, c. 20
	<b>PART 3</b>	<b>Budget Implementation Act, 2017, No. 1</b>
<b>24</b>		

## TABLE ANALYTIQUE

### **Loi modifiant le Code canadien du travail (harcèlement et violence), la Loi sur les relations de travail au Parlement, et la Loi n° 1 d'exécution du budget de 2017**

	<b>PARTIE 1</b>	<b>Code canadien du travail</b>
		Modification de la loi
<b>0.1</b>		
		Disposition transitoire
<b>18</b>		Demande reçue avant l'entrée en vigueur
		Dispositions de coordination
<b>19</b>		2017, ch. 20
		Entrée en vigueur
<b>20</b>		Décret
	<b>PARTIE 2</b>	<b>Loi sur les relations de travail au Parlement</b>
		Modification de la loi
<b>21</b>		
		Disposition de coordination
<b>22</b>		2017, ch. 20
		Entrée en vigueur
<b>23</b>		2017, ch. 20
	<b>PARTIE 3</b>	<b>Loi n° 1 d'exécution du budget de 2017</b>
<b>24</b>		



## BILL C-65

An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### PART 1

R.S., c. L-2

## Canada Labour Code

### Amendments to the Act

**0.1 Subsection 122(1) of the *Canada Labour Code* is amended by adding the following in alphabetical order:** 5

***harassment and violence*** means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment; (*harcèlement et violence*) 10

R.S., c. 9 (1st Supp.), s. 1

**1 Section 122.1 of the Act is replaced by the following:**

#### Prevention of accidents, injuries and illnesses

**122.1** The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies. 15

**2 Section 123 of the Act is amended by adding the following after subsection (2):** 20

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## PROJET DE LOI C-65

Loi modifiant le Code canadien du travail (harcèlement et violence), la Loi sur les relations de travail au Parlement, et la Loi n<sup>o</sup> 1 d'exécution du budget de 2017

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

### PARTIE 1

L.R., ch. L-2

## Code canadien du travail

### Modification de la loi

**0.1 Le paragraphe 122(1) du *Code canadien du travail* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :** 5

***harcèlement et violence*** Tout acte, comportement ou propos, notamment de nature sexuelle, qui pourrait vraisemblablement offenser ou humilier un employé ou lui causer toute autre blessure ou maladie, physique ou psychologique, y compris tout acte, comportement ou propos réglementaire. (*harassment and violence*) 10

L.R., ch. 9 (1<sup>er</sup> suppl.), art. 1

**1 L'article 122.1 de la même loi est remplacé par ce qui suit :**

#### Prévention des accidents, blessures et maladies

**122.1** La présente partie a pour objet de prévenir les accidents, les incidents de harcèlement et de violence et les blessures et maladies, physiques ou psychologiques, liés à l'occupation d'un emploi régi par ses dispositions. 15

**2 L'article 123 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :** 20

## Persons appointed and their employer

**(2.1)** This Part applies to persons appointed under subsection 128(1) of the *Public Service Employment Act*, other than persons appointed by a person holding the recognized position of Leader of the Opposition in the Senate or Leader of the Opposition in the House of Commons, and to their employer.

2000, c. 20, s. 5; 2013, c. 40, ss. 177(1) and (2)

### **3 (1) Paragraphs 125(1)(c) to (e) of the Act are replaced by the following:**

**(c)** except as provided for in the regulations, investigate, record and report, in accordance with the regulations, all accidents, occurrences of harassment and violence, occupational illnesses and other hazardous occurrences known to the employer;

**(d)** make readily available to employees, in printed and electronic form,

**(i)** a copy of this Part and a copy of the regulations made under this Part that apply to the work place,

**(ii)** a statement of the employer's general policy concerning the health and safety at work of employees, and

**(iii)** any other information related to health and safety that is prescribed or that may be specified by the Minister;

2000, c. 20, s. 5

### **(2) Paragraph 125(1)(f) of the Act is replaced by the following:**

**(f)** if the information referred to in any of subparagraphs (d)(i) to (iii) is made available in electronic form, ensure that employees receive appropriate training to enable them to have access to the information and, on the request of an employee, make a printed copy of the information available;

2000, c. 20, s. 5

### **(3) Paragraph 125(1)(z.16) of the Act is replaced by the following:**

**(z.16)** take the prescribed measures to prevent and protect against harassment and violence in the work place, respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place;

## Personnes nommées et leur employeur

**(2.1)** La présente partie s'applique aux personnes nommées en vertu du paragraphe 128(1) de la *Loi sur l'emploi dans la fonction publique*, sauf celles nommées par le leader de l'Opposition au Sénat ou le chef de l'Opposition à la Chambre des communes, ainsi qu'à leur employeur.

2000, ch. 20, art. 5; 2013, ch. 40, par. 177(1) et (2)

### **3 (1) Les alinéas 125(1)c) à e) de la même loi sont remplacés par ce qui suit :**

**c)** conformément aux règlements et sauf dans les cas prévus par règlement, d'enquêter sur tous les accidents, tous les incidents de harcèlement et de violence, toutes les maladies professionnelles ainsi que toutes les autres situations comportant des risques dont il a connaissance, de les enregistrer et de les signaler;

**d)** de mettre à la disposition des employés, de façon que ceux-ci puissent y avoir facilement accès sur support électronique et sur support papier :

**(i)** le texte de la présente partie ainsi que celui des règlements d'application de celle-ci qui sont applicables au lieu de travail,

**(ii)** l'énoncé de ses consignes générales en matière de santé et de sécurité au travail,

**(iii)** les renseignements réglementaires concernant la santé et la sécurité et ceux que précise le ministre;

2000, ch. 20, art. 5

### **(2) L'alinéa 125(1)f) de la même loi est remplacé par ce qui suit :**

**f)** lorsque les renseignements visés à l'un ou l'autre des sous-alinéas d)(i) à (iii) sont mis à la disposition des employés sur support électronique, de veiller à ce que ceux-ci reçoivent la formation nécessaire pour être en mesure d'accéder à ces renseignements et de mettre à leur disposition, sur demande, une version sur support papier;

2000, ch. 20, art. 5

### **(3) L'alinéa 125(1)z.16) de la même loi est remplacé par ce qui suit :**

**z.16)** de prendre les mesures réglementaires pour prévenir et réprimer le harcèlement et la violence dans le lieu de travail, pour donner suite aux incidents de harcèlement et de violence dans le lieu de travail et pour offrir du soutien aux employés touchés par le harcèlement et la violence dans le lieu de travail;

**(z.161)** ensure that employees, including those who have supervisory or managerial responsibilities, receive training in the prevention of harassment and violence in the work place and are informed of their rights and obligations under this Part in relation to harassment and violence;

**(z.162)** undergo training in the prevention of harassment and violence in the work place;

**(4) Section 125 of the Act is amended by adding the following after subsection (2):**

#### Regulations

**(3)** The Governor in Council may make regulations respecting the investigations, records and reports referred to in paragraph (1)(c).

#### Former employees

**(4)** Except as provided for in the regulations, the obligations set out in paragraphs (1)(c) and (z.16) apply to an employer in respect of a former employee in relation to an occurrence of harassment and violence in the work place if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer.

#### Extension

**(5)** On application by a former employee, the Minister may, in the prescribed circumstances, extend the time period referred to in subsection (4).

#### Regulations – former employees

**(6)** For the purpose of subsection (4), the Governor in Council may make regulations respecting an employer's obligations in respect of former employees.

2000, c. 20, s. 8

**4 Paragraph 126(1)(h) of the French version of the Act is replaced by the following:**

**h)** de signaler, selon les modalités réglementaires, tout accident ou autre incident ayant causé, dans le cadre de son travail, une blessure à lui-même ou à une autre personne;

2000, c. 20, s. 10

**5 (1) Subsections 127.1(1) and (2) of the Act are replaced by the following:**

**z.161)** de veiller à ce que les employés, notamment ceux qui exercent des fonctions de direction ou de gestion, reçoivent de la formation en matière de prévention du harcèlement et de la violence dans le lieu de travail et soient informés de leurs droits et obligations au titre de la présente partie en ce qui a trait au harcèlement et à la violence;

**z.162)** de suivre de la formation sur la prévention du harcèlement et de la violence dans le lieu de travail;

**(4) L'article 125 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

#### Règlements

**(3)** Le gouverneur en conseil peut prendre des règlements sur les enquêtes, les enregistrements et les signalements visés à l'alinéa (1)c).

#### Anciens employés

**(4)** Sauf dans les cas prévus par règlement, les obligations prévues aux alinéas (1)c) et z.16) s'appliquent à un employeur à l'égard d'un ancien employé concernant un incident de harcèlement et de violence dans le lieu de travail si l'employeur a connaissance de l'incident dans les trois mois suivant la date de cessation d'emploi de l'ancien employé.

#### Prorogation

**(5)** Sur demande de l'ancien employé, le ministre peut, dans les circonstances réglementaires, proroger le délai prévu au paragraphe (4).

#### Règlements : anciens employés

**(6)** Pour l'application du paragraphe (4), le gouverneur en conseil peut prendre des règlements concernant les obligations applicables aux employeurs à l'égard d'anciens employés.

2000, ch. 20, art. 8

**4 L'alinéa 126(1)(h) de la version française de la même loi est remplacé par ce qui suit :**

**h)** de signaler, selon les modalités réglementaires, tout accident ou autre incident ayant causé, dans le cadre de son travail, une blessure à lui-même ou à une autre personne;

2000, ch. 20, art. 10

**5 (1) Les paragraphes 127.1(1) et (2) de la même loi sont remplacés par ce qui suit :**

## Complaint to supervisor

**127.1 (1)** An employee who believes on reasonable grounds that there has been a contravention of this Part or that there is likely to be an accident, injury or illness arising out of, linked with or occurring in the course of employment shall, before exercising any other recourse available under this Part, except the rights conferred by sections 128, 129 and 132, make a complaint to the employee's supervisor.

## Supervisor or designated person

**(1.1)** However, in the case of a complaint relating to an occurrence of harassment and violence, the employee may make the complaint to the employee's supervisor or to the person designated in the employer's work place harassment and violence prevention policy.

## Oral or written complaint

**(1.2)** The complaint may be made orally or in writing.

## Resolve complaint

**(2)** The employee and the supervisor or designated person, as the case may be, shall try to resolve the complaint between themselves as soon as possible.

2000, c. 20, s. 10

**(2) The portion of subsection 127.1(3) of the Act before paragraph (a) is replaced by the following:**

## Investigation of complaint

**(3)** The employee or the supervisor may refer an unresolved complaint, other than a complaint relating to an occurrence of harassment and violence, to a chairperson of the work place committee or to the health and safety representative to be investigated jointly

**(3) Subsection 127.1(8) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):**

**(d)** in the case of a complaint relating to an occurrence of harassment and violence, the employee and the supervisor or designated person, as the case may be, failed to resolve the complaint between themselves.

## Plainte au supérieur hiérarchique

**127.1 (1)** Avant de pouvoir exercer les recours prévus par la présente partie — à l'exclusion des droits prévus aux articles 128, 129 et 132 —, l'employé qui croit, pour des motifs raisonnables, à l'existence d'une situation constituant une contravention à la présente partie ou dont sont susceptibles de résulter un accident, une blessure ou une maladie liés à l'occupation d'un emploi doit adresser une plainte à cet égard à son supérieur hiérarchique.

## Supérieur hiérarchique ou personne désignée

**(1.1)** Toutefois, dans le cas d'une plainte ayant trait à un incident de harcèlement et de violence, l'employé peut adresser sa plainte à son supérieur hiérarchique ou à la personne désignée dans la politique de l'employeur concernant la prévention du harcèlement et de la violence dans le lieu de travail.

## Plainte orale ou par écrit

**(1.2)** La plainte peut être adressée oralement ou par écrit.

## Tentative de règlement

**(2)** L'employé et son supérieur hiérarchique ou la personne désignée, selon le cas, doivent tenter de régler la plainte à l'amiable dans les meilleurs délais.

2000, ch. 20, art. 10

**(2) Le passage du paragraphe 127.1(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

## Enquête

**(3)** En l'absence de règlement, la plainte, sauf si elle a trait à un incident de harcèlement et de violence, peut être renvoyée à l'un des présidents du comité local ou au représentant par l'une ou l'autre des parties. Elle fait alors l'objet d'une enquête tenue conjointement, selon le cas :

**(3) Le paragraphe 127.1(8) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**d)** s'agissant d'une plainte ayant trait à un incident de harcèlement et de violence, l'employé et son supérieur hiérarchique ou la personne désignée, selon le cas, n'ont pu régler la plainte à l'amiable.

2013, c. 40, s. 180(3)

**(4) Subsection 127.1(9) of the Act is replaced by the following:**

#### Investigation

**(9)** The Minister shall investigate the complaint referred to in subsection (8) unless it relates to an occurrence of harassment and violence and the Minister is of the opinion that

- a)** the complaint has been adequately dealt with according to a procedure provided for under this Act, any other Act of Parliament or a collective agreement; or
- (b)** the matter is trivial, frivolous or vexatious.

#### Notice

**(9.1)** If the Minister is of the opinion that the conditions described in paragraph (9)(a) or (b) are met, the Minister shall inform the employer and the employee in writing, as soon as feasible, that the Minister will not investigate.

#### Combining investigations — harassment and violence

**(9.2)** The Minister may combine an investigation into a complaint relating to an occurrence of harassment and violence with an ongoing investigation relating to the same employer and involving substantially the same issues and, in that case, the Minister may issue a single decision.

**(5) Section 127.1 of the Act is amended by adding the following after subsection (11):**

#### Former employees

**(12)** A former employee may, within the prescribed time, make a complaint under subsection (1) relating to an occurrence of harassment and violence in the work place, in which case this Part applies to the former employee and to the employer as if the former employee were an employee, to the extent necessary to finally dispose of the complaint.

#### Extension

**(13)** On application by a former employee, the Minister may, in the prescribed circumstances, extend the time period referred to in subsection (12).

**6 Section 134.1 of the Act is amended by adding the following after subsection (4):**

2013, ch. 40, par. 180(3)

**(4) Le paragraphe 127.1(9) de la même loi est remplacé par ce qui suit :**

#### Enquête

**(9)** Le ministre fait enquête sur la plainte visée au paragraphe (8), sauf s'il est d'avis, dans le cas d'une plainte ayant trait à un incident de harcèlement et de violence :

- a)** soit que la plainte a été traitée comme il se doit dans le cadre d'une procédure prévue par la présente loi ou toute autre loi fédérale ou par une convention collective;
- b)** soit que l'affaire est futile, frivole ou vexatoire.

#### Avis

**(9.1)** Si le ministre est d'avis que les conditions visées aux alinéas (9)a) ou b) sont remplies, il informe l'employeur et l'employé par écrit, aussitôt que possible, qu'il ne fera pas enquête.

#### Fusion d'enquêtes : harcèlement et violence

**(9.2)** Le ministre peut fusionner une enquête concernant une plainte ayant trait à un incident de harcèlement et de violence avec une enquête en cours touchant le même employeur et portant pour l'essentiel sur les mêmes questions et rendre une seule décision.

**(5) L'article 127.1 de la même loi est modifié par adjonction, après le paragraphe (11), de ce qui suit :**

#### Anciens employés

**(12)** Tout ancien employé peut, dans le délai réglementaire, faire une plainte au titre du paragraphe (1) ayant trait à un incident de harcèlement et de violence dans le lieu de travail, auquel cas la présente partie s'applique à l'ancien employé et à l'employeur comme si l'ancien employé était un employé, dans la mesure nécessaire pour qu'il puisse être statué de façon définitive sur la plainte.

#### Prorogation

**(13)** Sur demande de l'ancien employé, le ministre peut, dans les circonstances réglementaires, proroger le délai prévu au paragraphe (12).

**6 L'article 134.1 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

### Investigation – harassment and violence

**(4.1)** Despite paragraph (4)(d), a policy committee shall not participate in an investigation, other than an investigation under section 128 or 129, relating to an occurrence of harassment and violence in the work place.

2000, c. 20, s. 10

**7 (1) Subsections 135(3) to (5) of the Act are repealed.** 5

2013, c. 40, s. 185(1)

**(2) Paragraph 135(6)(a) of the Act is replaced by the following:**

**(a)** at an employer's request, the Minister may, in writing, exempt the employer from the requirements of subsection (1) in respect of that work place; 10

**(3) Section 135 of the Act is amended by adding the following after subsection (6):**

#### Posting of request

**(6.1)** A request for an exemption must be posted in a conspicuous place or places where it is likely to come to the attention of employees, and be kept posted until the employees are informed of the Minister's decision in respect of the request. 15

**(4) Section 135 of the Act is amended by adding the following after subsection (7):** 20

### Investigation – harassment and violence

**(7.1)** Despite paragraph (7)(e), a work place committee shall not participate in an investigation, other than an investigation under section 128 or 129, relating to an occurrence of harassment and violence in the work place.

**8 The Act is amended by adding the following after section 135.1:** 25

#### Information likely to reveal identity

**135.11 (1)** Neither the Minister nor an employer shall, without the person's consent, provide, under this Part, a policy committee or a work place committee with any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence in the work place. Neither a policy committee nor a work place committee shall have access to that information without the person's consent. 30

#### Exception

**(2)** Subsection (1) does not apply with respect to 35

### Enquêtes : harcèlement et violence

**(4.1)** Malgré l'alinéa (4)d), le comité d'orientation ne peut participer aux enquêtes relatives à des incidents de harcèlement et de violence dans le lieu de travail, sauf à celles qui sont menées en application des articles 128 ou 129. 5

2000, ch. 20, art. 10

**7 (1) Les paragraphes 135(3) à (5) de la même loi sont abrogés.**

2013, ch. 40, par. 185(1)

**(2) L'alinéa 135(6)a de la même loi est remplacé par ce qui suit :**

**a)** le ministre peut, sur demande de l'employeur, l'exempter par écrit de l'application du paragraphe (1) quant à ce lieu de travail; 10

**(3) L'article 135 de la même loi est modifié par adjonction, après le paragraphe (6), de ce qui suit :**

#### Affichage de la demande

**(6.1)** La demande d'exemption doit être affichée, en un ou plusieurs endroits bien en vue et fréquentés par les employés, jusqu'à ce que ceux-ci aient été informés de la décision du ministre à cet égard. 15

**(4) L'article 135 de la même loi est modifié par adjonction, après le paragraphe (7), de ce qui suit :** 20

### Enquêtes : harcèlement et violence

**(7.1)** Malgré l'alinéa (7)e), le comité local ne peut participer aux enquêtes relatives à des incidents de harcèlement et de violence dans le lieu de travail, sauf à celles qui sont menées en application des articles 128 ou 129.

**8 La même loi est modifiée par adjonction, après l'article 135.1, de ce qui suit :** 25

#### Renseignements susceptibles de révéler l'identité

**135.11 (1)** Ni le ministre ni l'employeur ne peuvent transmettre à un comité d'orientation ou à un comité local, sous le régime de la présente partie, des renseignements qui sont susceptibles de révéler l'identité d'une personne concernée par un incident de harcèlement et de violence dans le lieu de travail, sauf avec le consentement de celle-ci. Ces comités ne peuvent accéder à de tels renseignements sans le consentement de la personne concernée. 35

#### Exceptions

**(2)** Le paragraphe (1) ne s'applique pas :

(a) information provided under section 128 or 129 or a direction or report relating to the application of those sections; or

(b) a decision, reasons or a direction referred to in subsection 146.1(2).

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2000, c. 20, s. 10

**9 Paragraph 135.2(1)(g) of the Act is replaced by the following:**

(g) requiring a committee to submit an annual report of its activities, containing the prescribed information, to a specified person in the prescribed manner and within the prescribed time; and

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**10 Section 136 of the Act is amended by adding the following after subsection (5):**

#### Investigation — harassment and violence

(5.1) Despite paragraph (5)(g), a health and safety representative shall not participate in an investigation, other than an investigation under section 128 or 129, relating to an occurrence of harassment and violence in the work place.

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**11 The Act is amended by adding the following after section 136:**

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#### Information likely to reveal identity

**136.1 (1)** Neither the Minister nor an employer shall, without the person's consent, provide, under this Part, a health and safety representative with any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence in the work place. A health and safety representative shall not have access to that information without the person's consent.

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#### Exception

(2) Subsection (1) does not apply with respect to

(a) information provided under section 128 or 129 or a direction or report relating to the application of those sections; or

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(b) a decision, reasons or a direction referred to in subsection 146.1(2).

**11.1 The Act is amended by adding the following after section 139:**

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#### Annual report

**139.1** The Minister shall prepare and publish an annual report that contains statistical data relating to

a) aux renseignements fournis au titre des articles 128 ou 129 ni aux instructions ou rapports relatifs à l'application de ces articles;

b) à la décision, aux motifs ou aux instructions visés au paragraphe 146.1(2).

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2000, ch. 20, art. 10

**9 L'alinéa 135.2(1)(g) de la même loi est remplacé par ce qui suit :**

g) la personne à qui le comité doit présenter, dans le délai et selon les modalités réglementaires, son rapport d'activité annuel contenant les renseignements réglementaires;

10

**10 L'article 136 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :**

#### Enquêtes : harcèlement et violence

(5.1) Malgré l'alinéa (5)g), le représentant ne peut participer aux enquêtes relatives à des incidents de harcèlement et de violence dans le lieu de travail, sauf à celles qui sont menées en application des articles 128 ou 129.

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**11 La même loi est modifiée par adjonction, après l'article 136, de ce qui suit :**

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#### Renseignements susceptibles de révéler l'identité

**136.1 (1)** Ni le ministre ni l'employeur ne peuvent transmettre à un représentant, sous le régime de la présente partie, des renseignements qui sont susceptibles de révéler l'identité d'une personne concernée par un incident de harcèlement et de violence dans le lieu de travail, sauf avec le consentement de celle-ci. Le représentant ne peut accéder à de tels renseignements sans le consentement de la personne concernée.

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#### Exceptions

(2) Le paragraphe (1) ne s'applique pas :

a) aux renseignements fournis au titre des articles 128 ou 129 ni aux instructions ou rapports relatifs à l'application de ces articles;

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b) à la décision, aux motifs ou aux instructions visés au paragraphe 146.1(2).

**11.1 La même loi est modifiée par adjonction, après l'article 139, de ce qui suit :**

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#### Rapport annuel

**139.1** Le ministre prépare et publie un rapport annuel qui contient des données statistiques relatives au

harassment and violence in work places to which this Part applies. The report shall not contain any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence.

### Five-year review

**139.2 (1)** Five years after the day on which this section comes into force and every five years after that, the Minister shall commence a review of the provisions of this Part relating to harassment and violence. At the conclusion of the review, the Minister shall prepare a report on the review.

### Report to be tabled

**(2)** The Minister shall cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the day on which the report is completed.

2013, c. 40, s. 190

**12 Subsection 140(3) of the Act is replaced by the following:**

### Exception

**(3)** The powers, duties or functions of the Minister provided for in section 130, subsections 137.1(1) to (2.1) and (7) to (9), 137.2(4), 138(1) to (2) and (4) to (6), 140(1), (2) and (4), 144(1) and 149(1), sections 152 and 155 and subsections 156.1(1), 157(3) and 159(2) shall not be the subject of an agreement under subsection (2).

2013, c. 40, s. 196

**13 Subsection 145.1(2) of the Act is replaced by the following:**

### Status

**(2)** For the purposes of sections 146 to 146.5, an appeals officer has all of the powers, duties and functions of the Minister under this Part, except for those referred to in subsection (1), section 130, subsections 137.1(1) to (2.1) and (7) to (9), 137.2(4), 138(1) to (2) and (4) to (6), 140(1), (2) and (4), 144(1) and 149(1), sections 152 and 155 and subsections 156.1(1), 157(3) and 159(2).

**14 Subsection 157(1) of the Act is amended by adding the following after paragraph (a):**

**(a.01)** defining the expressions “harassment” and “violence” for the purposes of this Part;

**15 The Act is amended by adding the following after section 160:**

harcèlement et à la violence dans les lieux de travail auxquels la présente partie s'applique. Le rapport ne contient aucun renseignement susceptible de révéler l'identité d'une personne concernée par un incident de harcèlement et de violence.

### Examen quinquennal

**139.2 (1)** Cinq ans après l'entrée en vigueur du présent article, et tous les cinq ans par la suite, le ministre commence l'examen des dispositions de la présente partie portant sur le harcèlement et la violence. Suivant l'achèvement de l'examen, il prépare un rapport sur ce dernier.

### Dépôt du rapport

**(2)** Le ministre fait déposer le rapport devant chaque chambre du Parlement, dans les quinze premiers jours de séance de celle-ci, suivant son achèvement.

2013, ch. 40, art. 190

**12 Le paragraphe 140(3) de la même loi est remplacé par ce qui suit :**

### Exception

**(3)** Ne peuvent toutefois faire l'objet de l'accord visé au paragraphe (2) les attributions du ministre qui sont prévues à l'article 130, aux paragraphes 137.1(1) à (2.1) et (7) à (9), 137.2(4), 138(1) à (2) et (4) à (6), 140(1), (2) et (4), 144(1) et 149(1), aux articles 152 et 155 et aux paragraphes 156.1(1), 157(3) et 159(2).

2013, ch. 40, art. 196

**13 Le paragraphe 145.1(2) de la même loi est remplacé par ce qui suit :**

### Attributions

**(2)** Pour l'application des articles 146 à 146.5, l'agent d'appel est investi des mêmes attributions que le ministre sous le régime de la présente partie, à l'exception de celles prévues au paragraphe (1), à l'article 130, aux paragraphes 137.1(1) à (2.1) et (7) à (9), 137.2(4), 138(1) à (2) et (4) à (6), 140(1), (2) et (4), 144(1) et 149(1), aux articles 152 et 155 et aux paragraphes 156.1(1), 157(3) et 159(2).

**14 Le paragraphe 157(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.01)** définir les termes « harcèlement » et « violence », pour l'application de la présente partie;

**15 La même loi est modifiée par adjonction, après l'article 160, de ce qui suit :**

## Pilot projects

**161** Despite anything in this Part, the Governor in Council may make any regulations that the Governor in Council considers necessary respecting the establishment and operation of one or more pilot projects for testing which possible amendments to this Part or the regulations made under this Part would improve the prevention of accidents, injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies, including regulations respecting the manner in which and the extent to which any provision of this Part or the regulations made under this Part applies to a pilot project, and adapting any such provision for the purposes of that application.

## Repeal of regulations

**162** Unless they are repealed earlier, regulations made under section 161 are repealed on the fifth anniversary of the day on which they come into force.

R.S., c. 9 (1st Supp.), s. 17

**16 Division XV.1 of Part III of the Act is repealed.**

**17 The Act is amended by adding the following after section 295:**

## Pilot Projects

### Regulations

**296** Despite anything in this Part, the Governor in Council may make any regulations that the Governor in Council considers necessary respecting the establishment and operation of one or more pilot projects for testing which possible amendments to this Part or the regulations made under this Part would improve compliance with Parts II and III of this Act, including regulations respecting the manner in which and the extent to which any provision of this Part or the regulations made under this Part applies to a pilot project, and adapting any such provision for the purposes of that application.

### Repeal of regulations

**297** Unless they are repealed earlier, regulations made under section 296 are repealed on the fifth anniversary of the day on which they come into force.

## Transitional Provision

### Requests received before coming into force

**18 A request for an exemption under subsection 135(3) of the *Canada Labour Code*, as it read on**

## Projets pilotes

**161** Malgré toute autre disposition de la présente partie, le gouverneur en conseil peut prendre les règlements qu'il juge nécessaires à l'établissement et au fonctionnement de projets pilotes ayant pour but de déterminer, après mise à l'essai, quelles modifications à la présente partie ou à ses règlements d'application amélioreraient la prévention des accidents, des blessures ou des maladies liés à l'occupation d'un emploi régi par ses dispositions; il peut notamment prendre des règlements prévoyant selon quelles modalités et dans quelle mesure telles dispositions de la présente partie ou de ses règlements d'application s'appliquent à un projet pilote et adaptant ces dispositions pour cette application.

## Abrogation des règlements

**162** Sauf abrogation anticipée, les règlements pris en vertu de l'article 161 sont abrogés au cinquième anniversaire de leur entrée en vigueur.

L.R., ch. 9 (1<sup>er</sup> suppl.), art. 17

**16 La section XV.1 de la partie III de la même loi est abrogée.**

**17 La même loi est modifiée par adjonction, après l'article 295, de ce qui suit :**

## Projets pilotes

### Règlements

**296** Malgré toute autre disposition de la présente partie, le gouverneur en conseil peut prendre les règlements qu'il juge nécessaires à l'établissement et au fonctionnement de projets pilotes ayant pour but de déterminer, après mise à l'essai, quelles modifications à la présente partie ou à ses règlements d'application amélioreraient la conformité avec les parties II et III de la présente loi; il peut notamment prendre des règlements prévoyant selon quelles modalités et dans quelle mesure telles dispositions de la présente partie ou de ses règlements d'application s'appliquent à un projet pilote et adaptant ces dispositions pour cette application.

### Abrogation des règlements

**297** Sauf abrogation anticipée, les règlements pris en vertu de l'article 296 sont abrogés au cinquième anniversaire de leur entrée en vigueur.

## Disposition transitoire

### Demande reçue avant l'entrée en vigueur

**18 La demande d'exemption présentée au titre du paragraphe 135(3) du *Code canadien du***

the day before the day on which section 7 comes into force, that is received by the Minister before the day on which that section comes into force is to be dealt with in accordance with subsections 135(3) to (5) of that Act as they read on the day before the day on which that section comes into force. If the request is approved on or after the day on which that section comes into force, the exemption may be granted for a period of not more than one year.

## Coordinating Amendments

2017, c. 20

**19 (1)** In this section, *other Act* means the *Budget Implementation Act, 2017, No. 1*.

**(2)** If section 347 of the other Act comes into force before section 13 of this Act, then that section 13 is replaced by the following:

**13** Section 145.1 of the Act is replaced by the following:

### Powers, duties and functions

**145.1** For the purposes of sections 146 to 146.5, the Board has all of the powers, duties and functions of the Minister under this Part, except for those referred to in section 130, subsections 135(6), 137.1(1) to (2.1) and (7) to (9), 137.2(4), 138(1) to (2) and (4) to (6), section 139, subsections 140(1), (2) and (4) and 144(1), section 146.01, subsection 149(1), sections 152 and 155 and subsections 156.1(1), 157(3) and 159(2).

**(3)** If section 13 of this Act comes into force before section 347 of the other Act, then, on the day on which that section 347 comes into force, section 145.1 of the *Canada Labour Code* is replaced by the following:

### Powers, duties and functions

**145.1** For the purposes of sections 146 to 146.5, the Board has all of the powers, duties and functions of the Minister under this Part, except for those referred to in section 130, subsections 135(6), 137.1(1) to (2.1) and (7) to (9), 137.2(4), 138(1) to (2) and (4) to (6), section 139, subsections 140(1), (2) and (4) and 144(1), section 146.01, subsection 149(1), sections 152 and 155 and subsections 156.1(1), 157(3) and 159(2).

**(4)** If section 347 of the other Act comes into force on the same day as section 13 of this Act, then that section 13 is deemed to have come into force

*travail*, dans sa version antérieure à la date d'entrée en vigueur de l'article 7, qui est reçue par le ministre avant cette date est traitée conformément aux paragraphes 135(3) à (5) de cette loi, dans leur version antérieure à cette date. En cas d'approbation de la demande à cette date ou après cette date, l'exemption peut être accordée pour une durée maximale d'un an.

## Dispositions de coordination

2017, ch. 20

**19 (1)** Au présent article, *autre loi* s'entend de la *Loi n° 1 d'exécution du budget de 2017*.

**(2)** Si l'article 347 de l'autre loi entre en vigueur avant l'article 13 de la présente loi, cet article 13 est remplacé par ce qui suit :

**13** L'article 145.1 de la même loi est remplacé par ce qui suit :

### Attributions

**145.1** Pour l'application des articles 146 à 146.5, le Conseil est investi des mêmes attributions que le ministre sous le régime de la présente partie, à l'exception de celles prévues à l'article 130, aux paragraphes 135(6), 137.1(1) à (2.1) et (7) à (9), 137.2(4), 138(1) à (2) et (4) à (6), à l'article 139, aux paragraphes 140(1), (2) et (4) et 144(1), à l'article 146.01, au paragraphe 149(1), aux articles 152 et 155 et aux paragraphes 156.1(1), 157(3) et 159(2).

**(3)** Si l'article 13 de la présente loi entre en vigueur avant l'article 347 de l'autre loi, à la date d'entrée en vigueur de cet article 347, l'article 145.1 du *Code canadien du travail* est remplacé par ce qui suit :

### Attributions

**145.1** Pour l'application des articles 146 à 146.5, le Conseil est investi des mêmes attributions que le ministre sous le régime de la présente partie, à l'exception de celles prévues à l'article 130, aux paragraphes 135(6), 137.1(1) à (2.1) et (7) à (9), 137.2(4), 138(1) à (2) et (4) à (6), à l'article 139, aux paragraphes 140(1), (2) et (4) et 144(1), à l'article 146.01, au paragraphe 149(1), aux articles 152 et 155 et aux paragraphes 156.1(1), 157(3) et 159(2).

**(4)** Si l'entrée en vigueur de l'article 347 de l'autre loi et celle de l'article 13 de la présente loi sont concomitantes, cet article 13 est réputé être entré

before that section 347 and subsection (3) applies as a consequence.

## Coming into Force

### Order in council

**20 (1)** Sections 0.1 to 16 and 18 come into force on a day to be fixed by order of the Governor in Council.

5

### Order in council

**(2)** Section 17 comes into force on a day to be fixed by order of the Governor in Council but that day must not be earlier than the day on which section 377 of the *Budget Implementation Act, 2017, No. 1* comes into force.

10

## PART 2

R.S., c. 33 (2nd Supp.)

# Parliamentary Employment and Staff Relations Act

## Amendments to the Act

**21** Part III of the *Parliamentary Employment and Staff Relations Act* is replaced by the following:

## PART III

# Occupational Health and Safety

15

## Interpretation

### Definitions

**87 (1)** The following definitions apply in this Part.

**Board** has the same meaning as in section 3. (*Commission*)

**employee** means a person employed by an employer and includes the person occupying the recognized position of Clerk of the Senate, Clerk of the House of Commons, Gentleman Usher of the Black Rod, Sergeant-at-Arms or Law Clerk and Parliamentary Counsel of the House of Commons. (*employé*)

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en vigueur avant cet article 347, le paragraphe (3) s'appliquant en conséquence.

## Entrée en vigueur

### Décret

**20 (1)** Les articles 0.1 à 16 et 18 entrent en vigueur à la date fixée par décret.

### Décret

**(2)** L'article 17 entre en vigueur à la date fixée par décret, mais cette date ne peut être antérieure à la date d'entrée en vigueur de l'article 377 de la *Loi n° 1 d'exécution du budget de 2017*.

5

## PARTIE 2

L.R., ch. 33 (2<sup>e</sup> suppl.)

# Loi sur les relations de travail au Parlement

## Modification de la loi

**21** La partie III de la *Loi sur les relations de travail au Parlement* est remplacée par ce qui suit :

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## PARTIE III

# Santé et sécurité au travail

## Définitions

### Définitions

**87 (1)** Les définitions qui suivent s'appliquent à la présente partie.

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**Commission** S'entend au sens de l'article 3. (*Board*)

**employé** Personne attachée à un employeur. La présente définition vise également la personne qui exerce les fonctions reconnues de greffier du Sénat, de greffier de la Chambre des communes, de gentilhomme huissier de la verge noire, de sergent d'armes ou de conseiller parlementaire de la Chambre des communes. (*employee*)

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**employer** means

- (a) the Senate as represented by any committee or person that the Senate by its rules or orders designates for the purposes of this Part;
- (b) the House of Commons as represented by any committee or person that the House of Commons by its orders designates for the purposes of this Part;
- (c) the Library of Parliament as represented by the Parliamentary Librarian acting, subject to subsection 74(1) of the *Parliament of Canada Act*, on behalf of both Houses of Parliament;
- (d) the office of the Senate Ethics Officer as represented by the Senate Ethics Officer;
- (e) the office of the Conflict of Interest and Ethics Commissioner as represented by the Conflict of Interest and Ethics Commissioner;
- (f) the Parliamentary Protective Service as represented by the Director of the Parliamentary Protective Service on behalf of the Speakers of the two Houses of Parliament;
- (g) the office of the Parliamentary Budget Officer as represented by the Parliamentary Budget Officer;
- (h) a member of the House of Commons who employs one or more persons or who has the direction or control of staff employed to provide research or associated services to the caucus members of a political party represented in the House of Commons;
- (i) in the case of a person occupying the recognized position of Clerk of the Senate, Clerk of the House of Commons, Gentleman Usher of the Black Rod, Sergeant-at-Arms or Law Clerk and Parliamentary Counsel of the House of Commons, the Senate or the House of Commons, as the case may be, as represented by the committee or person described in paragraph (a) or (b); or
- (j) any other person who is recognized as an employer in regulations made under subsection 19.5(1) of the *Parliament of Canada Act* or by-laws made under section 52.5 of that Act. (*employeur*)

**Meaning of employer**

(2) The definition *employer* in subsection (1) includes any person who acts on behalf of an employer.

**employeur**

- a) Le Sénat, représenté par la personne ou le comité qu'il désigne pour l'application de la présente partie par une règle ou un ordre;
- b) la Chambre des communes, représentée par la personne ou le comité qu'elle désigne pour l'application de la présente partie par un ordre;
- c) la Bibliothèque du Parlement, représentée par le bibliothécaire parlementaire agissant, sous réserve du paragraphe 74(1) de la *Loi sur le Parlement du Canada*, au nom des deux chambres;
- d) le bureau du conseiller sénatorial en éthique, représenté par le conseiller sénatorial en éthique;
- e) le bureau du commissaire aux conflits d'intérêts et à l'éthique, représenté par le commissaire aux conflits d'intérêts et à l'éthique;
- f) le Service de protection parlementaire, représenté par le directeur du Service de protection parlementaire agissant au nom des présidents des deux chambres;
- g) le bureau du directeur parlementaire du budget, représenté par le directeur parlementaire du budget;
- h) le député qui emploie une ou plusieurs personnes ou qui a sous sa direction ou sa responsabilité des documentalistes ou des personnes chargées de fonctions similaires affectés au service des députés d'un parti politique représenté à la Chambre des communes;
- i) à l'égard de la personne qui exerce les fonctions reconnues de greffier du Sénat, de greffier de la Chambre des communes, de gentilhomme huissier de la verge noire, de sergent d'armes ou de conseiller parlementaire de la Chambre des communes, le Sénat ou la Chambre des communes, selon le cas, représenté par la personne ou le comité visé aux alinéas a) ou b);
- j) toute autre personne qui est reconnue comme un employeur dans un règlement pris en vertu du paragraphe 19.5(1) de la *Loi sur le Parlement du Canada* ou dans un règlement administratif pris en vertu de l'article 52.5 de cette loi. (*employeur*)

**Employeur**

(2) La définition de *employeur* au paragraphe (1) vise également quiconque agit pour le compte de l'employeur.

## Canada Labour Code (Part II)

### Application

**88 (1)** Part II of the *Canada Labour Code*, other than subsections 134(2) and (3) and sections 152 and 153, applies to and in respect of an employer and employees, in the same manner and to the same extent as if the employer were a federal work, undertaking or business and the employees were employees to and in respect of which that Part applies except that, for the purpose of that application,

(a) any reference in that Part to

(i) “arbitration” is to be read as a reference to adjudication within the meaning of Part I of this Act,

(ii) “Board” and “collective agreement” are to be read as references to those expressions as defined in section 3 of this Act,

(iii) “employee” and “employer” are to be read as references to those expressions as defined in subsection 87(1) of this Act, and

(iv) “trade union” is to be read as a reference to an *employee organization* as defined in section 3 of this Act;

(b) Part I of this Act applies, with any modifications that the circumstances require, in respect of matters brought before the Board under Part II of the *Canada Labour Code* to the extent necessary to give effect to that purpose; and

(c) matters brought before the Board under Part II of the *Canada Labour Code* may be heard and determined only by a *member* as defined in section 3 of this Act.

### Application to other persons

(2) This Part also applies to any person who is not an employee but who performs for an employer activities whose primary purpose is to enable the person to acquire knowledge or experience, and to the employer, as if that person were an employee of the employer.

### Deputy Minister of Labour

**88.01 (1)** For the purposes of this Part, the Deputy Minister of Labour shall exercise the powers and perform the duties and functions of the Minister of Labour under this Part and under Part II of the *Canada Labour Code* involving a member of the Senate or their staff or a member of the House of Commons or their employees.

## Partie II du Code canadien du travail

### Application

**88 (1)** La partie II du *Code canadien du travail*, sauf les paragraphes 134(2) et (3) et les articles 152 et 153, s'applique à l'employeur et à ses employés comme si l'employeur était une entreprise fédérale et ses employés étaient les employés visés par cette partie; cependant, à cette fin :

a) toute mention de :

(i) **arbitrage** s'entend d'un arbitrage au sens de la partie I de la présente loi,

(ii) **Conseil** s'entend de la *Commission* et **convention collective** s'entend au sens de l'article 3 de la présente loi,

(iii) **employé** et **employeur** s'entendent au sens du paragraphe 87(1) de la présente loi,

(iv) **syndicat** s'entend d'une *organisation syndicale* au sens de l'article 3 de la présente loi;

b) la partie I s'applique, compte tenu des adaptations de circonstance, aux affaires dont est saisie la Commission au titre de la partie II du *Code canadien du travail*;

c) les affaires dont est saisie la Commission au titre de la partie II du *Code canadien du travail* ne peuvent être tranchées que par un *commissaire* au sens de l'article 3 de la présente loi.

### Application : autres personnes

(2) La présente partie s'applique également à toute personne qui n'est pas un employé et qui exerce pour un employeur des activités qui visent principalement à permettre à la personne d'acquérir des connaissances ou de l'expérience, ainsi qu'à l'employeur, comme si la personne était un employé de celui-ci.

### Sous-ministre du Travail

**88.01 (1)** Pour l'application de la présente partie, le sous-ministre du Travail exerce les attributions du ministre du Travail prévues à la présente partie et à la partie II du *Code canadien du travail* concernant un sénateur ou son personnel ou un député ou ses employés.

### Tabling of directions

(2) If the Deputy Minister of Labour exercises the powers or performs the duties and functions set out in section 88.3 or paragraph 88.4(b), he or she shall provide the direction referred to in that section or that paragraph to the Speaker of the Senate or the Speaker of the House of Commons, or both, who shall each table the direction in the House over which he or she presides.

### Minister to notify Speakers

88.1 The Minister of Labour shall notify the Speaker of the Senate or the Speaker of the House of Commons, or both, of the Minister's intention to enter, under subsection 141(1) of the *Canada Labour Code*, a work place controlled by an employer. The Minister shall also notify the Speaker of the Senate or the Speaker of the House of Commons, or both, as soon as possible after the Minister

(a) commences an investigation under Part II of that Act in relation to an employer or an employee; or

(b) issues a direction to an employer or an employee under that Part.

### Board to notify Speakers

88.2 (1) The Board shall notify the Speaker of the Senate or the Speaker of the House of Commons, or both, as soon as possible after

(a) the Board receives a complaint under subsection 133(1) of the *Canada Labour Code* in relation to an employer; or

(b) an appeal of a direction issued to an employer or an employee is brought under subsection 146(1) of the *Canada Labour Code*.

### Power of Speakers

(2) If the Speaker of the Senate or the Speaker of the House of Commons is notified that an appeal has been brought,

(a) the Board shall, at the Speaker's request, provide to the Speaker a copy of any document that is filed with the Board in the appeal and that is necessary to enable the Speaker to present evidence and make representations under paragraph (b); and

(b) the Speaker may present evidence and make representations to the Board in the appeal.

### Dépôt des ordres ou instructions

(2) Lorsqu'il exerce les attributions prévues à l'article 88.3 ou à l'alinéa 88.4b), le sous-ministre remet au président du Sénat ou à celui de la Chambre des communes, ou aux deux, l'ordre ou l'instruction visé à cet article ou à cet alinéa pour dépôt devant leurs chambres respectives.

### Avis du ministre aux présidents

88.1 Le ministre du Travail avise le président du Sénat ou de la Chambre des communes, ou les deux, de son intention d'entrer, en vertu du paragraphe 141(1) du *Code canadien du travail*, dans tout lieu de travail sous l'entière autorité d'un employeur. Le ministre avise également le président du Sénat ou de la Chambre des communes, ou les deux, dès que possible, si :

a) il commence une enquête, au titre de la partie II du *Code canadien du travail*, relative à un employeur ou un employé;

b) il donne des ordres ou des instructions à un employeur ou à un employé au titre de cette partie.

### Avis de la Commission aux présidents

88.2 (1) La Commission avise, dès que possible, le président du Sénat ou de la Chambre des communes, ou les deux, si :

a) elle reçoit une plainte, au titre du paragraphe 133(1) du *Code canadien du travail*, relative à un employeur;

b) un appel des instructions données à un employeur ou à un employé a été interjeté en vertu du paragraphe 146(1) de cette loi.

### Pouvoirs du président

(2) Dans le cas où le président est avisé qu'un appel a été interjeté :

a) la Commission lui fournit, sur demande, une copie des documents déposés auprès d'elle dans le cadre de l'appel qui sont nécessaires pour que le président puisse exercer le droit prévu à l'alinéa b);

b) le président peut, dans le cadre de l'appel, présenter à la Commission ses observations et des éléments de preuve.

### Direction of Minister not complied with

**88.3** The Minister of Labour shall cause to be tabled in the Senate or the House of Commons, or both, a direction that is issued to an employer or an employee under Part II of the *Canada Labour Code* if the direction is not complied with within the period provided for in the direction and it is not appealed within the period provided for in that Part. The Minister shall cause the direction to be tabled within a reasonable time after the later of the expiry of the period for compliance and the expiry of the appeal period.

### Exceptional circumstances

**88.4** If the Minister of Labour considers that exceptional circumstances require that immediate action be taken to prevent a contravention of Part II of the *Canada Labour Code* by an employer or an employee,

(a) the Minister shall provide a copy of any direction issued to an employer or an employee under that Part to the Speaker of the Senate or the Speaker of the House of Commons, or both; and

(b) despite section 88.3, the Minister may, before the expiry of the appeal period, cause to be tabled a direction referred to in paragraph (a) in the Senate or the House of Commons, or both, if that direction is not complied with within the period provided for in the direction.

### Order, decision or direction of Board not complied with

**88.5** The Board shall, at the request of the Minister of Labour or any person affected by an order or decision made or a direction issued with respect to an employer or an employee by the Board under Part II of the *Canada Labour Code*, cause the order, decision or direction to be tabled in the Senate or the House of Commons, or both, if it is not complied with within the period provided for in the order, decision or direction. The Board shall cause the order, decision or direction to be tabled within a reasonable time after receiving the request.

### Powers, privileges and immunities

**88.6** For greater certainty, nothing in this Part shall be construed as limiting in any way the powers, privileges and immunities of the Senate and the House of Commons and their members or as authorizing the exercise of a power or the performance of a function or duty by virtue of this Part if the exercise of that power or the performance of that function or duty would interfere, directly or indirectly, with the business of the Senate or the House of Commons.

### Défaut d'exécution des ordres ou instructions du ministre

**88.3** Le ministre du Travail fait déposer devant le Sénat ou la Chambre des communes, ou les deux, tout ordre ou instruction donné à un employeur ou à un employé au titre de la partie II du *Code canadien du travail* si l'ordre ou l'instruction n'a pas été exécuté dans le délai qui y est fixé et qu'aucun appel de cet ordre ou instruction n'est interjeté dans le délai prévu dans cette partie. Le dépôt est fait dans un délai raisonnable après l'expiration du délai d'exécution ou du délai d'appel, si celui-ci expire en dernier.

### Circonstances exceptionnelles

**88.4** Si le ministre du Travail estime que des circonstances exceptionnelles exigent la prise de mesures immédiates pour prévenir une contravention à la partie II du *Code canadien du travail* par l'employeur ou l'employé :

a) le ministre fournit au président du Sénat ou de la Chambre des communes, ou aux deux, une copie de l'ordre ou de l'instruction donné à un employeur ou à un employé au titre de cette partie;

b) malgré l'article 88.3, le ministre peut faire déposer, avant l'expiration du délai d'appel, devant le Sénat ou la Chambre des communes, ou les deux, l'ordre ou l'instruction visé à l'alinéa a) qui n'a pas été exécuté dans le délai qui y est fixé.

### Défaut d'exécution des ordonnances, décisions ou instructions de la Commission

**88.5** Sur demande du ministre du Travail ou de toute personne concernée par l'ordonnance, la décision ou l'instruction et dans un délai raisonnable après la réception de la demande, la Commission fait déposer devant le Sénat ou la Chambre des communes, ou les deux, toute ordonnance ou décision qu'elle a rendue ou toute instruction qu'elle a donnée au titre de la partie II du *Code canadien du travail* à l'égard d'un employeur ou d'un employé si l'ordonnance, la décision ou l'instruction n'a pas été exécutée dans le délai qui y est fixé.

### Pouvoirs, privilèges et immunités

**88.6** Il est entendu que les dispositions de la présente partie n'ont pas pour effet de restreindre de quelque façon les pouvoirs, privilèges et immunités du Sénat, de la Chambre des communes, des sénateurs et des députés ou d'autoriser l'exercice de toute attribution conférée par application de ces dispositions qui porterait atteinte, directement ou indirectement, aux affaires du Sénat ou de la Chambre des communes.

## Annual report — Board

**88.7** The Board shall, as soon as possible after the end of each year, submit a report for that year on its activities under this Part and under Part II of the *Canada Labour Code*, as it applies to employers and employees, to the Minister designated as the Minister for the purposes of the *Federal Public Sector Labour Relations and Employment Board Act*. The Minister shall cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the day on which the Minister receives it.

## Five-year review

**88.8 (1)** Five years after the day on which this Part comes into force and every five years after that, the Minister designated as the Minister for the purposes of this Act shall commence a review of the application, in relation to harassment and violence, of the provisions of this Part. At the conclusion of the review, the Minister shall prepare a report on the review.

## Report to be tabled

**(2)** The Minister shall cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the day on which the report is completed.

## Coordinating Amendment

2017, c. 20

**22** On the day on which section 21 of this Act and section 394 of the *Budget Implementation Act, 2017, No. 1* come into force, that section 394 is deemed to have come into force before that section 21.

## Coming into Force

2017, c. 20

**23** Section 21 comes into force on the later of the day on which this Act receives royal assent and the day fixed under subsection 402(1) of the *Budget Implementation Act, 2017, No. 1*.

## Rapport annuel — Commission

**88.7** Au tout début de chaque année, la Commission soumet, dans les meilleurs délais, au ministre désigné à titre de ministre pour l'application de la *Loi sur la Commission des relations de travail et de l'emploi dans le secteur public fédéral*, un rapport portant sur ses activités pendant l'année précédente menées en vertu de la présente partie et, dans la mesure où elle s'applique aux employeurs et employés, au titre de la partie II du *Code canadien du travail*. Celui-ci le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

## Examen quinquennal

**88.8 (1)** Cinq ans après l'entrée en vigueur de la présente partie, et tous les cinq ans par la suite, le ministre désigné à titre de ministre chargé de l'application de la présente loi commence l'examen de l'application des dispositions de cette partie relativement au harcèlement et à la violence. Suivant l'achèvement de l'examen, il prépare un rapport sur ce dernier.

## Dépôt du rapport

**(2)** Le ministre fait déposer le rapport devant chaque chambre du Parlement, dans les quinze premiers jours de séance de celle-ci, suivant son achèvement.

## Disposition de coordination

2017, ch. 20

**22** À la date d'entrée en vigueur de l'article 21 de la présente loi et de l'article 394 de la *Loi n° 1 d'exécution du budget de 2017*, cet article 394 est réputé être entré en vigueur avant cet article 21.

## Entrée en vigueur

2017, ch. 20

**23** L'article 21 entre en vigueur à la sanction de la présente loi ou, si elle est postérieure, à la date d'entrée en vigueur du paragraphe 402(1) de la *Loi n° 1 d'exécution du budget de 2017*.

### **PART 3**

2017, c. 20

## **Budget Implementation Act, 2017, No. 1**

**24** Section 382 of the *Budget Implementation Act, 2017, No. 1* is replaced by the following:

**Appeals – subsection 129(7) or 146(1)**

**382** The *Canada Labour Code*, as it read immediately before the day on which this section comes into force, applies with respect to any appeal made before that day under subsection 129(7) or 146(1) of that Act. 5

### **PARTIE 3**

2017, ch. 20

## **Loi n° 1 d'exécution du budget de 2017**

**24** L'article 382 de la *Loi n° 1 d'exécution du budget de 2017* est remplacé par ce qui suit :

**Appels – paragraphes 129(7) ou 146(1)**

**382** Le *Code canadien du travail*, dans sa version antérieure à la date d'entrée en vigueur du présent article, s'applique à l'égard des appels interjetés avant cette date au titre des paragraphes 129(7) ou 146(1) de cette loi. 5



# Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU

## WOMEN'S RIGHTS & GENDER EQUALITY



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**WOMEN'S RIGHTS & GENDER EQUALITY**

**Bullying and sexual harassment at the  
workplace, in public spaces, and in  
political life in the EU**

**STUDY**

**Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality (FEMM), provides a broad account and an in-depth analysis of bullying and sexual harassment in the workplace, in public spaces and in political life. In this study trends in understanding of phenomena are acknowledged, status and progress in research is accounted for, key issues of controversies and debate are identified and recommendations for actions and intervention are provided.

## **ABOUT THE PUBLICATION**

This research paper was requested by the European Parliament's Committee on Women's Rights and Gender Equality and commissioned, overseen and published by the Policy Department for Citizen's Rights and Constitutional Affairs.

Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

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## LIST OF ABBREVIATIONS

<b>BUSINESSEUROPE</b>	Confederation of European Business
<b>CEEP</b>	European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest
<b>ETUC/CES</b>	European Trade Union Confederation
<b>EPSU</b>	European Public Service Union
<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>EWCS</b>	European Working Conditions Survey
<b>PTSD</b>	Post Traumatic Stress Disorder
<b>UEAPME</b>	European Association of Craft Small- and Medium-sized Enterprises

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## EXECUTIVE SUMMARY

### Background

It is recognised that bullying and sexual harassment continue to represent serious problems in a variety of social settings including the workplace, in public spaces and in political life. Whilst 30 years of research and practical efforts to counteract and deal with these issues have brought about considerable progress, particularly regarding bullying, uncertainties still remain with respect to the understanding of the phenomena, their prevalence, their causes and consequences, as well as with the effectiveness of intervention.

This study provides an updated account with respect to how far we have travelled whilst pointing out which issues and challenges remain to be resolved.

### Aims

- To provide a broad-ranging account of the issues under consideration with a focus on key findings from research and public debate.
- To evaluate the strengths and weaknesses of research and public debate and identify any emerging trends.
- To identify key actions taken or advocated and to evaluate their respective strengths and weaknesses.

### Key findings

- Understanding of the term bullying is continuing to converge, focusing on repeated and prolonged exposure to unwanted/negative behaviour against which targets find it hard to defend themselves.
- Whilst considerable agreement exists regarding the general definition of sexual harassment, more uncertainty and disagreement remain with respect to the less serious offences associated with it, although in light of the current debates (including #metoo) boundaries for what is considered unacceptable behaviour are being redrawn.
- The rapid rise in the use of social media and electronic devices such as mobile phones is likely to impact on the forms and experience of bullying and sexual harassment.
- 5-10% of the European workforce is at any one time subjected to bullying at the workplace.
- Prevalence figures for sexual harassment are uncertain with large discrepancies emerging between studies, and the recent public debate suggests that real figures are higher than often suggested.
- Tolerance towards sexual harassment is a key factor in maintaining and reproducing the problem. It varies between EU-countries, even between countries which in other respects are economically and culturally very similar, including with respect to perceived gender equality.

- Sexual harassment/violence against women (and some men) in various arenas of life are interrelated and its presence in one area fuels its presence and reproduction in others. Paradoxically, sexual harassment also represents a substantial problem in countries which otherwise have achieved a high degree of gender equality.
- Whilst sexual harassment primarily is a problem for women, young women in particular, more men than previously suggested are exposed to sexual harassment.
- Members of protected groups, in particular young people, disabled, lesbians, gay men and bisexuals, are over-represented among those reporting bullying and unfair treatment.
- Role conflict, destructive forms of leadership (e.g. laissez-faire) and the inability to deal with workplace conflict are the main organisational antecedents of bullying, suggesting that the behaviour of leaders is key to prevention of bullying.
- Bullying and sexual harassment should be recognised as severe psychosocial stressors with impact on targets' health and wellbeing, organisational functioning and career prospects. However, sexual harassment cannot be reduced to an occupational hazard alone, but must be understood in the light of (male) power and wider gender equality.
- In terms of bullying, whilst personal resilience may protect against low level bullying, if the exposure is sufficiently frequent and severe no-one would be able to resist.
- High frequency of exposure to low levels of sexual harassment has equally negative effects as very severe but infrequent experience.
- Although difficult to estimate accurately, the cost of bullying (and sexual harassment) to the organisation and to society is very substantial.
- Sexual harassment in public spaces is widespread and often normalised, taking place in crowded places or under the influence of alcohol consumption, sometimes reinforced by cultural values which celebrate hyper-masculinity.
- With a shift of focus from a problem associated with dark and isolated spaces to one where offences often take place in public, in close proximity to others, the role of bystander intervention comes to the fore with greater focus needed on how such involvement can be encouraged.
- Sexual harassment is a widespread problem in political life, where abuse of power combines with a culture of political recruitment and patronage and pressure for silence and loyalty, including delusional party loyalty.
- In terms of prevention, the action-oriented Framework Agreement on Harassment and Violence between the European Social partners with its request for organisational policies and procedures, impartial investigation of complaints and social support to those affected, is particularly promising and its spread and uptake should be supported. To protect workers in non-unionised workplaces and to create a level playing field, the EU might consider turning it into a directive.
- Policies are the most widespread organisational measures in place against bullying and harassment, although their effectiveness should be subject to regular monitoring and improvement.
- Whilst confidentiality in cases of bullying and sexual harassment is essential, anonymity should be avoided as it violates perceptions of natural justice, with

anyone accused being given the opportunity to defend themselves against the accusations and considered innocent until guilt is proven.

- Measures which may make it easier to report sexual harassment in public spaces including online reporting to the police should be considered.
- Political institutions should not rely on political parties policing themselves but should introduce policies and behavioural guidelines for elected members and staff, with fair complaint procedures.
- Alternative conflict resolution methods such as voluntary mediation can sometimes play a constructive role in early phases of bullying. It is inappropriate and unreasonable, though, to apply mediation to cases of sexual harassment where someone's rights are considered breached, requiring a public response with opportunity for sanction and learning.

## 1. CONCEPTUAL CLARIFICATIONS: DEFINING BULLYING AND SEXUAL HARASSMENT

### KEY FINDINGS

- Although lay understanding of bullying may diverge somewhat from definitions used by researchers, definitions have continued to converge, focusing on the following characteristics: repeated or persistent exposure to negative acts over a prolonged period of time, and perceived powerlessness of the targets.
- Although less discussion (and research) has taken place on sexual harassment, there is considerable overlap between lay and research definitions, both focusing on unwanted and undignified exposure to behaviour ranging from sexism and unwanted sexual attention, to sexual assault.
- Recent widespread public debate including on social media is contributing to redrawing boundaries of what is considered sexual harassment and acceptable behaviour.
- Despite a large degree of overlap, some national cultural differences exist with respect to what behaviour constitutes bullying and, more so, sexual harassment.

### 1.1. Bullying and sexual harassment – background

Interest in workplace bullying started in Sweden in the 1980s, where Heinz Leymann pioneered research by systematically exploring the phenomenon empirically and through his writings and media appearances aroused considerable public debate in the early 1990s. Inspired by Leymann's work and studies on school bullying, the first arena to apply the term, research and public interest in workplace bullying quickly expanded, first to the other Scandinavian countries, and soon thereafter to other European countries. Over the last two decades research into the phenomenon has spread to all EU countries although with some exceptions (e.g. Slovenia) public debate and general interest appear to be concentrated within the old EU-15 countries.

Although terms other than bullying are being used in some countries (e.g. mobbing in Germany, Italy and Poland; moral harassment in France), their meaning largely overlaps with that of bullying. The term 'harassment' is of particular interest as it is the legal term most frequently used to account for the problem, whether used on its own or in conjunction with bullying. Thus, the European Agency for Safety and Health at Work (EU-OSHA) has used both 'harassment' and 'bullying and harassment'. Equally, the Framework Agreement on harassment and violence at work by the EU social partners (BUSINESS EUROPE, CEEP, UEAPME, ETUC/CES, 2007) (Framework Agreement), uses the term 'harassment'. It is also the case that the term 'harassment' when used interchangeably with 'bullying' is sometimes confused with 'sexual harassment'. In other arenas, such as political life, the term is often used more loosely to account for any form of perceived intimidation, whether repeated or not.

Interest in the issue of sexual harassment first emerged North America in the late 1970s with the term sexual harassment coined by Catharine McKinnon in 1979, where much of early research and discussion focused on education and the workplace. European interest in the issue emerged a few years later with the term being applied for the first time in sex-

discrimination cases in the late 1980s. It has been said that more time has been spent on defining the problem than actually researching the phenomenon itself (MacDonald, 2012). Whilst difficult to operationalise, the pervasiveness of the problem was recognised early. Following a surge in European interest and research in the 1990s, much less focus has been given to the problem in more recent years, particularly by the research community, where bullying has received far more attention. However, this is likely to change in the aftermath of the Weinstein revelations and the enormous interest this has caused through debate in the press and on social media (e.g. #metoo) in much of Europe.

## 1.2. Bullying in the workplace – defining the phenomenon

No single uniform definition of bullying exists. Although complete agreement on definition has yet to emerge, European definitions have continued to converge (Di Martino et al., 2003) focusing on persistent and prolonged exposure to negative and aggressive behaviours of a primarily psychological nature. Although some definitions put less weight on persistency of exposure, research has consistently showed that more than any other factor it is the repeated nature of the phenomenon which makes it so damaging, qualitatively changing the nature of the experience. Still, it is acknowledged that in some cases individual acts may be so devastating or have such a lasting impact that they can constitute bullying in their own right. A further central feature of the phenomenon is the imbalance of power, which prevents targets from successfully defending themselves, whether the imbalance precedes the bullying (e.g. due to hierarchical position, experience or social capital) or emerging during the conflict. Whilst some definitions include 'intent or purpose to cause harm', most choose to leave it out as intent is hard to prove, and, more importantly, the fact that someone has no intent to harm does not free them from responsibility for their actions, particularly when they ought to know or have been made aware that the behaviour is unwanted (see Einarsen et al., 2011).

In the Framework Agreement, harassment is defined as follows: '*Harassment occurs when one or more workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work*'.

Despite some differences in definitions bullying at work is characterized by four main criteria:

- the target is exposed to direct or indirect, unwanted, negative acts of a non-sexual and mainly non-violent nature;
- the negative acts are repeated and regular, bullying is not about isolated episodes or events;
- the negative acts take place over a prolonged time period;
- a real or perceived imbalance of power between the bully and the target; the target perceives that he or she is incapable of neutralising or stopping the negative behaviours and feels powerless in the situation.

Examples of definitions of bullying are given in Annex 1.

The negative behaviours possibly involved in bullying are numerous; however, some distinct categories have been identified. The most common classification makes a distinction between '*work-related bullying*' (e.g. persistent 'criticism of one's work and effort, being given tasks with impossible targets or deadlines, having one's opinions and views ignored); '*personal bullying*' (e.g. being humiliated or ridiculed in connection with work, being the subject of excessive teasing and sarcasm, having rumours and gossip spread about you) and '*social exclusion*' (e.g. being ignored, being socially excluded from ones' work team or from social events). Social exclusion, the type of behaviour which

appears to have the greatest negative consequences affects the targets' opportunity to fulfil their tasks and personal needs. Cyberbullying, bullying or harassment using electronic means, is a later form of bullying.

The term 'bullying at work' is mainly used to account for frequent and persistent negative acts inside the workplace, by superiors (managers/supervisors), colleagues or sometimes even subordinates. The term is often also used of situations where an employee is exposed to negative or inappropriate behaviour from third parties. Hence, the Framework Agreement recognises that violence and harassment can take place 'amongst colleagues', 'between supervisor and subordinates', or 'by third parties such as clients, customers and patients'. By contrast, the definition used by EU-OSHA only focuses on colleagues or superiors, implicitly excluding negative acts from third parties.

Outside Europe (in the US and Asia) the term 'incivility' has been used to account for low-intensity deviant behaviour with ambiguous intent to harm the target, in violation of workplace norms of mutual respect, with some studies also emerging within the EU context including Sweden (e.g. Torkelson et al., 2016). As there appears to be very considerable overlap between 'incivility' and less serious incidents of workplace bullying (questionnaires measuring incivility contain a number of items used in bullying instruments), there seems to be little need to acknowledge this as a separate phenomenon altogether.

One of the key strengths of European bullying research is the ability to stick to one term to describe this phenomenon despite minor differences in understanding rather than going down the road of US research where the field is split into a series of related concepts. The fact that bullying, in most researchers' views, reflects repeated and prolonged exposure, however, does not mean that society and organisations can ignore the possible negative impact of single, isolated negative acts, but rather must take steps to counteract such acts which breach normative perceptions of what is considered acceptable or dignified treatment.

### **1.3. Sexual harassment – defining the phenomenon**

The term sexual harassment refers to unwanted conduct of a sexual nature. Sexual harassment violates one's self-determination, targets feel intimidated and/or humiliated.

EU-Directive 2002/73/EC (Equal treatment in access to employment) defines sexual harassment as a situation: 'where any form of unwanted verbal, non-verbal or physical conduct of sexual nature occurs, with a purpose or effect of violating the dignity of a person, in particular when creating and intimidating, hostile, degrading, humiliating or offensive environment'.

Sexual harassment involves a range of behaviours:

- Non-verbal - (e.g. sexually suggestive gestures, display of sexual material)
- Verbal - (e.g. sexually suggestive comments or jokes)
- Physical - (touching, hugging, kissing, rape)
- Cyber - (offensive, sexually explicit e-mails or SMS messages, offensive, inappropriate advances on social networking sites)

From a research perspective, the above behaviour has often been categorised as follows: general sexist remarks/behaviour; inappropriate sexual advances; sexual request (explicitly or implicitly) in exchange for sexual favour (*quid pro quo*); and coercive sexual activities including threat of punishment or sexual assault. Thus, definitions emphasise a distinction between two factors: type and severity of behaviour/acts.

Whilst the phenomenon appears to be understood in a similar way, and considerable overlap exists between legal, research and lay definitions, perceptions of how boundaries

should be drawn may differ. A recent poll by YouGov including 8,490 men and women from Germany, Great Britain, France, Denmark, Sweden, Finland and Norway explored how definitions and boundaries of what is considered sexual harassment differ from country to country, and found that Danes and Germans were least likely to consider an action as sexual harassment. People in Great Britain, France and Finland shared a broad idea of what constitutes sexual harassment. [www.thelocal.de/20171110/germany-one-of-the-most-tolerant-countries-to-sexist-jokes-in-europe-survey-reveals](http://www.thelocal.de/20171110/germany-one-of-the-most-tolerant-countries-to-sexist-jokes-in-europe-survey-reveals)

The recent media debate and widespread revelations about sexual harassment cases (e.g. #metoo) and the subsequent condemnations of harassers and their behaviour, suggests that the understanding of what constitutes sexual harassment is changing with the boundaries for what is considered sexual acceptable behaviour being redrawn, although development in individual EU countries is likely to be somewhat uneven. Whilst this means that behaviour previously considered trivial or bothersome may now be seen as offensive and damaging, it is important to avoid considering all sexual harassment as equally bad, with the aim of arriving at a shared societal understanding of severity. Not only will severity of acts impact on outcomes/type of sanction, if no clear distinction is made between such acts, targets may be reluctant to report an offensive but less serious act/s due to the serious consequences it might have for the perpetrator (for example a boss or a colleague).

As the term harassment at times is used interchangeably with bullying, in some jurisdictions (e.g. Denmark and the UK) it is applied only to repeated unwanted behaviour. Where no further nuanced measures are in place to address one-off offences or what are considered to be relatively minor undignified acts or offences, this could leave victims of sexual harassment without any recourse when exposed to such behaviours.

#### **1.4. Recommendations**

To avoid unnecessary confusion the EU and its various institutions should develop and apply a shared definition of workplace bullying.

To get a better understanding of how sexual harassment is experienced today in 2018, researchers need to listen to women's voices and their stories. It is still important to establish normative standards for behavioural breaches and their perceived severity. In this respect, the need to develop a more calibrated vocabulary for less serious offences should be considered.

To stimulate further national debates on sexual harassment and standards for acceptable behaviour, the EU should engage in this debate internally and externally. This could assist in highlighting the problem also in those national contexts where it is rarely discussed, with the aim of pushing boundaries in a more restrictive direction.

For researchers and policy-makers to fully comprehend women's experience of sexual harassment, whether at work or in other life arenas, they need to acknowledge that these manifestations of violence against women are interconnected and that, when present, they fuel and reproduce each other. This means that to fully comprehend and address the issue successfully a holistic approach must be undertaken.

## 2. EMPIRICAL EVIDENCE OF BULLYING AND SEXUAL HARASSMENT AT WORK

### KEY FINDINGS

- A sharp rise in research interest in workplace bullying with scientific interest established in many EU countries shows that bullying is a common workplace problem of a very considerable magnitude affecting workers in all occupations, and women and men in similar numbers.
- Whilst studies comparing prevalence across the EU show greater levels of bullying in Western and Northern countries, factors such as a low level of awareness and greater tolerance for negative behaviour in other regions is likely to account for much of this discrepancy.
- Although much less researched, sexual harassment at work is common in most EU countries, affecting women (and some men) in considerable numbers, although few cases are formally reported.
- The recent global #metoo and equivalent debates on social media and in the mainstream press have brought the issue to the fore, suggesting that the real figures are higher than previously anticipated and with standards for what is considered acceptable being redrawn.

### 2.1. Methodological issues: methods applied by researchers and representativeness of samples

In order to interpret the prevalence rates of bullying, we need to know how the phenomenon has been defined, the measurement method used, and the time frame of the exposure. It is also necessary to make a distinction between self-labelled bullying (applying the bullying label to one's own experience), witnessing bullying and perceptions of the general presence of bullying (e.g. 'bullying is a problem in my workplace').

Two main methods are used to measure the prevalence of bullying: the self-labelling method and the behavioural method. As far as the self-labelling method is concerned, respondents are asked by means of a single item whether they have been subjected to bullying within a specific time period (usually six or twelve months). Often a common definition of bullying is provided with respondents asked to apply this to their own experience, whilst no definition is offered in other studies. The self-labelling method is particularly common in large-scale, e.g. national and international surveys.

By contrast, the behavioural method measures bullying by means of a list or inventory of negative acts (instrument), with respondents asked to report whether and how frequently they have been exposed to the behaviours listed ranging from never to daily. The most commonly used instrument applying this method is the Negative Acts Questionnaire (NAQ), and particularly the revised version, the NAQ-R (Einarsen et al., 2009). Commonly, the respondents are classified as a target of bullying if they have been exposed to at least one negative act at least weekly over a period of at least six months. The two methods are often used in conjunction, with a self-labelling item question added at the end of the instrument. Some use a stricter criterion with frequent exposure (at least weekly) to a

minimum of two negative acts (e.g. Nielsen et al., 2010). Whilst the behavioural method has been considered to be the more objective method, self-labelling is considered important as it is found to strengthen the negative health impact of bullying for targets, particularly with relative low exposure. The NAQ-R can be used to differentiate between groups of employees with different levels of exposure to bullying ranging from infrequent exposure to low-level bullying to severe victimisation.

Different measurement methods give somewhat different results on the frequency of bullying. In a meta-analysis (combining the results of multiple studies), the highest prevalence estimates were found in studies which used the self-labelling method without any definition provided, and lowest in studies using the self-labelling method with a given definition of the concept. Estimates from studies using the behavioural method fell between the rates of the two self-labelling methods. (Nielsen et al., 2010).

Some national cultural differences may exist with respect to the most common forms of negative acts. In a study in which the negative acts were explored in Italy and Spain, it was found that 'someone withholding information which affects your performance' and 'extensive monitoring of your work' were among the most commonly reported forms of bullying in both countries but 'having your opinions and views ignored' was among the most common forms in Italy but rarely reported in Spain (Arenas et al., 2015) In a Finnish study, 'ordered to work clearly below one's competence', 'one's opinions and views are ignored', 'one is exposed to unmanageable workload' were found to be the negative acts most often reported (Salin 2003).

Attempts have been made to develop instruments to measure cyberbullying. In one such promising attempt (Inventory of Cyberbullying Acts at Work) three underlying constructs were identified: person-related, work-related and intrusive (Vranjes et al., 2018).

By contrast with bullying research, no instrument has emerged in Europe (unlike the US) which is commonly used to measure sexual harassment. Instead most researchers have used the self-labelling method, most often without any definition but often combined with an inventory of behaviours associated with it.

A common problem with much of research into bullying and sexual harassment is the lack of representative studies, which undermines the opportunity to get a more objective picture of the scale of the problems. However, cost factors most often militate against such efforts as they are expensive and may not always be considered value for money. But where they exist their results should be given due attention, although their overall quality would also depend on other factors, including how the problems are measured (operationalised), the scope of questions applied and their ability to deal with questions of confidentiality/anonymity.

## **2.2. Prevalence of bullying at work**

Research into workplace bullying has expanded exponentially during the last two decades, with many papers dedicated to establishing prevalence of bullying. In the majority of cases these papers rely on cross-sectional national samples often focused on an industry or an occupation, in order to establish the general presence of the problem. Based on the many studies carried out it is estimated that approximately 5-10% of the Europeans at any one time is subject to bullying at work (See Zapf et al., 2011 for an overview).

The European Working Conditions Survey (EWCS) by the European Foundation is the most comprehensive survey of the prevalence of bullying at work across the EU based on interviews with about 1,000 respondents in each country. In the survey, bullying or

harassment has been assessed with the same question and with the same, self-labelling method in all EU member states (plus Norway, Switzerland and Turkey).

In the 6<sup>th</sup> EWCS in 2015, 5% of the respondents reported being subjected to bullying/harassment over the last twelve months. The reported exposure was somewhat higher in Western and in Northern countries compared to Southern and Eastern countries. Exposure to bullying was most common in France, Luxembourg, Ireland, Belgium and the Netherlands. The lowest prevalence rates were found in Bulgaria, Portugal, Hungary and Greece. (Table 1) (Annex 2 for more detail).

The countries that reported the highest exposure rates were the same as those which reported most bullying/harassment in the 5<sup>th</sup> survey in 2010. Looking at individual countries, in Ireland the reported exposure had increased by 3%, and in France by more than 2%. Lowest exposure was found in Bulgaria, Poland and Italy at both measurement points (Table 1).

**Table 1 Prevalence of bullying and harassment at work in some EU Member States in 2015 and 2010**

Country	EWCS 2015	EWCS 2010
EU Member States	4.9%	4.1%
France	12.2%	9.5%
Luxembourg	9.5%	7.2%
Ireland	8.3%	5.5%
Belgium	7.5%	8.6%
The Netherlands	7.1%	7.7%
Bulgaria	0.1%	0.6%
Poland	1.0%	0.7%
Italy	2.9%	0.9%

**Source:** (6<sup>th</sup> EWCS, 5<sup>th</sup> EWCS)

Comparable national studies are hard to find, e.g. because of different measurement methods and time frames applied. Still, to make sense of the discrepancy between countries and the surprisingly low levels reported for some countries the EU Foundation report (2015) points to the following factors:

- awareness of the causes and consequences of violence and harassment;
- the level of general socio-cultural tolerance for violence and harassment;
- the extent of discussions and initiatives by social partners and governments.

With respect to occupational sectors, taking the studies in different countries together, the risk of exposure to bullying seems to be higher in public than in private sector organisations with, as far as the latter is concerned, this being particularly pronounced in health and social care and in education (Zapf et al., 2011).

With regard to the perpetrator, some variations exist between countries. In most countries, including the UK, Ireland, Germany and Norway, most perpetrators were found among those in managerial or supervisory positions. In some countries, however, such as Finland, co-workers or colleagues are more frequently identified as the bullies.

Witnessing (observing) bullying is generally more prevalent than personally being the target of bullying. An explanation for this is that several employees witness bullying of the same person in the workplace. The amount of witnesses varies between studies. In a recent study in Finland one out of three of the employees had witnessed bullying in their organisation during the past twelve months (Vartia et al. 2016). The large variation often found in the reports of witnessing bullying may be explained by the different timeframes used, but also on the awareness and recognition of bullying in different organisations. However, witness accounts of bullying are important both for organisations and researchers as they verify that problems of bullying exist.

### 2.2.1. Cyberbullying

Until recently cyberbullying has been far less pronounced than other forms of workplace bullying, possibly with the exception of younger workers, however, this could change. A study comparing the prevalence of face-to-face bullying and cyberbullying among men showed that one out of three respondents was bullied face-to-face, while the similar figure for cyberbullying was one in ten. All victims of cyberbullying also experienced face-to-face bullying (Privitera & Campbell 2009). The exposure rate to cyberbullying varies substantially between studies. In a study among members of the Swedish Union of Journalists (SJF) in 2009, one in five of the respondents reported having been the victim of online threats. According to a survey carried out by the German Teachers Union (GEW) in 2007, 8% of unionised teachers had been targeted via the internet or mobile phone, with a higher prevalence for secondary school teachers. In a more recent study among trainee doctors, almost half of the respondents had experienced at least one act of cyberbullying (Farley et al. 2015).

The rise of cyberbullying is also covered in a European Foundation report from Eurofound (2015). It points to the 2010 multi-sectoral guidelines to tackle third-party violence and harassment related to work agreed by the EU social partners from both private and public sectors which included cyberbullying as one new form of violence and harassment at work. Unfortunately, this initiative seems largely to be limited to violence from third parties and with limited evidence of the scale and nature of the problem emerging so far.

Whilst the above studies show that cyberbullying, including the use of social media, is on the rise, they focus largely on younger worker or jobs or occupations where targets are at a higher risk of being exposed to bullying and harassment from third parties, whether pupils or members of the general public.

### 2.2.2. Gender differences in bullying

It is argued that there is a need for a gendered or gender sensitive perspective to bullying, rather than treating the issue in a 'gender-blind' manner (Salin & Hoel, 2013). Some findings support this. Women are more likely to label negative experience as bullying and to rate acts more severely than men, particularly acts associated with emotional abuse, social isolation and professional destabilisation/undermining (Escartin et al. 2011). It has been argued that lack of power may sensitise targets to threats (Andersen & Berdahl, 2002).

In the 6<sup>th</sup> EWCS, 5.4% of women, and 4.4% of men reported being bullied. Women reported being bullied more often than men in most EU Member States but in Estonia, Bulgaria, Spain, Malta, Italy, and Croatia men reported exposure to bullying more often than women, although the differences here were relatively small (Annex 2).

In terms of their experience, men appear to be more strongly affected by social isolation/ostracism (e.g. Hitland et al., 2006). Also, whilst women may be more affected by exposure to negative acts, men seem to be more affected when labelling or internalising the behaviour as bullying. Women and men seem to differ in what they perceive as bullying and how they explain it. Women focus more on negative behaviours associated with social exclusion and being ignored, criticism of their private life, slandering and gossiping. When telling about bullying, women seemingly describe situations in which they themselves have been the victims, whilst men typically describe bullying from the point of an observer. In explaining bullying men seem to focus strongly on the role and responsibility of the victim while women are more likely to consider issues associated with the personality of the perpetrator (Salin 2003).

Women and men appear to adopt different coping strategies with men more likely to confront perpetrators whilst women employ avoidance strategies combined with seeking social support from colleagues.

With reference to the work of Acker (2001), who emphasises that gender is a social category, affecting structures, social interactions, and practices at work, a number of explanations and theories have been put forward to make sense of gender differences in bullying (Salin & Hoel 2013). Some of these are outlined in Annex 3.

## **2.3. Prevalence of sexual harassment at work**

### **2.3.1. Key findings from research**

Measuring the extent of sexual harassment is complicated by the fact that perceptions of sexual harassment vary from person to person, from country to country, and over time. Targets of sexual harassment may also be reluctant to share their experiences, even anonymously, or to refer to what happened to them as sexual harassment, which means that real exposure may be under-reported. Although both women and men are subjected to sexual harassment, women are far more likely to be exposed than men. It follows that most research on sexual harassment focus on women's experience, particularly younger women who are considered being at greatest risk.

In the 6<sup>th</sup> EWCS only 1% of the respondents reported exposure to sexual harassment in connection with work over the previous twelve months. Sexual harassment was most prevalent in the Netherlands, Sweden, Greece, Austria, Finland and Germany (2.4% - 1.1%), and most uncommon in Bulgaria, Italy and Romania. In every country women reported exposure to sexual harassment more often than men (Annex 2). These figures also reflect the self-labelling nature of the survey which shows low figures for national contexts where the phenomenon is little discussed or acknowledged. Thus, the true figures for some of the lowest scoring countries are likely to be considerably higher.

Data emerging from national studies also show somewhat higher rates of exposure to sexual harassment both among women and among men in some countries, e.g. in Finland 9.3% of women and 3.1% of men reported that they had been subjected to sexual harassment or unwanted sexual attention in their workplace during the past 12 months (Salin 2003). Altogether and seen in light of the recent debate on sexual harassment these figures appear only partly to reflect realities on the ground. For example, in a British survey

by the Trades Union Congress (TUC) more than half (52%) of the respondents had experienced some form of sexual harassment sometime during their lives. In addition, 35% of women had heard comments of a sexual nature being made about other women in the workplace. About 8% reported unwelcome jokes of a sexual nature, 6% comments of a sexual nature about their body and/or clothing, and 4% unwanted touching in the last twelve months. In most of the cases (54%), the perpetrator was a male colleague and in 17% a manager or someone else in a position of authority (TUC 2016).

**Country case – decrease in the prevalence of sexual harassment and change in what is considered sexual harassment**

In Portugal, sexual harassment at work was studied at two time points, in 1989 and in 2015. Considerable changes were found in the prevalence of sexual harassment at work, the way women react to sexual harassment and with respect to perpetrator status. Back in 1989 one in three women suffered sexual harassment at work; in 2015 the corresponding figure was 14%. In 1989, perceptions of what was and what was not sexual harassment were particularly diffuse.

Lewd comments about how women dressed or their physical looks were identified as forms of sexual harassment by only one third of women. However, 25 years later about two in three women identify banter and remarks about their appearances as sexual harassment with 84% perceiving remarks of a sexual nature as a form of harassment. Equally, in 1989 offensive comments about women's bodies were identified by around 50% of women as a form of sexual harassment, in 2015 the figure stands at 72.9%.

There were also important changes noted with respect to perpetrator status. In 1989 the typical perpetrator was a co-worker whilst in 2015 most were superiors or managers. Moreover, in 2015 a significant proportion of perpetrators of sexual harassment were third parties: customers, suppliers or users, accounting for around 25% of cases. (Torres et al., 2016).

To make sense of their findings the Portuguese researchers point to the social and economic change which Portugal has undergone in the last 25 years, women's work participation and educational attainments. Altogether this has prompted women to become readier to speak out when offended, expressing their anger and annoyance.

### 2.3.2. Atypical sexual harassment

As confirmed by this report, sexual harassment is primarily a problem for women and perpetrated by men. However, other forms of sexual harassment do occur relatively frequently, with men more often targeted than previously anticipated, primarily by other men (e.g. McDonald & Charlesworth, 2016). However, some men do report harassment by women, and some women, although relatively few, report being harassed by other women. For example, a recent representative study of the Portuguese working population found that whilst 14.4% of women had experienced sexual harassment during their working lives, the similar figure for men was 8.6% (Torres et al., 2016). It is also the case that when reported, such atypical forms are often treated as if they were the same as sexual harassment of women by men, which may not necessarily be the case.

A study of formal complaints of sexual harassment (McDonald & Charlesworth, 2016) found that sexual harassment of men was primarily non-physical, falling into two categories: sexually suggestive comments or sexualised jokes (including sexually explicit emails), and intrusive questions about private life. Physical forms of sexual harassment included unwelcome touching and hugging, with sexual assault rare among formal complaints. However, with men altogether less likely to complain, this is unlikely to tell the full story. Complaining may be seen as emasculating, particularly when sexual favours are requested. It might also draw attention to the target's own behaviour which might not conform to normative masculine behaviour.

### 2.3.3. #MeToo – sharing experience and rewriting the boundaries of acceptable behaviour

The New York Times revelations on 5 October 2017 about the widespread, systematic sexual abuse carried out by the all-powerful film producer, Harvey Weinstein, following a series of financial settlements made with a number of women in response to allegations of sexual harassment, sparked an international media outcry about powerful men's abuse of women (and some men) of a magnitude and intensity never seen before. The scale and scope of this debate owe much to the social media grassroots campaign originally initiated by the American social activist and community campaigner Tarana Burke and given international attention and momentum by the actor Alyssa Milano who publicly encouraged women to spread the phrase '#MeToo' to draw attention to the scale and omnipresence of the problem of sexual harassment and assault. In the weeks that followed #MeToo, whether populating social media under its original label or in various national variants (e.g. #balancetonporc/#Grass on your pig/ in France), the campaign captured the imagination of large sections of populations in many EU countries with women (and a considerable number of men) sharing their experiences. Whilst originally meant to testify about sexual abuse in its many manifestations, the multiple conversations that have been initiated have moved beyond evidencing the magnitude and nature of the phenomenon, to address its multiple causes and antecedents and how best to respond to it, individually, collectively or socially. Moreover, as has been documented elsewhere, as a result of the many conversations it has caused boundaries for what is considered acceptable behaviour to be re-drawn.

A summary of the debate in various countries is given in Annex 4. Given the likely lasting impact of debate, considerable attention is given to it and the issues it has raised throughout this study.

## 2.4. Bullying and sexual harassment of protected groups

Despite having protection in EU and national anti-discrimination law, members of some demographic groups appear to be particularly vulnerable to bullying and sexual harassment (European Union Agency for Fundamental Rights, 2017). Knowledge about the experience of such groups has grown in the last decade due to more and better targeted research on what are considered 'hard to reach' groups combined with a growing strength and presence of many advocacy groups, both factors previously noted as undermining the ability to obtain a proper picture of the issues involved (Di Martino et al., 2003).

A summary of findings from research into the particular impact of ethnicity, disability and sexual orientation on the experience of bullying and harassment is given in Annex 5. Here we will only point to some key findings:

- Several representative UK studies have found members of protected groups (young, disabled, LGB, ethnic minority) to be over-represented among targets of workplace bullying and unfair treatment at work (e.g. Grainger & Fitzner, 2006; Fevre et al., 2009).
- Raised levels of reported discrimination for all groups (see 6<sup>th</sup> European Foundation survey).
- Rise in reported hate crimes (UK) associated with sexual orientation, disability and ethnicity/race.
- Lack of awareness of legal rights (Adams and Oldfield, 2012), particularly low awareness among LGBs. (Despite evidence of the existence of racism in the workplace, it is often denied due to its negative connotations and potential for punitive sanctions against individuals and organisations.)

## **2.5. Recommendations**

Due to the rapid rise in the use of social media and electronic devices such as mobile phones, the experience of bullying and sexual harassment is likely to change further (particularly for younger people), so more studies are needed on cyberbullying.

To arrive at a clear picture of sexual harassment across the EU, better and scientifically more robust studies are needed. Whilst representative studies are welcome, studies which compare workers' (women and men) experiences across countries in similar occupational groups or sectors may be particularly valuable as progress to tackle the problem would differ from sector to sector.

To obtain comparable figures on prevalence of sexual harassment and bullying across EU Member States, greater awareness and recognition of the problems should be prioritised through concerted effort to spread information and training.

With more men being sexually harassed than previously suspected, further studies need to be carried out to explore the nature of their experience.

Little attention has been given to the co-existence of bullying and sexual harassment. In the recent debate, however, anecdotal evidence has emerged suggesting that where bullying is widespread and employers/management rule with impunity, sexual harassment may be rife as well, an issue which needs to be further explored.

Studies aimed at exploring the experience of protected groups should be encouraged particularly in countries where little is known about their situation and progress in the workplace. In this respect, the impact of 'intersectionality', where several identities, e.g. gender, race and sexual orientation intersect, should be acknowledged and further studies encouraged.

### 3. EXPLAINING BULLYING AND SEXUAL HARASSMENT AT WORK: ANTECEDENTS AND RISK FACTORS

#### KEY FINDINGS

- Antecedents of bullying can often be traced back to shortcomings and problems associated with the organisation and the work environment, but personality and individual factors cannot be completely overlooked.
- In terms of organisational antecedents of bullying three factors stand out: role-conflict, leadership and the ability to deal with conflicts when they arise.
- Although organisational risk factors vary somewhat from country to country and from organisation to organisation, the main organisational risks factors of bullying appear to be universal.
- Tolerance for sexual harassment combined with power imbalances are key factors in understanding its presence in the workplace.

#### 3.1. Causes of bullying at work

##### 3.1.1. Organisational risk factors

Since its start, the focus of much bullying research has been to establish which organisational factors may increase the risk of bullying with the aim to remove or control these factors to reduce the prevalence of bullying (for a review see Salin & Hoel, 2011). Whilst most research has focused on the perceptions of targets, where included, perceptions of observers about the work environment largely concur with those reported by targets. Consistently, the most severely bullied individuals are also those reporting the worst work environment (e.g. Balducci et al., 2011; Hauge et al, 2007). Whilst specific contextual or cultural factors may impact on which organisational factors may represent the greatest risk in individual EU countries, findings from across Europe suggest that the main risk factors reported below appear to be applicable in all national settings.

A number of factors associated with the *work environment* have been found to increase the risk of bullying. Among these, role conflict and role ambiguity have emerged as key risk factors across studies. Where clear objectives and expectations are lacking, where job descriptions are unclear or missing altogether, bullying is more likely to occur. Job demands in terms of workload is another factor influencing the presence of bullying, and where workload is unreasonably high this could be considered a form of bullying in its own right. With work intensification increasingly a feature of many European work environments, high workload is likely to continue being a key area of study. Moreover, workload may interact with other factors to increase the risk of bullying as found in an Italian study, where high workload combined with job insecurity to enhance risk of bullying (Spagnoli et al., 2017). Workload or demand has often been studied in connection with employee autonomy or decision latitude, where high workload combined with little autonomy or job discretion was associated with higher levels of bullying. When interacting with high demand and low autonomy lack of support appears to increase stress levels as well as bullying (Baillien et al. 2011).

With organisations constantly undergoing change, their relationship with bullying has attracted interest although, when empirically tested, the relationship with bullying has been

modest (Skogstad et al., 2007b). Some argue that change is only linked to bullying when resulting in negative outcomes for employees (Baillien & De Witte, 2009). Although organisational restructuring appears to be a general feature of globalisation, it has been argued that more recent changes that have taken place, not least within many countries' public sectors, affect the nature of the employment relationship (Britain being a typical example). It is argued that with the power balance tilting in favour of employers, further work intensification and bullying may be more likely outcomes (Hoel & Beale, 2006).

It has been argued that for bullying to come to the fore it would require an *organisational culture* which allows or permits it and where such behaviours are rewarded (Brodsky, 1976). Bullying is also linked to organisational and professional socialisation processes where training and learning processes are considered key to understanding how individuals collectively learn and adopt the norms of the organisation and the profession. By contrast, an important recent study shows that when employees perceive that the employer effectively deals with conflicts, less bullying takes place and work engagement is strong (Einarsen et al., in press).

As standards of behaviour are at the centre of discussion about bullying (and indeed sexual harassment), the role of humour and acceptability of jokes (it is only banter!), often a key ingredient of organisational culture, have to be considered. Whilst most research on humour has focused on its positive impact on the work environment, it is highlighted that jokes aimed at or told at the expense of people who have difficulties in defending themselves may easily turn into bullying. In other words, positive humour requires power symmetry, being reciprocal and played out by equal parties (Matthiesen & Einarsen, 2010). However, even under such circumstances, jokes which seemingly are tolerated by all parties involved may breach organisational standards for respect and undermine inclusion, for example when contributing to a sexist, misogynist or homophobic culture.

As bullying in most European countries is first and foremost associated with behaviour on the part of managers and supervisors, research has identified *style of leadership* as a key factor in bullying whether directly as the primary source of bullying or more indirectly by creating an environment or culture where aggressive behaviour is commonplace and the use of bullying behaviour normalised. Research has typically focused on destructive styles of leadership, whether active or passive. In terms of active, destructive styles, Hauge et al., (2007) found a tyrannical or dictatorial style of leadership to be among the strongest risk-factors of bullying. Similarly, in a large-scale British study of bullying Hoel et al., (2010) concluded that bullying was most strongly linked to managers who applied non-contingent punishment, that is punishment meted out independently or non-contingent upon any prior behaviour by the target. In explaining their finding the authors point to the lack of predictability of such behaviour which makes it harder to protect oneself.

In both the above studies, however, a passive leadership style, or *laissez-faire* leadership, in which leaders are seen to abdicate their responsibility (Skogstad et al., 2007), also emerged as a risk factor. In addition to creating an environment where conflicts often are rife, this style of leadership could be considered bullying in its own right where the outcome of such behaviour contributes to social exclusion. Related to this, a Spanish study of bullying and conflict management (Arenas et al. 2015) shows that task-related bullying may escalate into personalised conflict and bullying, demonstrating a need for active management involvement to avoid such processes taking place. By contrast, as constructive styles of leadership are seen to protect or buffer against bullying, recent research has tried to identify which styles of leadership most effectively offer such protection. A Lithuanian study (Astrauskaite et al., 2015) looked at the deterring effects of

transformational leadership, whilst a study of employees from 53 Polish organisations concluded that authentic leadership, associated with transparency, openness, morality and leaders' own inspiration, prevented bullying by themselves or others (Warszewska-Makuch et al., 2015).

### 3.1.2. Individual risk factors

It is suggested that the causes of or contributing to bullying are not comprehensively covered without also considering personality and other individual factors. Three main factors or mechanisms contributing to target vulnerability are suggested: exposed social position of targets (being an outsider), low social competence or low self-esteem, and overachievement which may bring one into conflict with others (Zapf & Einarsen, 2011). For more on individual risks for victims and perpetrators see Annex 6.

## 3.2. Causes of sexual harassment

### 3.2.1. Organisational risk factors

Given that organisational factors are more amenable to influence and change compared to individual factors, research on sexual harassment has since its infancy aimed to establish which antecedents contribute to sexual harassment. This point of view is particularly articulated by leading US sexual harassment scholar Louise Fitzgerald, who argues that sexual harassment is a function of organisational and job gender context (Fitzgerald et al., 1997). Although presented separately here, the explanations below can be considered overlapping perspectives (McDonald & Charlesworth, 2016). We have decided not to include the early, now discredited 'natural biological model' where sexual harassment was explained as a function of men's sexual desire for women.

*Power or power-imbalance:* Feminist perspectives of sexual harassment emphasise that sexual harassment stems from men's economic power over women which allows them to sexually exploit women. Whilst this explains downward harassment, to account for harassment by co-workers an extended notion of power which includes the role of factors external to the organisation such as ideology has been put forward (McDonald & Charlesworth, 2016). Furthermore, emphasising power imbalance could give rise to a view that sexual harassment is solely a problem for women at the lower end of the organisational hierarchy. However, the glass ceiling phenomenon suggests that men who feel threatened by women, particularly in organisational environments and positions previously the sole domain of men, may use sexual harassment (and bullying) to exclude women (Veale & Gold, 1998). Such a view supports Berdahl's (2007) finding that sexual harassment may in fact often be the penalty given to 'uppity women' by men who feel threatened by the rise of women and which in effect undermines their professional standing.

*Tolerance for sexual harassment:* A meta-analysis found that organisational climate for sexual harassment represented an important antecedent for sexual harassment (Willness, Steel & Lee, 2007). Where sexual harassment is tolerated or condoned, the likelihood of it occurring is greater than where it is not tolerated and breaches of it sanctioned (Hunt et al., 2007). In line with this, it is argued that people are more likely to sexually harass another person if a previous experience has succeeded (Walker, 2014). Similarly, where sexualised behaviour and sexual objectification of women are commonplace, sexual harassment is also more likely to happen (Rutherford et al., 2006). As for workplace bullying, organisational chaos as reflected in lack of policies and procedures is another factor increasing the likelihood of sexual harassment (Lopez et al., 2010). In line with this,

it is argued that men who have a tendency to harass (women) would only do so where the organisation allows or tolerates it. Moreover, where sexual harassment is tolerated and even seen as 'part of the job' due to its omnipresence, inevitability, and sometimes even considered a necessity for staying on or getting on - as recently reported from high profile creative industries - it will have fertile ground (Hennekam and Bennett, 2017). Socialisation processes may sometimes account for the presence of such a harassment-tolerant culture, not least in those contexts where training is a shared experience of all organisational members, for instance in the armed forces or the fire service, where sexual harassment may also be directed against other men as part of initiation rituals ('hazing') (e.g. Archer, 1999). (See atypical sexual harassment).

*Gender representation:* Originally developed by Gutek in the 1980s, this perspective focuses on the under-representation of women in many work contexts, suggesting that the ratio of women to men within the organisation and within the work unit/job directly impacts on the presence of sexual harassment. This results from the fact that there exists a carry-over (or spill-over) into the workplace of gender-based behavioural expectations with women categorised according to their gender role (e.g. mothers, sex-objects) rather than their occupational role and treated accordingly, leading to inappropriate behaviour/advances from men. The fewer women present compared to men (highly skewed sex-ratio) the greater the risk of sexual harassment (Gutek, 1985). According to European Commission research on sexual harassment in the workplace, women working in male-dominated workplaces are more likely to experience sexual harassment. Other studies suggested that the issue is about skewed sex-ratios rather than under-representation of women *per se*, with Kohlman (2004) reporting that men in female-dominated organisations reported higher levels of sexual harassment than their female colleagues.

### 3.2.2. Individual risk factors

Women below 30 years of age, single or divorced, with lower levels of education are seen to be at particular risk (Eurofound, 2013). To some extent sexual harassment might be even more skewed towards younger women as perception of what constitutes sexual harassment appears to change with age and increased professionalism (McLaughlin et al., 2017).

### 3.2.3. Explaining atypical sexual harassment

A common explanation is that sexual harassment of men is a form of heterosexism, where heterosexuality is considered compulsory (Butler, 1990). Therefore, men whose behaviour, appearance or mannerisms deviate from such prescribed masculinity may be punished in order to ensure male bonding and 'stable masculine identities', (Knights & Tullberg, 2012) as well as ensuring male dominance (Lopez et al., 2009). (See also homophobia and bullying of LGBTs). Men who dare to complain are also treated and perceived more negatively than women who report sexual harassment. This explanation overlaps with organisational perspectives focusing on the gendered nature of the work group where particular contexts, i.e. masculine contexts, may be seen to allow harassment in ways which may be considered socially acceptable. Like male sexual harassment of women, these explanations emphasise that such same-sex male harassment is connected to hierarchies of power and relatively rarely are driven by sexual desire and subjugation.

To account for women perpetrating sexual harassment of men (or women), it is suggested that some women adopt what is considered normative masculine behaviour, for example telling sexualised jokes in order to 'fit in' (Pullen, & Knight, 2007). For the same reason

some women may join in, or collude in male sexual harassment of women or indeed of other men.

Given that the European workforce is aging, does this suggest a trend towards less sexual harassment, as the predominant target group (younger women) is shrinking, or a move towards more harassment of older 'uppity' women who might be perceived to threaten male dominance at work? (Quick et al., 2015).

### **3.3. Recommendations**

With research into antecedents of sexual harassment developing more slowly than into workplace bullying, there is a need for more research with a focus on prospective and longitudinal studies which can establish cause and effect relationships.

With laissez-faire leadership emerging as a key contributory cause of bullying and strategies for conflict management acting as a strong buffer against its presence, there is a strong need to educate managers in fully understanding their role in bullying scenarios and how they can be prevented.

To assist organisations and practitioners in putting in place effective prevention programmes, further information about the antecedents of the problems should be distributed and relevant training developed.

With more men than previously anticipated reporting sexual harassment, further attention should be given to exploring the antecedents and causes of their experience.

## 4. CONSEQUENCES OF BULLYING AND SEXUAL HARASSMENT AT WORK

### KEY FINDINGS

- Bullying and sexual harassment at work are severe social stressors with serious implications for targets' health and well-being, and with consequences for their organisational functioning, their livelihood and career prospects.
- In terms of bullying, whilst personal resilience may protect against low level bullying, if the exposure is sufficiently severe no-one would be able to resist.
- High frequency of exposure to low level sexual harassment may have an equally negative effect as very serious but rare experiences.
- For less serious forms of sexual harassment women are more affected than men. However, when the harassment is severe and from people in senior positions, then women and men are affected equally.
- Although difficult to estimate, the organisational costs associated with bullying and sexual harassment arising from factors such as turnover, reduced performance and productivity, and absenteeism/presenteeism are very considerable.
- Presenteeism may be a more common response to bullying than absenteeism with overall greater relative cost to the organisation.

### 4.1. Consequences of bullying at work

Since the start of bullying research much effort has gone into establishing the effects of the problem for the individuals concerned and the organisations within which they work.

#### 4.1.1. Individual consequences and effects

Three decades of research have clearly showed that bullying has serious consequences for targets' health and wellbeing. The evidence emerging from research suggests that bullying can be considered an extreme social stressor with potential to cause trauma in those victimised. A large number of studies have confirmed that bullying is associated with psychosomatic, psychological and physical symptoms, commonly identified in stress research. Among the symptoms most commonly reported are anxiety, depression, problems with sleep and insomnia, and irritability (e.g. Hansen et al., 2014). There is also evidence to suggest that bullying can affect targets' self-esteem, with self-blame a typical reaction.

Research in this area has taken important steps forward, moving away from a reliance on cross-sectional studies to include a number of longitudinal studies where the research design may allow for drawing firmer conclusions on cause-effect relationship as well as the direction of relationship between variables studied (e.g. bullying causes health problems but health problems themselves may make someone more vulnerable to bullying). Reflecting progress in research methods, two recent meta-analyses, studies which combine the results of multiple studies to identify an overall estimate of effects, reinforce the view

that bullying is associated with health and wellbeing-related as well as with job-or organisational-related outcomes. In particular, they confirm that bullying is linked to mental and physical health problems and symptoms of post-traumatic stress and burnout.

Overall, with respect to negative health outcomes including anxiety and depression those most frequently bullied and those exposed to prolonged bullying suffer the worst consequences (Kivimäki et al., 2003). Also, and debunking a common myth, whilst those already vulnerable due to existing health problems or previous victimisation may show the greatest negative effects for low exposure, if the exposure is sufficiently severe everyone, even those perceived as resilient, will succumb to the experience with severe negative outcomes as a result. Similarly, whilst those self-labelling themselves as victims of bullying report worse health consequences when the exposure to bullying is low or infrequent, self-labelling has no impact when the impact is high, reinforcing the view that high exposure is likely to exhaust any coping resources targets may successfully utilise with low exposure (Nielsen et al, 2015; Vie et al, 2011).

Victims of severe bullying often report symptoms similar to those associated with Post Traumatic Stress Disorder (PTSD) (Matthiesen & Einarsen, 2004). Whilst PTSD is most commonly linked to single traumatic events, the distress experienced by many victims of bullying - where individuals are exposed to frequent negative events over a prolonged period - appears to be equal to or possibly worse than what is reported for single traumatic events. This view is confirmed in a recent meta-analysis which found that more than half of victims of bullying at work (or in school) reported symptoms of PTSD which met the criteria for a diagnosis of PTSD (Nielsen & Einarsen 2012). In addition to health outcomes, research has also confirmed that the victims' organisational functioning suffers with negative implications for job-satisfaction and commitment and to a lesser extent their self-perception, work performance and absenteeism levels (Nielsen & Einarsen 2012).

Witnessing bullying may also have negative consequences, with bystanders more often reporting higher levels of general and mental stress, as well as physical health symptoms than those who did not witness bullying (Vartia 2001).

Concerns regarding the health effects of workplace bullying have also been raised by EU-OSHA. According to an analysis of EU-level surveys, work-related stress and harassment (and bullying) are two major psychosocial problems that can have very negative consequences for the health of workers and their performance (EU-OSHA 2014.)

#### 4.1.2. Costs to organisations and society of bullying at work

To convince organisations that it is in their own interest to acknowledge and counteract bullying, researchers have aimed to identify the type of effect and their contributions to the overall cost to the organisation (and society). Two possible outcomes of bullying have received particular attention: turnover and absenteeism. In this respect research has consistently found a relatively strong association between bullying and intention to leave and actual quitting (e.g. Nielsen & Einarsen, 2012). Targeted workers may leave as a conscious move to avoid the bully and an undignified situation, where possible seeking new opportunities elsewhere, or being forced out or made to leave. Thus, bullying also appears to increase levels of job-insecurity, with targets fearing that their experience may undermine their long-term job-prospects and professional future within their current organisation or within the labour market altogether (Glambek et al., 2014). For the organisation the direct cost increases as the individual needs to be replaced and trained. By contrast, the relationship between bullying and absenteeism, although often highlighted, is much weaker. Whilst bullying clearly affects the health of targets, and as such one would

believe would increase levels of absenteeism, research shows that many victims would rather stay at work, even when ill in order to avoid any negative repercussions from the bully or indeed undermine their relationship with colleagues (Convey et al., 2016). It is argued that costs incurred from rises in presenteeism, although difficult to establish in monetary terms, are likely to outweigh any cost associated with absenteeism (EU-OSHA, 2014). Whilst the association between bullying and productivity in statistical terms is only modest, and indeed hard to estimate in monetary terms, productivity loss linked to reduced efficiency, quality of output resulting from reduced job satisfaction and commitment is likely. In addition, research points to additional cost-factors such as costs incurred in investigating complaints and litigation, and indeed possible negative publicity (Giga et al., 2008).

The possible effect on third parties has also been noted, with witnesses who are not themselves targets but whose job satisfaction and productivity may also suffer, deciding to leave and seek job opportunities elsewhere (Hoel et al., 2011).

Society is also likely to pay a cost for bullying with the following factors highlighted:

- impact on the health sector – unnecessary use of a scarce resource;
- impact on the economy – drop in productivity;
- impact on service quality – increase in number of errors made; and
- impact on family and friends - strain on relationships, social stigma (Di Martino et al., 2003).

Several systematic attempts have been made to try to estimate the overall cost of bullying. Although such studies are fraught with methodological difficulties whatever estimate is considered, the cost is likely to run into many billions of Euros annually (see Hoel et al., 2011).

## 4.2. Consequences of sexual harassment in the workplace

Compared to workplace bullying there is less empirical evidence available for sexual harassment. Still, there is clearly sufficient evidence to conclude that sexual harassment is a severe social stressor and costly for the organisation.

**Table 2 Consequences of sexual harassment for victims and organisations**

<b>Consequences for victims</b>	<b>Consequences for organisations</b>
anger and annoyance	reduced productivity
fear and anxiety	high absenteeism
shame and embarrassment	reduced performance
vulnerability	low morale
loss of self-confidence	high staff turnover

Source: [file:///C:/Users/Omistaja/Downloads/EU-OSHA-infographic-Sexual-Harassment%20\(2\).pdf](file:///C:/Users/Omistaja/Downloads/EU-OSHA-infographic-Sexual-Harassment%20(2).pdf)

#### 4.2.1. Individual consequences and effects

Combining the results from multiple studies (meta-analysis), it can be concluded that sexual harassment is linked to physical and mental ill health, reduced job satisfaction, lower organisational commitment and job withdrawal (Willness et al., 2007). These findings have more recently been confirmed by means of a longitudinal study which measured the effects of sexual harassment over time and therefore can link the experience directly with the negative outcomes (Nielsen & Einarsen, 2012).

In a study by the TUC (2016), women frequently reported that being sexually harassed made them feel embarrassed, causing them to avoid certain work situations and making them feeling less confident at work. It also had an impact on their mental health, leaving them feeling more stressed, anxious, and depressed.

Whilst PTSD symptoms are associated with the most severe incidents, serious negative impact of sexual harassment has also been identified as a result of repeated less severe exposure. It follows that, more intensive but less frequent harmful experiences (i.e. sexual coercion and unwanted sexual attention) and less intensive but frequent experiences (sexist organisational climate and gender harassment) appear to have a comparable effect on the wellbeing of women (Sojo et al., 2016). Sexual harassment may also lead to maladaptive responses, such as eating disorders, drug and alcohol abuse (Cortina & Bredahl, 2008).

In terms of gender differences in responses to sexual harassment, generally speaking women tend to report more negative effects of sexual harassment than men, with men generally finding it less stressful and upsetting compared to women (Nielsen & Einarsen, 2012). A possible explanation for this is that women experience more severe and physical forms of sexual harassment, with men possibly perceiving their experience as less threatening and primarily seeing it as bothersome. Perpetrator status may also play a role here with more intense harassment from someone in a higher status position linked to greater experience of fear and subsequent distress for women and men (Settles et al., 2011). There is, however, some evidence that when the experience is more severe men might react more negatively than women, possibly experiencing the ordeal as emasculating and stigmatising as their masculinity is being questioned whether the perpetrator is a woman or indeed another man, where homophobia may be evoked.

#### 4.2.2. Costs to the organisation and society

In terms of organisational outcomes research points to increased withdrawal, absenteeism and turnover, with subsequent implications for costs (Quick et al., 2016). Where the problem is ongoing or when not being addressed by employers, targets' organisational commitment may suffer with quitting a likely outcome. However, sexual harassment may also have more long-term consequences in terms of someone's career, whether someone is forced out of their job or whether they leave 'voluntarily' as a result of harassment with loss of earnings a likely prospect. Among factors contributing to such a negative career trajectory is loss of human capital specific to the organisation one is leaving, problems with obtaining references for future job applications, with particularly negative implications in early career (McLaughlin et al., 2017). Targets may also deliberately search for jobs which are considered safe/r with possible negative impact on career trajectories as well as their long-term financial wellbeing.

### **4.3. Recommendations**

Spreading information about the consequences of bullying for individuals, organisations and society, including its overall cost will be a key method in changing behaviour and attitudes and moving the issue up the organisational agenda.

There is a need for longitudinal studies combined with structured clinical interview studies with severely affected targets to establish the causal links between bullying/sexual harassment and PTSD.

More, and more robust studies need to be undertaken to measure organisational outcomes particularly productivity loss as a result of sexual harassment and bullying.

Blaming oneself for bullying and sexual harassment is a familiar story for health professionals, consultants and researchers. Particularly when exposure to bullying has taken place for a long period of time, targets begin to blame themselves. More information and training about the causes of bullying and sexual harassment need to be distributed.

## 5. SEXUAL HARASSMENT IN PUBLIC SPACES

### KEY FINDINGS

- Sexual harassment in public spaces is widespread and possibly more pervasive than any other forms of sexual harassment.
- A shift of focus is noticeable from a problem primarily associated with dark and empty spaces to one where offences often take place in public, frequently in the presence of many other people.
- Normalisation of such offences represents a key problem in its own right.
- Whilst the problem includes a range of behaviours with respect to type and severity, they are strongly interconnected with the pervasiveness of the less serious offences, which is important to note as they might, when left unchallenged, provide motivation for more serious offences.

### 5.1. Prevalence and forms

Whilst systematic research of this aspect of the problem is largely absent, including in the EU Commission's own report from 2016 summarising research, public debates and policy initiatives across the EU, the empirical evidence available suggests that the problem is much more widespread than previously anticipated across the EU and possibly more pervasive than any other forms of sexual harassment.

The available information suggests that within the context of the EU most women have at some point during their life been exposed to some form of unwanted sexual attention or harassment.

The following examples highlight the pervasiveness of the problem.

- In the UK a taxi driver is alleged to have raped or sexually assaulted more than 100 women between 2002 and 2008 by spiking the women's drinks.
- In the End Violence Against Women (EVAN) survey on experiences of sexual harassment in public spaces among British women 85% of women aged 18-24 had experiences unwanted sexual attention, and 45% unwanted sexual touching in public spaces.
- In Germany in connection with the New Year celebration (2015/16) a large number of women were sexually harassed and assaulted in Cologne city centre with similar incidents also reported in other German cities.
- A recent Swedish study of university students found that one in four reported one or more incidents of sexual harassment during the last year, mostly taking place in clubs and restaurants (Mellgren et al. 2017).

EU-wide comparative studies of sexual harassment in public spaces are not available. The closest example is the survey on violence against women by the European Union Agency for Fundamental Rights (FRA survey 2015), which explored experience of sexual harassment more generally. On average, 21% of the respondents reported having experienced some form of sexual harassment in the past 12 months, which amounts to

between 24 to 39 million women in the EU-28. More than one in three women aged 18-39 had experienced at least one form of sexual harassment during the 12 months before the study. Like the European Foundation survey on bullying and harassment, the highest prevalence was reported in Northern and Western European countries, Denmark, Sweden, the Netherlands, Belgium, and France, and the lowest in the Eastern European countries such as Lithuania, Romania, Slovenia, and Poland. Physical forms of sexual harassment were reported on average by 5% of the respondents, most often in Denmark, Sweden, and the Netherlands, where also cyber harassment was most common. Sexual harassment is more commonly reported by women with a university degree and by women in the highest occupational groups, professionals and senior managers.

Also YouGov's survey on sexual harassment in public places shows that younger women are more likely than older women to say they have been harassed in the last five years, and at national level, a survey in Finland in 2012 found that women under the age of 35 had experienced sexual harassment substantially more than older women. No such difference was found for men among whom 20% aged 53 or below reported experience of sexual harassment. Another survey by YouGov revealed some differences between generations as to how they define sexual harassment. Generations are broadly united on the more obvious and severe forms of harassment. When asked specifically about 'wolf whistling' two thirds of 18-24-year-old women said that wolf whistling is always or usually sexual harassment but this figure dropped to just 15% among women aged 55 or above. <https://yougov.co.uk/news/2017/11/01/sexual-harassment-how-genders-and-generations-see-/>

Whilst these examples and figures are alarming, the endemic nature of the problem is reflected in a comment accompanying the French survey, suggesting that some of the women interviewed were seemingly unaware of what was happening to them as they had completely normalised their experience. This also chimes with comments made by young people taking part in a recent British poll who stated that it is simply 'part of a night out'.

As opposed to other forms of sexual harassment, in the case of sexual harassment in public spaces, the perpetrator is normally unknown to the victim, as reflected in the term 'stranger harassment' adopted by some commentators (Fairchild & Rudman, 2008). The relationship between the environment in terms of being crowded (public transport), being dark (public parks), being noisy and alcohol-fuelled (bars and clubs), on the one hand, and the opportunity it offers for offending, on the other, is considered key to understanding this phenomenon. In other words: sexual harassment in public spaces can be seen as a product of a motivated offender, a potential victim, with no-one to defend them, and a particular time and place (Ceccato, 2014).

Whilst sexual offences in public spaces have commonly been associated with assaults from an unknown attacker/s in a deserted spot or location, for example on an empty road or public park under cover of darkness, recent focus has shifted to those situations where the offence takes place in the presence of other people, in many cases a crowd of people. With a few exceptions, primarily from the criminology literature, this aspect or form of sexual harassment has been little explored in academic literature.

Whilst to some extent it may be possible to guard or take precaution against attacks in some public spaces, for example by being accompanied or avoiding certain locations at particular times of the day, much of sexual harassment in public places happens when people are travelling for a necessary reason, such as going to work or going shopping. For that reason, past victimisation may not act as a protection against future attacks as people

(primarily women) would still have to go to work, shop and pick up children from school (Madan & Nalla, 2016).

As in other social arenas, where sexual harassment takes place, the experience can encompass a variety of acts including gender harassment (e.g. sexist comments, whistling, gesticulation), touching, groping and sexual assault, including rape (Fairchild & Rudman, 2008).

Relatively little is known about the experience of sexual harassment in public spaces by men. A recent UK documentary revealed, however, that a substantial number of young men have experienced serious sexual assault including rape by other men, often by someone they knew or in connection with a date. However due to the stigma attached to such experiences, few cases have come to the fore, as victims suffer in silence and often resist reporting their experience or indeed keeping the entire experience to themselves. Also, as is the case for many women, when going to the police they are often not believed or treated badly, sometimes influenced by homophobia within the police.

<http://www.bbc.co.uk/programmes/p05ncndj>

It is important to emphasise that various forms of low-level sexual harassment, including sexist and misogynist language, comments and wolf whistling, and the wearing of T-shirts or badges with abusive language and slogans, although less threatening, represent a key part of the problem and in some countries (e.g. Italy, Spain) combines with a hyper masculine culture.

## **5.2. Causes and risk factors of sexual harassment in public spaces**

General causes of sexual harassment have been discussed elsewhere. Here we will focus on those which are specific to sexual harassment in public spaces.

As the problem particularly affects women and given that perpetrator actions are considered rational, deliberately taking advantage of the situation, attitudes to women (misogyny) appear to be the main motivating factor in combination with abuse of power and a feeling of entitlement, and often have little to do with sex or sexual desire.

Particular features of the physical environment where such incidents take place play a key role in order to understand its occurrence. As indicated above, some forms of stranger harassment, such as attacks in public parks or by the roadside, are more likely to happen at certain times of the day under the cover of darkness, solitude and isolation. These factors also contribute to perpetrator success and ability to hide their identity.

By contrast, sexual harassment on public transport often exploits crowded conditions, the ambiguity of the situation (leaning against or touching by chance due to circumstances or deliberately touching or groping), targets difficulties in drawing attention to what is happening and for others to see what is happening and to intervene, e.g. when it is impossible to physically move. Anecdotal evidence also suggests that the ambiguity of the situation causes targets to give their potential perpetrator the benefit of the doubt, even excusing them for being left in a compromised position, e.g. having their genitals possibly involuntarily pressed up against them. In some cases, targets may not even be fully aware of what is happening to them until after the event. Of course, public transport can also represent a high-risk location when there are few fellow passengers present, e.g. at night.

Where the offence takes place in bars, pubs or clubs, several factors appear to combine to increase the risk: being crowded, high levels of noise, and, in particular high levels of alcohol consumption, with some simply referring to the problem as 'drunken sexual harassment'. In the UK, studies among university students suggest that such sexual harassing behaviour may be influenced by a so-called dominant 'lad-culture' associated with a pack mentality linked to sporting activities, heavy alcohol consumption, sexist, misogynist and homophobic banter (Phipps & Smith, 2012). The normalisation of such behaviour with people seeing it as part of the deal, as referred to above, also acts as a cause of such behaviour in its own right as it prevents reporting and allows the perpetrators to get away with it, with re-offending an increased likelihood. Also, at some 'men only' events, misogyny and entitlement have been on open display when participants lower their normal guard in terms of self-policing, manifesting itself in sexualised behaviour and harassment towards female members of staff.

Whilst no witnesses may be present to some of the offences and with bystanders sometimes physically prevented from intervening, the role of the bystander effect as previously pointed out should be highlighted (see also Annex 9).

In a recent move the French actor – Catherine Deneuve (and a number of other women) signed an open letter in 'defence of sexual freedom' attacking the #metoo debate. In particular they stood up for what they referred to as men's right to conquer in the name of sexual desire, including pestering women and pushing themselves up against them. It appears that Deneuve and others here conflate sexual freedom with men's right to sexually harass women and, that at least in some countries these women are out of step with current public opinion.

### **5.3. Consequences of sexual harassment in public spaces**

Due to the paucity of research in this area there is limited empirical evidence with regard to the effects this has on victims beyond what has already been established, with the psychological effects of victimisation likely to be similar or possibly worse than with other forms of sexual harassment (Fairchild & Rudman, 2008). We will therefore focus on those consequences which may be specific to, or be exacerbated, as a result of sexual harassment by strangers.

Fear and reduced feeling of safety when in public spaces, walking on the road or travelling on public transport are seen to be a common consequence. In response victims (primarily women) are seen to voluntarily restrict or change their movements by making changes to their daily schedules and routines including travelling routes, modes of transport and clothing to avoid or escape potential perpetrators or situations. However, this is not always possible as alternatives may not exist or be too time-consuming to contemplate.

For many targets frequent experiences of sexual harassment may be experienced as humiliating and therefore undermining their quality of life. Others may react with self-blame, questioning their own behaviour and actions. To explore such responses in more detail, and in particular to examine the phenomenon of 'self-objectification', Fairchild & Rudman (2008) carried out an academic study of university students. They argue that a central aspect of sexual harassment is to treat women as sexual objects to be looked at and to be touched, with sexual objectification seen as being stimulated and shaped by pornography and advertising. Self-objectification, therefore, results from being repeatedly sexually objectified which causes the victims to view themselves as sexual objects, and as a result feel shameful about their own bodies, persistently checking their own bodily

appearance. They argue that women who respond to sexual harassment from strangers by means of active coping strategies, e.g. confronting the perpetrator or reporting the incident, are much less likely to self-objectify than those who use passive coping, e.g. ignoring or overlooking the situation. Moreover, even those who consider such sexual attention to be insignificant, possibly representing a form of flattery, may find themselves self-objectifying (see comment above).

#### **5.4. Recommendations**

Further research into the causes and consequences of sexual harassment in public spaces is needed.

The normalisation of being subjected to sexual harassment in public spaces, including on public transport or in bars or restaurants, must be fought head on, opening a debate particularly involving members of younger generations. This would also mean initiating a public debate challenging the outmoded idea that men have a given right to pester women for sex and sexual gratification. Such an approach is neither prudish nor a rejection of sexual liberation, as has been suggested by some observers, but a progressive measure to change behaviour and attitudes to women, promoting equality between men and women.

It is acknowledged that in order to wholly understand the presence of sexual harassment in public spaces, or indeed, any form of sexual violence against women, whether at work or in any other social arenas (including the home, at school, and in sport), a broader, more holistic approach is needed in which the impact of *structural violence* needs to be included. This would examine how ethics, values and cultures of a society are structured to promote inequality and violence against women and facilitate their exploitation, and how violence against women in one arena affects their experience in others. Such an approach would also consider women's positions within the workplace including their pay relative to that of men.

## 6. SEXUAL HARASSMENT AND BULLYING IN POLITICS

### KEY FINDINGS

- Recent revelations across (Western) Europe suggest that sexual harassment is widespread in political life.
- Leading politicians can abuse their position of power and get away with it.
- Behaviour is not challenged due to a culture of silence and cover-up fuelled by political recruitment and loyalties.
- Some politicians are themselves targets of bullying and sexual harassment by members of the public.
- Practices may negatively impact on recruitment of women to political life.

### 6.1. Forms and prevalence of sexual harassment and bullying in politics

#### 6.1.1. Sexual harassment in political life

The debate about sexual harassment in political life took centre stage when the European Parliament discussed the problem on 25 October 2017 in the wake of the Weinstein scandal and the #metoo campaign/discussions in media/social media. Serious allegations made against individual MEPs highlighted the omnipresence of the problem. As publicly stated, although this is a problem for women, in particular, it is not a women's problem.

<http://http.europarl.europa.eu/news/en/headlines/society/20171023STO86603/sexual-harassment-meps-debate-situation-in-the-eu-in-plenary>

Similar debates have taken place in several EU countries, in which female politicians have been speaking out, often in solidarity with others, condemning a culture where powerful politicians can exploit the vulnerability of primarily younger members of staff. As argued by UK media (Guardian editorial), whilst Parliament is in no way unique with respect to sexual harassment, elected members should be held to the highest standard of behaviour due to the role of the national assembly (Parliament) as the supreme institution of democracy.

Although systematic surveys are still scarce, the following headlines speak about the widespread nature of the problem which also goes to the top of the power pyramid and makes little distinction between political right and left, suggesting that to address the problem one should avoid party-political point-scoring.

Iceland: 300 women jointly produced an account of their experiences in politics varying from low level sexism to blatant misogyny, having one's drinks spiked and receiving rape threats.

<https://grapevine.is/news/2017/11/24/drugs-bullying-rape-threats-icelandic-women-politicians-tell-their-stories/>

UK: Secretary of state for defence Fallon quits due to allegations of sexual harassment, admitting that 'behaviour fallen short of standard'. <https://www.theguardian.com/politics/2017/nov/01/michael-fallon-quits-as-defence-secretary>

Norway: Deputy Leader of Norwegian Labour Party & previous minister of culture suspended from office after admitting inappropriate sexualised behaviour towards several women. <https://www.reuters.com/article/us-norway-harassment-lawmaker/norway-labour-partys-deputy-leader-suspended-over-harassment-allegations-idUSKBN1EQ19F>

The President of the Swedish Parliament Urban Ahlin was recently accused by several people of harassment including sexual harassment, although he denied the accusations. One of the cases involves a woman who filed a complaint of sexual harassment already in 2010. The case was discussed by his party (the Swedish Social Democratic Party) and he received a warning. <https://www.abcnyheter.no/nyheter/politikk/2017/12/08/195354574/presidenten-i-riksdagen-anklaget-seksuell-trakassering>

In a survey in the Finnish Parliament in 2017, seven employees reported exposure to sexual harassment, compared with five in 2015. A survey by YLE (Finnish radio), with a total of 223 employees and personal assistants working at the Finnish Parliament, found that workers in parliament experience more sexual harassment than workers elsewhere in Finland. Thirteen of the 95 employees who responded to the survey revealed that they had experienced sexual harassment. All but one of the victims of harassment who reported their experiences in the survey were women. The majority of the victims reported that the harasser abused their position of power to carry out the harassment. The harassment reported included verbal harassment, unwanted touching and gestures.

The types of harassment perpetrators are accused of vary from misogynist language, inappropriate propositions and touching to allegations of sexual assault and rape. Whilst some incidents involve two elected politicians, with the harasser most frequently more senior and male, other reported cases focus on harassment of political aides or employees. In a recent UK case a British Member of Parliament (MP) was accused of 'sexual chatter' with a 19-year-old who had applied for a job in his office, whilst similar abuse of power was revealed when an elected politician (MP) was accused of sexually harassing members of the public seeking his assistance in personal matters.

Whilst the above examples focus on the behaviours of politicians, sexual harassment has also been wielded against female politicians on social media by way of 'trolling', posting sexist and abusive messages, including rape threats, an issue we return to when examining bullying in politics below.

These examples show the range of behaviours perpetrated. They also reveal a culture (at least in Britain), which, whilst losing ground, still allows for sexualised comments and gestures (e.g. about breasts) still intermittently being made when female MPs stand up to speak. The fact that standards are rapidly changing has also been used to excuse some alleged perpetrators for simply failing to change with the times, although others have pointed out that some of the behaviours they are accused of have not been considered acceptable for a long time.

### 6.1.2. Bullying in political life

Compared to sexual harassment, as far as political life is concerned bullying has received limited attention and often tends to flare up in national debate when a high-profile politician acts in a way which appears to seriously breach standards for acceptable and decent behaviour. The following examples are in this sense typical.

In 2010 the then prime minister Gordon Brown was accused publicly of bullying, including grabbing them by their lapels and shouting at them after office employees had contacted a bullying help-line. [http://news.bbc.co.uk/1/hi/uk\\_politics/8527170.stm](http://news.bbc.co.uk/1/hi/uk_politics/8527170.stm)

Where alleged perpetrators are not widely known, although they may still wield considerable power over their subordinates, very grave forms of bullying need to occur for such cases to receive any media attention. In a recent case, a previous Conservative party parliamentary candidate and election organiser (Mark Clarke) was found guilty of 15 cases of bullying, mostly of junior staff following an inquiry, with one of the victims naming Clarke as his tormentor in a suicide note. Although the focus here was on bullying, the accusations also included sexually inappropriate behaviour.

<https://www.theguardian.com/politics/2016/aug/17/inquiry-into-tory-bullying-scandal-finds-13-alleged-victims-of-mark-clarke>

Recent evidence also suggests that the problem is widespread with a recent poll suggesting that a fifth of Westminster (Parliament) staff reporting that they have been bullied, revealing a 'toxic' relationship between some MPs and staff.

<http://www.independent.co.uk/news/uk/politics/westminster-staff-bullying-parliament-fifth-harassment-mps-offices-a8072061.html>

It is likely that examples such as these only represent the tip of the iceberg and that bullying behaviour is widespread in all member states, and likely to extend to the behaviour of regional and local politicians, as revealed by a search of local media outlets in Scandinavia.

Whilst the above examples point to bullying by politicians and advisers, politicians themselves are not immune to bullying from the public. In particular female politicians have been the target of vicious social media campaigns with some receiving death threats.

## **6.2. Causes of sexual harassment and bullying in political life**

A variety of culturally inspired political customs and practices are at work across the EU. Whilst products of history and democratic traditions, to some extent these will be influenced by women's representation and influence in political life. However, gender parity within political institutions does not represent a guarantee against bullying and sexual harassment as the Scandinavian examples above verify. Despite this, there seem to be some key, overlapping themes or factors which contributing to the production and reproduction of these problems.

The pervasiveness of these problems appears to be directly linked to a culture of political recruitment where loyalties militates against disclosure and complaints allows for sexual harassment as a form of sexual gratification as well as a form of power and control (Guardian editorial, 5/11-2017).

<https://www.theguardian.com/commentisfree/2017/nov/05/the-guardian-view-on-sexual-harassment-in-westminster-no-grey-areas-no-excuses>

This also means that the problem extends beyond young vulnerable women to include anyone who wants to get on in politics, including men. The power of 'whips', party officials equipped with the role of ensuring that assembly members vote in line with party requirements has also comes under scrutiny, as in the case of Britain they have been seen to use any indiscretion of their own parliamentarians as a kind of leverage to ensure the party line is toed. It is suggested that this has led to a culture of silence, keeping rumours

under lock and not reporting any sexual indiscretion they are made aware of including serious sexual assault as it could come handy in order to apply pressure when possibly later needed.

Power is often seen to be accompanied by more risk-taking behaviour, where the chances of a cover-up, if necessary, is more likely to succeed as people who share a similar destiny learn to protect and cover for each other even in criminal matters. In terms of sexual harassment, it is also argued that power breeds vanity, and with politicians being in business to persuade others one may get an enhanced opinion of oneself, possibly helped by a narcissistic personality trait getting in the way of any realism with respect to whether any personal/sexual attention is wanted or not.

In many European countries parliaments are dominated by men with some sense of entitlement and with the male culture reflected in practices such as late-night meetings, where the evening often is completed with a late night in local bars or in the cases of Britain, in one of Parliament's many bars. The combination of male-dominated company and alcohol also reinforce a sexist culture with tolerance for certain aspects of sexual harassment and bullying, where sexual transgressions even if unwanted may not be condemned. This has led to some commentators (e.g. Suzanne Moore, *Guardian*, 31/10) arguing that many politicians, although not harassers themselves are complicit in the abuse.

As EU Commissioner Vera Jourova, herself a victim of sexual abuse, argued in the EU Parliament in October 2017, in order to address the problem of sexual harassment society needs to examine their attitudes towards women. As discussed elsewhere, tolerance towards sexual harassment varies very considerably between countries. In some countries (e.g. Italy) high tolerance is associated with machismo with certain forms of sexual harassment portrayed as normal and nothing else than men demonstrating their masculinity. It is argued that the former prime-minister Berlusconi's continuous popularity with parts of the electorate despite taking part in sex-parties with very young women has to be understood in such a light, combined with his personal hold over media where women systematically are portrayed as sexual objects. Such attitudes will of course spill over and affect politicians and their relationship with their staff.

In many cases the accusations of sexual harassment appear to come as little surprise as the alleged perpetrators seemingly are well known for their behaviour (serial offenders), as past behaviour has been enacted with no or little cost to the perpetrator. For example, in the recent Norwegian high-profile case, a number of colleagues have confirmed that everyone knew his 'like' for young women and that he had been asked directly by the party's election committee prior to being nominated for the deputy position whether there was anything in the rumours, although no investigation had been carried out.

It is argued, that referring to individual politicians as 'sex-pest', not only individualises the problem, it also fails to castigate the behaviour as disrespect for women in general by people elected to high offices. With the many revelations surfacing, there are voices, including of some women, who themselves are little bothered by the behaviour and pointing to the apparent fragility of some women who are unable to stand up to the harassers and letting it happen to them. Absence of clear guidelines and vague standards of behaviour has also been used to excuse perpetrators as well as accusing targets of politically motivated behaviour. Other commentators, including some previous prominent politicians, have asked whether the discussion has gone too far, signalling the 'death to romance', but missing the point altogether. Underlying much of sexist language and sexual

harassment in politics is often an ingrained contempt for women. Prejudices against women also come to the fore when women find themselves held to a higher standard than men and criticised more harshly when making mistakes, having their professionalism as politicians questioned.

### **6.3. Recommendations**

In politics there must be a high level of tolerance for sharp debate and argument, over and above what would be considered acceptable within the workplace, with the bullying label sometimes inappropriately applied. However, the same tolerance cannot be applied to politicians' treatment of their staff and employees who should have the same right to respectful treatment as any other employees, a distinction some politicians fail to grasp.

Also, politicians who themselves can draw on considerable resources and avenues of communication/access to media must also have a greater acceptance of critical comments by the public, without applying the label bullying to any targeted, heated debate and criticism. That said, systematic singling out of individuals for their views, whether in mainstream or social media, with the aim of inciting hatred, should not be tolerated. Particularly, zero tolerance should also be applied to attempts to conflate a politician's identity in terms of their gender, ethnicity, sexual orientation, religion or disability with the views they promote.

There is another aspect to these problems in politics in that they could be seen to put people, women in particular off the idea of a political career altogether, a particular problem in countries where women are disproportionately represented or struggle to be heard. The political institutions cannot rely on the fact that the political parties police themselves but should establish cross-party policies and procedures to protect individual elected to political office as well as employees (see chapter 7).

Whilst the focus should be on the targets, the cost to the alleged harasser should also be acknowledged, as is poignantly expressed by the recent suicide of a Welsh assembly cabinet member in the wake of accusations from several women of sexual improprieties. Allegations the details of which he had not been informed about. Without casting perpetrators as victims, it is essential to treat them as innocent until proper process has been completed. Unfortunately, the recent debate has revealed that many assemblies, whether national, regional or local have no procedures in place which question the fairness of any process. Moreover, although serious offences and sometimes crimes occur, as argued by the Guardian political commentator Deborah Orr, 'mere allegations should not be feared so greatly that people's lives are destroyed by them, particularly at this time when the societal rules about permissible behaviour are being painfully redrawn' (Guardian, 10-11-2017).

## **7. MEASURES TO TACKLE BULLYING AND SEXUAL HARASSMENT**

### **KEY FINDINGS**

- Despite a number of statutory regulations available at supranational (EU) and national levels covering bullying and sexual harassment in the workplace, the Framework Agreement on Harassment and Violence at Work by the European social partners is particularly promising and should be supported.
- Specific legislation on bullying at work is enacted in some EU member states under criminal law, whilst in others the issues are dealt with under Occupational Safety and Health legislation as part of psycho-social risks at work, or indeed, via Equality and Anti-Discrimination regulation.
- At organisational level anti-bullying policies are the most common measure used, and the number of organisations with such policies and procedures in place are increasing across the EU, although their effectiveness is sometimes questioned.
- A procedure which offers a timely, fair and impartial investigation of complaints of bullying or sexual harassment is a key instrument in dealing with the problems as well as an approach which offers targets opportunity for restorative justice and redress.

### **7.1. Overview of interventions for the prevention and management of bullying and sexual harassment at work**

Reducing hazards in working conditions and developing a good working environment is a process with different stages which requires changes in the work environment, and sometimes also in individuals.

Regarding practical approaches used in the prevention and management of occupational safety risks, a distinction is commonly made between primary, secondary, and tertiary prevention on the one hand, and the level of intervention on the other, i.e. policy/societal; organisational; job/task; and individual (e.g. Vartia & Leka 2011). Primary level interventions are proactive by nature, the aim being to prevent the harmful phenomena from occurring. Secondary level interventions aim to reverse, reduce, slow down or bring to a stop the progression of the harmful situation or of ill-health effects, and to increase the resources of individuals. Tertiary level interventions are rehabilitative by nature aiming to reduce the negative impacts, restoring the health and well-being of individuals as well as ensuring a safe and healthy workplace. What such an approach applied to the issues of bullying and sexual harassment would look like is illustrated in table 3.

Although originally developed to account for workplace bullying specifically, a similar approach is advocated for sexual harassment intervention (e.g. Hunt et al., 2010; McDonald et al., 2015).

**Table 3: Overview of prevention and management of bullying and sexual harassment**

Level of intervention	Primary interventions	Secondary interventions	Tertiary interventions
<b>Society/policy</b>	Legislation/regulations, Collective, stakeholder agreements	Litigation Industrial tribunal	Rehabilitation possibilities
<b>Organisational/ employer</b>	Anti-bullying, anti-harassment and equality policies, procedures to deal with cases in place in organisation  Development of an organisational culture emphasising fairness, dignity and respect, and agreeing standards for acceptable behaviour  Management training  Organisational surveys, risks analysis	Handling procedures  Investigation of complaints  Possibilities for mediation	Corporate agreements  Programs and contracts of professional care, occupational health care
<b>Workplace/ group/task</b>	Psychosocial work environment re-design  Work environment surveys, risk analysis/risk assessment  Training of personnel (e.g. awareness of the issue, of legislation, existence of policies, responsibilities)	Training, e.g. conflict management training, investigation of bullying/sexual harassment cases  Awareness raising, exploration of the situation  Case analysis, conflict/case resolution  Alternative conflict resolution/mediation	Group recovery programs
<b>Individual</b>	Training  Raising awareness  Rights and responsibilities	Advice to targets  Social support  Counselling	Reintegration/monitoring Therapy/Counselling  Physical activities redress

**Source:** Adapted from Vartia & Leka (2011)

## **7.2. European Union and national level interventions on bullying and sexual harassment**

Policy level interventions on safety and health risks (including bullying and harassment) encompass development of international and national statutory regulation and legislation and national policy, specification of best practice standards at national or stakeholder levels, the signing of stakeholder agreements for a joint strategy for the problem, and signing of declarations at the European or international levels (Leka et al. 2008). They oblige and encourage employers and other responsible actors to take action for the prevention of health and safety risks.

### **7.2.1. EU level statutory regulations and agreement on bullying**

There is no specific EU-wide legislation on bullying. However, the Charter of Fundamental Rights and the Framework Directive on Occupational Safety and Health and its focus on stress at work both underscores and forms the basis for more specific legislation both at EU-level and at national levels.

#### **Charter of Fundamental Rights of the European Union (2000/C 364/01)**

The EU's bill of rights, the Charter of Fundamental Rights of the European Union became legally binding when the Treaty of Lisbon entered into force in 2009. The Charter states that:

- Human dignity is inviolable. It must be respected and protected (Article 1).
- Every worker has the right to working conditions which respect his or her health, safety, and dignity (Article 31(1)).

#### **Council Directive 89/391/EEC - OSH 'Framework Directive'**

This directive aims to establish an equal level of safety and health for the benefit of all workers, and obliges employers to take appropriate preventive measures to make work safer and healthier. The directive introduces as a key building block the principle of risk assessment and defines its main elements (e.g. hazard identification, worker participation, introduction of adequate measures with the priority of eliminating risk at source, documentation and periodical re-assessment of workplace hazards). According to the directive, employers have 'a duty to ensure the safety and health of workers in every aspect related to work'. Psychosocial risk management, including bullying and harassment, falls under employers' responsibilities (EU-OSHA 2012).

#### **Framework Agreement on Harassment and Violence at Work**

The autonomous Framework Agreement on Harassment and Violence at Work was signed in 2007 by the European social partners ETUC/CES, BUSINESSEUROPE, UEAPME, and CEEP.

The aim of the agreement is to increase awareness and understanding among employers, workers and their representatives of workplace harassment and violence, and to provide employers, workers and their representatives at all levels with an action-oriented framework to identify, manage and prevent problems of harassment and violence at work. According to the agreement enterprises need to have a clear statement emphasising that harassment and violence will not be tolerated. Procedures outlining how to deal with individual cases, should they arise, should also be included with the right to have one's complaint impartially investigated without undue delay.

<https://drive.google.com/file/d/0B9RTV08-rjErYURTckhMZzFETEk/view>

A follow-up report on the progress of implementation of the framework agreement by the European Social Partners in 2011 concluded that it had brought real added value in terms of raising awareness and better equipping employers and workers to deal with situations of harassment and violence in the workplace (including bullying). The key to this is the flexible nature of the agreement which, despite causing some challenges in implementation, is important for it to be tailored to the different national, sectoral and company realities. In more detail, in seven countries overarching agreements have been made by social partners (in some countries also including representatives of the state as signatories), in six countries national social partners have jointly agreed or unilaterally developed guidance, in four countries national social partners have made a joint declaration or statement, and in three countries national social partners have integrated elements of the framework agreement into existing social partner agreements. Complementary measures including research, training, communication activities and events were reported in eleven countries (Implementation of the European autonomous framework agreement, 2011).

Despite its promise, anecdotal evidence suggests that the framework agreement is still little known and applied, including in some countries where very considerable effort has gone into preventing bullying, such as Finland, Norway and the UK.

The strength and potential of the framework agreement in terms of counteracting bullying (and sexual harassment) cannot be overestimated. Its relative obscurity and limited progress in terms of implementation is, therefore, of great concern. Not only does it place the responsibility for developing policies and procedures firmly with employers, but the fact that the framework agreement is the outcome of a long and complicated negotiation process between the social partners who, by their signatures at EU level and within individual countries have committed themselves to act in accordance with the agreement, should also warrant its implementation locally if the process is properly rolled out. The general nature of the agreement also makes it flexible with respect to upholding national norms and standards in line with societal change.

#### 7.2.2. EU level directives and regulations on sexual harassment in the workplace

Sexual harassment and gender equality are at the centre of several EU-level directives.

##### **Directive 2006/54/EC - equal opportunities**

The purpose of this directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The directive defines sexual harassment as 'any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment'. The directive contains provisions to implement the principle of equal treatment in relation to access to employment, including promotion and vocational training, in relation to working conditions including pay, and in relation to occupational social security schemes. It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.

(Sexual) harassment is considered in several directives on equality and on equal treatment/non-discrimination in employment (see Annex 7). As was the case for bullying, the Charter of Fundamental Rights of the European Union emphasises that gender equality must be assured.

### 7.2.3 National level legislation on bullying in the workplace

This section aims to give a flavour of the variety of legal approaches that exist across EU Member States rather than to provide a comprehensive overview. For a more in-depth evaluation of legal responses in France, Spain, Sweden, and Germany see Lippell (2010). Specific legislation on bullying and harassment at work has been passed in some EU Member States (e.g. Belgium, Sweden and France), although in the case of Sweden later repealed. In most countries the issue is addressed through general occupational health and safety legislation which covers bullying among the identified occupational hazards that need managing arising from employers' duty of care towards their employees. In addition, claims of bullying may be addressed via equality legislation (e.g. bullying of members of protected groups) which may or may not address the issue specifically. Some legislation is reactive by nature whilst other puts greater emphasis on risks prevention (see also details given in Pinkos Cobb, in press).

In France, workplace bullying, known as 'moral harassment', is regulated under both the Labour Law (2008, amended 2016) and the Criminal Code (2009). The Labour Law applies to both private and public employees, and addresses moral harassment, discrimination, and professional equality between men and women. The Criminal Code imposes a criminal sanction for bullying.

Belgium is of interest as Belgian legislation developed in a somewhat different way from most other countries. The Welfare Act (or Welfare Law) was enacted in 1996, and has been amended several times since. In 2002 an amendment was enacted to combat 'undesirable behaviour' in the workplace (bullying, harassment including sexual harassment, and violence). In 2014 the Prevention of All Psychosocial Risks at Work came into force. The new Act is not limited to bullying and sexual harassment but covers all psychosocial risks that could lead to occupational stress. The Act puts harassment in a more general framework of psychosocial risks and states that employers must recognise harassment like any other risk to employees' health.

Finland is a typical example of countries which primarily address bullying (and harassment) via occupational safety and health legislation. Thus, the Finnish Occupational Health and Safety Act of 2003 includes a special section on harassment at work. It is reactive by nature and obliges the employer to take action after becoming aware of the matter. The section also covers inappropriate behaviour by third parties, which means employers have a duty to take action also in those cases where the perpetrator is a third party. The Act also makes it clear that employees themselves have a duty to refrain from harassment. In addition, it contains particular sections about prevention which also apply to bullying and harassment, including risk assessment and the employer's general duty of care.

Norway, following a similar path to Finland, is of interest for several reasons. First: the Norwegian Work Environment Act makes it explicit that it is the employer's responsibility to protect employees against exposure to 'adverse physical and mental strain'. Second: it implicitly grades possible offences by highlighting various forms of adverse effects including 'improper conduct', 'breach of employees' dignity and respect' and 'harassment'. Third: the dynamic aspects of the law are highlighted emphasising that 'standards shall be continuously developed and improved in accordance with developments in society'. The recent development with regard to a shift in perception as to what constitutes sexual harassment would accordingly be a normative change which would impact on the application of the regulation to a particular case or complaint of sexual harassment or indeed bullying.

Countries such as the UK have resisted introducing specific legislation against bullying despite pressure from anti-bullying advocacy groups, leaving the legal situation somewhat ambiguous. With no particular legislation addressing the issue, when a victim of bullying pursues a course of legal action, one or more general legal provisions could form the basis of the case, including among others Common Law liabilities, health and safety legislation, anti-discrimination legislation, regulations aimed at stalking or the Protection against Harassment Act (see 7.2.4 below). For more on national legislation see Annex 8.

#### 7.2.4 National level legislation on sexual harassment in the workplace

Sexual harassment has its own definition and legal source often in equality legislation in most EU Member States.

In Finland, the Act on Equality between men and women states that discrimination is prohibited regardless of whether it is based on factual or assumed information relating to individuals themselves or to another individual. Sexual harassment, gender-based harassment and any order or instruction to engage in discrimination based on gender shall be deemed to constitute discrimination under this Act.

The Criminal Code criminalises sexual harassment (509/2014): A person who, by touching, commits a sexual act towards another person that is conducive to violating the right of this person to sexual self-determination, shall be sentenced, unless punishment is provided elsewhere in this Chapter for the act, for sexual harassment.

UK law distinguishes between gender harassment (art 26 sub 1 (j. sub 5 "sex") and sexual harassment (section 26 sub 2). Whilst gender harassment refers to unwanted conduct that is related to an individual's sex, sexual harassment refers to 'unwanted conduct of a sexual nature' (Legal Source: Equality Act 2010, Section 26A).

Sweden: Discrimination Act. The law regulates the employers' responsibility of preventing and taking action against sexual harassment.

#### **Country example: Lithuania**

A person who seeks sexual contact or satisfaction and harasses a person subordinate to them in office, or otherwise by vulgar or comparable actions or by making offers or hints, shall be considered to have committed a misdemeanour and shall be punished by a fine or by restriction of liberty or by arrest.

According to Article 1 of the Law on Equal Opportunities of Women and Men, sexual harassment is defined as offensive verbal or physical, conduct of a sexual nature, towards a person with whom there are work, business or other relations of subordination. There is a general definition of harassment in the same law relating to unwanted conduct related to the gender of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating or offensive environment.

The definition of sexual harassment, provided in the directives, is completely subsumed within the national legislation of Lithuania.

Related information: Subparagraph 5 of Article 235(2) of the Labour Code defines violation of equal opportunities of women and men or sexual harassment as a gross breach of work duties for which a disciplinary sanction may be imposed on the violator (a warning, a reprimand, dismissal from work).

Legal Source:

Criminal Code, Article 152; Law on Equal Opportunities for Women and Men (1998); Law on Equal Opportunities (2005) and Labour Code (2003)

For more on definitions and legislation on sexual harassment across EU countries see [Legal Definitions in the EU Member States | EIGE](#)

## **7.3. Organisational and individual level interventions on bullying and sexual harassment at work**

### **7.3.1. Organisational measures to counteract bullying and sexual harassment at work**

Organisational or employer-level interventions follow the same general model as outlined in table 1, making a distinction between primary (prevention), secondary (intervention) and tertiary intervention (rehabilitation). They aim to educate and change attitudes towards bullying and harassment; to develop an organisational culture where there is no place for bullying; to reduce the risks of bullying by developing the social climate and functionality of work units including their leadership; to ensure that justice prevails by investigating complaints; and, finally, to rehabilitate those directly affected. Whilst prevention of sexual harassment and management of any complaint of harassment follow a similar pattern, given its nature sexual harassment is also a function of (gender) inequalities and as such would be addressed in a broader manner as part of organisational attempts to achieve greater equality.

#### **Policies and procedures in place**

Anti-bullying policies and procedures and training in their rationale and application, particularly aimed at management, are the measures most often used in organisations in line with recommendations from researchers (e.g. Hoel & Einarsen, 2011), or indeed instruction/order by occupational safety and health authorities. Organisational policy is the employer's statement of intent, as by means of a policy the employer demonstrates commitment to tackle bullying. Policies with agreed procedures not only force but also support employers in managing cases fairly and ethically. As this appears to be the key intervention applied by employers across countries to address bullying (and sexual harassment), particular attention is given to its forms, coverage and effectiveness.

The following features are considered key to effective policies: (e.g. Rayner & Lewis, 2011, PRIMA-EF 2008):

- A statement of intent;
- Clear definition of bullying and sexual harassment and examples of unacceptable behaviour;
- Reference to legal statutes that affect the policy;
- Clarification of roles and responsibilities/duties for managers and workers, and workers representatives;
- Integration with a procedure which regulates informal as well as formal actions;
- Forms of support available to targets and alleged perpetrators;
- Measures to monitor and evaluate the policy.

According to the Second European Survey on New and Emerging Risks carried out in 2014 (ESENER2), procedures to deal with cases of bullying or harassment are introduced in organisations most often in the western EU countries and in Scandinavia. Most commonly in the UK (94% of organisations), Ireland (93%), Belgium (82%), Sweden (80%), and Finland (75%). In some countries, such as Hungary, Estonia, Bulgaria, Latvia, and Portugal, such procedures were in place in fewer than 20% of organisations. Procedures are in place more often in big organisations than in smaller ones. With regard to occupational sector, procedures in place to deal with cases of bullying or harassment were most common in

human health and social work activities (61%) (ESENER2 2016). In general, the frequency of reporting procedures to deal with bullying or harassment had increased from 2009 when the existence of procedures in place in organisations was assessed in ESENER1.

Analysis of the ESENER1 survey found that the most significant drivers for having in place procedures in this area were their perceived link to absenteeism. The most significant barriers were lack of technical support/guidance and sufficient resources. The results showed that enterprises which indicated that legal requirements were important to them were more likely to report having in place procedures and measures to deal with psychosocial risks (EU-OSHA 2012). Approximately 30-40% of European establishments directly expressed a need for information or support on how to design and implement preventive measures, how to assess psychosocial risks, and how to deal with violence, harassment or work-related stress in general.

The ESENER1 survey also showed that bullying and harassment was a major concern in establishments more often in old EU Member States (EU-15) (74%), than in newer Member States (53%). Most often bullying and harassment was a major concern among managers in Portugal, France, and Ireland, and most seldom in Estonia, Finland and Sweden.

Also, policies on sexual harassment have been developed in organisations but systematic collection of data on the existence of such is lacking. In many cases, e.g. in the UK, sexual harassment is often incorporated in anti-bullying/Dignity at Work policies, with particular sections addressing the issue.

Eurofound (2015) has worked out a useful classification based on policies in place to tackle violence and harassment (bullying) at work and reported in the ESENER2 survey, based on responses from national rapporteurs on issues such as coverage of organisational policies on violence and harassment (bullying) and general awareness of the issues. Prevalence of violence and harassment and the presence of national legislation were also considered.

*Group A:* Belgium, Denmark, Finland, Ireland, Netherlands, Norway, Sweden, UK - Violence and harassment is considered an issue and policies are in place to prevent and tackle it.

*Group B:* Bulgaria, Croatia, Cyprus, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania, Spain - Violence and harassment is not considered to be a major issue. Awareness of it is low or increasing.

*Group C:* France, Germany, Luxembourg - Violence and harassment is increasingly considered a relevant policy issue and awareness of violence and harassment is steadily increasing.

*Group D:* Czech Republic, Estonia, Latvia, Lithuania, Slovakia, Slovenia - Awareness of violence and harassment is low. Policies and procedures are developing or do not yet exist.

*Group C:* outlier Austria. Austria has a comparatively high share of workers reporting violence and harassment. There are some work-related policies, but none are systematic.

For more detail see. Eurofound (2015) Violence and harassment in the European workplaces: Extent, impacts and policies, Dublin.

<https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>

Although the most common organisational response to bullying (and sexual harassment) by far, it is recognised that policies are not always effective. Typical weaknesses identified with policies are: insufficiently communicated; not incorporated into induction for new staff training; insufficient training of managers and key personnel prior to implementation; written in a language which signal that they are not intended to be used; not made clear when they next will be evaluated and with whom the responsibility for evaluation and revision would rest; and unclear to whom a complaint should be made (Rayner & Lewis, 2011). (See also Velázquez, 2016).

With a focus on *sexual harassment prevention*, and making a distinction between a primary, secondary and tertiary stages of prevention for organisational intervention as advocated above, Hunt et al., (2010) also highlight the importance of organisational policies. To be effective a commitment to zero tolerance of sexual harassment is needed, with the policy widely communicated and its implementation effectively monitored. This should go hand-in-hand with education of employees focusing on what behaviour constitutes sexual harassment and how to deal with it should it occur.

### Investigation of complaints

The Framework Agreement suggest that complaints of bullying and harassment should be governed by a procedure with the following element incorporated as a minimum:

- It is in the interest of all to proceed with the necessary discretion to protect the dignity and privacy of all.
- No information should be disclosed to parties not involved in the case.
- Complaints should be investigated and dealt with without undue delay.
- All parties involved should get an impartial hearing and fair treatment.
- Complaint should be backed up by detailed information.
- False accusations should not be tolerated and may result in disciplinary action.
- External assistance may help.
- If it is established that harassment and violence has occurred, appropriate measures will be taken in relation to the perpetrator(s). This may include disciplinary action up to and including dismissal.
- The victim(s) will receive support and, if necessary, help with reintegration.

In a nutshell the above principle should guarantee for a timely, fair and impartial hearing of a complaint.

Two principles should be highlighted: First: the Framework Agreement implicitly incorporates the principle of *natural justice*, making it clear that for any investigation to be fair and perceived as fair the alleged perpetrators must be given the opportunity to defend themselves by given access to the information of the case that concern them. Second: confidentiality is fully respected but limited to be able to disclosing necessary information to the parties directly involved with the case. This is of utmost importance as it highlights that anonymous complaints cannot be tolerated as it would breach the principles of natural justice, making it impossible for alleged perpetrator to defend themselves.

It is also recognised that for investigations to be effective, impartial and perceived as fair investigators need to be properly trained to develop the necessary competences needed (see also Hoel & Einarsen, 2011).

## Training

Management training is considered one of the key measures in counteracting bullying and sexual harassment at work. Management and employee training as well as training for safety representatives are used to increase the general awareness of bullying, its antecedents and consequences and forms a key part of any tailor-made intervention project to address the problem.

### Work environment re-design

Research has shown a strong association between bullying and poor psychosocial work environment (see chapter 3). These research findings suggest that assessment of psychosocial risks and improvement of the psychosocial work environment are key measures for the prevention of bullying at work.

There is little information on prevention measures against *cyberbullying* in workplace-related situations. Most of the activities still focus on providing information and raising awareness. For example, the Estonian Data Protection Inspectorate has published several guides regarding processing and protecting personal data in work relations, the privacy of employees' computer use and recording phone calls.

The social partners in Norway have in recent years emphasised that employers must be aware of the use of digital platforms in their business and they should have an active policy on the prevention of sexual harassment using such media. They should also have clear procedures for dealing with cases of sexual harassment and threats via digital platforms. Overall, the issue of cyberbullying seems mainly to focus on third-party violence. As it is expected to be a growing issue of concern, policymakers should pay attention to it.

## Monitoring progress

With relevance to sexual harassment and bullying, some countries, including the UK, put considerable emphasis on monitoring developments which impact on workplace in/equalities. According to the 2010 Equality Act (EHRC, 2010) public sector organisations are required to set stretching objectives with respect to equality challenges within their workplace. For this purpose, they are asked to collect information about the composition of their workforce in terms of demographics such as gender, age, disability, ethnicity and sexuality, as well as information about grievance and disciplinary procedures, including complaints of bullying and sexual harassment. They are also expected to undertake reviews of their policies and procedures, as well as informal and unwritten work practices, which altogether should lead to an action plan. Through systematic collection of data it is possible to measure progress and revise objectives accordingly.

## Role of bystanders

Despite being recognised as a possible factor in bullying scenarios, until recently little attention has been given to the possible role of bystanders in preventing bullying or bringing bullying to an end. For a further discussion see Annex 9.

### 7.3.2. Effectiveness of organisational measures

Although there has been a growing use of interventions to manage bullying at work, the number of systematically evaluated interventions is still small.

According to the intervention literature, interventions at the policy level are often in practice ignored (Leka et al. 2008). Although the situation may have improved somewhat during the past ten years, still we can see that those responsible in organisations are often unaware of EU level legislation and agreements. Moreover, employees are often unaware of

policies and procedures to deal with bullying in place in their own organisation (Rayner & Lewis, 2011).

A few studies have been conducted to assess the effectiveness of organisational intervention programmes. In an intervention project in Denmark (Mikkelsen et al., 2008) interventions included steering group meetings, lectures for all employees, training in conflict management for all managers and key employees, dialogue meetings focusing on psychosocial work environment issues, and of internal newsletters and information on bullying to all employees. Similarly, a UK intervention in five large public-sector organisations tested the effect of three interventions: stress management training, bullying behaviour awareness training, and policy communication without coming to a clear conclusion (Hoel & Giga, 2006).

Evaluation of management training interventions has shown small positive effects (Leon-Perez et al. 2012). Interventions increase awareness of the phenomenon and of the importance of constructive communication. In the Finnish 'Amicable Working Environment' project (see below) some forms of negative behaviour decreased following interventions. A higher level of positive interactions was reported at unit/team level, including supporting colleagues and giving positive feed-back. Most positive development was found in units where supervisors actively took part in different activities. Management intervention showed that intervening in bullying and inappropriate behaviour is a skill that can be learned. Supervisors reported that they had been provided with tools to intervene in bullying.

#### [An example of a multilevel intervention](#)

In an intervention project 'Amicable Working Environment – towards zero tolerance of bullying' in Finland, work was done at different levels of the organisations, and different measures were used. E.g. pre- and post-intervention surveys were conducted among the whole staff in every organisation. Intervention measures included promotion of positive behaviour by means of a poster campaign across the premises (e.g. 'If you talk about someone – SAY SOMETHING POSITIVE'), line-managers/supervisors were given two half day training sessions, and three further awareness-raising sessions about bullying were conducted for all members of staff of the ten work units involved, combined with information about the aims and progress of the project (Olin et al., 2016, Vartia et al. 2016).

#### [7.3.3. Individual level interventions](#)

Tertiary level individual interventions involve supporting and helping victims recover from bullying, including help with reintegration at work. In Germany victims of bullying have been treated in special clinics assigned for victims of bullying. The treatment includes a programme of intensive therapy provided over several weeks, with regular group-therapy sessions as a key component. An evaluation study showed positive outcomes, with most participants benefitting from the treatment (Schwickerath & Zapf, 2011).

In a Danish two-year rehabilitation programme among unemployed victims of bullying involving victims on long-term sick leave, several measures were used: psychological counselling, physiotherapy and physical exercise, as well as job counselling ('on the job training'). The aim of the programme was to explore whether such a rehabilitation programme had beneficial effects on the health and well-being of victims of bullying and whether it increases the likelihood of their returning to work. A significant decrease was found in psychological and psychosomatic symptoms among the victims during the course of the programme, and some victims successfully returned to work (Mikkelsen & Einarsen 2006).

## **7.4. Recommendations for prevention of workplace bullying and sexual harassment at work**

As argued above, the Framework Agreement on Violence and Harassment has a series of positive properties which could turn it into an effective instrument against bullying and harassment in the workplace. Its communication and uptake should therefore be strongly supported. With the EU Parliament already in 2001/2339 (Di Martino et al., 2003) considering whether to extend the directive on health and safety at work, or introduce a new directive to combat bullying, turning the Framework Agreement into a directive might be a way forward. This would also help in guaranteeing some protection against bullying in non-unionised workplaces.

Organisational level interventions are implemented and reported mostly from western European countries and Scandinavia. For countries and organisations to take action and implement measures to prevent and tackle bullying, the issue needs to be acknowledged as a serious psychosocial risk factor for management to take it seriously.

In the case of sexual harassment, the issue can be addressed by means of two routes of intervention, via health and safety legislation as a psychosocial risk, or via equality legislation/anti-discrimination. For the individuals who are faced with sexual harassment there should be a choice with respect to which route they want to follow in order to progress their case. It is also the case that dealing with the issue primarily under health and safety legislation could mean a depoliticisation of the issue, divorcing it from the wider issue of gender in/equality.

Regulations on bullying and sexual harassment should allow for nuanced complaints rather than forcing victims to label their complaint as 'bullying' or 'sexual harassment'. If the bar for a complaint is set too high it may prevent targets from filing a complaint due to the severe consequences it may have for the alleged perpetrators should their complaint be upheld, when all the targets may want is for the behaviour to stop. Also, by unnecessarily invoking the bullying label, the conflict is likely to escalate making any longer-term resolution more difficult to achieve.

Practically, providing effective training for managers on bullying and sexual harassment is essential, emphasising their role in preventing and dealing with it if it occurs. Induction programmes for new members of staff should contain information about policies on bullying and sexual harassment, emphasising rights and responsibilities of employees.

Further research into multilevel intervention programmes should be welcomed given the positive results emerging from the limited number of studies so far undertaken. Such intervention programmes should also to a greater extent acknowledge the role of bystanders in bullying and their potential positive role in preventing bullying.

In terms of preventing bullying and harassment of members of protected groups, the role of stereotypes and prejudice, including 'unconscious bias' must be acknowledged and counteracted. As part of such efforts members of protected groups must be given greater voice within the workplace, for example through establishment of networks or employee resource groups. Some argue, however, that the most effective networks are those which also welcome members from majority groups to foster mutual understanding and support.

## **7.5. Prevention and reduction of bullying and sexual harassment in public spaces**

### **7.5.1. Policy level intervention**

The issue has been discussed by the EU Parliament on several occasions, including in February 2016 in connection with the aftermath of the multiple sexual assault on women in several German cities in connection with the New Year celebrations. In response there was a new call for an EU directive aimed at combating violence against women as requested already in 2004, but with little progress made since.

Similar concerns have been raised in other EU countries, notably Sweden and Finland, where a number of serious sexual offences carried out by immigrants or asylum seekers have raised grave concerns and widespread condemnation, with calls for a greater focus on educating new immigrants in what is described as the need to adopt EU values. Whilst this issue clearly needs to be taken seriously as has been evidenced in this report, violence against women is a much broader issue with most cases of sexual harassment against women in public spaces equally likely to be perpetrated by the native population. Moreover, with widespread anti-immigrant feeling and indeed Islamophobia emerging in many European countries and with the number of violent attacks against members of the immigrant community rising as a result, it is clear that a focus on immigrants when addressing the issue will fall wide of the target.

In a debate in the EU Parliament in June 2017, there was discussion on how to combat sexual violence against women in public spaces with a call for a 'fundamental change of mindset'. In response to the problem a wide-ranging approach was advocated, integrating gender equality in education curricula and the use of teaching methods which avoid reproducing relationships based on an imbalance of power. Highlighting the need for a zero-tolerance approach, it called for prosecution of perpetrators and a greater focus on awareness raising, as well as training of teachers and law enforcement staff, with a particular role acknowledged for the media in promoting the issue. Moreover, it asked for integration of a gender dimension with respect to urban planning and public transport.

At a national level discussion and initiatives taking place in France have received attention. President Macron publicly stated the need for a public debate on how to curb sexual harassment in French society, arguing that he would make gender equality a priority of his Presidency. Among the initiatives considered is a new law on sexism and sexual violence which also would criminalise sexist behaviour such as 'wolf-whistling'. In that connection, to get what is referred to as 'the pulse of the public', online consultation and hundreds of workshops are being planned ([www.egalite-femmes-hommes.gouv.fr](http://www.egalite-femmes-hommes.gouv.fr)). Moreover for the law to be effective it is recognised there is a need to consult specifically with the police and law enforcement officers.

Women have also been encouraged to lodge their complaints in greater numbers with the police to highlight the magnitude of problem and to seek personal justice and redress, as in all countries it is acknowledged that only a fraction of offences are reported. In a related but separate move, the French minister of Justice has suggested offering the opportunity to file a complaint online rather than directly with the police. However, whilst this seems like a bold move which is likely to considerably increase the number of complaints, there are doubts whether the police and judiciary actually have sufficient resources to deal with such an increased case-load as no increase in budget has been forthcoming yet.

It is also recognised that in order to ensure long-term change, the issue needs to be raised already in schools together with attitudes to women linked to general sexism and portrayal of women in pornography.

#### 7.5.2. Local interventions

To address the issue locally a number of initiatives have been put forward. In a French poster campaign launched by the French state railways and Paris tube aimed at changing behaviour by way of shaming and deterring people from pestering and harassing women on public transport, spoof metro maps with each station named in terms of escalating sexual remarks from 'you're sweet' to 'say something, you filthy bitch'.

In Spain, in response to the appalling and widespread sexual violence against women at the 2016 San Fermin Festival in Pamplona, organisers and local activists put in place a series of actions which together appear to have worked by substantially reducing the attacks on women at the 2017 festival. These included raising social awareness about the problem, heavy police presence including some officers specially trained in dealing with victims of sexual abuse and daily publication of criminal offences to show that abuses will be punished

Hotlines free of charge for women to report sexual violence have been another method launched in several countries including France (3939) where it is operated by volunteers.

An interesting initiative in the UK ('Unmute the commute') and sponsored by the BBC was recently revealed where a team of researchers, community activists, technology experts and artists, together developed a multiple-strand approach, combining awareness-raising, providing information about the problem, its manifestations, magnitude and how it is experienced by women, through posters and exhibitions. Emphasising the holistic nature of the approach, it focuses on bystander responsibilities, using technology developed by a mathematician and a computer scientist to draw attention to the harasser's experience (wearing a button which lights up signalling that there is a harasser on the bus/tram/tube with the aim of increasing intervention by bystanders.

<http://www.bbc.com/news/live/world-41637763>

Other initiatives are focused on local urban planning and design, emphasising issues such as visibility of others and seeking 'solitude without isolation' (Warp, 2015). For example, local parks may be made safer by means of making provision for multiple quick escape routes, street lighting and the use of emergence telephone boxes.

With research identifying restaurants and bars as spaces where women frequently are being sexually harassed, whether as guests or as member of staff, suggestions regarding how to improve the situation in this industry are of interest. In a recent Norwegian study focusing on staff experiences and demonstrating the large scale of the problem (Bråten & Øistad, 2017), there was emphasis on the need for greater openness about the issue among people working in the industry as the term sexual harassment at large is generally considered taboo among young men and women, an issue which has also been raised in the German #metoo debate. Others point to the need for such establishments to promote a zero tolerance approach, advertised and on social media, with venue operators given specialist training in how to deal with sexual harassment.

## **7.6. Recommendations for prevention of bullying and sexual harassment in public spaces**

For progress to be made on this issue it also depends on whether victims are willing to come forward and make a complaint. The often low success rate for rape convictions (11% in the UK), suggests that it may be hard to convince victims that this would be in their personal interest as well as in the interest of women in general. Moreover, as is well known from the debate on rape, women find themselves disbelieved and their intentions questioned. This has also been a common element in the ongoing public debate with some observers, mostly men, repeating discredited clichés: what was she wearing, why did she not speak up, why didn't she say no, why didn't she fight back, why didn't she go to the police.

The role of bystander intervention is essential here and should form a key part of any intervention programme.

Whilst attitudes to sexual harassment are key, the process for making a complaint should be further scrutinised with initiatives such as the one currently discussed in France on opening up for on-line reporting pursued further. Still, there is a job to be done with respect to police and law enforcement officers who often harbour patriarchal values and misogynistic attitudes.

Whilst reporting requires the individual victim to act, the current debate has demonstrated the strength of collective approaches in bringing the issue to the fore, through sharing experiences and collectively bringing their experience to the public. Some old-style activists have mocked this approach, arguing that women should speak up and tell men to stop the moment they feel violated or harassed. Rather than treating this as second-class activism demonstrating lack of ability to challenge men head on, new forms of collective action should be welcomed and celebrated.

Although standards are being re-drawn, widespread cultural tolerance to sexism and sexual harassment remains the biggest obstacle to change. Whilst many young people have been active in the debate on social media, sexual harassment still remains a taboo among many groups of young people. Initiatives to address issues of sexual harassment already in school should therefore be welcomed, with strong voices recommending that the harassment should be linked to pornography and its objectification of women. Surprisingly, few voices have emerged linking sexual harassment to prostitution and trafficking, which one might expect would be a natural extension of the debate.

## **7.7. Prevention and reduction of bullying and sexual harassment in political life**

The EU Parliament has addressed the issue of sexual harassment and other forms of inappropriate behaviour on several occasions, the latest in October 2017 in response to the Weinstein revelations and the international outcry and debate that followed in its wake. Through testimony of a number of MEPs, it was recognised that the EU Parliament and other EU institutions themselves are not immune from such conduct and in response a zero-tolerance approach has been advocated.

The EU Institutions Staff Regulation deals with the issue of inappropriate conduct by members and staff. Its paragraph 12 states that people working in all EU institutions shall

refrain from any form of psychological or sexual harassment, emphasising unwanted conduct that creates an intimidating, hostile, offensive or disturbing environment.

The EU Parliament has established particular mechanisms to deal with inappropriate behaviour by its members and staff, with a special Advisory Committee responsible for preventing harassment and another Advisory Committee, with responsibility for dealing with complaints against MEPs from parliamentary assistants. The committee has recently also launched a campaign to raise awareness about the issue.

Guidelines also exist for MEPs' own conduct, pointing out what constitutes appropriate/inappropriate behaviour, emphasising the requirement of civilised language and with MEPs asked to refrain from insults and comments about staff members' physical appearance. They are also required to respect employees' private lives, discuss problems and intervene immediately if they spot any inappropriate behaviour among staff such as sexist jokes and vulgar acts. A similar set of guidelines is also being developed for parliamentary assistants.

<http://www.europarl.europa.eu/news/en/headlines/society/20171023STO86603/sexual-harassment-meps-debate-situation-in-the-eu-in-plenary>

The recent public debate on sexual harassment has also revealed that few EU national parliaments and political institutions have developed specific guidelines or policies for behavioural conduct including bullying and sexual harassment, possibly reflecting a view that they to some extent were immune from such behaviour. In some cases, such as in the UK, the political parties have mostly been left to police themselves in line with their own codes of conduct, leaving staff members vulnerable to abuse by politicians or other members of staff. For that reason, the UK's Independent Parliamentary Standards Authority recommends that a grievance procedure is to be included in employees' contracts, but this does not cover those members of staff who work directly for MPs, who do not have to follow the procedure. MPs' status as self-employed has also complicated matters. However, the Prime Minister (Theresa May) now recognises that this situation is untenable.

In terms of sexual harassment, given the Parliament's own focus on alternative conflict resolutions, it has been highlighted that tackling sexual harassment in this manner, for example by means of mediation is not acceptable. In terms of dealing with any complaint arising, the independence of the process has also been questioned. Overall it has been emphasised that for any code of conduct to be fit for purpose it needs to comply with the following requirements: be *credible, accountable and transparent*, and have an *individual element*. Although procedures should be applied fairly and equally to all, for people experiencing bullying and sexual harassment, it is considered vital to be given some choice with respect to how one takes the case forward.

## **7.8. Recommendations for prevention of bullying and sexual harassment in political life**

Being sexually harassed or indeed accused (rightly or wrongly) of sexual harassment could leave a promising political career in ruins. As allegations of sexual harassment are often seen to have broader political implications, as people often react in a partisan way, trying to make political capital out of a case, victims may be discouraged from making a complaint and instead suffer in silence. Also, attempts to blame the victims in parts of the media, castigating them as being complicit in their own ordeal, may stop others from coming forward. It follows, that in addition to the need for behavioural guidelines and

proper systems for reporting and investigation of complaints, political institutions need to ensure that necessary supportive mechanisms are available for targets (and the accused). Whilst various conflict resolution approaches, such as mediation, may be applied voluntarily to resolve personal disputes including some cases of bullying where the conflict is still in its early phases and the parties are motivated to find a solution, such approaches are not appropriate for sexual harassment. Not only is it unreasonable to ask the victim to sit down together with the perpetrator, it also leads to 'privatisation of justice' where the perpetrator is let off the hook and where issues of confidentiality surrounding the process prevent the institution from learning (Deakin, 2017).

Behaviour guidelines and policies must not allow for vexatious or false accusation, as has emerged from the British debate, and it is necessary that punitive measures for false accusations are not given so much space that this prevents people from utilising the policy and making a complaint. Moreover, it needs to be emphasised that a complaint which is not upheld or proven is in most cases not the same as a false complaint.

The distinction between confidentiality and anonymity is of key concern. Whilst confidentiality is of outmost importance and should be followed as far as is possible to progress the case, anonymity should not be granted as this represents a breach of natural justice and the right to know what one is accused of. However, what is essential is to ensure is protection against any victimisation as result of making a complaint. Following the #metoo campaign a number of organisations have dismissed staff simply on the basis of a complaints without any proper process. Whilst there might be some *Schadenfreude* involved with seeing powerful persons (men) falling from great height in this way, this might be short-sighted as it militates against principles of fairness and justice with implications for organisational members' trust in organisational processes.

## 8. CONCLUSION

This study provides an updated account of progress in research and practice on bullying and sexual harassment in the EU. Whilst considerable agreement exists with regard to definition and understanding, what has become clear from the recent public debate on sexual harassment is the need for national and, indeed, EU-wide conversations about boundaries of acceptable and dignified behaviour, whether sexual or non-sexual. This not only applies to the workplace and political institutions, but also to behaviour in public spaces. Whilst in terms of sexual harassment these conversations would imply listening primarily to women's voices, paying attention to their experiences, they must also include men, as this is neither a women's issue, despite mainly affecting women, nor is it just about women, as more men than anticipated are affected. Furthermore, for men to change their behaviour the link between less serious offences, associated with sexist comments and sexualised behaviour, and more serious offences including sexual assault should be highlighted, challenging notions that such behaviours are trivial or indeed normal manifestations of male sexuality. Moreover, real progress in pushing boundaries permanently in a more restrictive direction will only be achieved when sexual harassment is addressed holistically. This means connecting the problem directly to men's power over women and wider gender inequalities, as well as acknowledging that all forms of violence against women are interconnected, whether in the home, the workplace or in public spaces, with transgressions in one arena fuelling and reproducing behaviour in others.

As far as bullying is concerned, the essence of the experience lies in its repeated and prolonged nature and the disarming and exhausting effects this has on the targets' ability to fight back and cope. Whilst personal vulnerability increases the risk of becoming targeted and feeling victimised, personal resilience may protect against low-level bullying but not against severe victimisation. This means that the bullying label should not be used lightly, but it does not suggest that individual unacceptable or undignified acts should be tolerated. On the contrary, in responding to bullying organisations and institutions should give consideration to behaviours they will not tolerate, establishing boundaries in line with national rather than local norms, and acknowledging that these change over time. This means that boundaries may be drawn differently in different countries, and the EU should seek to influence current tolerance levels by raising awareness of their cost and consequences.

The evidence of bullying and sexual harassment provided requires cultural change relying on an integrated response with action taken at policy, organisational/institutional and individual levels, combining prevention, intervention and rehabilitation. Whilst statute and policy provide legitimacy for the issues, with this report highlighting the potential of the Framework Agreement, to change realities on the ground actions are needed, primarily by those with a legal duty of care towards their staff (employers of all kinds). They should develop and enact policies and procedures to prevent and respond to unacceptable behaviours when they occur, monitoring their effectiveness and making it safe and legitimate to report or complain. Complaints should be investigated confidentially and impartially, recognising also the rights of alleged offenders. Moreover, as managers'/political leaders' own behaviour is crucial to progress it should be scrutinised, emphasising that they will be held to a higher standard of conduct. With the success of the #metoo debate in mind, the power of collective action in bringing about change by challenging silence and tolerance of misconduct should also be harnessed.

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## ANNEX 1 - SOME DEFINITIONS OF BULLYING AND HARASSMENT AT WORK

Definition by	Definition
<b>EU-level:</b> Framework Agreement on Harassment and Violence at Work	Harassment occurs when one or more workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work.
EU-OSHA – ESENER survey	Bullying or harassment occurs when one or more workers or managers are abused, humiliated or assaulted by colleagues or superiors.
<b>Research:</b> Einarsen et. al. (2011)	Bullying at work means harassing, offending, or socially excluding someone or negatively affecting someone's work. In order for the label 'bullying' to be applied to a particular activity, interaction, or process, the bullying behaviour has to occur repeatedly and regularly (e.g. weekly) and over a period of time (e.g. about six months). Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of systematic negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal strength are in conflict.
Leymann (1990)	Psychological terror or mobbing in working life involves hostile and unethical communication, which is directed in a systematic way by one or a few individuals mainly towards one individual who, due to mobbing is pushed into a helpless and defenceless position, being held there by means of continuing mobbing activities. These actions occur on a very frequent basis (at least once a week) and over a long period of time (at least six months).
<b>Country specific:</b> France	Employees should not be subjected to repeated actions constituting moral harassment, which intentionally or unintentionally deteriorate their working conditions and are likely to violate their rights and dignity, impair their physical or mental health, or jeopardise their professional future.
Slovenia	Harassment: any undesired behaviour associated with any personal circumstance. Bullying: any repetitive or systematic, reprehensible or clearly negative and insulting action or behaviour aimed at individual workers in the workplace or in connection with work.
Italy	Mobbing is considered to be a consistent action and behaviour that damages the worker's productivity. The minimum period for the duration of mobbing is specified as six months.

## ANNEX 2 - PREVALENCE OF BULLYING AND SEXUAL HARASSMENT AT WORK IN EU COUNTRIES

All, women and men subjected to bullying and sexual harassment during the course of work over the last 12 months (%)

Country	Bullying/harassment			Sexual harassment		
	Men	Women	All	Men	Women	All
France	12.2%	13.5%	11.0%	0.4%	0.6%	0.2 %
Luxembourg	9.6%	10.7%	8.6%	0.6%	1.1%	0.3%
Ireland	8.1%	9.2%	7.2%	0.7%	1.3%	0.1%
Belgium	7.5%	8.7%	6.5%	0.8%	1.1%	0.5%
Netherlands	7.1%	7.7%	6.6%	2.4%	4.2%	0.8%
Slovenia	5.5%	6.7%	4.5%	0.7%	1.3%	0.1%
Malta	5.5%	4.8%	5.9%	0.4%	0.6%	0.2%
Austria	5.2%	6.5%	4.2%	1.2%	1.8%	0.6%
Finland	4.9%	7.2%	2.7%	1.1%	1.9%	0.3%
Latvia	4.9%	5.3%	4.5%	0.9%	0.9%	1.0%
Germany	4.8%	5.0%	4.5%	1.1%	2.0%	0.4%
United Kingdom	4.6%	5.3%	4.1%	0.8%	1.5%	0.3%
Sweden	4.5%	5.4%	3.7%	1.9%	3.4%	0.6%
Lithuania	4.3%	4.7%	3.9%	0.9%	1.7%	0.0%
Denmark	4.0%	5.1%	3.0%	1.0%	1.5%	0.6%
Romania	4.0%	5.1%	3.0%	0.1%	0.0%	0.2%
Spain	3.3%	3.1%	3.4%	0.5%	0.6%	0.3%
Estonia	3.2%	2.3%	4.1%	0.5%	0.4%	0.6%
Italy	2.9%	2.9%	3.0%	0.1%	0.1%	0.1%
Croatia	2.5%	2.1%	2.9%	0.8%	0.8%	0.8%
Czech Republic	2.0%	2.2%	1.9%	0.7%	1.4%	0.0%
Cyprus	1.9%	2.0%	1.9%	0.3%	0.1%	0.5%
Greece	1.8%	2.4%	1.4%	1.8%	2.0%	0.7%
Slovakia	1.7%	2.4%	1.0%	0.9%	1.6%	0.3%
Hungary	1.1%	1.5%	0.6%	0.5%	0.8%	0.2%
Poland	1.0%	1.1%	0.8%	0.3%	0.5%	0.0%
Portugal	0.9%	1.0%	0.8%	0.9%	0.8%	0.9%

Source: 6<sup>th</sup> European Working Conditions Survey

## **ANNEX 3 - THEORIES EXPLAINING THE GENDER DIFFERENCES IN BULLYING AT WORK**

**Social dominance theory** (Sidanius & Pratteo, 1999) views gender as an aspect of social power and is related to how the labour market is segregated horizontally and vertically, which explains the predominance of men among perpetrators/bullies (Zapf et al., 2011). It is argued that social groups maintain their power through oppression and social control including victimisation. In line with this, women's seemingly enhanced risk of bullying in male-dominated organisation could be explained as a threat to sex-based status (Berdahl, 2007) supporting previous findings that compared to men, female middle and senior managers are much more likely to be bullied by their superiors as well as their colleagues (Hoel et al., 2001). This could equally apply to same-sex victimisation where the target may exhibit what is considered atypical gender behaviour (see SIT below).

**Gender role socialisation** relates to prescribed gender stereotypes with respect to what roles and behaviours are considered appropriate for men and women, including how to respond to threats. This could explain women's greater likelihood of labelling themselves as targets, with male stereotypes prescribing reluctance to labelling or taking on victim status. As a consequence, only the most severely bullied men adopt the counter-normative victim label (Salin & Hoel, 2013). In this sense it could be argued that taking a gender atypical career path may itself represent a form of norm violation which then would seem to increase the likelihood of victimisation.

**Social Identity Theory (SIT)** (Tajfel & Turner, 1979) refers to our tendency to place ourselves and others into social categories, identifying with those who are similar to oneself (the in-group). Social identity arises from intergroup comparisons where, in order to boost our own need for self-esteem, we favourably evaluate the in-group over the out-group. Group prototype refers to characteristics of the ideal group member/s who are perceived to best represent the group in terms of behaviour, feelings and values. Where strong in-group cohesion exists, non-prototypical members are more likely to be assessed less favourably with social rejection a possible gradual outcome. In a similar way SIT also explains why men observing sexual harassment are less likely to label the experience as sexual harassment as their judgements tend to favour other men, i.e. their in-group (Salin & Hoel, 2013).

## ANNEX 4 - RESPONSE IN SOME EU COUNTRIES (+NORWAY) TO METOO CAMPAIGN

Country	Response in society and media
Sweden	<p>The campaign aroused enormous debate. It has been said that history has been made in Sweden, that nothing so significant has happened since women got the right to vote. A culture of silence has been condemned, and over 4,400 female lawyers, over 600 actresses, 650 singers have in open letters published in the press appealed against sexual harassment and told about their own experiences. Also 1,700 people from the Swedish army have published a plea against sexual harassment. In some cases where employees have come out in public with their experiences of sexual harassment the name of their organisation has been highlighted in the media. Some alleged harassers have also been named publicly with some of them resigning. Others have been fired. The accused have predominantly been men but also a female presenter of the Swedish radio resigned as a result of being accused of sexual harassment.</p>
Finland	<p>The campaign aroused debate in all media. The discussion has partly been quite general by nature. Attitudes and a culture of silence connected with sexual harassment have been condemned but the culture of silence has not become the subject of criticism as much as in Sweden, for example. Accusations of harassment have been anonymous, no names of accused people have come into the public domain. In one interview relating to the film industry, the same five to ten names emerged as harassers, among them well known directors. However, no names have been published. Both the level of the debate as well as the decision to keep the identity of the accused harassers anonymous have given rise to surprise and astonishment. A hot debate has also been going on on sexual harassment in schools. The Parliament had a discussion on the issue.</p>
The UK	<p>Initially the debate focused on the US and British actors caught up in the Weinstein case, but quickly moved on to domestic matters. The aspects of the debate that found their way into the main press focused on the performing arts and the fashion industry (high profile cases such as actor Kevin Spacey and photographer Terry Richardson), and politics (but also less high-profile occupational groups such as ministers of religion). A number of actors, curators, museum directors, etc signed a letter denouncing sexual harassment and the abuse of power, highlighting that 'one resignation of a high-flying individual does not resolve the problem', asking for a strong collective voice to speak out and the need for behavioural guidelines. The need to listen to (women's) stories so that patterns of behaviour could be recognised was highlighted. There was acknowledgment that on social media the debate involved a much broader set of issues and occupational contexts with also many men sharing their stories. Political life and sexual harassment within the UK Parliament has received particularly attention, affecting all parties and with several high-flying politicians having to resign from their position including a current member of the government.</p>
Norway	<p>Following initial debate on a closed social media space where participants shared their stories, and consultation with actor unions in other Nordic countries, 487 actors put their name to an open letter telling their stories of how men abused their positions (of power) e.g. during rehearsals and filming, with the aim of challenging the negative culture without revealing any name (stressing that who has done what is not the main point). The expressed intention was to start a conversation about what is going on and identifying boundaries for un/acceptable behaviour, acknowledging that behaviours previously tolerated are no longer acceptable. It was highlighted that stories and complaints had been around for a long time but now had reached a tipping point for them no longer to be ignored. Beyond the performing arts, the discussion has focused on some leading media personalities (mainstream press and television), and politics, where several senior politicians across the political spectrum have resigned their positions as result.</p>

Country	Response in society and media
Spain	<p>The #metoo (#yotambien) has been extensively followed. It has been related to the 24N (International Day Against Violence Against women) and the local prosecution of the perpetrators of sexual harassment/sexual assault in connection with the San Fermin Festival in Pamplona. The debate has been used to share personal experiences on social media. Otherwise the debate has focused on the entertainment sector but also on higher education, drawing attention to the power imbalance between professors and students. The long and debilitating process victims go through when they decide to complain is also recognised.</p>
Italy	<p>Following the Italian equivalent of the #metoo, several prominent men in the entertainment sector (e.g. the film-maker Fausto Brizzi) have been accused publicly of sexual misconduct and many famous women have denounced sexual harassment in Italian society. Still compared to other Western European countries the debate seems to have made limited headway with some part of media treating it with scorn and with the former Italian prime minister Berlusconi, known for his sexism and sex parties involving young women, ironically seemingly making a political comeback at the same time. Some observers have commented that this reflects the dominance of 'machismo' in Italian society and men's perceived need to prove their masculinity. As the Italian actor Asia Argento who was instrumental in bringing down Weinstein put it, 'Italians don't get it, here it is just touching tits'.</p>
Poland	<p>The campaign aroused debate in all media. According to <i>PRESS-SERVICE Media monitoring</i>, during October - just after the actress <i>Alyssa Milano</i> tweeted her note, 36,000 messages appeared in the Polish media with the phrase #Metoo. In the same period, there were 674 reports on the Internet, 43 on television and 34 - in newspapers. Many well-known women from film and television told their own stories about sexual harassment. Some organisations have been mentioned by name but the names of people who have been accused of sexual harassment have not been published. However in 2015 a very known TV presenter was accused, then fired and his name has been published. It is said that no working environment is free from sexual harassment including lawyers. Examples of such incidents are described even among law professors. A Polish representative in the European Parliament stressed that there is a need to mobilise witnesses of sexual harassment. In her opinion the debate focuses on salience of victims. At the same time witnesses close their eyes to abuse but they should report instances of harassment.</p>
France	<p>A surge in interest on social media (#grass on your pig) covering all sorts of sexual aggression including sexual assault and rape, but also 'ordinary', everyday sexism and street harassment. Focus has been on media and culture, and marginally about political slur. Some stories from private companies but very little from the public sector. Only a few perpetrators named publicly possibly related to negative public attitudes to informing, particular among the older generation. Symbolic gesture offered by President Macron in suggesting to withdraw official French Honour given Harvey Weinstein (Services to the Légion d'Honneur). A petition collecting signatures launched in the media and endorsed by a national paper (Journal du Dimanche) which advocates an action plan, including increased public budget for the association against violence against women; systematic training of the professionals in contact with victims such as police and members of the justice system; the legal profession, and awareness-raising in schools and in the workplace.</p>
Denmark	<p>Debate on social media with a focus on artists and personalities within cultural life. A number of famous women accused some men in cultural and political life of abusing their power and sexually harassing women. However, compared to the other Scandinavian countries the debate has been less widespread and angry. It has been argued that progress and changes in the workplace with regard to sexual harassment are being resisted by many employers and some</p>

Country	Response in society and media
	trade unions with reference to a culture where the threshold for what is accepted is high often under the cover of banter.
Greece	<p>One could say that the recent scandals regarding sexual harassment have received wide coverage in the media. However, this is quite new, i.e. the issue of sexual harassment has been seldom raised in public debates in Greece. The public is quite unaware of or even indifferent to harassment. The lack of a debate on the issue may be linked with the under-reporting of sexual harassment. A recent survey by FRA suggested that around 43% of women in Greece experienced sexual harassment. 11% of these cases concerned harassment in the workplace. However, in only a minority of cases are the incidents reported to authorities. This has been linked to the way harassment is conceptualised (namely, the boundaries between acceptable behaviour and harassment) and the fear of victimisation in case harassment is reported. The latter is especially important, given the continuing crisis: women, among others, are concerned about losing their jobs if they report harassment in the workplace. The recent debate on harassment has indeed focused rather predominantly on the case of harassment within the workplace.</p>

## **ANNEX 5 - PROTECTED GROUP'S EXPERIENCE OF BULLYING AND SEXUAL HARASSMENT**

A summary of findings from research into the particular impact of ethnicity, disability and sexual orientation on the experience of bullying and harassment

### **Ethnicity**

The amount of studies on bullying of ethnic minorities is surprisingly scarce. Where they have been carried out they have generally found that members of ethnic minority groups are more likely to be exposed to bullying than white Caucasian people. This also applies to the workplace where non-white employees have been shown to be subjected to bullying far more frequently than their white colleagues (Lewis & Gunn, 2007).

In a Finnish study, immigrants were on average more likely to label themselves as being bullied, although the experience of immigrants from cultures considered very similar to the host nation did not differ from the majority population. By contrast, the risk of reporting bullying was nearly three times higher in the intermediate culture-distance group of immigrants, and nearly eight times higher in the culturally most distant group. In terms of negative acts, immigrants were most often subjected to social exclusion (Bergbom et al., 2014).

There is little empirical research on whether the incidence of sexual harassment varies significantly by ethnicity. However, there is evidence that BME (black and minority ethnic) women's experience of sexual harassment is often bound up with racial harassment. Many black feminist academics and activists have pointed to the double oppression faced by BME women and the "othering" and eroticising of BME women's bodies and sexuality.

Not all harassment against ethnic minority members was carried out by white members of staff. In an interesting interview study of BME women employees who had experienced sexual harassment at work, it was found that most of the women had been harassed by another male ethnic minority worker from the same ethnic group. Targets were more likely to leave than report the incidents. It was also found that the power of the harasser was not necessarily linked to work but often to their position outside work within the community which then spilled over into the workplace with greater implications for the women should they decide to take their case forward (Fielden et al., 2009).

In terms of religion it is worth noting that in many cases religion appears to be a proxy for ethnicity. In this respect it is worth drawing attention to the dramatic rise of Islamophobia in many European countries often in places where the immigrant population is small with few Muslims present.

### **Disability**

With people across the EU expected to work longer due to demographic changes, combined with cost-saving changes to social care provision, thus forcing disabled employees to stay on longer at work, the number of older disabled people within the labour force, particularly the chronically ill, will continue to increase (Lewis et al., in press). Bearing this in mind, several recent national representative studies of the British working population have consistently found disabled people to be the single protected group reporting the highest levels of workplace bullying across studies, with women with a disability reporting the highest levels of bullying. Altogether Fevre et al. (2013) found that disabled employees

were twice as likely to report unfair treatment and bullying compared to other employees and scoring higher than their male counterparts on every negative behaviour measured, including being given excessive workload or impossible deadlines. Unsurprisingly, mastering expected workload and meeting deadlines may be particularly hard for disabled and chronically ill employees whose abilities may fluctuate (Lewis et al., 2018). However, whilst levels of bullying for those with a physical disability were on par with the non-disabled population, it was individuals with a learning difficulty and those who had a psychological or emotional condition who were at the greatest risk (EHRC, 2008). In addition to finding themselves socially excluded they also reported being threatened and gossiped about. People suffering from a long-term illness was another group frequently experiencing negative treatment at work. Alarming, more than double the proportion of disabled people and people with long-term illness reported experiencing physical violence at work.

Whilst disclosure can be positive to all parties, enabling necessary work adjustment, it can fuel stigmatisation and disrespectful treatment where adjustment to needs is perceived by others as unfair treatment, which could be considered bullying in its own right (Russinova et al., 2011). Inflexibility of the part of the organisation to meet fundamental health requirements has often been noted as a key cause of bullying of this group.

There is some evidence that women with a disability are more vulnerable to sexual abuse and harassment due to physical or cognitive impairment. Some of the mistreatment experienced can be explained with reference to prejudice and lack of understanding (Colemar et al., 2013). Some mistreatment may also be related to a form of demonization of disabled people, who in some arenas have been portrayed as fraudulent claimants of social benefits. Fear of stigmatisation also affects decisions on whether to disclose this to their employer (Concoran & Smith, 2015), with some suggesting that one in four experience negative consequences as a result (von Schrader et al., 2014).

### Bullying and sexual orientation (SO)

A growing number of studies including several large-scale representative studies of the British population show that lesbian, gay men and bisexual (LGBs) employees are at greater risk of bullying than their heterosexual colleagues (e.g. Fevre et al., 2008), particularly with respect to more severe forms of bullying (Hoel et al., 2014). Among LGBs lesbians and bisexual women face the greatest risk suggesting that there is also a gender dimension to the experience. In terms of organisational context bullying of LGBs appears to be particularly widespread in the uniformed services (e.g. police and prison service) and the hotel industry (e.g. ACAS, 2007). Compared to heterosexuals, LGBs more frequently experience disrespectful and sexualised behaviour, for example receiving unwanted touching and being confronted with sexualised jokes or unwelcome comments about dress and appearance. They also frequently face social exclusion, for example being excluded from their work group and experiencing people avoiding them.

Social stigma and stereotyping appear to play a key role, with new research suggesting that LGBs' personal control over disclosing their sexuality at work (and elsewhere) in a manner acceptable to them is more limited than previously anticipated due to third party interventions such as prompting or questioning. This does not include those cases where individuals are 'outed' against their own will which could be considered bullying in its own right (e.g. Di Marco et al., 2017). Stereotypes about body shape, appearance and mannerisms, mostly negative and particularly about women, and also shared by many LGBs themselves, were also found to affect the experience of bullying and sexual harassment, but in differently ways for gay men and lesbians. For gay men, those

corresponding to stereotypes, often described as effeminate and seen challenging masculinity, were most at risk whilst for lesbians, it was the feminine lesbians, those who did not 'fit the bill', who were more likely to attract negative acts and comments from their colleagues, including being pestered with sexual requests by men and having their sexuality repeatedly questioned.

To make sense of these findings, and supported by social categorisation theory, gay men conforming to stereotypes may be bullied as they behave in an atypical way to what is expected by group members in terms of what is considered the contextually prevailing masculine ideal or what Connell (2005) refers to as 'hegemonic masculinity'. Whilst this may explain why men may harass women in male-dominated workplaces (and vice versa) (Salin & Hoel, 2013), it equally illuminates bullying and harassment of lesbians and gay men, including anyone who may be perceived to be lesbian or gay (Berdahl, 2007) when their behaviour does not fit what is considered appropriate for men and women in terms of masculinity and femininity respectively.

With the experience of transsexuals (T) until recently excluded from the agenda of key European SO advocacy groups (e.g. Stonewall), less attention and research has focused on this group. However, with T currently moving rapidly up organisational agenda priorities, focus is somewhat shifting. In part this reflects findings from new research revealing particularly high levels of adverse experience and discrimination among members of this community (e.g. ILO, 2013), including a recent report from the British Trades Union Congress (TUC, 2017) reporting that nearly half (48%) of trans employees have experienced harassment or bullying at work. Future research on non-heterosexual workers' experiences should consider this group specifically.

## **ANNEX 6 - INDIVIDUAL FACTORS BEHIND BULLYING**

Particular personality factors have also been considered, with victims of bullying often scoring high on neuroticism, whilst extroversion, agreeableness and conscientiousness appears to personality factors which protect against bullying (Nielsen et al., 2017). Other studies (e.g. Glaso et al., 2007) however, highlight that the majority of (two thirds) have a personality profile very similar to people not targeted (the control group), thus, suggesting that bullying in most cases does not hinge on target personality. Moreover, from an organisation's point of view, whilst organisational antecedents are amenable to change, the same cannot be said about personality factors.

In terms of vulnerability, however, a mutual relationship between bullying and psychological distress and bullying and clinical depression has also been found which indicates a vicious circle where bullying increases the risk for psychological distress and depression, and psychological distress and depression increase the risk to become bullied (Nielsen et al., 2012; Kivimäki et al. 2003).

As far as perpetrator characteristics are concerned, it is self-evident that it is hard to this establish scientifically, partly due to the fact that those who acknowledge their 'darker' side may not be representative of the wider group of perpetrators. Whilst victims often evoke characteristics such as psychopath or socio-path when describing their perpetrator, there is little to suggest this description would apply to most perpetrators.

## **ANNEX 7 - EQUALITY DIRECTIVES ON SEXUAL HARASSMENT AND EQUALITY**

### **Directive 2006/54/EC**

The Equal Opportunities Directive aims to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

### **Directive 2000/43/EC**

Racial Equality Directive prohibits discrimination and harassment on the grounds of race and ethnic origin.

### **Council Directive 2000/78/EC**

The Employment Directive implements the principle of equal treatment in employment and training.

**Directive 2006/54/EC** on equal treatment in employment and occupation.

**Directive 2004/113/EC** on equal treatment in goods and services.

## ANNEX 8 - SOME EXAMPLES OF NATIONAL LEGISLATION ON BULLYING AT WORK

Country	Legislation on bullying at work
Finland	<p>The Occupational Health and Safety Act includes a special section on harassment and inappropriate behaviour: If harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter, shall by available means take measures for remedying this situation.</p> <p>General obligations of an employees: Employees shall avoid such harassment and other inappropriate treatment of other employees at the workplace which causes hazards or risks to their safety or health.</p> <p>Other sections which apply also to bullying: The employer has to monitor occupational risks including harassment at work : The employer shall, taking the nature of the work and activities into account, systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions and, if the hazards and risk factors cannot be eliminated, assess their consequences to the employees' safety and health.</p> <p>Employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees' personal capacities.</p>
Belgium	<p>The Welfare Act (or Welfare Law) was enacted in 1996, and has been amended several times. In 2002 an amendment was enacted to combat 'undesirable behaviour' un the workplace (bullying, harassment including sexual harassment, and violence). Legislation in 2014 on Prevention of All Psychosocial Risks at Work came into force. The new Act is not limited to bullying, violence, harassment and sexual harassment but all psychosocial risks that could lead to stress are covered. The Act puts harassment in a more general framework of psychosocial risks and states that employers must recognize harassment like any other risk to employees' health.</p> <p>Legislation provides for "prevention advisors" who specialize in psychosocial problems. Professionals are most often external not in-house specialists.</p>
Slovenia	<p>Health and Safety at Work Act 2011. According to the Act employer shall adopt measures to prevent, eliminate, and manage cases of violence, mobbing, harassment and other forms of psychosocial risks at the workplace which can pose a risk for workers' health.</p> <p>Employment Relationships Act 2013 prohibits violence, mobbing, sexual harassment, and discrimination.</p> <p>Law 202/202 Equal Opportunities between Women and Men on equal opportunities of women and men in order to eliminate direct and indirect discrimination based on sex.</p>

## **ANNEX 9 - BYSTANDERS AND INTERVENTIONS**

It is acknowledged that bystanders can play a key role in cases of bullying (and sexual harassment), constructively by intervening or challenging/punishing the perpetrator or indeed destructively, by their inaction, turning a blind eye or indeed by colluding in the bullying. Despite this, until recently the bullying literature has primarily treated bystanders as proxy victims, themselves negatively affected in terms of reduced job-satisfaction and negative assessment of their workplace (e.g. Vartia, 2001). However, recently research has turned to investigating this more systematically, adding to our understanding of bullying and how we may challenge it. The fact that nearly half of employees say that they have witnessed bullying indicates the potency of such an approach.

Criminologists has long acknowledged the impact of the 'bystander effect', the tendency for individuals to refrain from intervening to help the target in a (serious) event when others are present (Latané & Darley, 1970), due factors such as diffusion of responsibility; social inhibition in terms of possible embarrassment or stigmatisation; and the influence of others, particularly those who may be considered 'social anchors' or local role-models. Despite empirical support for the bystander effect, researchers have pointed to the tendency of most people to want to want see themselves as moral, some more than others, with an urge to right wrongs (Aquino & Reed, 2002), which could be bolstered to counteract bullying and harassment by recognising that injustice is taking place.

Whilst personal competence and victim status (more likely to help the powerless) are factors lead to assisting the victim, fear or perceived dangers work in the opposite direction (O'Reilly & Aquino, 2011). By contrast, others have explored the factors which contribute to bystander destructive inaction or indeed aiding the escalation of bullying. To account for this it is argued that to stop ourselves feeling bad, we free ourselves from responsibility by rationalising our behaviour (Ng et al., 2017). Such moral disengagement is seen to be particularly likely when situations are ambiguous, with certain organisational (e.g. laissez-faire leaders, weak ethical infrastructure) and individual factors (e.g. weak moral compass, perception that life is governed by factors outside one's control).

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality (FEMM), provides a broad account and an in-depth analysis of bullying and sexual harassment in the workplace, in public spaces and in political life. In this study trends in understanding of phenomena are acknowledged, status and progress in research is accounted for, key issues of controversies and debate are identified and recommendations for actions and intervention are provided.

#### **DISCLAIMER**

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Independent Complaints and Grievance Policy  
Programme Team

## Independent Complaints and Grievance Scheme Delivery Report

Published July 2018



# Foreword from the Steering Group

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It is vital that all those who engage with Parliament, whether working or visiting, are treated with dignity and respect. In turn, they need to understand the behaviour that is expected of them to ensure a respectful and safe environment. The new Behaviour Code recognises the need for Parliament to meet the highest ethical standards of integrity, courtesy and mutual respect and this has been uppermost in our minds as we have undertaken our task.

The Working Group on an Independent Complaints and Grievance Policy, in responding to allegations and testimony of bullying, harassment and sexual harassment at Westminster, recognised that a change in workplace culture was urgent and essential and made recommendations on how Parliament could achieve this change. Following the resolution of the House of Commons on 28th February, the Steering Group was established to oversee the delivery of those recommendations and we have met regularly over the past 4 months to support the officials and advisers tasked with implementing the Scheme.

We have been dealing with difficult, complex and sensitive issues. Steering Group members have brought a diversity of views and experience to their role which has enriched our discussions. We believe the new Scheme represents a strong foundation from which to promote better behaviour and improve the culture of Parliament. We say a strong foundation as we believe that achieving positive change will require persistence, flexibility and the on-going evaluation of the impact of the measures outlined in this report. Parliament must continue to build on the work we have done to ensure that the positive change we want to see comes to pass and to take forward any outstanding issues that have not been possible to resolve yet and which will make the Scheme even stronger. This includes the issue of independence and long term cultural change. We are determined that this will be a living document and that all in our community endeavour to uphold its values every day.

We are not aware of any legislature elsewhere in the world that has put in place such a significant package of measures to create lasting, positive change in the culture of a Parliamentary Community. We have achieved a great deal but we also acknowledge that there is more to do, and we therefore look forward to the outcome of the reviews to be held six and eighteen months after implementation.

We are aware that for the new Scheme to be a success we need to be able to deal with problems of the past. We are therefore establishing an independent review of historic allegations that will be open for six months to hear any complaints from Members' staff, MPs or Peers who have experienced bullying, harassment, or sexual misconduct. This will use similar terms of reference to the Dame Laura Cox review, and will focus on providing guidance, support and closure to all those who feel they have been wrongly treated. We believe it will provide a way for all voices to be heard with the six month review of the Scheme considering whether there is anything further that can be done to help people find the resolution they seek.

The Independent Inquiry into the Bullying and Harassment of House of Commons Staff by Dame Laura Cox QC has been running in parallel to our work. Although our focus has been the Parliamentary Community as a whole and Dame Laura's inquiry is focused on House of Commons staff only there are likely to be lessons for this Scheme when she reports later in the year. We strongly recommend that the findings from Dame Laura's inquiry, together with the findings from the independent review outlined above should be taken into account in the six-month review. Some members of the Steering Group advocated strongly for the start of the new Scheme to be delayed until after Dame Laura Cox's inquiry reports so that final decisions could be made in the light of her findings and recommendations, including on pre-Scheme cases. On balance it was felt that there is an urgent need for this Scheme to be in place as soon as possible to provide the support and protection that everyone deserves.

This is a once in a generation opportunity to make the change needed to ensure that we all consider what we can do to promote dignity and respect. We encourage all members of the Parliamentary Community to support this Scheme and uphold the values it promotes.

We are grateful to all of those who have been involved in the development of this Scheme, including those who have had the courage to share their testimony. In particular we are grateful to the Programme Team and our expert advisers who have achieved such in a lot in a short space of time.

Rt Hon Andrea Leadsom MP (Chair)	Rt Hon Baroness Evans of Bowes Park	Baroness Bloomfield of Hinton Waldrist (substitute for Baroness Evans of Bowes Park)
Dawn Butler MP	Emily Cunningham (NUJ, SNP staff)	Max Freedman (Unite)
Ken Gall (TUS President HoC)	Georgina Kester (MPSA)	Emma Little Pengelly MP
Caroline Lucas MP	Rachael Maskell MP	Cath Miller (substitute for Caroline Lucas MP)
Layla Moran MP (substitute for Jo Swinson MP)	Liz Saville Roberts MP	Pete Wishart MP
Jo Swinson MP	Baroness Young of Hornsey	

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# The Independent Complaints and Grievance Scheme for Parliament

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## Introduction

1. Following the resolution of the House of Commons on 28th February 2018 and the agreement of the House of Lords Commission on 18th March 2018, officials of both Houses, with the support of expert advisers, have been working to deliver the recommendations of the Cross-Party Working Group on an Independent Complaints and Grievance Policy. This report from the Programme Team provides the detail of the new policies and procedures required to promote a culture of respect and tackle unacceptable behaviour.

## Background

2. The context for this work arose from allegations and accounts in the press about inappropriate behaviour and a culture of bullying and sexual harassment at Westminster. This resulted in the setting up of a cross-party, bicameral Working Group on an Independent Complaints and Grievance Policy. The Group published its report<sup>1</sup> on 8 February 2018 which was followed by a debate in the House of Commons on 28th February. Following that debate, the House of Commons agreed the following resolution:<sup>2</sup>

“Resolved,

That this House endorses the recommendations of the Working Group on an Independent Complaints and Grievance Policy; and asks the House of Commons Commission to authorise House officials, reporting regularly to a steering group of Members and others in consultation with the Committee on Standards and the Parliamentary Commissioner for Standards, to undertake the work necessary to establish:

(1) a Behaviour Code for Parliament that covers bullying and harassment, and sexual harassment, and applies to all persons working for or with Parliament, or who are lawfully on the parliamentary estate;

(2) an independent complaints and grievance scheme to underpin the Code, together with associated policies, appropriate sanctions and the contractual arrangements necessary for delivering the scheme;

(3) particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate;

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1 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-02-08/HCWS460/>

2 <https://hansard.parliament.uk/Commons/2018-02-28/debates/DDEF813-D9D0-4F25-B1FA-97799098300D/IndependentComplaintsAndGrievancePolicy>

- (4) a system of training to support the Code;
  - (5) a human resources support service for staff employed by Members of Parliament or jointly by political parties, delivered by a third-party provider, and a handbook for these staff;
- and to identify any amendments that may be necessary to Standing Orders and the Code of Conduct, for the approval of the House.”

The report was endorsed by the House of Lords Commission in March 2018.

## Steering Group Membership

3. The Steering Group held its first meeting on 6 March 2018. The following individuals were members: Andrea Leadsom MP (Leader of the House of Commons and Chair of the Steering Group), Baroness Evans of Bowes Park (Leader of the House of Lords), Baroness Bloomfield of Hinton Waldrist (substitute for Baroness Evans), Dawn Butler MP (Shadow Minister for Women and Equalities), Emily Cunningham (National Union of Journalists (“NUJ”) representative SNP staff Westminster), Max Freedman (Unite), Ken Gall (Trade Union Side President (TUS) House of Commons), Zainab Gulamali (Plaid Cymru substitute), Emma Little Pengelly MP (Democratic Unionist Party “DUP”), Caroline Lucas MP (Co-Leader of the Green Party), Cath Miller (Green Party substitute), Georgina Kester (Members and Peers’ Staff Association “MAPSA”), Rachael Maskell MP (Labour), Layla Moran MP (Liberal Democrats substitute), Liz Saville Roberts MP (Plaid Cymru), Jo Swinson MP (Liberal Democrats), Pete Wishart MP (SNP) and Baroness Young of Hornsey (Crossbench Peer).

## Steering Group Objectives

4. At its meeting on 23rd April 2018, the Steering Group agreed its terms of reference including the following objectives:
- a. To develop the Independent Complaints and Grievance Policy through overseeing the work needed to deliver this, ensuring that it is faithful to the Cross-Party Working Group on an Independent Complaints and Grievance Policy Report.
  - b. To support the SRO and the programme team in making decisions, and providing challenge and guidance for the successful delivery of the workstreams within the Independent Complaints and Grievance Policy Programme.
  - c. The initial scope contained the following workstreams:
    - a Behaviour Code for Parliament that covers bullying and harassment, and sexual harassment, and applies to all persons working for or with Parliament, or who are lawfully on the parliamentary estate;

- an independent complaints and grievance Scheme to underpin the Code, together with associated policies, appropriate sanctions and the contractual arrangements necessary for delivering the Scheme;
- particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate service and an independent specialist investigator;
- a system of training to support the Code;
- work to effect cultural change in order to support the principles of the Behaviour Code;
- work to ensure the Parliamentary Commissioner for Standards, the House of Lords Commissioner for Standards, the House of Commons Committee on Standards and the House of Lords Sub-Committee on Lords' Interests and the Committee for Privileges and Conduct are consulted and that changes to Standing Orders or the Code of Conduct necessary to support this work are identified and amendments are brought to both Houses to approve.

### **Programme Team**

5. A Programme Team of parliamentary officials and specialist advisers was established by the Commissions of both Houses to deliver the recommendations of the Cross-Party Working Group.

### **The "Parliamentary Community"**

6. Reference is made throughout this report to the 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 and MPs' staff, interns and other paid or unpaid staff, holders of parliamentary security passes including those employed by external organisations, Peers and Peers' staff.

# 1 A Behaviour Code for Parliament

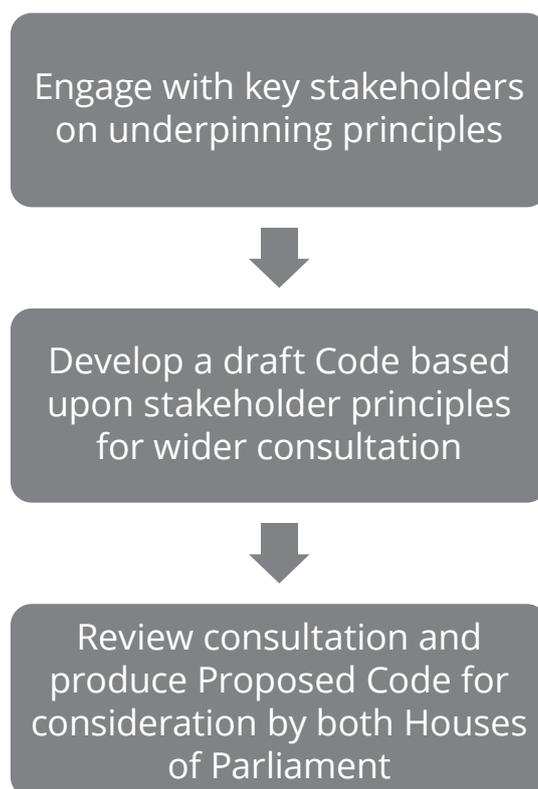
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7. The Working Group report identified that a “Behaviour Code is needed to encompass a shared set of explicit behavioural expectations of all those working for and within Parliament”. These standards underpin interaction between members of the parliamentary community, including visitors, and are a clear statement of how people are expected to behave, and how they can expect to be treated. The Behaviour Code represents a positive view of the future and the Culture Change workstream is focused on how it can be brought to life and embedded.

8. It is important to note that the Behaviour Code is a statement of principle and cultural intent. It is not a set of rules; the bullying and harassment and sexual misconduct policies outline breaches of acceptable behaviour that could result in a complaint being made through the Scheme. Posters and other informational materials will make sure that this is clear to avoid any confusion.

## Creating the Code

9. The Steering Group agreed the following process for developing the Behaviour Code:



Further detail on the development of the Code is included in Annex A.

## Identifying Underpinning Principles

10. In conjunction with the House of Commons Evaluation and Insight Team and Ipsos MORI, deliberative workshops on the principles to underpin the Behaviour Code were held in April. Attendees at these workshops included MPs and Peers,

their staff, and staff of both Houses. Discussions also took place with trade union representatives, the Press Gallery Committee and the Committee on Standards on the development of the Behaviour Code.

## Reviewing feedback and producing the Proposed Code

11. Based on the principles identified in the deliberative workshops, a public consultation was undertaken on a draft Code. The Steering Group reviewed this consultation feedback to produce the Proposed Behaviour Code and identify some illustrative examples. It is important to note that the examples set out in Annex A are not exhaustive and by taking a principles-based approach, the Code is intended to be meaningful in all of Parliament's different working and visiting environments.

## The Proposed Behaviour Code



### Behaviour Code

**Whether you are a visitor or working in Parliament at Westminster or elsewhere, there are clear guidelines in place on how you should be treated, and how you should treat others:**

Respect and value everyone – bullying, harassment and sexual misconduct are not tolerated

Recognise your power, influence or authority and don't abuse them

Think about how your behaviour affects others and strive to understand their perspective

Act professionally towards others

Ensure Parliament meets the highest ethical standards of integrity, courtesy and mutual respect

Speak up about any unacceptable behaviour you experience

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

If you have experienced bullying, harassment or sexual misconduct you are encouraged to report it and/or seek support by contacting:

Independent Sexual Misconduct Advice Service – 0800 112 4318

Independent Bullying and Harassment Reporting Service – 0800 028 2439

## 2 An independent complaints and grievance Scheme to underpin the Code

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*‘Procuring independent services including...a workplace dispute resolution service to anyone wanting to report...bullying or harassment’ (Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 88a)*

### Section 2A: A detailed bullying and harassment policy and procedures

12. The Working Group report recommended “the development of an independent complaints and grievance scheme” including a new Parliament-wide policy “for responding to and managing complaints of...bullying and harassment”.<sup>3</sup> This should be “accompanied by a comprehensive set of supporting procedures”, written in consultation with relevant stakeholders. The policy and procedures should be subject to a full equality impact assessment process and detailed legal checks.<sup>4</sup>

13. An external HR policy consultant was engaged, whose schedule of work included a best practice review and a Parliament-wide consultation exercise. Staff representatives for Members’ and Peers’ staff, TUs representatives for both Houses and representatives from the Workplace Equality Networks were involved in the policy development. Other consultees on the detailed policy and procedure included the Steering Group, the legal and sexual violence against women Specialist Advisers to the Steering Group, the Commissioners for Standards for both Houses and the HR teams for the Lords, Commons and Parliamentary Digital Service.

14. Legal advice was provided by the Office of Speaker’s Counsel in the House of Commons and an equality analysis was conducted on the end-to-end bullying and harassment scheme, which was circulated to the Workplace Equality Networks for input. The policy, procedures and flowchart were revised to reflect the feedback received during this consultation period. We are grateful to all those who provided feedback, all of which was thoughtful and much of which was included in the final versions. The importance of reviewing this policy and procedures in light of the operation of the Scheme after the first six months was also noted.

#### Procurement processes

15. The Working Group report also specified that “[t]here will be [a] separate reporting helpline... for allegations of...bullying and harassment” providing “an improved and inclusive reporting and monitoring mechanism”. Support and guidance would be provided to complainants, an independent specialist investigative process where required and access to informal resolutions (where appropriate and agreed by both parties).<sup>5</sup>

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3 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 21

4 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 39–40

5 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 29–31

16. Within the wider bullying and harassment service, market testing was carried out and two separate procurement exercises were agreed. These were: a reporting helpline and an investigation service. It was agreed that the reporting helpline would also need to include the ability to provide first-line support and advice to both complainants and responders, and the investigation service would need both expertise in gathering and assessing evidence and in supporting informal resolutions. Procurement strategies, timetables and tender specifications were drawn up and as specified in the Working Group report “staff representatives [were] also involved in the procurement processes” and criteria around diversity and inclusion were written into the tenders.<sup>6</sup>

### Reporting helpline

17. A tender exercise was conducted for the bullying and harassment helpline, and the Workplace Equality Networks were represented on the evaluation panel. Information and briefings about the parliamentary community and its complex relative power dynamics are being provided to the successful suppliers, and appropriate information recording and escalation protocols have been developed and documented. Effective communication will also be important to raise the profile and awareness of the new helpline and reinforce its independence.

### Independent investigation and dispute resolution services

18. A single tender specification for investigators for both bullying and harassment and sexual misconduct was developed, but separated into two ‘lots’ to reflect the qualitative difference between sexual harassment and other types of inappropriate behaviour. This tender is currently underway and allows for a range of different investigators with different areas of expertise to bid to provide investigation and workplace dispute resolution services on a case-by-case basis. Protocols for conducting investigations, recording information, producing case reports and managing requests for informal resolutions are being developed to promote consistency, maintain quality and fulfil relevant information rights and information security obligations.<sup>7</sup>

### Monitoring and review

19. After launch, reports made to the new helpline will need to be carefully (and anonymously) monitored to ensure that both complainants and responders who need the service are able to access it in ways that meet their varying needs. It will also be important to ensure that effective first line advice is provided to everyone, regardless of their identity in the Parliamentary Community, and that the helpline ensures that people who call are made aware of the other sources of emotional and practical support available.<sup>8</sup>

20. The Working Group noted the importance of understanding ‘both reporting levels and the types of issues raised, to inform the development of awareness-

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6 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 41

7 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 55

8 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 31

raising campaigns and wider cultural change initiatives'.<sup>9</sup> Regular reporting is being built into the arrangements for managing these services. We also expect this information to be important in evaluating the success of the new Scheme, including as part of the six and eighteen-month reviews, alongside monitoring data about the number, type and outcomes of complaints investigated. A Contract Manager has been recruited to provide support to both the bullying and harassment and the sexual misconduct reporting and investigation services.

## **Section 2B: Particular procedures to deal with reports of sexual harassment, including the provision of a specialist Independent Sexual Violence Advocate**

21. The Working Group report recognised 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. A workstream dedicated to developing the support requirement and policy and procedures for responding to sexual harassment was established with the following aims:

- to conduct research in to the experiences and views of sexual harassment among the Parliamentary Community to feed into the development of the Sexual Misconduct Policy and Procedure,
- to develop a Sexual Misconduct Policy and Procedure,
- to develop the requirement and put in place the contractual arrangements for an Independent Sexual Misconduct Advisory Service (ISMA Service), and
- to develop the requirement for an Independent Investigation Service.

### Further Research

22. An anonymous online portal was available from May until July for the sole purpose of gathering testimonies and feedback from staff in Westminster and in constituency offices. Seven focus groups were also held; four separate groups in Westminster with MPs/Peers, MPs'/Peers' staff, TUS and Workplace Equality Networks (WENs). Additional focus groups were held in Edinburgh, Belfast and Cardiff.

23. In addition, an Advisory Group on Sexual Misconduct was set up to offer specialist expertise and advice. Membership included Dr Helen Mott, Sexual Harassment Specialist Adviser and expert representatives from; Cambridge University, Goldsmiths University, Equality and Human Rights Commission, King's College London, Holly Dustin, the London School of Economics and Political Science, Women's Aid, Imkaan, University College London, The 1752 Group, University of Westminster, Universities UK, End Violence Against Women Coalition, Metropolitan Police Service, Reshape, Commons and Lords TUS Reps.

24. The main methods for gathering evidence of bullying, harassment and sexual harassment among the Parliamentary Community were an online portal through which people could anonymously share their experiences and through focus groups. Evidence submitted to the on-line portal relating to sexual harassment related to verbal or physical harassments. Examples were given of inappropriate comments, inappropriate and unwanted sexual advances and unwanted touching were given.

25. The focus groups identified some key themes, including the role of entitlement and power in enabling harassment and preventing people speaking up about it, 'hot spots' on the Parliamentary Estate of small, isolated spaces, and behaviour on overseas trips.

### The policy and procedures

26. There is a wealth of research regarding workplace sexual misconduct, harassment and violence and this, together with the expertise of the Advisory Group and the research gathered from the Parliamentary Community, has informed the development of the policy and procedures.

27. The Working Group report identified a number of areas for the sexual misconduct policy to include. These are: zero tolerance, definitions, legislation, behaviours, intersectionality, impact, victimisation, vexatious complaints confidentiality, provision of support, time limits and responsibilities. The policy takes into account all of these areas.

28. The procedure for people reporting sexual misconduct has also been developed using expert advice and the research undertaken by the workstream team. This led to the development of a pathways based approach with three pathways as set out below:

- Pathway 1 Independent Sexual Misconduct Advisory Service (ISMA Service):

The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisers (ISVAs) who provide specialist support, advice, signposting and advocacy acting as case managers.

- Pathway 2 Appropriate Measures (optional):

This pathway can be followed whether or not the reporter wishes to follow the formal complaint pathway. As outlined in section 3 of the procedure, the ISMA Service case manager will help to broker and facilitate an appropriate measures intervention with the parties concerned.

- Pathway 3 Formal Complaint:

The Formal Complaints pathway, has two stages: an initial assessment and a formal assessment. Both stages are managed by the Independent Investigation Service. The appropriate decision-making body is responsible for decision and action.

29. The draft policy and procedure have been distributed to a range of stakeholders including; TUS, IPSA, Workplace Equality Networks, the Parliamentary Commissioner for Standards (PCS) and the Lords Commissioner for Standards. A number of consultation meetings have taken place and stakeholders also had the opportunity to submit written feedback.

#### Independent Sexual Misconduct Advisory Service (ISMA Service)

30. Arrangements have been put in place for a one-year pilot ISMA Service. This will be reviewed after six months and plans are underway to develop a tender for a three-year service thereafter based on learning from the pilot. The initial contract has been awarded to Rape Crisis and the service will cover:

- A freephone confidential helpline, 7am–9.30pm.
- Management of on-going risk.
- Face to face sessions.
- Full time equivalent Independent Sexual Violence Advisor located at Westminster.
- Support, guidance and signposting into other services.
- Identifying and classifying disclosures.
- Support and facilitation of the Appropriate Measure pathway.

#### Independent Investigation Service

31. As set out in Section 2A of this report, a tender is currently underway to provide investigation and workplace dispute resolution services on a case-by-case basis.

### 3 A system of training to support the Code

*‘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.’<sup>10</sup>*

*‘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.’<sup>11</sup>*

32. Four training sub-workstreams were identified from the Working Group’s recommendations:

- **Behaviour Code.** Interventions to support the dissemination of the Code to MPs, Peers and staff working on the Parliamentary Estate (regardless of who their employer is) or in constituency offices.
- **Tackling bullying, harassment and sexual misconduct.** Interventions to address the specifics of bullying, harassment and sexual misconduct, including what is and is not acceptable behaviour and outlining the options and recourses available to those affected
- **Sanctioned Training.** Tailored interventions to be available as part of the outcome to a complaint made under either of the two new policies.
- **Management Practice.** Interventions to improve line management practice, including well-being but also skills and knowledge enabling MPs, their staff and any Peers who employ staff to become more effective managers of people. To include the development of a ‘good employer’ standard.

The intention is to make all training available to Peers. This will be considered as part of the implementation of the the Scheme in the House of Lords

33. Research into the effectiveness of training in preventing and tackling bullying, harassment and sexual misconduct was reviewed, guided by an expert academic, Dr Helen Mott. A review was also undertaken of our existing offerings in the area of management practice as well as the inductions currently carried out for each of the relevant audiences. This phase has resulted in the design of the following interventions:

#### Behaviour Code

34. Fifteen to twenty minute sessions to be integrated into existing inductions for Commons Members, their staff and Parliamentary staff. The content will cover:

- organisational messaging on zero tolerance

<sup>10</sup> Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 78

<sup>11</sup> Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 81

- information about the Behaviour Code
- the types of behaviours that will not be tolerated
- what the policies are
- encouraging participation in the workshops on tackling bullying, harassment and sexual misconduct

These sessions have been designed and will be delivered from September 2018 onwards.

### **Tackling bullying, harassment and sexual misconduct**

35. The training will include two to three-hour workshops, tailored for each of the different audiences. The content will include:

- what constitutes bullying and harassment and sexual misconduct
- the impact of inappropriate behaviours
- the impact of power and unconscious bias on behaviours
- ways to help prevent all forms of bullying and harassment at work
- what to do if unacceptable behaviour happens
- the role of the manager in preventing all forms of bullying and harassment at work
- informal and formal approaches to tackling unacceptable behaviours
- raising a complaint; seeking support; building confidence to speak up and challenge; the role of the bystander

A procurement exercise will begin by the end of July 2018 with pilot sessions due to be delivered in November 2018.

### **Sanctioned training**

36. Where training is deemed an appropriate outcome as a result of an informal or formal process, a coach experienced in addressing behaviours related to bullying, harassment and sexual misconduct will be commissioned to work with the individual. The focus of the intervention will vary according to the individual and circumstances but would be aimed at enabling them to:

- understand the impact of their behaviour
- understand how it may be experienced by others
- explore what influences their inappropriate behaviour
- take responsibility for their behaviour and commit to make changes

A procurement exercise will begin by the end of July with a service available from September 2018.

## Management Practice

37. Two 90-minute workshops for Members, linked to the Good Employer Standard and supplementing the inductions and workshop on tackling bullying, harassment and sexual misconduct will be available:

- Good employment practice covering fair recruitment practices, unconscious bias in the selection process, HR policies and procedures.
- Managing people effectively covering planning work and setting team and individual objectives, monitoring performance, sharing and requesting feedback, supporting staff development.

38. One-day and three-day Office Manager programmes (our current programmes, adapted to reflect the Behaviour Code and related topics e.g. unconscious bias) will be available from August 2018.

39. Following a review of a range of workplace standards, an outline approach to a Good Employer Standard has been developed and will be ready for full consultation in September 2018. The Standard would have at its heart a series of principles and related practices:

Principles	Practices
<b>We follow good employment practice</b>	<ul style="list-style-type: none"> <li>• we recruit staff using a fair and open selection process</li> <li>• we have well-communicated HR policies and procedures</li> <li>• we provide new staff with a thorough induction</li> </ul>
<b>We manage people effectively</b>	<ul style="list-style-type: none"> <li>• we agree clear work goals and expectations with staff</li> <li>• we share and request feedback</li> <li>• we encourage our staff to learn and develop</li> </ul>
<b>We create respectful and safe working environments</b>	<ul style="list-style-type: none"> <li>• we uphold the Parliamentary Behaviour Code</li> <li>• we foster a diverse and inclusive working culture</li> <li>• we fulfil our health and safety obligations</li> </ul>

## 4 Human resources support service for staff employed by Members of Parliament or jointly by political parties

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*‘Procuring an HR advice service for Members’ staff’ and ‘Developing a handbook for Members’ staff’<sup>12</sup>*

40. During the Working Group’s life, a new interim Members’ Staff HR Service was launched by the House of Commons Commission in recognition of the immediate difficulties reported to the group by the staff representatives and the staff members who gave evidence. The House of Lords established similar interim arrangements for Peers’ staff through an employee assistance programme. The report described the need for the longer-term HR service to be ‘delivered through a third-party provider and [to] cover the full range of potential employment concerns and disputes’.

### Market engagement

41. Early research established that the proposed employee HR service was not easily available in the market. The suppliers we contacted were either able to provide HR advice to line managers, or to provide generic advice to employees that would not be tailored to the parliamentary structures. A tailored service was also required to include the ‘reference to a new MPs Staff Handbook’<sup>13</sup> specified by the Working Group.

### Procurement process

42. A Prior Identification Notice (PIN) was therefore issued, to allow potential suppliers to indicate their interest in setting up a service for Members and Peer’s staff. A number of suppliers submitted responses, but there were concerns about whether these would offer good value for public money. The service specification was therefore revised, in consultation with staff representatives on the Steering Group. The interim Members’ Staff HR Service was also reviewed to help identify likely usage levels and a revised PIN was issued. This resulted in sufficient market engagement to underpin a full tender exercise, which is currently underway.

### Members’ Staff Handbook

43. A draft Members’ Staff Handbook for MP’s staff has been developed bringing together “information about the terms and conditions, mandatory and optional policies and guidance provided by Ipsa”.<sup>14</sup> To ensure a seamless service, this draft will be shared with the successful supplier and launched as part of the longer-term HR service in respect of MP’s staff. Printed copies of the handbook will be made available.

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12 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraphs 88b and 88d

13 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 75

14 Report of the Cross-Party Working Group on an Independent Complaints and Grievances Policy, paragraph 75

## 5 Committee on Standards and Parliamentary Commissioner for Standards

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### Standing Order and Related Changes

44. Each House currently has a Code of Conduct and arrangements for regulating the behaviour of its Members, including independent investigation of allegations of wrong-doing. The Working Group on an Independent Complaints and Grievance Policy sought to ensure that Members of each House were subject to the same standards as others on the estate, and that, as far as possible, the complaint and investigation processes did not distinguish between Members and others. It also recognised that these new processes had to be constructed in a way which fitted with the House's existing disciplinary arrangements.

45. The arrangements for handling cases involving Members will need to be adapted for the House of Lords. This chapter focuses on the changes needed to incorporate the new system into the House of Commons process.

46. The House of Commons rules of conduct, which give practical effect to the Code, do not focus on personal behaviour of Members. The Parliamentary Commissioner's remit for investigation does not currently allow investigation of such behaviour, unless it involves damage to the reputation of the House and its Members.

47. When the Independent Complaint and Grievance Policy was debated on the Floor of the House of Commons in February 2018, the motion was amended to make it clear that detailed proposals on handling complaints relating to Members should be drawn up in consultation with the Committee on Standards and the Parliamentary Commissioner for Standards. The subsequent input from the Committee and the Commissioner were invaluable in working out the details of these proposals, and there is now broad consensus on the interface between the ICGP and the existing arrangements.

48. It is also worth noting that the Commons Committee on Standards contains seven lay members, who have extensive regulatory and disciplinary experience, as well as seven MPs. Their experience has been set out in a recent Committee on Standards Report.

### Investigation

49. The Working Group on an Independent Complaints and Grievance Policy originally envisaged that investigation of MPs' conduct would in the first instance be conducted solely by the independent investigator, with a subsequent appeal to the Parliamentary Commissioner for Standards. The Working Group's original conception would have entailed many cases being resolved at this initial investigation stage without reaching the Commissioner at all.

50. After engagement with the Commons Committee on Standards and the Parliamentary Commissioner for Standards and the Lords Commissioner, it became clear that the relevant Commissioner should have oversight of the investigation process. This change will make no practical difference for the complainant at the outset. Concerns about Members will be raised through the telephone helpline, and handled in the same way as other calls. If the matter progresses, the Commissioner will be responsible for overseeing the investigation. This will be conducted by an investigator from the same pool of investigators as are employed on the general parliamentary contract. The protocols for the investigators' work will be the same for MPs as for other responders. If investigation is required, the investigator will act on behalf of the Commissioner, who will have oversight of the investigation process

51. The advantages of this approach are:

- The Commissioner will be able to monitor all complaints about Members, and will have an overview of the situation that they would not have, if complaints resolved at the first stage did not come to them;
- Investigations will be carried out to a consistent standard, and the risk that a Commissioner might have to re-investigate, causing inconvenience and distress to both complainant and responder, will be avoided;
- The Commissioner is entirely independent, and that independence is underpinned by their appointment on a non-renewable fixed term.

### **Withdrawal of complaint**

52. There were discussions with the Commons Committee on Standards and the Commissioners about whether complainants should be able to withdraw complaints after they had gone beyond the initial assessment stage. On the one hand, breaches of the standards set for Members by their House are matters of concern to the relevant House, which has an interest in upholding high standards. Moreover, there is a risk that complainants could be pressurised into withdrawing their complaints. Conversely, there is a risk that complainants will be unwilling to come forward if they are unable to change their mind later in the process. In consultation with the Steering Group, we consider the danger that people will not come forward overrides other considerations. It should be possible for complainants to withdraw complaints against Members as they could withdraw complaints against anyone else.

### **Penalties**

53. The Commissioner will have power to propose remedies—in effect, sanctions—if she sees fit. Given the broad range of behaviours which might be sanctioned, it is likely that the remedies will be equally varied; apologies, training or behaviour agreements will be available, but there may be cases when some other remediation would be appropriate. Standing Order changes are proposed to

give the Commissioner the power to agree remedies within a framework agreed by the Committee. It will be open to the Committee on Standards to publish reports setting out its principles which would assist the House.

54. If an MP resists a remedy proposed by the Commissioner, or if their behaviour warrants a stronger sanction, the Commissioner will prepare a memorandum for the Committee on Standards, which will be able to recommend stronger sanctions—up to and including expulsion—to the House. The details of how that approach will work in practice are discussed further in the section on confidentiality below.

## Appeals

55. The Commissioner will review the initial investigations and the complainant will be able to exercise the appeal rights set out in the policy at that stage. The Committee on Standards will hear appeals against a finding of the Commissioner raised by either the responder, or the complainant. If the latter, appeals will be possible only in instances where correct procedure is questioned or substantial new evidence has since become available and we anticipate that such appeals would not necessarily require a hearing. If a hearing is required, we note that the Committee on Standards has power to work through sub-committees, and could appoint such a sub-committee if it considers a complainant might be intimidated by appearing before a fourteen member committee.

## Powers of lay members on the Committee on Standards

56. In addition to its membership of Members, the Committee on Standards also has seven lay members. The lay members and their role on the Committee is important to ensure that appeals are not heard solely by Members considering the behaviour of other Members. The powers of the lay members of the Commons Committee on Standards will be enhanced by a change to Standing Orders setting out a mechanism to allow them to participate in an indicative vote on freestanding motions, the result of which will be published. This is in addition to their existing power to append an opinion to any report so the lay members views will be effective and recorded both in dealing with the reports which would arise from an appeal by a Member and in any decision on whether an appeal from a complainant should be upheld, which might, for example, result in it being remitted for further investigation. This is a significant change in the procedure and practice of the Committee on Standards. The reviews of the policy should consider the practical effect of this change to the Standing Order. If the enhancement of the powers of lay members has not proved effective, it could be possible further to enhance those powers through primary legislation to allow lay members to vote in substantive Divisions in Committee, although such a proposal might well have serious implications for the maintenance of parliamentary privilege.

## Code of Conduct

57. The first point of the Behaviour Code makes it clear that bullying, harassment and sexual misconduct are not tolerated. Amendments to the Code of Conduct for MPs will be put forward to ensure that the Code of Conduct is linked to the

Behaviour Code, so that the Commissioner and the Committee can deal with complaints arising from the Behaviour Code. The first amendment will make it clear that MPs are expected to abide by the principles underlying the Behaviour Code.

58. The rules of conduct in the Code of Conduct for Members of the House of Commons will also be amended to make it clear that bullying and harassment and sexual harassment are breaches of the Code by including a new requirement for Members to treat those with whom they come into professional contact with dignity, courtesy and respect. These changes will ensure that complaints of bullying and harassment against Members can be dealt with even if the behaviour complained about does not reach the current high bar of bringing the House into disrepute and that Members, like others, are bound by the House's policy on bullying and harassment and sexual harassment.

## Confidentiality

59. Most of those to whom the Behaviour Code will apply will be in existing employment relationships. Members' staff will in many cases be employed by the Member concerned. Parliamentary staff will be employed by the relevant House or Houses; and contractors will employ staff who work on the estate. Any disciplinary proceedings against such people will not be made public.

60. The Working Group, Steering Group, Commissioner and Committee have all considered the question of Members' confidentiality in detail. Members' behaviour is subject to levels of scrutiny unusual for staff. There is a balance to be struck between the need for transparency about lawmakers' conduct and the danger that publication of unfounded allegations, or even minor transgressions, could have a disproportionate effect on the Member.

61. Under the current system, the Commissioner records the start of an investigation online together with an indication of the rule which may have been breached. No further information is given until the end of the investigation, when either a memorandum is submitted to the Committee on Standards, which is recorded online, or the complaint is dismissed or rectified. In each of these cases a summary and relevant correspondence is published online by the Commissioner.

62. The Independent Complaints and Grievance Policy is intended to set up a system in which people are encouraged to report and matters can be resolved at an early stage. In those cases, it would not be appropriate to release names of those under investigation at the outset. It is worth noting in this context that the publication of the details of a complaint is likely to lead the media to attempt to identify the complainant.

63. There needs to be some flexibility: a Member is likely to want publication of the fact that a complaint which has attracted widespread media attention has not been upheld but as general principles we consider that for ICGP complaints which are handled confidentially:

- a. There should be no publication of the fact that an investigation has commenced;
- b. If an unpublicised complaint is not upheld, the MP's name should not be published;
- c. In deciding whether to publish details of individual complaints which have proceeded to the stage of investigation by the Commissioner and have been remedied, the Commissioner should consider:
  - i. the potential effect on the reporter and respect any desire for confidentiality on the reporter's part, and
  - ii. whether naming the responder is proportionate in relation to the finding, bearing in mind the effect on the responder's reputation.

64. The House of Commons may wish to take the opportunity to reflect on the wider publication system. From 2003 onward, the Commissioner did not publish information on complaints received (other than in the Annual Report) although if asked whether a specific complaint had been received, its receipt would be confirmed. In 2010 the procedure was changed to the current system in which the names of those under investigation are published. In recommending the change, the then Committee on Standards and Privileges noted that there were several, potentially conflicting, principles in play:

One is the public's right to know, not least in order to have confidence in the effectiveness of the system for considering complaints. On the other hand, accused Members are entitled to fair consideration of the complaint against them. Their public reputation is at stake and should not be put at hazard without proper cause. Nor is it necessarily in the interest of complainant for information to be disclosed, for example of this would prejudice a successful investigation of their complaint or put potential witnesses under pressure.

65. Until 2010, information about MPs being investigated was not routinely published. In 2010, the Committee on Standards and Privileges recommended the publication both of information about the resolution of complaints which did not form the subject of a memorandum and of information about complaints received and matters under investigation. Standing Order 150 was subsequently amended to this end.

66. The current Committee on Standards and the Commissioner for Standards do not support any change to the reporting of complaints in non-Behaviour Code cases. There is room for legitimate differences of opinion about where the balance between the competing interests identified in 2010 should lie. Given that Behaviour Code investigations will not be announced until proceedings have concluded, there is a case for treating all investigations in a similar way, and amending Standing Order No. 150 by 12(b) which gives the Commissioner power to publish information about complaints received and ongoing investigations.

## Complainant/reporter confidentiality

67. The Committee on Standards and the Parliamentary Commissioner for Standards were concerned that Behaviour Code cases could not be dealt with entirely privately. As the Registrar of Members' Interests has stated:

The real question [...] is not whether information about allegations of harassment, bullying and sexual harassment should be published; but how best to balance the public interest in disclosing some information about such cases with the need, which will vary in each case, to protect sensitive personal information about complainants and victims, who may be vulnerable, and about witnesses and the subjects of complaint.

68. We understand the position advanced by the Committee and Commissioner. While, as set out below, entry level matters may be dealt with confidentially, both those working in Parliament and the public at large need to know that serious cases are being dealt with effectively. This requires a degree of transparency on outcomes.

69. Not every case will reach the level where the Commissioner is required to prescribe a remedy through the formal process. In such cases, there will not be any announcement of the investigation at any stage, although statistical records will be kept and statistical analysis may be published. If matters cannot be resolved without the Commissioner's direct involvement, the Commissioner should undertake that in deciding what to publish if a complaint is upheld she will take account of the impact on the complainant/reporter and responder and the privacy of the complainant/reporter.

70. If matters are escalated to the Committee, the complainant's or reporter's name and identifying details will be redacted. The House will be invited to take action on serious matters with information about the conduct in question which does not identify the complainant or reporter, unless the complainant/reporter has agreed. It would be inappropriate to attempt to identify the complainant or reporter in debate, and we are confident the Speaker would deprecate any attempt to do so.

71. We are reassured by the undertakings from the Committee on Standards that:

- Not every case accepted for investigation will reach the level where a remedy is required; in those cases there will not be any announcement of the investigation.
- Even where an investigation takes place and the Commissioner is involved in resolving it, the investigation will not be announced until its conclusion.
- At that stage a summary of the facts and findings will be published; in deciding on the contents of this, the Commissioner will pay careful attention to the sensitivities and wishes of the complainant/reporter.

- In truly exceptional circumstances, the Commissioner may disclose some information before the case has been concluded, either to other agencies, if this is needed in order to protect the interests of vulnerable people, or more generally, if she suspects that a Member is a serial harasser or bully.
- We do not believe that the party whips should be supplied with any confidential information relating to an upheld complaint; they will have access to any published information, and should not have privileged access to information that other third parties do not see.
- Where cases are serious enough to be referred to the Committee, or if they go to the Committee on appeal, the Committee will publish a report to the House, with the complainant/reporter anonymised and subject to any redactions the Committee considers necessary to protect the complainant's privacy.

We particularly note the assurance that if there is no remedy required there will be no announcement of the investigation

### **Other dependencies**

72. The Commissioner and Committee may wish to review their existing processes in the light of the measures agreed by the House. More discretion may be needed in the light of the inclusion of Behaviour Code breaches in the Commissioner's remit, since many matters which do not require police intervention may technically be offences against the person, and because there will be consultation with the police at the assessment stage. We recommend that any such review should take account of the need for flexibility, proportionality and responsiveness to the complainant's/reporter's wishes. We are confident that the Commissioner and Committee will deal with this appropriately.

## 6 Culture Change

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73. The Working Group identified a number of areas where work is needed to create the environment within which the Scheme can be effective. The cultural change workstream has sought to use evidence about the negative aspects of Parliamentary culture garnered through the Working Group’s inquiry, work undertaken by the Commons Reference Group on Representation and Inclusion and further consultation to inform the work of the wider programme, particularly the Behaviour Code and Training workstreams; and to coordinate and promote measures being taken throughout Parliament to effect cultural change.

### Embedding the Behaviour Code

74. In recognising power dynamics and encouraging professionalism, the Behaviour Code addresses known risk factors in Parliamentary culture: the significant power imbalances that exist between and within the different groups of people working in Parliament, including the fact that many young people work in vulnerable low-status positions, often with a lot invested in getting on in politics; and the blurred boundaries between personal and professional relationships that can exist in an institution where people tend to socialise together as well as working long hours. The Code also emphasises the need to consider others’ perspectives, which may come less naturally in an environment in which people are working for different employers and in pursuit of different ends.

75. The Code is a tool for cultural change by setting standards for good behaviour, by encouraging the Parliamentary Community to “speak up” against bad behaviour and by giving them the language to do so. To give the Code meaning and bring it to life:

- Work is underway over the summer and into the autumn to explore with different groups of people working in Parliament what the Code means in their context; stimulate discussions about acceptable and unacceptable behaviour, supplementing the formal training described in chapter 3; and generating examples which can be used in future training and communications activity. This will include areas which employ contractors to reinforce the message that the Code really does apply to everyone working here.
- The Steering Group and the senior leadership groups of each House Administration will act as “champions” of the Code, ensuring it is visibly displayed, lending high-profile support to the training, role-modelling, speaking up and contributing to communications.
- It will be given a high-profile via the communications strategy set out in chapter 9.

76. In the autumn, both House Administrations have agreed to support a “language to challenge” campaign, sharing advice on challenging poor behaviour based on lived experience. The campaign will visibly promote good behaviour (“no

by-standers”), implicitly raise awareness of what unacceptable behaviour looks like, and support passholders in developing tactics and techniques that they might use to achieve this aim.

77. Evidence points to the importance of incentivising good behaviour as well as tackling unacceptable behaviour. A new Parliamentary Diversity and Inclusion Award will therefore recognise an individual who has role modelled the positive behaviours in the Code and/or is known for directly challenging unacceptable behaviour.

## **Engendering confidence in the new Scheme**

78. The new policies and processes will be effective only if a culture exists in which individuals are supported to use them and have the confidence to do so, and if they can see that unacceptable visible behaviour has consequences. A number of interventions will assist:

- Bullying and Harassment and Sexual Misconduct Advisory Services have been established as described in chapter 2.
- The senior leadership of parties and of the House Administrations must continue to emphasise zero harassment of bullying, harassment and sexual misconduct.
- Line managers will be given the tools to support staff through in-house training or the Good Employer Standard (as applicable).
- There will be greater transparency around complaints processes.

## **Promoting co-professionalism**

79. The Working Group also concluded that a “key objective in bringing about change will be the introduction of measures to promote a culture of co-professionalism.” This means creating an inclusive environment in which everyone working in Parliament is treated equally, and equally valued for the contribution they make to Parliament’s work.

80. Members’ staff giving evidence to the Working Group described feeling isolated and excluded. Historically the House authorities have provided little support to Members’ staff beyond that accessed on behalf of their employers. Henceforth, the HR support service described in chapter 4 will be available to both MPs’ and Peers’ staff. The Commons Executive Board has also confirmed, in the context of the ICGP programme’s work, the more recent direction of travel to align provision for House and MPs’ staff as much as possible, and agreed to roll-out the pilot MPs’ induction Scheme and incentivise attendance.

81. In response to evidence from House of Commons staff, the Administration is exploring the removal of unnecessary rules about access to facilities or services by grade, or visible signs of hierarchy, which can make more junior staff feel that they are second class citizens in the House and encourage a servant/master culture.

82. Co-professionalism is also about respecting the boundaries of peoples' working lives. Work is underway in the Commons to clarify and agree expectations of what is acceptable and unacceptable in terms of the demands placed on individuals. For MPs' and Peers' staff, the Good Employer Standard will provide an opportunity to have these discussions with their employers.

### **Mitigating risk**

83. Work is underway to identify scenarios in which individuals are particularly vulnerable to bullying, harassment or sexual misconduct, and introduce mitigations.

### **Monitoring and review**

84. The Working Group recommended that the progress and impact of the proposed arrangements should be monitored, reviewed and evaluated regularly.

85. Although it will be important to monitor the use of the new complaints processes, complaints data will not in itself provide a clear picture of the incidence of bullying, harassment and sexual harassment; nor evidence that the culture has become more supportive of complainants. The Boards of House Administrations have agreed to consider how data on (a) incidence of bullying, harassment and sexual harassment and (b) confidence in management to tackle the problem are best captured through staff surveys. MAPSA has also agreed to repeat the survey it carried out of Members' staff in 2017. This survey data could also be used to inform proposed reviews at six and eighteen months, as described in chapter nine.

### **Next steps**

86. The measures described here are not exhaustive. In the Commons, further work will be informed by the report of the inquiry being undertaken by Dame Laura Cox, expected in the autumn. Cultural change takes time and will require a persistent and ongoing focus on the part of all the actors involved.

## 7 Pre-Scheme Cases

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87. The Steering Group are determined that the new Scheme is not a ‘day zero’ approach that ignores the problems of the past. We know that unacceptable behaviour can have devastating long-lasting consequences for people. Our approach to developing the new Scheme, and in responding to the issue of older incidents, is to focus on those who have experienced unacceptable behaviour. In developing this package of measures for behaviour which predates the new Scheme we have thought hard about how we might best facilitate the resolution people are seeking. Key to this is providing information, advice and clarity about the routes open to people and listening to and counselling individuals to support them to gain closure.

88. It is incumbent on us to not raise expectations that are unlikely to be met and which may add to the distress and frustration that people may already be feeling. The unfortunate reality is that the further back in time you go the further the availability of evidence, the quality of recollection and the possibility of achieving natural justice for either party recedes. The advice we have taken from Tom Linden QC is clear that an investigation of a complaint will be more difficult the further into the past you go. That is why we have selected the start of this Parliament for the retrospective application of investigations under the Scheme.

89. What we have done is set out the options available to complainants to pursue a route that offers the best chance to deliver what they need to find resolution. Research indicates that personal resolution is not a straightforward matter and we will therefore ensure that there will be skilled and experienced support available to help people identify what resolution looks like for them and how they might be able to achieve it. To reiterate, anyone with a complaint will be able to call the independent helpline and seek help and guidance.

90. This package of measures for older cases is not the end of the story. It is essential that lessons are learned from unacceptable behaviour, whenever it happened, so an independent inquiry will be established by the Steering Group to hear from those Members, Peers and their staff who have experienced bullying, harassment or sexual misconduct. Mirroring the terms of reference of the Dame Laura Cox QC inquiry, a report with recommendations on policy changes will be prepared for the six-month review of the Scheme. The information gathered will also be used to inform ongoing culture change work. Support and advice will be available to those wishing to add their testimony to this inquiry, including how someone might be able to resolve any outstanding concerns outside of the scope of any investigatory process.

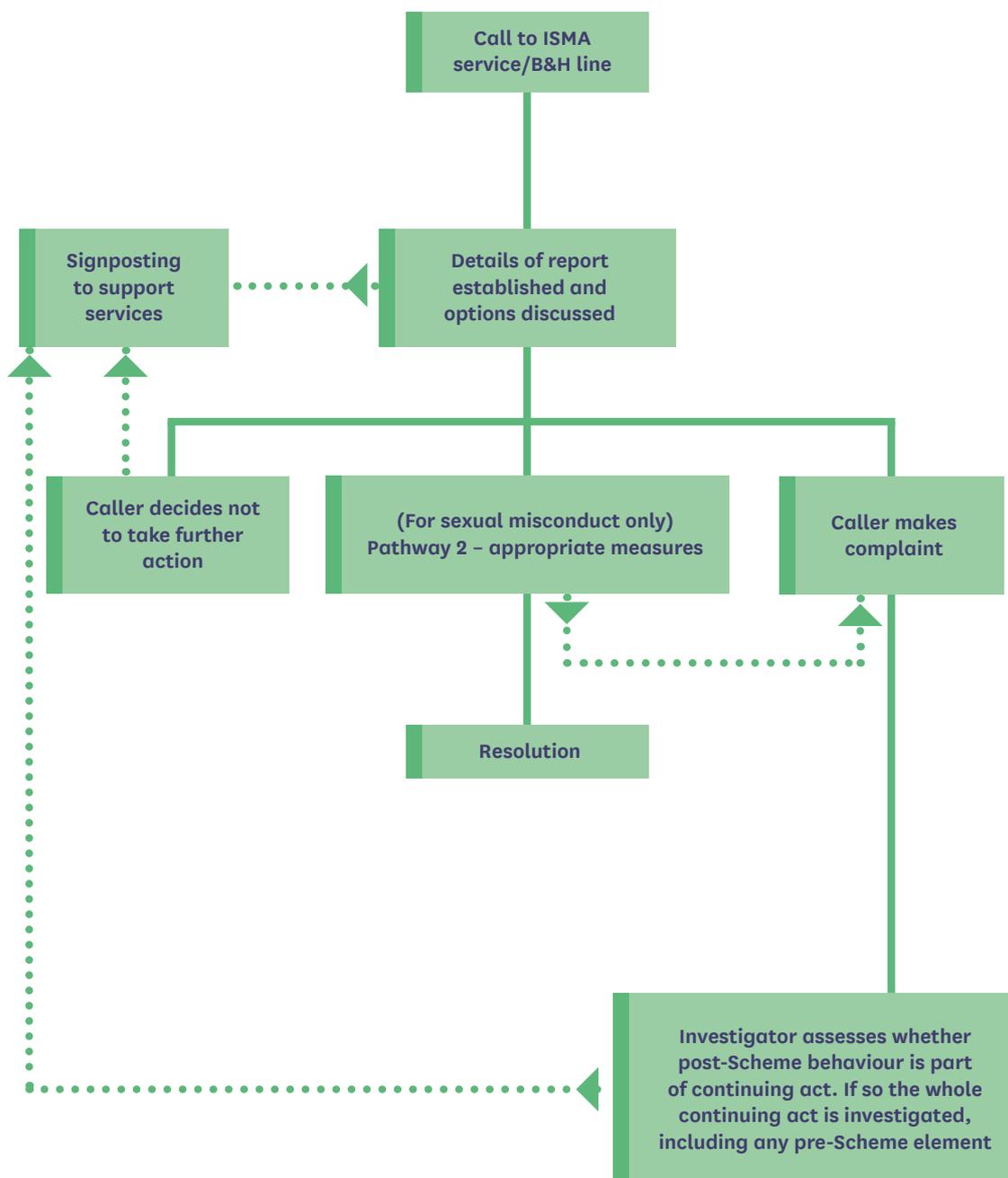
### Routes for Pre-Scheme Complaints

91. The following examples illustrate the routes available for people with pre-Scheme complaints. It is impossible to identify every potential scenario, and that is why the support services will provide individualised advice.

## SCENARIO A—‘Continuing Acts’

92. This scenario covers a situation in which people who are complaining about an incident which occurred after the new Scheme has been introduced may be able to include previous incidents of inappropriate behaviour in their complaint where such behaviour amounts to a continuing act. In addition, the investigators may also be able to consider reports of allegations prior to the Scheme as evidence when considering complaints. Previous incidents are therefore relevant in this scenario.

### Continuing Act

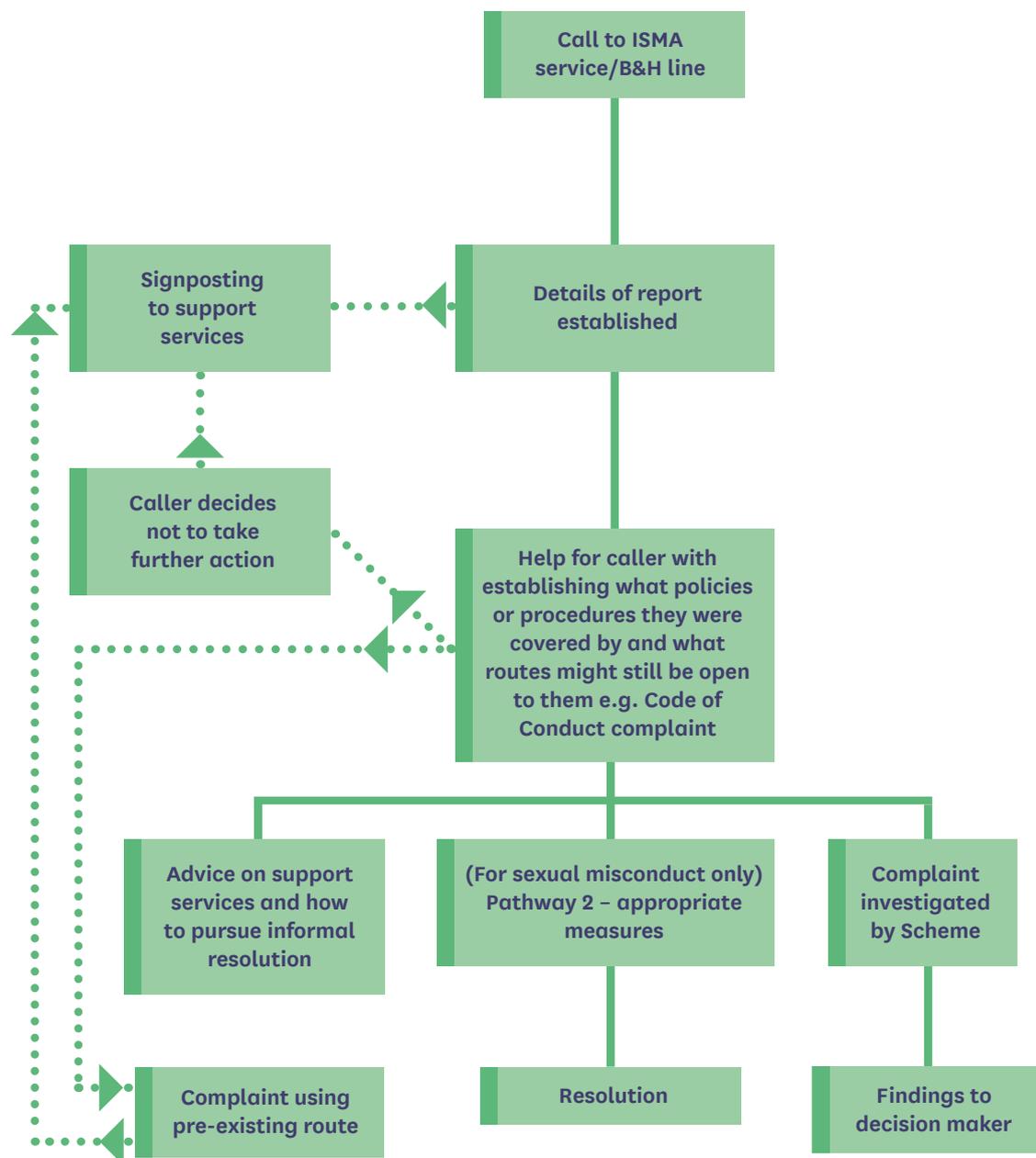




## SCENARIO C—Incident involving a staff member between June 2017 and the start of the new Scheme

95. The Steering Group has agreed that the new Scheme can investigate incidents that occurred from the start of this Parliament (June 2017). In this scenario, the incident occurred in September last year and therefore it will be investigated under the new arrangements. The advice and support is available as it is for other cases, and the complainant will be talked through the options available to them.

### Complaint against MP’s staff member in September 2017



96. We recognise that there is no approach that can completely satisfy all the stakeholders in this process equally, given the different views on how to achieve the most credible and effective system possible. For example, some members of the Steering Group, including the trade unions, advocated strongly that the Scheme should apply to all allegations raised, regardless of date, with the investigators taking a judgement as to whether fairness could be maintained given the passage of time, availability of evidence and seriousness of the allegation. Others expressed concern about the risk of unconscious bias in such a discretionary approach and we again draw attention to the risk of raising expectations that may not be met.<sup>15</sup>

97. We affirm our commitment to doing everything in our power to provide support for the victims of bullying, harassment and sexual harassment in the knowledge that the impact of these behaviours can be severe and long-lasting. This is an issue that will be kept under constant review. Any evidence about the impact of this policy with relation to pre-Scheme cases or recommendations about how to deal with past bullying, harassment or sexual harassment will be considered during the six-month review of the Scheme.

## 8 Reviewing the Scheme & additional work to be undertaken

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98. It is important to note that neither the Steering Group nor the Programme Team see the creation of the Scheme as an end-point. The introduction of the Scheme is the beginning of a sustained, well supported and appropriately resourced approach to promoting a positive and supportive environment for those working in or visiting Parliament. The Working Group recommended that at least two reviews of the Scheme be undertaken six and eighteen months after implementation. These and potential future revisions of the Scheme will ensure that it continues to develop based on feedback, best practice and the needs of the Parliamentary Community.

### The Six-Month Review

99. Including representatives of staff and unions, Members and Peers, the six-month review will consider, amongst other things:

- Third party and cluster reporting
- The operation of the complaints system to date
- The wording and interpretation of the Behaviour Code
- The take-up of training and development relating to the Scheme
- The effectiveness of the support provided to complainants and those subject to complaints
- The equality of application of sanctions

The review will also address the outstanding issue of visitors to MP constituencies.<sup>16</sup>

### The Eighteen-Month Review

100. The eighteen-month review will assess both the effectiveness of the Scheme and the impact of the Scheme on changing the culture of Parliament. The eighteen month review should also consider how sanctions are being applied and whether they are being applied equitably between different groups. The review should assess whether there is any evidence of bias in the way sanctions are applied.

### The House of Lords

101. The House of Lords governance and employment structures differ to those in the House of Commons, and so implementation will need to be progressed in parallel in the two Houses. The House of Lords Commission and House of Lords Management Board have been the primary bodies overseeing Lords engagement with the Programme in relation to Members and their staff, and staff of the House, respectively.

102. The Commission and Management Board have committed to tackling the issues raised by the Working Group. Members, their staff, and staff of the House have been fully involved in the consultations relating to the Behaviour Code and the bullying and harassment and sexual harassment policies and procedures.

103. Specific deliverables from the programme will follow the usual governance processes within the House. Thus, for example, proposals for new training for Members and their staff will be looked at by the Lords Services Committee when they are brought forward, and proposals relating to culture change will be taken to the Commission and the Management Board.

104. Work on how the new processes and procedures will apply to Lords members under the Code of Conduct, and to members' staff, will be taken forward in July. The Sub-Committee on Lords' Interests will consider how the Behaviour Code and the policies and procedures on bullying and harassment (including sexual harassment) should be incorporated into the Code of Conduct and how the existing processes for investigating breaches of the Code need to be adapted. It is expected that the Sub-Committee will start this work before the summer recess. The Lords Commissioner for Standards will continue to be involved in during the Sub-Committee's work. The Sub-Committee will report to the Committee for Privileges and Conduct who will make recommendations which will be put before the House for approval in the Autumn.

### **Application of the Scheme to Staff of the House of Lords**

105. In the House of Lords, the Commission does not have any role in the employment of House staff. Instead, this is reserved to the Clerk of the Parliaments and the Management Board, and the application of the Scheme to House staff is a matter for them.

106. The House of Lords Administration will now formally consult with TUS on the new Behaviour Code with a view to incorporating this and the Bullying and Harassment and the Sexual Misconduct policies into the existing policies in the House of Lords staff handbook. The six-month and eighteen-month review will be an opportunity to review and revise the Scheme.

107. House of Lords L&D will continue to collaborate with House of Commons L&D to implement learning initiatives to support the Scheme

## 9 Communicating the Scheme

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108. The communications approach to support the roll out of the Scheme is underpinned by three key objectives:

**INFORMATION:** Ensure all stakeholders are fully informed about development, benefits, launch and continued iteration of the new prevention processes and resolution routes.

**REPUTATION:** Support the internal and external reputation of Parliament by building trust and confidence that significant and permanent cultural, behavioural and process change is happening.

**ENGAGEMENT:** Encourage and support engagement from key stakeholder groups, and foster a sense of shared responsibility across Parliament for cultural and behavioural change.

109. The communications approach for all stakeholders is:

**Backed by explanatory narrative:**

Communications will be consistently underpinned by explanatory narrative giving workstream context and objectives, and setting expectations of scope.

**Outcome and user benefit focused:**

Communications will be focused on the impact and benefits for parliamentary stakeholders, and seek to answer the questions: What difference will they see and feel in their daily working lives?

**Supportive and pragmatic:**

Communications will offer the current 'support and report' pathways, ensuring that solution pathways are signposted always, so that stakeholders who may be affected by communications and engagement know where they can access help, and can feel safe in doing so.

**Transparent:**

Communications will deliver a sense of both transparency and progress, with regular updates of programme delivery.

**Clear in direction:**

Calls to action required to support the delivery of the Scheme will be clear and accessible, with projected outcomes and timelines clearly signposted.

110. Key messages are:

- Urgent and comprehensive action has been taken by Parliament to help prevent sexual harassment and bullying, and to improve internal processes for resolving these issues.
- Parliament is consulting widely with all stakeholder groups and external, independent experts in related fields (such as sexual harassment) to ensure the solutions are appropriate and robust.
- This is just the start of a comprehensive and iterative process, safeguarding all those who connect or interact with Parliament in any capacity will remain a priority.

111. The internal and external headline message for the Scheme's delivery should be focused on a positive vision of permanent cultural change—the final combined outcome of more robust prevention and resolution processes.

## ANNEX A—BEHAVIOUR CODE REPORT

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# Proposed Behaviour Code

**June 2018**

## DEVELOPING A BEHAVIOUR CODE FOR PARLIAMENT

### Introduction

This document contains the proposed Behaviour Code, some illustrative examples to help explain the Code and information on the consultation process which informed its development.

### Background

The Working Group on an Independent Complaints and Grievance Policy (ICGP) was established in November 2017. The ICGP Working Group was cross-party and bicameral and included representatives of unions and employees' organisations active in Parliament.

The underlying aim of the Working Group was to establish the tools required to change the culture across Parliament and deliver a positive, safe environment for people to work in and visit.

### Working Group Report

The ICGP Working Group's report was published in February 2018 and recommended that new policies and independent advice and investigation services should be developed. The report also recommended further work be undertaken on training and cultural change, and the development of a new Behaviour Code.

The House of Commons endorsed the Working Group's recommendations for these proposed workstreams on 28 February. To deliver this work, an ICGP Steering Group was established to monitor implementation by Parliamentary officials.

The ICGP Steering Group membership reflects a broad range of parliamentary stakeholders and includes representation from both the Lords and the Commons.

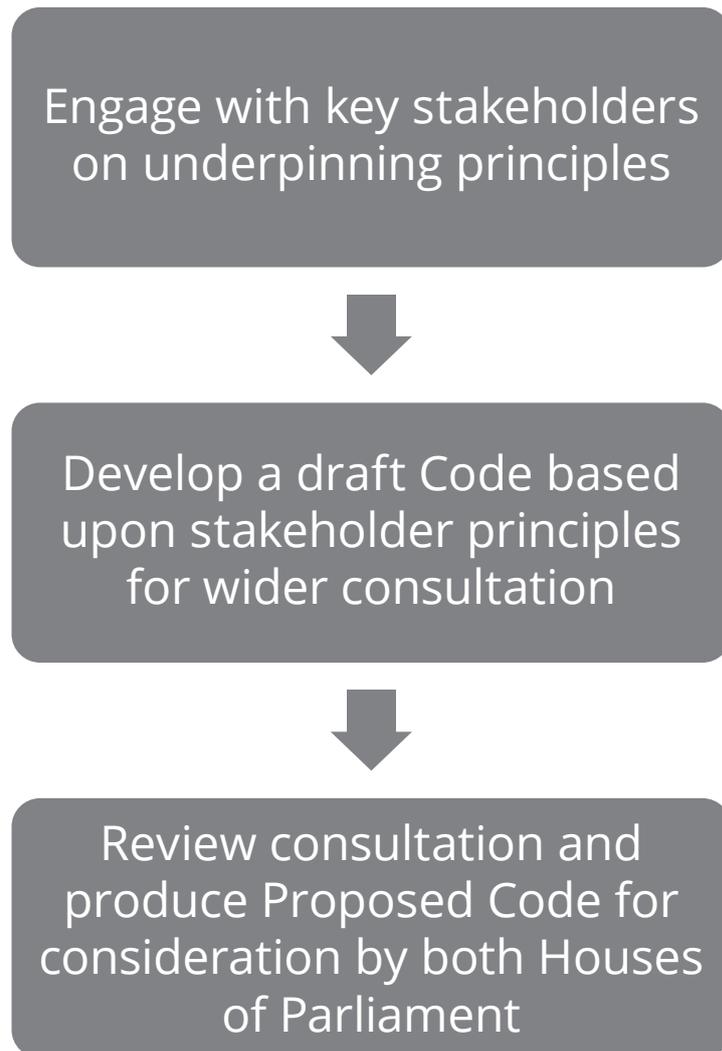
### Behaviour Code

The Working Group report identified that a new binding Behaviour Code was needed to encompass a shared set of explicit behavioural expectations of all those working for and within Parliament. These standards would underpin the whole Independent Complaints and Grievance Policy and be a statement of how people are expected to behave whether they work for Parliament or are visiting.

The Behaviour Code is the lynchpin of the work of other workstreams, and is the prime driver of the core benefits of preventing bad behaviour. The Culture Change workstream is closely aligned with the Code and its implementation.

### Creating the Code

The Steering Group agreed the following process for developing the Behaviour Code:



### Identifying Underpinning Principles

In conjunction with the House of Commons Evaluation and Insight Team and Ipsos MORI, deliberative workshops on the principles to underpin the Behaviour Code were held in April. Attendees at these workshops included MPs, Peers, Members' staff and House staff. Discussions on the development of the Behaviour Code were also undertaken with trade union representatives, the Press Gallery Committee and the Committee on Standards.

### Developing a draft Code for consultation

In summary, the outcome of these deliberative workshops indicated:

- There was widespread support for the introduction of a Code
- One of the greatest benefits will be culture change and clarifying rights and responsibilities
- Need to be clear and comprehensible, the Code will protect, and provide guidance to, a wide variety of people

- There was a question around detail—enough to make sense, but not too much to enable `loopholes`—defining every circumstance is impossible but the communication and engagement period should provide stories explaining how it might affect people
- Power dynamics need to be considered as part of the Code
- Making sure that the Code signposts where breaches need to be reported and that they are taken seriously.

The Steering Group reviewed the outcomes of the workshops and developed a draft Code for wider consultation. As well as internal stakeholders, a social media campaign was undertaken and the UK Parliament website carried a copy of the draft Code with information on how to provide feedback.

### Reviewing feedback and producing the Proposed Code

In summary, consultees:

- Viewed the Code as an overdue and welcome initiative to encourage behaviour change
- Had differing views on the benefits of brevity and clarity versus the need to provide greater detail
- Wanted the tone of the Code to be bolder and less aspirational
- Were unsure whether the Code was meant to cover visitors as well as passholders
- Identified phrases missing from the Code, most importantly sexual harassment
- Made specific wording suggestions for the principles

The Steering Group reviewed this consultation feedback to produce the Proposed Behaviour Code and identify some illustrative examples. It is important to note that these examples are not definitive and by taking a principles-based approach, the Code will be meaningful in all the different working and visiting environments in Parliament.



## Behaviour Code

Whether you are a visitor or working in Parliament at Westminster or elsewhere, there are clear guidelines in place on how you should be treated, and how you should treat others:

Respect and value everyone – bullying, harassment and sexual misconduct are not tolerated

Recognise your power, influence or authority and don't abuse them

Think about how your behaviour affects others and strive to understand their perspective

Act professionally towards others

Ensure Parliament meets the highest ethical standards of integrity, courtesy and mutual respect

Speak up about any unacceptable behaviour you experience

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

If you have experienced bullying, harassment or sexual misconduct you are encouraged to report it and/or seek support by contacting:

Independent Sexual Misconduct Advice Service – 0800 112 4318

Independent Bullying and Harassment Reporting Service – 0800 028 2439

### Illustrating the Code

**This information is provided to help explain the Code, it is not a definitive interpretation. The principles-based approach allows the Code to be meaningful in the many different contexts where it applies.**

**Respect and value everyone—bullying, harassment or sexual harassment is not tolerated**

Parliament is committed to being an ethical, inclusive environment and has zero tolerance for unacceptable behaviour. The following is not an exhaustive list but you can expect:

- Not be mocked, undermined, shouted at or belittled
- Not to have personal comments made about your appearance or characteristics, whether positive or negative
- Not to be coerced into physical contact
- Not to be coerced into attending out of work time events
- Not to be touched inappropriately

### **Recognise your power, influence or authority and don't abuse them**

In Parliament much power sits in the hands of particular individuals or groups and this makes it more difficult to challenge abuses of that power.

As an MP, Peer, manager or official you have a particular responsibility to behave respectfully and promote a positive and safe environment. You should understand that power relationships can affect how people perceive you, for example on the issue of consent. The definition of consent provided by the Sexual Offences Act 2003, is agreeing to something by choice and having the freedom and capacity to make that choice.

Some examples of unacceptable behaviours relating to power are:

- Making personal threats to someone or victimising them if they do not do something you want
- Using your influence, power or authority to improperly protect, damage or influence the career or employment conditions of another.
- Supporting the victimisation of someone by others, including using your influence with others or the media (mobbing)
- Promising to advance someone's career in return for sexual favours
- Using language that undermines someone for the job they do or their perceived status

Often these behaviours are implied, rather than clearly stated, and it is important to understand that implication or suggestion is also unacceptable.

Power relationships in our context are not straightforward. Although not immediately obvious, a staff member may also have power over a Member (threats to complain vexatiously and publicise it). A visitor to Parliament may also be powerful, for example a CEO or a parliamentarian from overseas.

It is important to recognise that there is an inherent conflict of interest and potential misuse of power or authority in having an intimate relationship with anyone under your supervision. Should you find yourself in such a relationship, you should find a way to resolve this conflict of interest.

### **Think about how your behaviour affects others and strive to understand their perspective**

You should realise that not everyone sees the world the way you do. Behaviour that you may think is okay in your group of friends or colleagues, such as ‘banter’, is not acceptable in a professional environment. Striving to understand other perspectives is about thinking of others and acknowledging differences as equally valid to your views of what is right or normal. It is not, however, about excusing unacceptable behaviour, for example racism and sexism is wrong whatever the context.

### **Act professionally towards others**

You can expect that you will be treated properly wherever and whenever you are working. For example, a boss or colleague should be aware that you are protected by this Code when on a committee visit in the UK or abroad or attending a work reception.

The Code applies:

- During evening/weekend work in the same way as daytime hours
- Wherever you are working—whether at an outreach visit, constituency event or trip abroad
- Whether in person or through social media and other online platforms.

The Code also requires us to recognise the blurred spaces between work and social space, and not to exploit them

### **Ensure Parliament meets the highest ethical standards of integrity, courtesy and respect**

It is imperative to the reputation of Parliament and trust in democracy that those working in or for Parliament should be held to standards that should set an example to others. Your role, background, whether you are elected or not, or other characteristics should not matter to the way you are treated or treat others. All of us are engaged in delivering for the citizens of the UK and unacceptable behaviour prevents us from doing so.

### **Speak up about any unacceptable behaviour you experience**

If we are going to achieve a change in the culture of Parliament to ensure that people can visit and work in an atmosphere of respect, safety and freedom from abuse then we need to tackle unacceptable behaviour. The overall complaints and

grievance Scheme will provide channels to raise concerns and support to help you do so. You will be protected from any discrimination or victimisation arising from speaking up about unacceptable behaviour.

The Scheme is based upon natural justice, confidentiality, and support for all of those involved in a complainant.

**Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions**

Although not a behaviour principle, it has been written on to the face of the Code to demonstrate Parliament's commitment to promoting a positive, respectful and safe working environment by tackling unacceptable behaviour. The whole Scheme has been developed with independence and natural justice at its heart to promote confidence in investigations and the assessment of findings. There will be regular reviews, including surveys, to make sure that it is working.

# ANNEX B—Bullying and Harassment Policy

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## Independent Complaints and Grievance policy: Bullying and Harassment

### 1 Introduction and aims

1.1 Parliament believes that all people have the right to be treated with dignity, courtesy and respect and we expect all members of the Parliamentary Community to treat others accordingly.

1.2 Our Behaviour Code, this policy, the Sexual Misconduct policy and the associated procedures provide a framework for us to create a respectful and courteous working environment and to respond to any allegations of unacceptable behaviour promptly, fairly and effectively. Bullying and harassment are unacceptable in all circumstances and abuse of power can be an aggravating factor in such cases.

1.3 This policy and procedure relate specifically to bullying and harassment. It outlines how concerns about bullying and harassment by members of the Parliamentary Community can be raised and how complaints will be investigated as part of the Independent Complaints and Grievance Scheme. If complaints are upheld under this policy, the matter will be referred to different bodies depending on the identity of the person who the complaint is against. These bodies will have and use their own policies and procedures to reach a decision, including the application of any sanctions.

1.4 This policy and procedure are here to provide support for anyone involved with incidents or complaints of alleged bullying and harassment, whether you have experienced bullying or harassment or have had a complaint of bullying or harassment made against you. The aims of the policy and procedure are to:

- Ensure that all members of the Parliamentary Community are aware of their responsibilities in relation to bullying and harassment;
- Provide a fair, transparent and consistent approach for reporting, investigating and responding to allegations of bullying and harassment.
- Provide information about sources of support available to anyone who experiences bullying or harassment or who is accused of bullying or harassment.

### 2 Definitions

2.1 There are many definitions of bullying and harassment and both terms are often used interchangeably. The definition for harassment below reflects the definition set out in Section 26 of the Equality Act 2010. The definition for bullying below is based on classification provided by ACAS. These definitions will be used for determining whether any behaviour reported under this policy and procedure constitutes bullying or harassment.

2.2 All behaviour that does constitute bullying or harassment is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute bullying or harassment. When alleged incidents of bullying or harassment are reported under this policy, any investigation will assess whether or not the incidents constitute bullying or harassment.

### What is harassment?

2.3 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. Under the Equality Act 2010, harassment is related to one or more of the relevant 'protected characteristics' which include age, sex, race, disability, religion or belief, sexual orientation and gender reassignment.

2.4 Sexual harassment is qualitatively different from other forms of unacceptable behaviour, including bullying and non-sexual harassment. There is a separate Sexual Misconduct policy and procedure for dealing with allegations of sexual misconduct and more information about reporting incidents under both policies can be found in clause 2.15 of this policy.

2.5 Harassment may be persistent or an isolated incident and may manifest obviously or be hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications such as social media. Harassment through social media could involve a serious one-off incident but is more likely to be the result of a sustained on-line campaign.

2.6 Harassment can be intentional or unintentional. For example, if a person speaks or behaves in a way that they do not find offensive, but that another person does. The key is that the words or behaviour are unwanted or unacceptable to the recipient. The purpose or effect of the unwanted conduct violates the recipient's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

2.7 A person may also be harassed even if they were not the intended 'target' of harassment. For example, a person may be harassed by jokes about a religious group that they do not belong to, if these jokes create an offensive environment for them.

2.8 Harassment associated with different protected characteristics may be quite different in nature and may relate to more than one protected characteristic. Examples of harassment, other than sexual harassment, may include, but are not limited to:

- Deliberate exclusion from work activity or conversations;
- Sending or displaying offensive material in any format (including posters, graffiti, emails, messages, clips or images sent by mobile phone or posted on the internet);

- Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype) in relation to their age, disability, gender reassignment, race, religion or belief, sex or sexual orientation;
- Use of unacceptable or inappropriate language or stereotypes relating to race or ethnicity;
- Deliberately holding meetings or social events in a location that is not accessible for an individual with a disability;
- Using profanities or swearing that could have the effect of intimidating a person.

### What is bullying?

2.9 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 and can include both personal strength and the power to coerce through fear or intimidation.

2.10 Like harassment, bullying can take the form of physical, verbal and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person, by telephone or in writing, including emails, texts or online communications such as social media. It may be persistent or an isolated incident and may manifest obviously or be hidden or insidious.

2.11 Examples of bullying may include, but are not limited to:

- Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language
- Physical or psychological threats or actions towards an individual or their personal property;
- Practical jokes, initiation ceremonies or rituals;
- Overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures;
- Inappropriate comments about someone's performance;
- Abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work, or coercing someone to meet such expectations;
- Use of unfair sanctions in relation to disciplinary or attendance procedures;
- Ostracising or excluding someone from meetings, communications, work events or socials;

- Sending, distributing or posting detrimental material about other people, including images, in any medium.

### What does the law say about bullying and harassment?

2.12 In some cases, acts of bullying or harassment can be civil offences, which can be brought to an employment tribunal or county court.

2.13 In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence. Examples may include, but are not limited to:

- Physical assault;
- Making violent or death threats;
- Stalking;
- Hate crimes.

2.14 Clauses 2.16 and 2.17 of this policy contain more information about how this policy and procedure deal with criminal investigations into conduct that may also amount to bullying and harassment.

### What is not covered by this policy?

#### Sexual harassment

2.15 This policy and procedure does not cover complaints of sexual harassment specifically. Where someone has a complaint of sexual harassment as part of a wider pattern of other bullying or harassing behaviour, they can choose to use this policy or the Sexual Misconduct policy (but not both) to make their complaint. Where a complaint is made under this policy and a substantial sexual harassment element becomes apparent during the course of investigation, the complaint may be transferred to the Sexual Misconduct procedure, if appropriate. The Sexual Misconduct policy includes access to specialist advice relating to sexual harassment, so may be more appropriate in cases where sexual harassment comprises a substantial part of the complaint.

#### Criminal investigations

2.16 This policy and procedure relates to forms of misconduct in the workplace and not the investigation of specific criminal offences.

2.17 Where someone has reported an alleged criminal offence to the police and has made a complaint under this policy and procedure, the circumstances of the case will be considered to determine whether it is appropriate to investigate the matter under this procedure at the same time, or whether action under this

procedure should be paused until the criminal investigation is complete. The Independent Reporting Helpline can provide information about sources of support to both complainants and respondents involved in criminal investigations.

### Other workplace disagreements or disputes

2.18 Many workplace disagreements or disputes will not constitute bullying or harassment. Examples include, but are not limited to, concerns or disputes about working practices and conditions or disagreements or conflicts between people working together. These should be dealt with informally or by using other workplace policies and procedures, as appropriate.

2.19 As part of their role, managers should be able to issue reasonable instructions and expect them to be carried out; set and manage standards of performance; and use attendance, performance and disciplinary procedures. Legitimate actions by a manager would not constitute bullying or harassment in and of themselves. However, in circumstances where the management actions were unreasonably or coercively applied (see 2.11), this may constitute bullying or harassment and could be reported using this policy and procedure.

## 3 Terms used in this policy and procedure

3.1 **Complainant:** This is an individual who reports bullying and harassment through the Independent Reporting Helpline. They may or may not also choose to pursue their complaint of bullying or harassment through the Independent Investigation Service.

3.2 **Respondent:** This is an individual who is accused of bullying or harassment.

3.3 **Report:** This is when a complainant reports an incident to the Independent Reporting Helpline.

3.4 **Complaint:** This is when a complainant chooses to pursue their complaint through the Independent Investigation Service after reporting it to the Helpline.

3.5 **The Independent Reporting Helpline:** This is the service for reporting incidents of alleged bullying or harassment and finding out about sources of support available for complainants and respondents. The Helpline also retains confidential records and provides regular anonymised reports about the levels of Helpline usage and the types of issues raised, to monitor the quality of the service and inform the development of awareness-raising campaigns and cultural change initiatives.

3.6 **Independent Investigation Service:** This is the service which is available if a complainant decides that they want to take action in relation to an alleged incident of bullying and harassment (as opposed to only using the Helpline to report an incident or access support). Deciding to pursue a complaint under the Independent Investigation Service does not prevent the complainant from withdrawing the case at any stage during the investigation. The Independent

Investigation Service also retains confidential records and provides regular reports about the levels of use and types of complaints investigated and resolved, to monitor the quality of the service and inform the development of awareness-raising campaigns and cultural change initiatives.

**3.7 Case Manager:** Any complaint made to the Independent Investigation Service is allocated to a Case Manager, who is responsible for undertaking an initial assessment of the complaint to determine whether it is likely that there is a case to answer. They are also responsible for helping to broker informal resolutions between the complainant and respondent, where appropriate; or for undertaking a formal assessment of the complaint, based on gathering further evidence from those involved. Case Managers will always be independent, with specialist expertise and training in resolving and investigating complaints of bullying and harassment.

**3.8 Decision-making bodies:** These are the organisations within the Parliamentary Community which have responsibility for the complainant or respondent. In general, decision-making bodies for the respondent are notified when a case progresses beyond the initial assessment stage. For example, this might be the complainant's or respondent's employer, or one of the Commissioners for Standards and the relevant committee on standards for a Member or Peer. Decision-making bodies are also responsible for deciding and implementing appropriate actions and/or sanctions when a complaint is upheld by the Independent Investigation Service.

## 4 Scope

Who does this policy and procedure apply to?

**4.1** This policy and procedure applies to all acts of workplace bullying and harassment by and against any member of the Parliamentary Community, including bullying or harassment by a third party, such as a visitor to the Parliamentary Estate.

**4.2** For the purposes of this policy and procedure, the Parliamentary Community comprises all those working for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of their employment and/ or parliamentary work. This includes:

- Members of Parliament (MP) or Peers;
- Employees of MPs or Peers or other people working for them, such as volunteers, people undertaking work experience or interns;
- Employees of the House of Commons and Parliamentary Digital Service, following a decision by the House of Commons Commission on 16 July 2018.<sup>17</sup>

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<sup>17</sup> This was updated on 16 July 2018 and that the text previously said "[House of Commons staff subject to a decision by the House of Commons Commission]"

- [Employees of the House of Lords;—subject to House of Lords Management and TUS consultation]<sup>18</sup>
- Employees of other Parliamentary organisations (for example, CPA UK, BGIPU, an All Party Parliamentary Group)
- Specialist Advisers and others supporting Parliamentary work, including people employed by political parties or collectively employed by MPs (e.g. PRU, PRS and Group staff);
- Members of the Press Gallery;
- Contractors, agency workers, inward secondees or interns to any of the relevant bodies above;
- Visitors at Westminster

4.3 Under this policy and procedure, it is possible to report and make a complaint about bullying and harassment in the following circumstances:

- Where the respondent was working for or with Parliament at the time the alleged behaviour took place; and
- Where the respondent is working for or with Parliament or continues to hold a Parliamentary pass at the time the complaint is made.

4.4 The work of the Parliamentary Community is broad, and can involve office work, public facing work, travel and social events, as well as non-standard working hours. As a result, this policy and procedure applies to behaviour by members of the Parliamentary Community anywhere where they would not be other than for the purposes of their employment or parliamentary work. For the avoidance of doubt, this includes on the Parliamentary Estate, at constituency offices or other places of work, or in the course of parliamentary duties and activities (e.g. UK or overseas travel or social events related to parliamentary business).

How does this policy and procedure deal with multiple allegations of bullying or harassment?

4.5 Bullying or harassment may be:

- by an individual against an individual or against several people, or;
- by several people against an individual or against several people.

4.6 This policy and procedure can be used to report and investigate any allegations of bullying or harassment on an individual or collective basis (e.g. where a group of people allege bullying and harassment by the same respondent(s)). Where complaints are made collectively, all complainants must provide consent for their evidence to be included in the collective complaint. A complainant may still choose to make an individual complaint separately, if they would prefer not to be part of a collective complaint.

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18 This section of the policy will be updated in light of any decision by the House of Lords Management Board

4.7 Where someone makes a complaint against several people, this may be managed as a single investigation or as multiple investigations relating to each respondent. The most appropriate course of action will depend on the circumstances of the case. In either event, the Case Manager from the Independent Investigation Service will consider the case against each respondent on an individual basis when making their assessment of the evidence.

4.8 Where several complaints are made independently about one person, each of these will be managed on an individual basis. The decision-making body with responsibility for the respondent will respond to each investigation finding separately but may also take into consideration previous findings when deciding on an appropriate course of action or sanctions.

#### How does this policy and procedure work alongside other ways of reporting bullying and harassment?

4.9 This policy and procedure are not intended to replace any individual action in reporting incidents of bullying or harassment directly to the police, their employer, an employment tribunal, a political party, the Parliamentary Commissioner for Standards or the House of Lords Commissioner for Standards.

4.10 Where a complainant chooses to use another policy to make a complaint of bullying or harassment, the Case Manager from the Independent Investigation Service reserves the right not to investigate the same incident under this policy and procedure.

4.11 This policy does not replace safeguarding obligations for all members of the Parliamentary Community. For example, if you are concerned about behaviour towards a vulnerable adult, you should report this to the Designated Safeguarding Lead, as outlined in the Safeguarding policy. The Independent Reporting Helpline and Independent Investigation Service will also carry out risk assessments and have agreed escalation processes in cases where an individual or others are at risk of harm that cannot be mitigated in another way.

#### How does this policy deal with malicious complaints of bullying or harassment?

4.12 We expect all individuals involved in a complaint made under this policy to act with integrity and provide accurate information, since false accusations of bullying and harassment can have serious consequences.

4.13 If someone makes a complaint as a result of a genuine mistake or misunderstanding, this would not be a malicious or vexatious complaint. Likewise, if the outcome of an initial or formal assessment under this policy is not upheld (i.e. not found to be bullying or harassment), it should be emphasised that this would not mean the complaint would be judged as malicious or vexatious.

4.14 For an investigation to indicate that a complaint may be malicious or vexatious, there would have to be strong evidence of manifestly false accusations or deliberate intent to falsely discredit the respondent. Examples of malicious or vexatious complaints could include a succession of complaints without reasonable

grounds from one complainant against a respondent; or a series of complaints between two or more people, one apparently made in response to another ('tit-for-tat' complaints).

4.15 Where a complaint has been found to be potentially malicious, vexatious or deliberately false, this will be based on the evidence gathered by the Case Manager from the Independent Investigation Service. In this case the decision-making body for the complainant will be notified and can deal with the matter using their own policies and procedures, which may include disciplinary action or other sanctions, depending on the role of the complainant in the Parliamentary Community.

## 5 Timescales for reporting incidents of bullying or harassment

When can I report an incident of bullying or harassment?

5.1 It is always preferable to address issues of bullying or harassment as soon as they arise, so that they can be resolved as quickly as possible. As a general principle, reporting or making a complaint of bullying and harassment should be done as soon as is reasonable after the incident in question. This will ensure informal resolution (where appropriate) can be attempted as quickly as possible and will facilitate effective formal assessments (e.g. by gathering evidence and statements from those involved whilst the event is fresh in their minds).

5.2 There may be times when a complainant does not want to or feel able to make a report soon after an alleged incident or incidents of bullying or harassment. Where a lengthy period of time has elapsed between the most recent incident of alleged bullying or harassment and a report or complaint being made, as part of their initial assessment, the Case Manager will examine the nature of any evidence available to determine whether this is likely to be sufficient to proceed with a formal assessment. For example, in circumstances where there is no contemporaneous evidence of an incident taking place and/or where witnesses have since left the Parliamentary Community, it may be difficult to gather sufficient evidence to make a formal assessment of the complaint.

5.3 Complaints can be investigated under this policy if they post-date the start of the 2017 Parliament. This includes continuing acts where at least one act complained about falls within that timeframe. People who have concerns about behaviour prior to this may be able to raise a complaint under a different pre-existing policy or as a criminal case and can call the Independent Reporting Helpline for advice about sources of support that they can access. A record will also be made by the Independent Reporting Helpline.

5.4 If someone wishes to report a criminal or civil offence, different time limits may apply depending on the nature of the offence. Anyone considering this action should speak to the Independent Reporting Helpline, who will be able to offer advice about reporting criminal or civil offences and accessing legal advice, if appropriate.

## 6 Responsibilities for members of the Parliamentary Community

6.1 All members of the Parliamentary Community should treat others with dignity, courtesy and respect and be aware of the types of behaviour that are unacceptable under this policy.

6.2 The Behaviour Code encourages all members of the Parliamentary Community to speak up about unacceptable behaviour they experience or observe. Whilst reporting or complaining of alleged bullying and harassment under this policy is subject to certain conditions (see Sections 2 and 4 of this policy), this should not prevent anyone from raising their concerns elsewhere (e.g. with their line manager or HR service).

6.3 Anyone who is involved in the informal resolution of a complaint, formal investigation of a complaint, or action taken as a result of a complaint also has a particular responsibility to act with integrity (see clause 4.12) and to maintain confidentiality throughout (see section 8 of the Independent Complaints and Grievance: Bullying and Harassment Procedure). This is particularly important since breaches in confidentiality can result in both workplace and media exposure or scrutiny for those involved, which can be deeply upsetting and damaging.

## 7 Policy review

7.1 Policy finalised: July 2018.

7.2 Policy review date: as part of the review conducted six months after the Scheme becomes operational.

## Independent Complaints and Grievance procedure: Bullying and Harassment

### 1 Introduction

1.1 This procedure outlines how we deal with complaints of bullying or harassment. You can use it to find out:

- How to make a complaint about bullying or harassment;
- What to do if someone has made a complaint of bullying or harassment about you;
- How complaints of bullying and harassment are managed;
- What might happen as a result of a complaint being made under this procedure;
- Sources of support if you have a complaint or if someone has made a complaint about you.

The procedure should be read in conjunction with the Independent Complaints and Grievance Policy for Bullying and Harassment.

## 2 Reporting an allegation of bullying or harassment

What should I do if I believe I am being harassed or bullied by someone working for or with Parliament?

2.1 In the first instance, you will need to consider whether what you have experienced may amount to bullying or harassment (see section 2 of the Independent Complaints and Grievance Policy for Bullying and Harassment). To help you do this, you should to keep records of what you have experienced, including a description of what has happened, where and when it took place, any witnesses and relevant documentation (e.g. emails, letters, social media posts). You may find it helpful to keep a diary and a note of all incidents; often with bullying it is only when you look back on a catalogue of negative behaviours do you recognise that it is bullying.

2.2 If you think you may have been bullied or harassed, you should report this to the Independent Reporting Helpline, The Helpline also provides a safe space, as discussing your experiences can help you understand whether you have been bullied or harassed. The Helpline can provide information about sources of advice and support for you, both within the Parliamentary Community and externally. Depending on your role within the Parliamentary Community, this may include Trade Union representatives, Members and Peers' Staff representatives, Harassment and Bullying Contacts, your line manager, a HR adviser or a counselling/welfare service. You can find out more about sources of support here. You may also choose to contact any of these sources of support prior to approaching the Helpline, if you would like help or advice about making a report.

2.3 When you contact the Helpline, you will be given the choice to report the incident anonymously or to provide information such as your name, role and contact details, which would be needed if you want to go on to make a complaint about the incidents to the Independent Investigation Service, either immediately or in the future.

2.4 Once you have reported any incident(s) to the Helpline, you can choose what to do next.

- **Make a report only:** You may not want to take the matter any further, if you do not want to make a formal complaint or take any informal action in response to the incident. If you later change your mind and decide to make a formal complaint, you may do so.
- **Informal resolution outside this procedure:** You may want to try and resolve the matter informally yourself, or with appropriate support (e.g. from your line manager). The Helpline can provide advice about how you can do this. Examples might include raising the issue with the person involved, either in writing or in person, perhaps as part of a facilitated conversation, to explain which aspects of the person's behaviour you find

unacceptable or unwelcome, how you'd like this to change and any other resolution you would like (e.g. an apology). Any informal resolution would usually be written down and it is best practice to include a review date, as part of a facilitated conversation if necessary.

- **Make a formal complaint:** In some circumstances, it is not possible or appropriate to seek informal resolution, so at any stage after making a report to the Helpline, you can make a formal complaint to the Independent Investigation Service (see section 4 of this procedure). If agreements on how a matter should be resolved informally are then not adhered to, i.e. the behaviour continues, then a formal complaint may also be appropriate.

2.5 The decision whether to progress to a formal complaint under this procedure is wholly up to you. In exceptional circumstances, if a report involved risks or safeguarding issues which could not be mitigated in any other way, the Helpline may reserve the right to refer the report to other services without your express permission, in the interests of protecting you and other members of the Parliamentary Community. This might be, for example, in cases where someone is in immediate physical danger. All the people who work for the Helpline have received training in risk assessments and safeguarding issues and there are clear and agreed escalation processes for such cases.

2.6 The Independent Investigation Service will also conduct regular risk assessments and follow agreed escalation processes if risks to you or others cannot be mitigated in another way. An investigator will also escalate a case if they believe that your complaint of bullying and harassment includes behaviour that might amount to a major criminal offence.

2.7 In that case, the Scheme will share anonymised information with the police under a protocol that is designed to make sure that our internal investigation does not inadvertently prejudice a criminal investigation. The police will be responsible for deciding whether they need to investigate the matter further, and this may include asking for identifying information. Decision-makers may also have information sharing requirements under their own policies.

2.8 If you decide to make a formal complaint, you are able to withdraw the complaint and/or seek informal resolution at any stage of the investigation and assessment.

[What should I do if I believe I have been bullied or harassed by a visitor to the Parliamentary Estate?](#)

2.9 To manage the incident at the time you can contact the Parliamentary Control Room, who will take the necessary action. You can also report the incident to the Independent Reporting Helpline and pursue a complaint through the Independent Investigation Service.

## What should I do if I'm not sure whether to report an incident to the Independent Reporting Helpline?

2.10 The table below provides guidance to help you decide whether and how to report an incident.

<b>I'm not sure whether what I've experienced constitutes bullying or harassment</b>	<b>I don't know whether to report what I have experienced as sexual harassment</b>	<b>I believe what I have experienced may constitute a criminal offence</b>
Read the definitions of bullying and harassment in section 2 of the Independent Complaints and Grievance Policy for Bullying and Harassment. If you are still not sure, call the Independent Reporting Helpline who can provide information about where you can get further advice and support to discuss your circumstances and help you decide.	If you have experienced sexual harassment as part of a wider pattern of other bullying or harassing behaviour, you can choose to report this using this procedure or the Sexual Misconduct procedure (but not both). The Sexual Misconduct procedure includes access to specialist sexual harassment advice, so should be used where the inappropriate behaviour you have experienced is exclusively or substantially sexual, or where this is the behaviour that concerns you most.	The police are best placed to deal with any concerns about alleged criminal offences. You can contact the Independent Reporting Helpline, who can provide information about sources of advice and support within the Parliamentary Community and externally, whether or not you want to report the matter to the police. If appropriate, you should also tell your manager, or the Member or Peer you work for, so that they can provide any support you may need at work.

2.11 If you are worried about making a report to the Helpline or do not feel able to do this yourself, you can make arrangements to do so with support. For example, a Trade Union representative or Members' Staff representative could be with you when you contact the Helpline.

## 3 Responding to a complaint of bullying or harassment

I have been advised that a complaint has been made against me—what should I do?

3.1 You could find out that someone has concerns about bullying or harassment at different times, including if they approach you to discuss the matter informally or if they make a formal complaint about you to the Independent Investigation Service (see sections 4 and 5 of this procedure). Regardless of when or how you find out, you will probably find this stressful and upsetting so you can contact the Independent Reporting Helpline to find out about support that is available for you.

3.2 If the person approaches you informally to try and resolve the matter, this can be a good opportunity to repair and maintain your working relationship. You may be able to understand more about the incident(s) they are concerned about, as well as giving you an opportunity to explain things from your perspective, and discuss how you can work effectively together in future.

3.3 If you find out about a complaint of bullying or harassment made against you as a result of a formal complaint being made to the Independent Investigation Service, the Case Manager will help ensure that you are aware of how the complaint will be managed and the sources of support that you can access.

3.4 If someone makes a formal complaint about you, you will be told the details of the complaint being investigated and have the opportunity to respond. If both parties agree, a formal complaint can also be resolved informally. Once a complaint has been made, any informal resolution would be brokered by the Case Manager, rather than undertaken directly by both parties.

3.5 You may find it useful to compile your own record of any incident(s) relating to a complaint or any future incident(s) that arise whilst a complaint is being assessed, including a description of what has happened, where and when it took place, any witnesses and relevant documentation (e.g. emails, letters, social media posts).

## 4 Stage 1: Making a formal complaint

What is the first step in making a formal complaint of bullying or harassment?

4.1 Making a formal complaint of bullying or harassment can be done by contacting the Independent Reporting Helpline who will, with the complainant's consent, make arrangements for a Case Manager from the Independent Investigation Service to contact the complainant.

4.2 Formal complaints can be made in writing using the Bullying and Harassment Complaint Form. However, complainants can speak with their Case Manager in person or by phone to assist with making a formal complaint. In this case, the Case Manager will ensure that they have sufficient detail of the complaint in line with the template. Section 8 of this procedure provides more information about arrangements for meetings as part of the initial and formal assessment stages.

4.3 The Case Manager will first make an initial assessment of the complaint to determine whether, in their specialist opinion, there is likely to be a case to answer. To do this, they will check that the complaint meets the conditions for being reported under this policy and procedure (e.g. that the complaint is made by and against people who are covered by this policy). They will also examine the wider context of the complaint to ensure this is the right policy to use; and whether the alleged behaviour has the potential to reach the threshold for constituting bullying or harassment. In some cases, this initial assessment stage will need to include contacting the respondent.

4.4 The outcome of the initial assessment could be as follows:

Case to answer	No case to answer	
<b>The complaint can be made under this policy and the incident(s) warrant further investigation (i.e. they may constitute bullying or harassment)</b>	<b>The complaint would not constitute bullying or harassment</b>	<b>The complaint cannot be made using this policy because it does not meet the relevant conditions</b>
The Case Manager will notify the complainant and the decision-making body for the respondent. The decision-making body may choose to inform the respondent themselves (e.g. to ensure they are supported at the time) or for the Case Manager to inform the respondent.	The Case Manager will notify the complainant and the respondent (if they are aware of the complaint). The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify the complainant and the respondent (if they are aware of the complaint). The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.

4.5 Where an initial assessment has found a case to answer, the decision-making body for the complainant and reporter should consider any management actions that may be appropriate as the complaint is managed either through brokered resolution or formal assessment (e.g. temporary changes to working hours or responsibilities).

#### What happens next?

4.6 If the initial assessment has found that there is a case to answer, there are two possible outcomes:

- Informal resolution brokered by the Case Manager;
- Formal assessment of the complaint by the Case Manager.

4.7 In the case of complaints made against Members or Peers, in cases where the initial assessment identifies that there is a case to answer, this will be passed to the relevant Commissioner for Standards for the respondent. They will commission the same or another investigator from the Independent Investigation Service to undertake the full assessment and will have oversight of the investigation and any informal resolutions.

4.8 Usually, the Case Manager will encourage both parties to seek informal resolution, which requires the agreement of both parties, unless the circumstances make this inappropriate. Even if informal resolution has been attempted previously, a brokered approach at this stage can be effective in resolving the problem.

4.9 The complainant also has the option to withdraw their complaint or not to take any further action after the initial assessment.

## What is involved in informal resolution at this stage?

4.10 The Case Manager will advise both parties about options for informal resolution and the support they can provide (e.g. arranging a meeting with both parties to discuss the matter). The options for brokered informal resolution include (but are not limited to):

- A facilitated phone call or meeting between the complainant and respondent;
- Communication in writing from the complainant;
- Another appropriate individual (e.g. line manager, Member or Peer in their role as an employer) supporting communication between both parties.

4.11 The outcomes from brokered informal resolution could include (but are not limited to):

- An apology or acknowledgement of behaviour from the respondent;
- An agreed behaviour contract for working together in future;
- Training for the respondent to increase awareness; or for a particular team/area to enable cultural change or increased awareness;
- Agreement to external mediation.

4.12 Mediation is a voluntary and confidential form of resolving workplace disputes between people, in which a trained, impartial mediator meets with those involved (both separately and jointly) to understand the issues and assist both parties in finding options for resolving their difference or dispute. It is an alternative to internal forms of informal resolution, as it involves an external mediator without any prior involvement in the complaint.

4.13 Since mediation is most likely to be successful if certain conditions are met and is not suitable in all cases, the Case Manager will discuss with both parties whether the following conditions apply:

- Whether both parties agree to mediation;
- Whether the problem is appropriate for mediation (in some cases mediation may not be appropriate due to the nature of the issue or the power dynamics in the relationship);
- Whether there is commitment on both sides to seeking resolution.

If these conditions are met at the pre-mediation stage, the Case Manager will make arrangements for independent mediation.

4.14 At any stage during informal resolution, the complainant can choose to move to formal assessment. However, if the complainant is satisfied with the outcome of the informal resolution or mediation, there is no need to do anything further.

4.15 If a complaint is resolved via brokered informal resolution, there would be no assessment made in relation to the respondent (i.e. whether the complaint constituted bullying or harassment), since no formal assessment would be made as part of informal resolution activities.

## **5 Stage 2: Formal assessment of complaints**

5.1 There may be circumstances in which informal resolution to a complaint is either inappropriate (for example, if the nature of the complaint is particularly serious), unwanted by either or both the complainant and respondent, or in which informal resolution or mediation are unsuccessful. In these cases, the complainant can request a formal assessment of the complaint, which will be undertaken by the Case Manager.

### **What happens during a formal assessment?**

5.2 The Case Manager will make arrangements to gather further evidence about the complaint from the complainant, the respondent and any witnesses. This would usually involve holding detailed evidence gathering meetings with those involved and/or requesting written evidence.

5.3 Before starting a formal assessment, the Case Manager would create an assessment plan, outlining the approach for evidence gathering (e.g. including the timetable, list of witnesses, any documentation to be requested). This may be shared with the complainant, the respondent and the decision-making body for the respondent. The outcome of a formal assessment is a written report with details of the complaint and the evidence that has been gathered relating to the complaint.

5.4 The report will make an assessment, the outcomes of which may be:

Upheld	Not upheld		
The incident(s) are assessed as potentially constituting bullying or harassment	The incident(s) are assessed as not constituting bullying or harassment,	The complaint was made falsely as a result of misunderstanding or a genuine mistake	The complaint is potentially malicious, vexatious or deliberately false
The Case Manager will notify both parties and their respective decision-making bodies. Further action can be taken by the decision-making body for the respondent.	The Case Manager will notify both parties and their respective decision-making bodies. Further investigation or action can be taken by the decision-making body for the respondent under their own policies and procedures, if the report contains evidence of inappropriate behaviour that does not constitute bullying or harassment but may be a breach of the decision-making body's own policies or codes of conduct. The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify both parties and their decision-making bodies. The Case Manager may still offer support for an informal resolution, to support a positive future working relationship.	The Case Manager will notify both parties and their respective decision-making bodies. Further action can be taken by the decision-making body for the complainant.

5.5 The standard of proof used for this formal assessment will be proof on the balance of probabilities (i.e. that the incident(s) in question are more likely than not to have occurred and are considered in the specialist opinion of the investigator to potentially constitute bullying or harassment. In cases where there is limited evidence available, the Case Manager will comment on this and the role it has played in their assessment.

## 6 Stage 3: Decision and action

6.1 Once the Case Manager has completed the formal assessment, the decision-making body for the respondent will be sent the report. If there has been an assessment of bullying and harassment by the investigator, the decision-maker will use their own policies and procedures to deal with the matter, including conducting any additional investigations and imposing any sanctions.

6.2 Potential sanctions are outlined in the table in Appendix 1 of this procedure. The nature of sanctions will depend on a range of factors and the individual circumstances of each case. Decisions about sanctions may take into account the following factors:

- The complainant's wishes (as documented in the Independent Investigation Service report);
- The decision-making body's legal and internal obligations;
- The severity of the bullying or harassment in question;
- Known precedents from comparable cases; or
- Previous complaints about the individual's behaviour, including any breaches of previously agreed informal resolutions or sanctions (e.g. behaviour agreement)

6.3 If the following aggravating factors are uncovered in the course of any fact finding or investigation, they should be taken seriously and may impact on the sanctions:

- The increased impact that bullying or harassment has if someone has been targeted because of their identity or perceived identity;
- Retaliation or victimisation as a result of the complaint;
- Breaches of the confidentiality of the complaint;

6.4 There may be times when it is not appropriate for complainants to know full details of any sanctions imposed (e.g. via disciplinary proceedings). Complainants will always be made aware of and consulted about any sanctions that involve the public identification of either themselves and/or the respondent, and their views will be fully taken into consideration.

6.5 If a complaint has been found to be malicious, vexatious or deliberately false, the decision-making body for the complainant will be notified. They will use their own policies and procedures to deal with the matter, including conducting any additional investigations and imposing any sanctions.

## 7 Reviews

What if I don't agree with the outcome of an initial or formal assessment?

If an initial assessment finds no case to answer or a formal assessment at the investigation stage does not uphold a complaint of bullying or harassment the complainant can ask the Independent Investigation Service to review the outcome. This review will be conducted by an investigator who has had no previous involvement in the case.

7.1 A review can only be requested on the following grounds:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

7.2 For complaints against a Member or a Peer, initial assessments will be reviewed by the relevant Parliamentary Commissioner for Standards. If you are a complainant, you will be able to contribute to this review by putting forward any evidence that you feel may have affected the assessment finding in relation to:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

7.3 If a review finds that further evidence is admissible, the case will generally be re-assessed by the original Case Manager, taking into account the additional evidence. If the review finds that the correct procedure had not been followed or a different type of investigation is needed, the case may be re-assessed by a different investigator.

7.4 If a formal assessment upholds a complaint of bullying or harassment at the investigation stage, this will be reviewed by the decision-making body (e.g. via a hearing/interview under their own policies and procedures). The respondent will have an opportunity to represent any concerns they had about the investigation conducted by the Independent Investigation Service as part of this process.

## **8 Arrangements for initial and formal assessment meetings**

8.1 This section of the procedure provides more detailed information about how initial and formal assessment meetings are conducted. It contains information for complainants, respondents and witnesses.

### Notification of meetings

8.2 If you are a complainant, respondent or a witness involved in an assessment, you may be invited to meeting(s) with the Case Manager. The Case Manager will always provide written notification of meetings, including the time, date and place of the meeting; the purpose of the meeting; and any relevant information, including documentation and witness statements, if appropriate.

### The right to be accompanied

8.3 If you are a complainant or respondent, you can be accompanied in any meetings under this procedure by a colleague from the Parliamentary Community or trade union representative.

8.4 Prior to any meeting and with at least one day's notice, you should confirm to the Case Manager who will be accompanying you to the meeting.

8.5 The following conditions apply to your choice of companion:

- Colleagues are not obliged to act as a companion and may decline a request if they wish.
- The Case Manager may, at their discretion, permit a companion who is not a colleague or trade union representative where appropriate (e.g.

to provide support for someone who may have difficulty understanding English, including an interpreter, or who may have particular needs as a result of a disability).

- If your choice of companion is unavailable when the meeting is scheduled, you will usually be able to rearrange the meeting at a mutually convenient time, although if this would result in a significant delay the Case Manager may ask you to choose someone else and/ or proceed with the meeting.
- Companions can make representations, ask questions of the Case Manager, and sum up your position, but are not allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

8.6 If you are interviewed as a witness, you would not usually be accompanied in the meeting. However, the Case Manager may, at their discretion, permit you to have a companion if appropriate to the circumstances (e.g. if you have difficulty understanding written or spoken English or have particular needs as a result of a disability).

### Attendance

8.7 If you are a complainant or respondent, you must take all reasonable steps to attend any meetings. Failure to do so without good reason will be taken seriously and recorded in the assessment report. If you or your companion cannot attend the meeting you should inform the Case Manager immediately, who will ask you to identify an alternative time within five working days. If you fail to attend without good reason, or are persistently unable to do so, the Case Manager will make their findings based on the available evidence and without your contribution.

### Confidentiality

8.8 Complaints under this policy will be treated confidentially and will only be discussed with those who are legitimately involved in resolving it by the Independent Reporting Helpline, Investigation Service and decision-making bodies. If you are involved in a complaint as a complainant, a respondent or a witness you should also treat the matter as strictly confidential. Likewise, if you are involved in informal resolution outside this procedure in any capacity (e.g. as a line manager, HR adviser), you should maintain confidentiality, as appropriate.

8.9 Complaints to the Independent Investigation Service cannot be raised anonymously since this would not allow the respondent to understand the complaint against them or for the complaint to be resolved or investigated fully. This will always be discussed with you before progressing with the complaint. You may also make anonymous reports to the Independent Reporting Helpline, who can use these for monitoring purposes.

8.10 During the course of initial and formal assessments, relevant extracts of statements or minutes from meetings with the complainant, respondent and witnesses may be made available to both the complainant and respondent to ensure

that all parties involved can understand and respond to relevant evidence provided by others. Copies of relevant documentation (e.g. email or other correspondence, social media posts) may also be provided.

## Records

8.11 If you are a complainant, respondent or witness, you will be provided with a copy of the minutes from any meeting you attend under this procedure. You will be given the opportunity to review the minutes and ensure they are an accurate record. If you dispute any aspect of the minutes, a record of this will be kept alongside the minutes.

## 9 Timescales

9.1 The intention is always that complaints made under this procedure are dealt with promptly. However, complaints of bullying or harassment can vary in complexity and circumstance, so some complaints may take longer to resolve than others.

9.2 The flowcharts accompanying this procedure outline the usual timescales for each stage of the procedure. Since a formal assessment can take a number of weeks to complete, before starting the assessment, the Case Manager will provide an assessment plan, including a provisional timetable (see section 5.3). If there are any significant changes to the timetable during the assessment period, the Case Manager will notify the complainant and respondent of this in writing as soon as possible providing the reason(s) for this change.

## 10 Data protection

10.1 All those involved in this procedure, including the Independent Reporting Helpline, Independent Investigation Service and decision-making bodies will collect and process personal data in accordance with the Data Protection Act 2018. The basis for processing data under this procedure will be Legitimate Interest.

10.2 Records of reports and complaints will generally be kept for at least 12 months by the Independent Reporting Helpline and Independent Investigation Service and, where relevant, may be retained by the decision-making body for the complainant and respondent in accordance with their own data protection policies. The Independent Reporting Helpline and Independent Investigation Service will also keep anonymised records of the number and types of reports and cases that they receive, in line with the data protection policies agreed with parliament.

10.3 Records of complaints will include a copy of the written complaint, details of any assessment (including supporting documents such as witness statements and meeting notes) and a record of any action taken as a result of the complaint.

## 11 Support for those involved in complaints of harassment or bullying

11.1 The Independent Reporting Helpline can provide information about sources of support for complainants and respondents, both within the Parliamentary Community and externally.

11.2 Whether you are a complainant or respondent, we encourage you to let your manager, HR service or other relevant parties know that you are involved in a complaint of bullying and harassment under this procedure. They will be able to discuss any actions that could be available to support you both during and after an investigation (e.g. temporary changes to working practices, hours, accompaniment during working hours).

## 12 Tools and resources

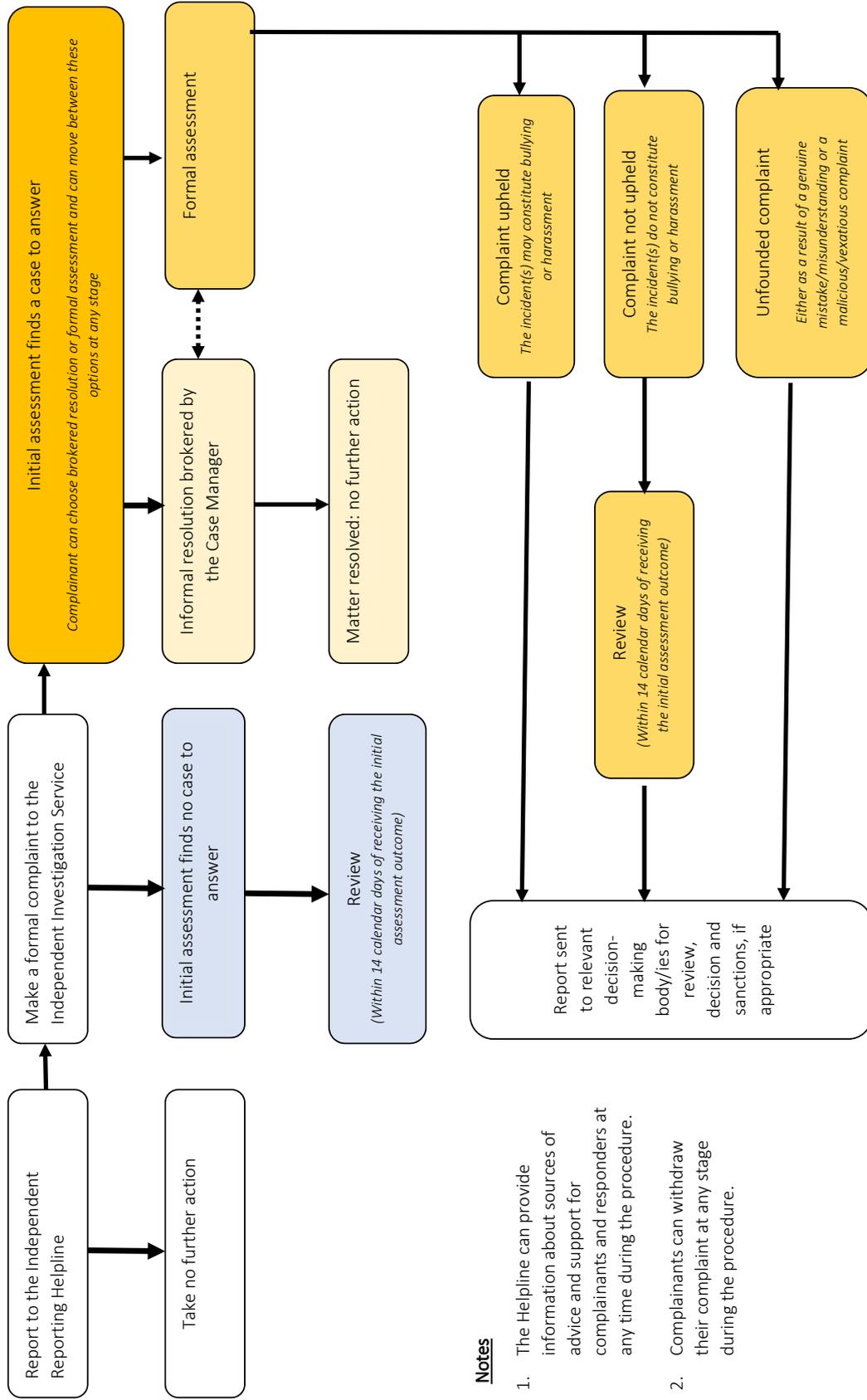
12.1 The following tools and resources are available to accompany this procedure:

- Flowcharts showing the procedure for the complainant and respondent;
- Table outlining usual time periods for assessment of formal complaints;
- Template form for making a formal complaint.

Respondent	Decision making body	Sanction	How sanctions are imposed
MP / Peer	The Commissioner for Standards (Commons or Lords) in conjunction with the relevant committee of the Houses for the most serious cases or where alternative resolutions have failed.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties or imposed by the Commissioner for Standards  (Commons or Lords)
		Suspension / recall (in the House of Commons)  Suspension / expulsion (in the House of Lords)	The 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

<b>Respondent</b>	<b>Decision making body</b>	<b>Sanction</b>	<b>How sanctions are imposed</b>
<b>An MP's or Peer's employee or someone employed by a political party to work on the Parliamentary estate</b>	MP, Peer or political party who employs them (or otherwise engages them—e.g. intern, volunteer, work experience agreement, or contract for services)	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
<b>Employees of the House of Commons Administration, House of Lords Administration, Parliamentary Digital Service</b>	House Authorities, through the appropriate management chains.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
<b>Relevant passholders</b>	Relevant officials and processes for suspending or revoking parliamentary passes. The passholder's employer may also be notified, where relevant.	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties
		Withdrawal of pass	Relevant officials and processes for revoking parliamentary passes. The passholder's employer may also be notified, where relevant.

Independent Complaints and Grievance procedure for bullying and harassment: flowchart



**Notes**

1. The Helpline can provide information about sources of advice and support for complainants and responders at any time during the procedure.
2. Complainants can withdraw their complaint at any stage during the procedure.

<b>Stage of procedure</b>	<b>Responsibility</b>	<b>Timescale</b>
Acknowledgement of complaint	Case Manager	Within 5 calendar days of the complainant's request
Notice of meetings with the Case Manager	Case Manager	A minimum of 5 calendar days before the meeting
Provision of draft minutes from meetings	Case Manager	Within 5 calendar days of the meeting
Agreement of minutes of investigation meetings	Reporter, responder or witness	Within 7 calendar days of receiving the minutes
Review of initial or formal assessment	Reviewing Case Manager or PCS	Subject to variation but usually within 14 calendar days of receipt of the assessment report.

# ANNEX C—Sexual Misconduct policy

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## Sexual Misconduct Policy and Procedure

### Policy

1. Introduction and Aims
2. Zero Tolerance Approach
3. Definitions
4. Legislation
5. Behaviours
6. Consent
7. Terms used in this policy and procedure
8. Intersectionality and Impact
9. Scope
10. Other ways of Reporting Sexual Misconduct
11. Victimisation
12. Malicious or Vexatious Complaints
13. Confidentiality
14. Provision of Support
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### Procedure

1. Introduction
2. Pathway 1: Independent Sexual Misconduct Advisory
3. Pathway 2: Appropriate Measures
4. Pathway 3: Formal Complaint - Considerations
5. Investigation Process: Stage 1 Initial Assessment
6. Investigation Process: Stage 2 Formal Assessment
7. Investigation Process: Stage 3 Decision and Action
8. Aggravating Factors
9. Arrangements for initial and formal assessment meetings
10. Reviews
11. Timescales
12. Appendix 1: Flowchart
13. Appendix 2: Possible Sanctions

## 1 Introduction and Aims

1.1 Parliament believes that all people have the right to be treated with dignity and respect and not be the subject of sexual misconduct, harassment or discrimination of any kind. We expect all members of the Parliamentary Community (see Scope) to treat others accordingly, promote a culture that supports this and protect individuals from harm.

1.2 This Policy and Procedure, the Behaviour Code and the Bullying and Harassment Policy and Procedure provide a framework for us to create a respectful and courteous working environment and to respond to any allegations of unacceptable behaviour promptly, fairly and effectively. The aims of the Policy and Procedure are to:

- Ensure that all members of the Parliamentary Community are aware of their responsibilities in relation to sexual misconduct.
- Provide a fair, transparent and consistent approach for reporting, investigating and responding to allegations of sexual misconduct.
- Provide information about sources of support available to anyone who experiences sexual misconduct or who is accused of sexual misconduct.

## 2 Zero Tolerance Approach

2.1 This Policy and Procedure relates specifically to sexual misconduct. Sexual misconduct is unacceptable in all circumstances and may also constitute a criminal offence. This approach means that sexual misconduct will not be tolerated by the Parliamentary Community and an abuse of power can be an aggravating factor in such cases.

2.2 All reports of sexual misconduct will be taken seriously. Members of the Parliamentary Community found to be behaving in this way will be dealt with under the appropriate routes and sanctions will apply.

2.3 This Policy and Procedure sets out how Parliament defines sexual misconduct, what we expect of those in the Parliamentary Community, the support we will provide to all parties and the options and remedies available to them.

## 3 Definitions

3.1 The definitions below will be used for determining whether any behaviour reported under this Policy and Procedure constitutes sexual misconduct.

3.2 All behaviour that constitutes sexual misconduct is a breach of the Behaviour Code. However, not all breaches of the Behaviour Code would constitute sexual misconduct. When alleged incidents of sexual misconduct are reported using this Policy and Procedure, any investigation will assess whether the incidents constitute sexual misconduct.

## Sexual Misconduct

3.3 Sexual misconduct incorporates a range of behaviours including sexual assault, sexual harassment, stalking, voyeurism and any other conduct of a sexual nature that is non-consensual or has the purpose or effect of threatening, intimidating, undermining, humiliating or coercing a person. Sexual misconduct is used to describe the range of behaviours that will be treated as a potential breach under this Policy and Procedure, encompassing behaviours that may or may not also be defined as sexual harassment or sexual offences in the context of civil or criminal courts. However, using the language of sexual misconduct makes it clear that the Policy and Procedure for Parliament is separate from and additional to any court processes.

3.4 For the purposes of this policy, although it may not be illegal to pay for sex, in line with best practice it is considered unprofessional, inappropriate and a breach of the Behaviour Code, if this occurs whilst individuals are acting in a parliamentary capacity or engaged in activity connected to their membership of the Parliamentary Community both in the UK and overseas.

## 4 Legislation

4.1 Harassment of a sexual nature is defined in the Equality Act 2010 section 26 (2) (3). A non-exhaustive summary that covers the majority of what is meant by the term is: unwanted behaviour that is sexual in nature or 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 be subject to discrimination.

4.2 Forms of sexual harassment and sexual misconduct may also constitute criminal offences under a range of legislation, including, but not limited to, the Sexual Offences Act 2003 and the Protection from Harassment Act 1997 and national legislation in Scotland and Northern Ireland. Potential criminal offences include sexual assault, sexual assault by penetration, rape, harassment, stalking or ‘revenge pornography’.

## 5 Behaviours

The following behaviours may constitute sexual misconduct if they occur inappropriately or without explicit full and freely given consent.

5.1 This non-exhaustive list provides examples of broadly escalating severity in the categories of verbal, non-verbal/environmental and physical sexual misconduct. However, impact and trauma will be felt differently by those experiencing sexual misconduct.

5.2 **Verbal**—sexual remarks including those about appearance or clothing, jokes, catcalls, questions about sexual life, raising sexual topics, verbal advances, etc.

- Asking personal questions about sexual or social life or offering unwanted personal information about own activities.
- Remarks that draw attention to someone's sex in an inappropriate or unwanted way.
- Enquiring about sexual history, fantasies or preferences.
- Making sexual comments about a person's clothing, anatomy, or appearance.
- Obscene phone calls of a sexual nature.
- Repeatedly propositioning someone.
- Subtle or overt pressure for sexual activity, including requests or demands for sexual favours and promises of reward in return.
- Threats of reprisals if requests for sexual activity are turned down.
- Treating someone less favourably because they have rejected or submitted to unwanted sexual conduct.

5.3 **Environmental/Non-Verbal**—displaying pornographic or sexually explicit material, sexist comments and pictures on social media, stalking, image-based sexual abuse such as up-skirting, revenge porn, deep fake porn, etc.

- Obscene texts, emails, notes or letters of a sexual nature.
- Inappropriate gifts of a sexual nature.
- Inappropriate advances or stalking via social media.
- The circulation or displaying of pornography.
- Sharing private sexual materials of another person without consent.
- Repeatedly propositioning someone in writing.
- Repeatedly following or tracing the movements of another person without good reason.

5.4 **Physical**—suggestive looks and gestures, staring, leering, threatening behaviour, brushing past someone, pinching, touching, groping, promises/threats related to career prospects in return for sexual favours, etc.

- Uncalled-for physical contact, deliberate brushing past.
- Unwelcome and inappropriate touching, hugging or kissing.
- Groping, grabbing, kissing or fondling without consent.
- Indecent exposure (masturbation, nudity) and acts of voyeurism or exhibitionism.

- Attempting to or engaging in sexual intercourse or a sexual act without consent.

## 6 Consent

6.1 The definition of consent provided by the Sexual Offences Act 2003 is agreeing to something by choice and having the freedom and capacity to make that choice. This Policy uses the same definition of consent in relation to sexual misconduct.

6.2 Capacity—A person’s capacity is dependent on whether they are physically and/or mentally able to make a choice and to understand the consequences of that choice. For example, a person does not have the capacity to give consent if:

- They are drunk or under the influence of drugs, for example they may still be physically able to have sex but they may not be able to consent.
- They are asleep or unconscious.
- They may not have capacity if they have a disability or impairment, including learning difficulty, physical disability or mental health condition.

6.3 Consent is ongoing and needs to be negotiated every time one engages in sexual activities. Individuals must stop if they are not absolutely sure that they have someone’s consent. Any prior sexual activity or relationship does not, in and of itself, constitute consent. Consent may be withdrawn at any time (including during a sexual act) and can never be implied, assumed or coerced.

## 7 Terms used in this Policy and Procedure

- Reporter: This is an individual who reports or makes a complaint of sexual misconduct.
- Responder: This is an individual who is accused of sexual misconduct by a member of the Parliamentary Community or a visitor to Parliament/a constituency office.
- Sexual misconduct: Any act that is covered by this Policy and Procedure, including sexual harassment and sexual violence.
- Independent Sexual Misconduct Advisory Service (ISMA Service): The ISMA Service is available for all and offers advice, support and signposting throughout the three Sexual Misconduct Pathways in the procedure.
- Independent Investigation Service: The service available if a reporter decides to make a complaint. It provides an independent and impartial investigation of any cases which enter the Complaint Pathway.
- Decision-making bodies: The organisations within the Parliamentary Community with responsibility for the reporter and responder

depending on their role/employment function. Decision-making bodies are responsible for deciding and implementing appropriate actions and/or sanctions following an independent assessment of a complaint.

## 8 Intersectionality and Impact

8.1 Sexual misconduct can happen to anyone and can be carried out by anyone, but the research is clear that it is disproportionately carried out by men against women. Sexual misconduct is both a cause and a consequence of inequality and power differences.

8.2 Research shows that the incidence and specific experience of sexual misconduct can be affected by a number of characteristics of those who are targeted, including the protected characteristics covered under the Equality Act 2010, such as: age, disability, gender reassignment, race, sex and sexual orientation. Characteristics such as race and sex and sexuality can intersect with each other in ways that create specific issues (for example a Black woman might be targeted with racialised sexual harassment). Additional factors which influence power dynamics include class and if a position of authority is held.

8.3 Research has documented the impact of sexual misconduct upon those who have experienced it. Impact cannot be predicted and varies with every individual. Emotional and physical impact can include anxiety and long-term depression, sleep disorders, lowered self-esteem and a range of physical impairments. From a workplace perspective, sexual misconduct can lead to a hostile and unpleasant working environment or the risk of loss of job or promotion opportunities, reduced productivity and increased staff turnover.

## 9 Scope

9.1 This Policy and Procedure applies to acts of sexual misconduct by and against any member of the Parliamentary Community, provided that it takes place in conjunction with their parliamentary role or function. It includes sexual misconduct by individuals (see 10.3), such as a visitor to the Parliamentary Estate.

9.2 For the purposes of this Policy and Procedure, the Parliamentary Community comprises all those working for or with Parliament either on the Parliamentary Estate, in constituency offices or elsewhere in the course of parliamentary work.

9.3 This Policy and Procedure sets out the standards of behaviour expected of individuals to protect them from sexual misconduct. The list of individuals who can make a report or complaint through the Policy and Procedure includes:

- Members of Parliament (MP) or Peers;
- Employees of MPs or Peers or other people working for them, such as volunteers, people undertaking work experience or interns;

- Employees of the House of Commons and Parliamentary Digital Service, following a decision by the House of Commons Commission on 16 July 2018;<sup>19</sup>
- [Employees of the House of Lords;—subject to House of Lords Management and TUS consultation]<sup>20</sup>
- Employees of other Parliamentary organisations (for example, CPA UK, BGIPU, an All Party Parliamentary Group)
- Specialist Advisers and others supporting Parliamentary work, including people employed by political parties or collectively employed by MPs (e.g. PRU, PRS and Group staff);
- Members of the Press Gallery;
- Contractors, agency workers, inward secondees or interns to any of the relevant bodies above;
- Visitors at Westminster

9.4 The work of the Parliamentary Community is broad and can involve office work, public facing work, travel and social events related to parliamentary business, as well as non-standard working hours. As a result, this Policy and Procedure applies to behaviour by members of the Parliamentary Community:

- On the Parliamentary Estate.
- At constituency offices or other places of work.
- In the course of parliamentary duties and activities (including UK or overseas travel, all events related to parliamentary business, conferences, social events, gatherings and functions).

9.5 Members of the Parliamentary Community should expect the provisions of employment legislation, including the Employment Rights Act 1996 and the Equality Act 2010, to apply to employment related matters in all circumstances covered by 10.4.

## 10 Other Ways of Reporting Sexual Misconduct

10.1 This Policy and Procedure are not intended to discourage individuals from reporting incidents of sexual misconduct to the police, an employment tribunal, their employer, a political party or the relevant Commissioner for Standards. Making use of the specialist ISMA Service available, as set out in Pathway 1 of the procedure, may help individuals to come to a decision that they judge to be right for them.

19 This was updated on 16 July 2018 and that the text previously said “[House of Commons staff subject to a decision by the House of Commons Commission]”

20 This section of the policy will be updated in light of any decision by the House of Lords Management Board

10.2 Where a reporter chooses to use another policy route (such as a political party route) to make a complaint of sexual misconduct, the Investigation Service reserves the right not to investigate the same incident under this Policy and Procedure.

10.3 The nature and scope of the Policy and Procedure is fundamentally different from that of a criminal process. The Policy and Procedure is a disciplinary matter for the Parliamentary Community based upon an allegation that an individual has breached the Sexual Misconduct Policy and Procedure.

10.4 Where someone has reported an alleged criminal offence to the police and has made a complaint under this Policy and Procedure, the circumstances of the case will be considered, to determine whether it is appropriate to investigate the matter under this Procedure at the same time, or whether action under this Procedure should be paused until the criminal investigation is complete.

## **11 Victimisation**

11.1 Fear of victimisation is a major barrier that can prevent individuals from seeking support or resolution. Members of the Parliamentary Community are prohibited from engaging in any form of victimisation, revictimisation, or encouraging others to victimise someone who has made, or has supported someone else in making, a report/complaint or has cooperated in the investigation of a report/complaint.

11.2 If victimisation or retaliation are uncovered in the course of an investigation, they will be taken seriously as outlined in section 8 of the Procedure.

## **12 Malicious or Vexatious Complaints**

12.1 We require all individuals involved in a complaint made under this Policy and Procedure to provide accurate information made in good faith. False accusations of sexual misconduct, while rare, can have serious consequences.

12.2 Complaints will always be assumed to be made in good faith unless there is evidence to the contrary. The Independent Investigator will always examine the evidence from the case to determine whether a complaint is made in good faith.

## **13 Confidentiality**

13.1 Parliament recognises the importance of privacy and confidentiality in cases of sexual misconduct. For this reason, breach of confidentiality is an aggravating factor in any finding of sexual misconduct. Mechanisms will be put in place to protect confidentiality of all the parties involved throughout the three pathways of the procedure and all parties will need to respect confidentiality (see section 8 of the Procedure, aggravating factors).

13.2 Any sensitive information disclosed will be held subject to and in accordance with the provisions of the Data Protection Act 2018.

13.3 At all stages, those receiving disclosures and/or processing details of cases are required to keep the names and details confidential, to protect the rights of the parties involved.

13.4 However, there may be circumstances where certain information may need to be shared with other parties consistent with safety, a duty of care or because of Parliament's safeguarding responsibilities. In these cases, permission will be sought and, if not granted, the risk of potential harm will be weighed up.

## **14 Provision of Support**

14.1 The Independent Sexual Misconduct Advisory Service (ISMA Service) provides confidential, independent, specialist and trained support in relation to sexual misconduct.

14.2 The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisors (ISVAs) who provide specialist support, advice, advocacy and signposting in relation to instances of sexual misconduct which fall within the scope of this Policy and Procedure.

14.3 The primary aim of the ISMA Service is to provide advice, support and signposting so that individuals can make informed choices about the pathways they wish to pursue.

## **15 Time limits**

15.1 The sooner a complaint or report is made, the better the chance of thorough evidence gathering. Therefore, early reporting or making a complaint of sexual misconduct is encouraged. There may be times when a reporter does not want to or feel able to make a report soon after an alleged incident or incidents of sexual misconduct, the barriers to early reporting are understood and acknowledged and a delayed decision to make a report will be respected and not treated with suspicion.

15.2 All members of the Parliamentary Community as set out in section 9 (Scope) of the Sexual Misconduct Policy can access the ISMA Service for advice and support and signposting as outlined in Pathway 1. However, under Pathway 2 & 3, retrospective investigations using this Sexual Misconduct Policy and Procedure are limited to the start date of the 2017 Parliament. Previous acts of sexual misconduct prior to the start date of the 2017 Parliament can be included where such acts amount to a continuing act.

15.3 People who have concerns about behaviour prior to the start date of the 2017 Parliament may be able to raise a complaint under a different pre-existing policy or as a criminal case and can call the IMAS Service for advice about sources of support that they can access. A record will also be made by the IMAS Service.

15.4 If someone wishes to report a criminal or civil offence, different time limits may apply depending on the nature of the offence. Anyone considering this action should seek legal advice or discuss this with the ISMA Service in Pathway 1 of the Procedure.

## **16 Responsibilities of the Parliamentary Community**

16.1 All members of the Parliamentary Community should treat others respectfully and be aware of the types of behaviour that are unacceptable under this Policy.

16.2 The Behaviour Code encourages all members of the Parliamentary Community to speak up about unacceptable behaviour they experience or observe, including reporting concerns to their line managers as appropriate. Individuals are encouraged to seek advice from the specialist advisers provided by the ISMA Service in Pathway One of the Procedure.

16.3 Managers have a particular responsibility to develop and maintain a working environment in which people are treated with dignity and respect and intervene if they identify any sexual misconduct amongst their staff. Managers also have a responsibility for ensuring that any of their direct reports involved in a complaint of sexual misconduct (whether that be a reporter, responder or a witness) are signposted and encouraged to use the ISMA Service for advice and support.

16.4 Anyone who is involved in assisting with the Appropriate Measures Pathway or Formal Complaint Pathway, has a responsibility to provide accurate information and to maintain confidentiality throughout.

16.5 This Policy does not replace safeguarding obligations for all members of the Parliamentary Community. For example, if you are concerned about a vulnerable adult, you should report this to the Designated Safeguarding Lead as outlined in the Safeguarding policy.

## **1 Introduction: Sexual Misconduct Procedure – 3 Pathways**

1.1 The Sexual Misconduct Procedure identifies three distinct pathways (see flow chart in appendix 1);

- Pathway 1: Independent Sexual Misconduct Advisory Service (ISMA Service)
- Pathway 2: Appropriate Measures
- Pathway 3: Formal Complaint

1.2 These pathways can be accessed independently or in the following combinations;

- Pathway 1: Can be used by all for advice, support and signposting, regardless of whether Pathway 2 or 3 are used.
- Pathway 2: Is an optional pathway for reporters who wish to have a facilitated intervention with the responder.
- Pathway 3. At any point during this pathway the reporter will have the option to seek resolution through Pathway 2 Appropriate Measures and the matter need go no further.

## **2 Pathway 1: Independent Sexual Misconduct Advisory Service (ISMA Service)**

2.1 The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisers (ISVAs) who will provide specialist support, advice and advocacy in relation to sexual misconduct and act as Case Managers.

2.2 Those contacting the ISMA Service will be logged anonymously or with identifying details, depending on the wishes of the individual, and their information will be kept confidential and assigned to a Case Manager.

2.3 The Case Manager will provide ongoing support and advice and signpost individuals to additional support if required.

2.4 One of the aims of the ISMA Service is to enable the reporter to make informed choices about the pathways they wish to pursue by putting them at the centre of decision-making in relation to their case.

2.5 Where risks to the reporter or others are identified, the Case Manager will complete a risk assessment and a management plan.

2.6 If individuals are unsure that what they have experienced is sexual misconduct or think the behaviour might also be related to other factors, they can still follow this pathway which will give them access to specialist advice and support related to sexual misconduct that will help in deciding the best course of action.

## Pathway 1: Confidentiality

2.7 Confidentiality will be maintained in relation to contacts made via the ISMA Service, unless otherwise agreed. However, there may be circumstances where certain information may need to be shared with other parties' consistent with safety, a duty of care or with Parliament's safeguarding responsibilities.

2.8 In these circumstances, the Case Manager will seek the permission of the reporter and, if this is not granted, will need to weigh up the risk of potential further harm to them or others before sharing information, for example, in cases where someone is in immediate physical danger.

## 3 Pathway 2: Appropriate Measures

3.1 This pathway can be followed whether or not the reporter wishes to follow the formal complaint pathway.

3.2 At any time after contacting and receiving advice and support from the ISMA Service, the reporter may decide that they wish to take action to help remedy their situation through the Appropriate Measures Pathway. Any action taken via this route will be subject to an initial assessment to check that the Policy applies and a risk assessment will be carried out by the ISMA Service. This Pathway will not include an investigation. For this reason, although action may lead to resolution, this may be limited in scope.

3.3 Where necessary, the Case Manager in the ISMA Service will help broker and facilitate interventions.

3.4 Appropriate measure might include (non-exhaustive list):

- A facilitated telephone conversation between the reporter and the responder.
- Communication in writing from the reporter.
- A face to face meeting, facilitated by the Case Manager in the ISMA Service with the responder.
- Intervention by another appropriate individual, such as the manager of the responder.

Desired outcomes might include (non-exhaustive list):

- An apology from the responder.
- Acknowledgement of the behaviour by the responder.
- A behavioural agreement outlining what is considered appropriate/inappropriate behaviour moving forward.
- Training:

- for the responder to increase awareness of inappropriate/appropriate behaviours, their impact and expectations going forward.
- for an area/team to deal with an inappropriate culture or to train a particular team, which doesn't target a particular individual.
- for the reporter to help them cope and deal with any future inappropriate behaviours.

3.5 The reporter may decide at any time to end or halt the progress of this pathway.

3.6 If a resolution is agreed under this pathway, no finding of fault will be recorded in respect of the responder. Details of both parties will be kept confidential. Mechanisms will be put in place to protect confidentiality of all the parties involved throughout the three pathways of the procedure and all parties will need to respect confidentiality.

#### Pathway 2: Confidentiality

If the reporter requests Appropriate Measures it will be necessary to involve the responder and other members of the Parliamentary Community as necessary. These individuals will be contacted only with the permission of the reporter.

## 4 Pathway 3: Formal Complaint

### Considerations

4.1 The key principles of any investigation will be fairness, due process and proportionality:

- The reporter, responder and any witnesses will be treated fairly, with dignity and confidentiality.
- The responder will be provided with details of the allegations made against them and by whom and will be offered appropriate support.
- The standard of proof will be on the balance of probabilities.
- Efforts will be made to avoid any re-traumatisation of the reporter.

4.2 It is recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect the reporter from retaliation or victimisation, may inform the degree of disclosure to the responder of certain details of some reports, in tandem with the principles of natural justice. Factors to consider when making this decision will be:

- The immediate safety of the reporter, such as risk of violence or retaliation.
- The immediate safety of the responder.

- Whether there is a substantial risk that the responder would make efforts to interfere with or undermine an investigation.
- Whether a reasonable request has been received from the police or other authority with statutory or investigatory powers to require the information.

4.3 At each stage in the process evidence will be sought and be considered. Decisions for further evidence gathering will need to be carefully considered as the preference will be to interview the parties only once, to avoid the risk of potential re-traumatisation and prolonging the process.

4.4 Under Pathway 3, an investigator will also escalate a case if they believe the complaint of sexual misconduct might amount to a major criminal offence. In that case, the Scheme will share anonymised information with the police under a protocol that is designed to make sure that our internal investigation does not inadvertently prejudice a criminal investigation. The police will be responsible for deciding whether they need to investigate the matter further, and this may include asking for identifying information. Decision-makers may also have information sharing requirements under their own policies.

## Investigation process

### 5 Stage 1: Initial Assessment

5.1 The Investigator receives a written complaint from the reporter using the Sexual Misconduct Complaints Form.

5.2 The Investigator makes an initial assessment of the complaint to determine whether the Policy applies. To do this, they will check that the complaint meets the conditions for being reported under this Policy and Procedure (e.g. that the complaint is made by and against people who are covered by this Policy).

5.3 The outcome of the initial assessment could be as follows:

Case to answer	No case to answer	
The complaint can be made under this Policy and the incident(s) warrants further investigation (i.e. they may be sexual misconduct).	The complaint does not constitute sexual misconduct.	The complaint cannot be made using this Policy because it does not meet the relevant conditions.
The investigator will notify both parties and their respective decision-making bodies.  The ISMA Service remains available to offer ongoing support and advice.	The investigator will notify the reporter and the responder.  The ISMA Service remains available to offer ongoing support and advice.	The investigator will notify the reporter and the responder.  The ISMA Service remains available to offer ongoing support and advice.

## 6 Stage 2: Formal Assessment

6.1 Before starting a formal assessment, the specialist investigator will contact the appropriate decision-making body. These discussions might involve sharing:

- An assessment plan;
- The approach for evidence gathering (e.g. including the timetable, list of witnesses, any documentation to be requested)

6.2 A letter is sent to the relevant parties to start the evidence-gathering process.

6.3 In the case of complaints made against Members or Peers, where the initial assessment identifies that there is a case to answer, this will be passed to the relevant Commissioner for Standards for the responder. They will commission the same or another investigator from the Independent Investigation Service to undertake the full assessment and will have oversight of the investigation.

6.4 The Investigator interviews both parties and any witnesses to collect any evidence and understand the circumstances of the complaint, any actions already taken and whether there are any steps that could be taken to create a resolution. Witnesses will be given the opportunity to supply evidence.

6.5 The outcome of a formal assessment is a written report with details of the complaint and the evidence that has been gathered relating to the complaint, the outcome that the reporter wants to achieve and whether the information in the complaint is accurate.

6.6 The assessment will be sent to the relevant decision-making bodies, identifying recommendation of assessment, reasons for assessment and details of notifications.

6.7 The outcomes of the assessment may be:

- The complaint is upheld – there is sufficient evidence on the balance of probabilities to determine that sexual misconduct has occurred.
- The complaint is not upheld – the evidence suggests that sexual misconduct did not occur or the evidence is insufficient to determine whether sexual misconduct has occurred.

## 7 Stage 3: Decision and Action

7.1 Once the investigator has completed the formal assessment, the decision-making body for the responder will review the report. If there has been an assessment of sexual misconduct by the investigator, the decision-making body will use their own policies and procedures to deal with the matter including any additional investigations and imposing sanctions.

7.2 Potential sanctions are outlined in the table in Appendix 1 of this Procedure. Decisions about sanctions should take into account the following factors:

- The reporter's wishes (as documented in the Independent Investigation Service report).
- The decision-making body's legal and internal obligations.
- The severity of the sexual misconduct in question.
- Any precedents from comparable cases or previous complaints about the individual's behaviour.

## **8 Pathway 3: Confidentiality**

8.1 Complaints under the initial or formal assessment will be treated confidentially and will only be discussed with those who are legitimately involved i.e. the Investigation Service and the decision-making bodies. Those involved in the complaint as a reporter, a responder or a witness should treat the matter as strictly confidential.

8.2 Complaints to the Investigation Service cannot be raised anonymously (See section 4 the procedure on considerations).

8.3 During the course of initial or formal assessments, relevant extracts of statements or minutes from the meeting with the reporter, responder and witnesses may be made available to both the reporter and responder to ensure that all parties involved can understand and respond to relevant evidence provided by others. Copies of relevant documentation (e.g. email or other correspondence, social media posts) may also be provided. However, this will be in line with the consideration as outlined in section 4 of the procedure.

## **9 Aggravating factors**

9.1 If the following aggravating factors are uncovered in the course of any fact finding or investigation, they should be taken seriously and may impact on the sanctions even if the complaint is not upheld:

9.1.1 Breaches of the Behaviour Code.

9.1.2 Abuses of power/authority.

9.1.3 Retaliation or victimisation.

9.1.4 Breaches of agreed Appropriate Measures or sanctions.

9.1.5 Breaches of confidentiality, refusal to engage in the Procedure, or sharing the name of the reporter.

9.2 If during an investigation, the reporter or responder resigns or leaves, this will be recorded. However, the investigation will continue until it is concluded.

## 10 Arrangements for initial and formal assessment meetings

10.1 This section of the Procedure provides more detailed information about how initial and formal assessment meetings are conducted. It contains information for reporters, responders and witnesses.

### Notification of meetings

10.2 If you are a reporter, responder or a witness involved in an assessment, you may be invited to meeting(s) with the investigator. The investigator will always provide written notification of meetings, including the time, date and place of the meeting, the purpose of the meeting and any relevant information, including documentation and witness statements, if appropriate.

### The right to be accompanied

10.3 If you are a reporter or responder, you can be accompanied in any meetings under this Procedure by a colleague from the Parliamentary Community, the case manager from the ISMA Service, an interpreter or a trade union representative.

10.4 Prior to any meeting and with at least one day's notice, you should confirm to the Investigator who will be accompanying you to the meeting.

10.5 The following conditions apply to your choice of companion:

- Colleagues are not obliged to act as a companion and may decline a request if they wish.
- The Investigator will permit a companion who is not a colleague, such as the case manager from the ISMA Service or trade union representative where appropriate (e.g. to provide support for someone who may have difficulty understanding written or spoken English or who may have particular needs as a result of a disability).
- If your choice of companion is unavailable when the meeting is scheduled and will not be available for more than 5 working days, the Investigator may ask you to choose someone else.
- Companions can make representations, ask questions, and sum up your position, but are not allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

If you are interviewed as a witness, you would not usually be accompanied in the meeting. However, the Investigator will permit you to have a companion if appropriate to the circumstances (e.g. if you have difficulty understanding written or spoken English or have particular needs as a result of a disability).

## 11 Reviews

11.1 If an initial assessment finds no case to answer or a formal assessment at the investigation stage does not uphold a complaint of sexual misconduct the reporter

can ask the Independent Investigation Service to review the outcome. This review will be conducted by an investigator who has had no previous involvement in the case.

11.2 A review can only be requested on the following grounds:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

11.3 For complaints against a Member or a Peer, initial assessments will be reviewed by the relevant Commissioner for Standards. The reporter will be able to contribute to this review by putting forward any evidence that they feel may have affected the assessment finding in relation to:

- Whether the correct procedure for assessment was followed;
- Whether substantial new evidence has since become available.

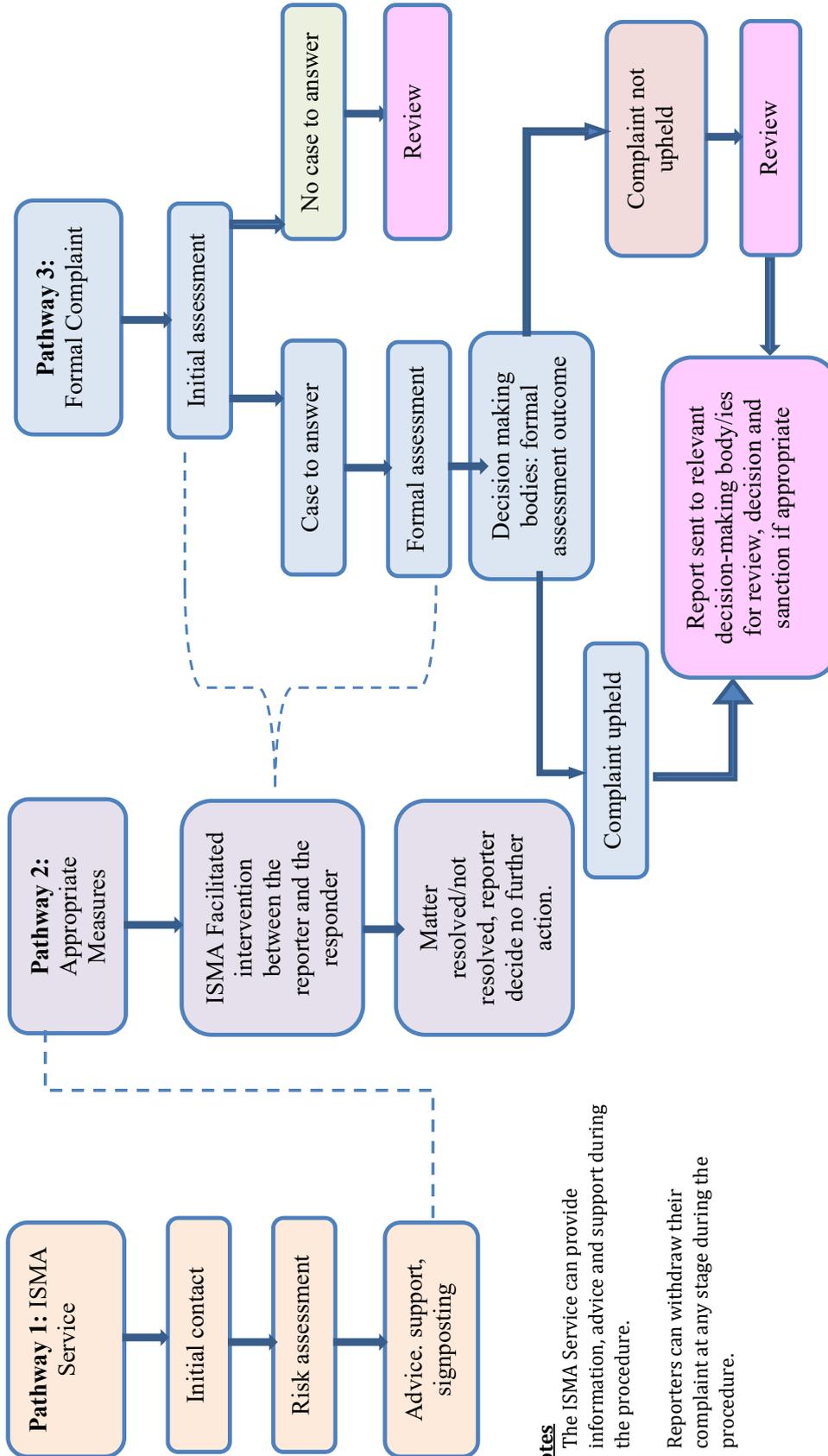
11.4 If a review finds that further evidence is admissible, the case will generally be re-assessed by the original investigator, taking into account the additional evidence. If the review finds that the correct procedure had not been followed or a different type of investigation is needed, the case may be re-assessed by a different investigator.

11.5 If a formal assessment upholds a complaint of sexual misconduct at the investigation stage, this will be reviewed by the decision-making body (e.g. via a hearing/interview under their own policies and procedures). The respondent will have an opportunity to represent any concerns they had about the investigation conducted by the Independent Investigation Service as part of this process.

## 12 Timescales

Stage of procedure	Responsibility	Timescales
Acknowledgement of written complaint and notification to responder	Investigator	Within 3 working days on the reporter's request
Notice of meeting with investigator	Investigator	A minimum of 3 working days of the meeting
Provision of draft minutes from meeting	Investigator	Within 3-5 working days of the meeting
Agreement of minutes of investigation or appeals meeting	Reporter, responder or witness	Within 10 working days of receiving the minutes
Application to appeal	Reporter, responder or witness	Within 10 working days of receipt of the initial or formal assessment
Acknowledgement of appeal	Investigator	Within 3 working days of receipt of the appeal application
Appeal review and decision	Reviewing investigator or PCS	Subject to variation, but usually within 10 working days of receipt of the appeal application

## Appendix 1: Flow Chart



**Notes**

1. The ISMA Service can provide information, advice and support during the procedure.
2. Reporters can withdraw their complaint at any stage during the procedure.

## Appendix 2: Table of possible sanctions

Responder	Decision making body	Sanction	How sanctions are imposed
MP/Peer	The Commissioner for Standards (Commons or Lords) in conjunction with the relevant committee of the Houses for the most serious cases or where alternative resolutions have failed	Rectification to restore and maintain working relationships, including, but not limited to, an apology, behaviour agreement and compulsory training	With agreement by all parties or imposed by the Commissioner for Standards  (Commons or Lords)
		Suspension/recall (in the House of Commons)  Suspension/expulsion (in the House of Lords)	The 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
An MP's or Peer's employee or someone employed by a political party to work on the Parliamentary Estate	MP, Peer or political party who employs them (or otherwise engages them—e.g. intern, volunteer, work experience agreement or contract for services)	Rectification to restore and maintain working relationships, including, but not limited to, an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer

Responder	Decision making body	Sanction	How sanctions are imposed
Employees of the House of Commons Administration, House of Lords Administration, Parliamentary Digital Service	House Authorities, through the appropriate management chains	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	Agreed by all parties or imposed by employer
		Disciplinary sanctions, which may include a Warning, Final Warning, Demotion or Dismissal	By employer
Relevant passholders	Relevant officials and processes for suspending or revoking parliamentary— the passholder’s employer may also be notified, where relevant	Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training	With agreement by all parties
		Withdrawal of pass	Relevant officials and processes for revoking parliamentary passes - the passholder’s employer may also be notified, where relevant

# ANNEX D—Legal opinion on pre-Scheme cases from Tom Linden QC

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IN THE MATTER OF THE PROPOSED INDEPENDENT COMPLAINTS AND GRIEVANCE POLICY (“ICGP”)

AND IN THE MATTER OF COMPLAINTS BASED ON EVENTS OCCURRING BEFORE THE ICGP COMES INTO EFFECT AND THE RELEVANCE OF THE COMMON LAW PRESUMPTION AGAINST RETROSPECTIVE EFFECT

## OPINION

### Introduction

1. I have been asked to give an opinion on the impact of the common law presumption against retrospective effect on the ability, under the proposed Independent Complaints and Grievance Policy (“ICGP”), to investigate complaints relating to events which occurred before that policy and the behavioural policies/codes which it will seek to uphold come into force. The question I have been asked to address is whether this presumption would, *of itself*, prevent such investigations and, for the reasons given below, I do not consider that it would.

### The factual background

2. The factual background is set out in my Instructions and in the documents which accompany them, including the ‘Report of the Cross Party Working Group on an Independent Complaints and Grievance Policy’ dated 8 February 2018. It will also be familiar to those who read this Opinion and I therefore do not rehearse it here. Where relevant, I will deal with the facts below.

### What is the presumption against retrospective effect?

3. The crucial starting point is to consider the nature and scope of the common law presumption against retrospective effect. Essentially, it is a principle of legal policy that changes in the law should not normally take effect retrospectively. The principle is based on fairness<sup>21</sup> and the rule of law:<sup>22</sup> the law should make clear to a person what he can and cannot lawfully do and what the consequences of given acts or omissions will be. He should not be put in a position whereby he conducts himself, or deals with his personal or business affairs, in a way which is lawful and/or will have known legal consequences, only for the law to change subsequently in such a way as to render his actions unlawful and/or subject to legal consequences which are different to those which he could have anticipated.

4. The primary context in which the presumption against retrospective effect is influential is in the interpretation of legislation. Parliament is presumed not to have intended that legislation will render past acts which were previously lawful,

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<sup>21</sup> *L’Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd* [1994] 1 AC 486 at 525.

<sup>22</sup> *R v Rimmington; R v Goldstein* [2006] AC 459 paras 32-37

unlawful, nor that legislation will penalise acts which were previously not subject to sanction, nor that it will subsequently provide for more severe sanctions than could have been anticipated at the time of the relevant events. Even then, clear words will displace the presumption. But the more adverse the retrospective effect, the clearer the language will need to be to demonstrate that his effect was intended by Parliament.<sup>23</sup>

5. The presumption is most powerful where the issue is the criminalisation of previously lawful acts or the increasing of sentences<sup>24</sup> and in such cases it is underpinned by Article 7 of the European Convention on Human Rights which provides that: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed”. The presumption is, however, also applicable in the civil context as one would expect given that it is a principle of fairness and the rule of law.<sup>25</sup>

6. Importantly, in the present context, the principle does not apply to procedural measures. On the contrary, where procedural changes in the decision making process occur through legislation, the presumption is that they are in the interests of justice in that they will improve the quality of decision making.<sup>26</sup> Retrospective effect is therefore regarded as desirable.

7. The distinction between procedural and substantive changes in the law is not always easy to draw. However, in ***Yew Bon Tew v Kenderaan Bas Mara***<sup>27</sup> Lord Brightman said the following in the context of an argument as to whether the provisions of the Public Authorities Protection (Amendment) Act 1974 which were in issue in that case were procedural or substantive in nature:

“the proper approach to the construction of the Act of 1974 is not to decide what label to apply to it, procedural or otherwise, but to see whether the statute, if applied retrospectively to a particular type of case, *would impair existing rights and obligations...*” (emphasis added).

8. Lord Brightman added that a provision has retrospective effect in the relevant sense:

‘if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past’

9. These passages are particularly helpful in the present context in that they show that the central question is whether a given measure which is introduced would impair existing rights and obligations if it were to have retrospective effect. If that is the case, in construing a statute at least, the court will consider whether

23 ***L’Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd*** [1994] 1 AC 486 at 525; ***Secretary of State for Social Security v Tunncliffe*** [1991] All ER 712 at 724.

24 ***R v Penrith Justices, ex p Hay*** (1979) 1 Cr App Rep (S) 265

25 See eg ***Gardner & Co Ltd v Cone*** [1928] Ch 955 at 966

26 ***Imperial Tobacco Ltd v A-G*** [1979] QB 555 at 581

27 [1983] 1 AC 553 at 558

the language of the provision in issue demonstrates that such an effect was intended by Parliament. They will also have this principle in mind in examining any decision where the issue is fairness. If, on the other hand, the measures in question seek to improve the decision making process, they will be presumed to be desirable and to have retrospective effect.

### **Applying these principles in the present case**

10. To my mind the following points are relevant. They overlap to some extent.

11. First, save to the extent that the presumption against retrospective effect reflects a basic principle of fairness, it seems to me to be debateable that it has any direct application in the present context. The presumption is primarily concerned with changes in the law and the preservation of legal rights, whereas the ICGP is essentially a proposed complaints procedure which is voluntary in the sense that no one is obliged to participate in it and that its outcomes are not binding per se. As I understand it, a responder to a complaint would be perfectly free to decline to participate, the proposed Investigator/Case Manager merely has a power to investigate and to make findings, and his or her conclusions do not bind anyone. Rather, they will be passed to the relevant decision making body, which will decide whether to act on the report of the Investigator/Case Manager and, if so, what action to take both in terms of procedure and outcome. The findings of the Investigator/Case Manager will have no legal consequences until such time as they are acted on by a decision making body. The investigation will also be confidential. The analogy between the ICGP and the application of the law by the courts is therefore not a close one.

12. Second, a key aspect of the ICGP appears to be to be to improve the quality of decision making in relation to complaints of misconduct including sexual harassment, harassment and bullying. These aspects of the proposal do not seem to me to be objectionable on the grounds that they are retrospective. They are simply the procedures whereby complaints will be investigated. It is clear that the process of investigating a complaint will be required to be conducted in accordance with the duty to act fairly, including to the responder, and the principles of natural justice. It therefore seems to me to hardly be a matter for complaint by the responder that such procedures did not previously exist. Even if the procedure for investigating complaints is retrospective, in the sense that when the acts which are investigated under the procedure were committed the responder could not be subject to such procedures, in my view the presumption against retrospective effect would not bite for the reasons discussed above.

13. Third, a key aspect of the ICGP is that it provides the machinery to investigate breaches of codes of conduct/behavioural policies which were not in existence at the time when the events which may be alleged in the so called historic cases took place. To this extent it might be said that there is an issue as to retrospective effect if those codes/policies are then enforced. However, even assuming that the presumption against retrospective effect is applicable by analogy there seem to me to be two answers to this point:

- a. First, as I understand it the codes/policies will in effect articulate standards or requirements which were already in existence at all material times. There may not have been written policies which prohibited, for example, bullying, harassment or sexual harassment but it is not the case that these forms of conduct were acceptable amongst the Parliamentary Community in the past and will now be rendered unacceptable by the new policies: they were always unacceptable. Moreover, in many cases the conduct in question (if it is found to have occurred) will have been unlawful for many years: amongst other things the policies prohibit discrimination and harassment in the context of employment which is contrary to the Equality Act 2010<sup>28</sup> and/or harassment which is contrary to the Protection from Harassment Act 1997, conduct which would amount to a sexual assault or other possible criminal offences or breach of the implied duty of mutual trust and confidence by employers, and so on. It therefore seems likely that in most cases where an complaint was upheld there would be some difficulty with an argument, if it were put forward by a responder, that he had a right to act as he did, that he had thought that the conduct prohibited by a given code or policy was permitted when he acted as he did, and that it is therefore unfair now to say that it was in breach of the standards expected of members of the Parliamentary Community. In marginal cases, where this type of argument was persuasive, it would no doubt be taken into account either as evidence that the conduct was indeed acceptable at the relevant time or as mitigation.
- b. Second, as noted above, the outcome of the procedure is merely that the findings are presented to the relevant decision making body which will then be obliged to act in accordance with the rights and obligations which form part of the particular relationship with the responder. This may mean that no action is taken or it may mean that action is taken which is in accordance with the legal rights of the responder. If the action taken is contrary to the responder's legal rights they will have whatever legal recourse would ordinarily be available against the decision making body in the relevant circumstances. It is not the case that the responder will be subjected to any sanction by the Investigator/Case Manager or, indeed, necessarily any adverse consequence. This tends to reinforce the point that there is no unfairness in the use of the ICGP to investigate and make findings in relation to past events.

## Practicalities

14. This seems to me to answer the question which I have been asked to consider, but it may be worth making the following practical points.

15. First, to my mind the key issue in relation to the so called historic cases is the fairness, in terms of the ability responder to respond effectively, of any investigation where the allegation relates to events which took place a long time ago. As is well known, complaints of discrimination or harassment which arise in

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28 (and was contrary to the anti discrimination legislation which existed before that)

the field of employment must be brought within 3 months of the act complained of or, where the act extends over a period, 3 months of the end of that period.<sup>29</sup> There is a discretion to extend time where it would be just and equitable to do so. The factors which will be taken into account when considering an application for an extension will include the reasons for the delay and the prejudice to the respondent, in terms of its ability to defend the claim, which has been caused by the delay.<sup>30</sup> For discrimination claims in the county court the primary limitation period is 6 months, albeit with the same scope for an extension as applies to employment cases.<sup>31</sup> The limitations periods for other civil claims in the courts are, however, longer. Careful thought therefore needs to be given to how this type of issue will be approached if historic cases are to be investigated.

16. Second, in the light of the concerns which have been expressed about the presumption against retrospective effect, if the decision is that historic cases will be investigated where they are not too old to be capable of a fair determination, this should be made clear in the ICGP. This will, at least, close down arguments that the ICGP should be interpreted as applying only to events which occur after it comes into force. I see that a statement along these lines is likely to be included.

17. Third, it is important to note that the analysis above is premised on the conduct in question being unacceptable at the time when it took place. As I have pointed out, in theory there may be marginal cases where a responder can genuinely say that his conduct was acceptable at the relevant time, in which case I would expect this to be made clear in the findings of the Investigator/Case Manager so that it can be taken into account by the decision making body.

18. Fourth, careful thought will need to be given to getting 'buy in' from the decision making bodies. Obviously, if they do not take action in the light of the findings, the ICGP process will be of less value. As the decision making bodies will potentially impose important sanctions, they are liable to have greater concerns about the fairness of any retrospective effect. There may be questions as to whether it would be consistent with the existing legal rights and obligations of the responder for a given course of action to be taken.

19. I have not been provided with the details of the rights and obligations which exist within the different types of relationship that there are within the Parliamentary Community, and which may be affected by a decision under the ICGP. Nor have I been asked to comment. However, it seems unlikely that a responder will be able to argue convincingly that, in the context of an employment relationship, he had a right e.g. to sexually harass the complainant, that he believed that he was entitled to do so and that therefore it is unfair now to punish such behaviour. I would expect the answer to be as above: that such conduct has never been acceptable in the context of the particular employment relationship, that on the contrary it has been unlawful for a number of years, and that the potential disciplinary consequences were obvious or ought to have been obvious at all material times.

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29 Section 123 Equality Act 2010. Note that there are numerous cases on what constitutes 'conduct extending over a period', with **Hendricks v Metropolitan Police Commissioner** [2003] ICR 530 CA being the one most often cited.

30 Again, there are numerous cases on the right approach to determining whether there should be an extension but see eg **British Coal Corporation v Keeble** [1997] IRLR 336.

31 Section 118 Equality Act 2010

20. In the case of the relationship between MPs and the Parliamentary Commissioner for Standards the position may be less clear cut, but I see that the House of Commons Code of Conduct provides for example that ‘Members have a duty to uphold the law, including the general law against discrimination’ and that ‘Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House as a whole or its members generally’. Although the thrust of the Code is directed at financial misconduct, assuming that they formed part of the Code at the time of the relevant events, these provisions seem likely to provide a basis for saying that even if, as a matter of common sense, it was obvious that the conduct in question was unacceptable, the Code sets a clear enough standard. Certainly, I would be surprised if an MP thought it advisable to argue that no action could be taken in relation to proven acts of sexual misconduct because they predated the introduction of the ICGP and the presumption against retrospective effect therefore prevented this.

## **Conclusion**

21. I hope that this Opinion has been helpful. Please do not hesitate to contact me if I can be of further assistance.

THOMAS LINDEN QC

Matrix Chambers

Gray’s Inn

27 June 2018

# ANNEX E—Legal opinion on criminal cases from David Perry QC and Katherine Hardcastle

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In the matter of the Independent Complaints and Grievance Policy

## Advice

### Introduction

1. In November 2017, following certain reports in the national media, a cross-party bicameral working group was established to consider the issues of bullying and sexual harassment within the United Kingdom Parliament and the Parliamentary Community (“the Working Group”). The Working Group reported in February 2018 (“the report”) and recommended, among other matters, the development of an independent Scheme for managing complaints and grievances, including a new policy for the management of complaints of sexual misconduct (“the policy”).

2. The policy is now in draft form, and will be finalised subject to the comments of various interested parties. It is expected that the policy may be amended (perhaps significantly) during this process of consultation, though this is a matter which falls outside the scope of this Advice.

3. The issue which presently arises for consideration is the functioning of the policy in circumstances where the subject of a complaint made under the policy may also be capable of constituting the subject of a criminal investigation and, potentially, a prosecution.

### Executive Summary

4. For reasons discussed further below, our views may be summarised as follows:

- i. The processes of disciplinary proceedings and criminal proceedings are separate and their purposes and procedures are wholly distinct.
- ii. There is no legal bar to an internal investigation being conducted prior to any criminal investigation. Civil and criminal proceedings may be conducted in respect of the same facts (subject to a limited exception, discussed further below) and it is commonplace for disciplinary proceedings to be concluded in advance of criminal proceedings.
- iii. A disciplinary investigation should not be inhibited in considering matters which may form the subject of a criminal investigation. The risks arising from a properly conducted internal investigation are likely to be within tolerable limits and can be mitigated by certain steps being taken by those conducting an internal investigation.

- iv. However, in some exceptional circumstances there may be practical reasons why it is preferable to adjourn disciplinary proceedings which are likely to become the subject of a later criminal investigation.
- v. Otherwise, there is no particular significance of a decision by a complainant to report a matter to the police which is, or may be, the subject of disciplinary proceedings.
- vi. From the point of view of a criminal investigation or prosecution, there is no particular legal risk which arises because an internal investigation has not been conducted.
- vii. Consistent with the recommendations of the report and the terms of the policy, we would emphasise the importance of conducting internal investigations in a manner which is fair to all parties and in which all aspects are meticulously documented.

## Relevant Background

5. Before turning to the substance of this Advice, it is relevant to note several features of the policy and the report which preceded it.

### The report

6. Reflecting the result of the Working Group, the report is wide in its scope, extending to some 15,000 people within the Parliamentary Community, including Members of Parliament, Peers and staff in the Palace of Westminster and in constituency offices.

7. Whilst aiming to be inclusive and to foster a culture in which misconduct is readily reported and sanctioned, the report acknowledges that, owing to the nature of their positions, there is a particular risk of malicious and vexatious claims being made against Members of Parliament, Peers and staff and, accordingly, that there is a need to design a procedure that is fair to all parties.

8. Among the report's key findings is the point that sexual misconduct is qualitatively different in a number of ways from other forms of misconduct and requires separate definitions and procedures. Accordingly, the report recommends the development of a specific policy for the management of complaints of sexual misconduct.

9. The report does not envisage that the new arrangements should discourage any individual from reporting misconduct to the police or any other relevant body (an employment tribunal or political party, for example). It further states (at §27):

*“Complainants will be encouraged to report any criminal allegations to the police, and supported whether or not they chose to do so; the new scheme will provide support and advice to the complainant, whether or not they chose to raise [a] criminal complaint.”*

10. While the Scheme will be complainant led, it is noted that the Scheme will reserve the right not to investigate incidents that have already been investigated under another process.

11. In respect of confidentiality, the report states (at §32) that:

*“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.”*

12. So far as sanctions are concerned, it is noted in the report that these will differ according to the role of the perpetrator in the Parliamentary Community as it will be the role of the new procedures to be adopted to make findings of fact (for example, whether there has been any act of sexual misconduct) and to refer that matter to the body responsible for the discipline of the perpetrator. For example, in the case of a Member of Parliament or a Peer, the relevant decision maker would be the Parliamentary Commissioner for Standards, whereas for a member of a Peer’s staff, the decision maker would be the person who employs them.

13. In relation to the development of a policy on sexual misconduct, the report notes that criminal proceedings and internal disciplinary proceedings are distinct—though the outcome of criminal proceedings may inform subsequent disciplinary proceedings. It is noted that if there is a parallel criminal investigation in any matter, a formal disciplinary process may be paused, depending on the circumstances.

14. The report envisages that an independent specialist will take up a key role in relation to the management of the procedure for complaints of sexual misconduct. It states (at §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 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 nonetheless recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect complainants from retaliation or further victimization, may inform the degree of disclosure to an alleged perpetrator of certain details of some reports, in tandem with the principle 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."*

15. The report envisages that the policy to be developed may provide for 'cluster' reporting (where a pattern of misconduct is identified through multiple reports), and appropriate information security measures.

16. Two broad channels are identified by way of potential procedures for resolving complaints:

- i. The informal resolution of allegations – in which no formal findings are made though resolution measures may be adopted by agreement between the parties (for example, the alleged perpetrator provides a written apology or enters into a future behaviour agreement).
- ii. Formal investigations—amounting to workplace disciplinary proceedings. The key principles of this procedure are said to be fairness and proportionality and alleged perpetrators are to be provided with all details of the allegations against them and invited to present their own evidence as well as to test the evidence against them. The standard of proof for such proceedings is the balance of probabilities. The investigation result in a written report which may be shared with the relevant decision-making body and, in the event of a finding of fault, would be shared with that decision maker in order to determine the appropriate sanction. It is noted in the report that in relation to the conduct of a Member of Parliament, the processes of the Parliamentary Commissioner for Standards may need to change such that there is no blanket obligation to publish details of investigations. It is envisaged in the report in relation to formal proceedings that complainants will have a right to anonymity (which they may chose to waive). The range of envisaged sanctions encompasses the informal resolution mechanisms (mentioned above), through to recall of a Member of Parliament or the suspension of a Peer. An employee may face dismissal. The appropriateness of sanctions is expected to take into account the wishes of the complainant, the role of the perpetrator, the severity of the conduct and any precedents set in comparable cases.

17. The report envisages that detailed procedures should include appeal mechanisms.

### The policy

18. The draft sexual misconduct policy and procedure is to be considered against the background of the report. Among the notable features of the policy are the following matters.

19. The policy is intended to deal with 'sexual misconduct', which term incorporates a range of behaviours in breach of the policy. Whilst the policy acknowledges that

sexual misconduct may include conduct which also amounts to the commission of an offence, the use of the term ‘sexual misconduct’ makes clear that the policy is separate from any consideration of the criminal law or criminal process. The policy does, however, adopt the same definition of consent as is used in the Sexual Offences Act 2003; that is to say, that consent is agreeing to something by choice and having the freedom and capacity to make that choice.

20. The report makes clear that its purpose and procedures are distinct from any criminal process and it includes a provision which reserves the right to pause any investigation in the event of a parallel criminal investigation (at §13.3 to 13.5):

*“The nature and scope of the policy and procedure is fundamentally different from that of a criminal process. The policy and procedure is a disciplinary matter for the Parliamentary Community based upon an allegation than an individual has breached the sexual misconduct policy and procedure. The allegation has to be proved on the balance of probabilities. The most serious sanction that can be applied is dismissal.*

*In contrast, the criminal process deals with allegations related to a criminal act, that must be proven beyond reasonable doubt.*

*Where someone has reported an alleged criminal offence to the police and has made a complaint under this policy and procedure, the circumstances of the case will be considered to determine whether it is appropriate to investigate the matter under this procedure at the same time, or whether action under this procedure should be paused until the criminal investigation is completed.”*

21. In cases where a number of individuals make allegations against one individual; or one individual makes allegations against a number of individuals (‘cluster’ cases), the policy provides that those complaints may be managed as a single joint investigation or as multiple investigations, depending on the circumstances, although the case against any alleged perpetrator will be considered on an individual basis.

22. The policy states that it is not intended to discourage individuals from other routes of reporting sexual misconduct, including reporting to the police.

23. In relation to confidentiality, the policy states that mechanisms will be put in place to protect the confidentiality of all of the parties involved in any procedure under the policy. It further requires that at all stages, those receiving disclosures and/or processing details of any case are required to keep the names and details of that case confidential.

24. The policy identifies three ‘pathways’ in relation to dealing with any particular allegation:

- i. Pathway 1: use of an Independent Sexual Misconduct Advisory Service. This pathway provides specialist support, advice and advocacy services and is aimed to assist a complainant in deciding which (if any) further pathways he or she wishes to pursue.
- ii. Pathway 2: the 'Appropriate Measures' pathway. This pathway does not include any investigation of the allegation and will make no findings. Instead it provides for a facilitated intervention with the alleged perpetrator (if desirable), and the adoption of informal measures such as a written apology, acknowledgment of the behaviour, and/or a future behaviour agreement or an agreement to undertake relevant training.
- iii. Pathway 3: a Formal Complaint. This involves a three stage process of: (a) an initial complaint and a determination of whether there is a prima facie case within the scope of the policy; (b) a formal assessment, in which a specialist investigator will gather evidence, the alleged perpetrator will be provided with details; and (c) a written report will be prepared to be sent to the relevant decision making body for the individual concerned and any sanction determined. The policy provides that a written report may conclude, in any case, that there is no case to answer (on the basis that the evidence suggests there was no sexual misconduct); that there is insufficient evidence (on the basis that it is not possible to determine whether the alleged misconduct occurred or not); or that the case is upheld on the basis that, applying the test of the balance of probabilities, sexual misconduct has occurred. The decision making body for the relevant individual will consider the written report and assess its findings (including taking further evidence if necessary). It is then for the relevant decision-making body to form its own conclusions on the allegation and to apply its own policies and procedures to deal with the matter, including the imposition of any sanction. Under the policy, decisions about sanctions will take into account the severity of the conduct in issue; the wishes of the complainant; and any precedents in comparable cases. The policy states that key principles of the Formal Complaint pathway are to be fairness, due process and proportionality. Parties are to be treated fairly, with dignity and confidentially. The alleged perpetrator will be provided with details of the allegation made against him or her. The standard of proof will be the balance of probabilities. The investigation may involve gathering further evidence in any case, if needed.

25. Pathway 1 can be used in conjunction with Pathways 2 and 3. At any time a person using Pathway 3 may chose to seek resolution through Pathway 2 and conclude the matter.

26. In relation to a Formal Complaint, it is envisaged that a complainant or alleged perpetrator may appeal against a determination at the stage of consideration of the initial complaint or the formal assessment stage.

## Application of Relevant Principles

27. There is no principle of criminal law that the subject of civil, or disciplinary or employment, proceedings cannot also form the subject of a criminal investigation or, if the applicable threshold is met, a prosecution. Criminal and civil proceedings (including disciplinary proceedings) frequently run in parallel. It is also often the case that disciplinary proceedings in an employment context are conducted and concluded prior to any criminal investigation.

28. The circumstances in which civil proceedings may be stayed pending the outcome of criminal proceedings are strictly limited; namely, that there must be a real risk of serious prejudice which may lead to injustice and that sufficient safeguards are not available to protect against the risk of injustice arising.<sup>32</sup> This is a high bar and is not met, for example, by the fact that a defendant, by serving a defence in civil proceedings, would be giving advance notice of a defence which he or she might wish to rely on in criminal proceedings.<sup>33</sup>

29. In the present case, and as the policy itself recognises, the purpose of criminal proceedings and disciplinary proceedings are distinct and their procedures are different. The procedures envisaged by the policy are intended only to cater for circumstances whether there has been sexual misconduct, as that term is defined within the policy. The policy is not concerned with any matter other than to establish whether ‘sexual misconduct’ has occurred, unlike the application of the criminal law or proceedings, the purpose of which is to determine whether an offence has been committed, contrary to the law of any part of the United Kingdom.

30. The standard of proof to be applied in civil proceedings generally and under the policy is the balance of probabilities, as opposed to a standard of beyond reasonable doubt in criminal proceedings. In criminal proceedings there is a law of evidence which is intricate and governs whether material is admissible before the tribunal of fact (in England and Wales: magistrates or a jury). By contrast, the policy imposes no restriction on what evidence an investigator may consider in undertaking an investigation under the Formal Complaint pathway. Further, while under the policy the greatest available sanction to any decision making body is dismissal or recall (depending on the role of the alleged perpetrator), a conviction for an offence in the criminal courts may lead to imprisonment.

31. As a matter of general principle, the findings of another tribunal in civil proceedings are not admissible evidence in criminal proceedings.<sup>34</sup> That is to say: the conclusion and findings of an internal investigation under the policy that sexual misconduct had occurred would not be admissible as evidence in a criminal trial. In this sense, internal disciplinary matters may be considered to have limited relevance to any subsequent criminal investigation or prosecution.

This is so regardless of the nature of the conduct (and potential offence) under consideration.

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32 **R v Panel on Takeover and Mergers, ex parte Fayed** [1992] BCC 524 and **Bankas Snoras v Antonov** [2013] EWCA 131.

33 Civil proceedings will only be stayed in exceptional circumstances.

34 **Hollington v Hewthorn** [1943] KB 587.

32. A related point is that the fact that an internal investigation has not been conducted is not a matter which, of itself, would be of any particular significance in relation to a criminal investigation or criminal proceedings – though the reasons why no investigation was conducted may be a subject on which witnesses are questioned at trial, depending on the facts of any particular case.

33. In very limited circumstances it may be argued that the fact of prior civil proceedings in relation to a particular set of facts gives rise to the principle of double jeopardy (the principle that a person cannot be tried twice in relation to the same conduct) and that a prosecution in relation to facts which have formed the basis of civil proceedings is barred. However, such an argument could only plausibly arise in relation to prior civil proceedings which shared the essential characteristics of a criminal process and, importantly, carried sanctions such as monetary fines, that were commensurate with a criminal process. On the basis of the policy described above, the principle of double jeopardy appears to be of no application in the present case. The procedure proposed by the policy and the available sanctions are far removed from criminal proceedings and no such argument could be made.

34. It follows that any risks associated with parallel criminal and disciplinary proceedings might be characterised as indirect and relate chiefly to the following topics:

- i. Publicity.
- ii. Confidentiality.
- iii. Evidence.

35. In relation to publicity, as a matter of principle, there is a possible risk that if it became publicly known that there had been a finding against, for example, a Member of Parliament, that he or she had misconducted him or herself under the policy, that fact and its reporting in the media may unfairly influence a jury in a subsequent criminal trial. It is to be noted however, that the threshold for finding that pre-trial publicity makes conducting a fair trial impossible is set very high. The Court of Appeal explained the principle in *R v Abu Hamza* in the following terms (at §93):<sup>35</sup>

*“Prejudicial publicity renders more difficult the task of the court, that is of the judge and jury together, in trying the case fairly. Our laws of contempt of court are designed to prevent the media from interfering with the due process of justice by making it more difficult to conduct a fair trial. The fact, however, that adverse publicity may have risked prejudicing a fair trial is no reason for not proceeding with the trial if the judge concludes that, with his assistance, it will be possible to have a fair trial. In considering this question it is right for the judge to have regard to his own experience and that of his fellow judges as to the manner in which juries normally perform their duties.”*

36. It follows that criminal trials proceed on the basis that jurors will act in accordance with their oaths and faithfully try the case on the evidence heard in court, not what has been reported in the media. In this respect, the risk that adverse publicity surrounding any prior internal investigation may cause any prejudice to a subsequent criminal trial is extremely remote.

37. We further note that the policy and the report place some emphasis on confidentiality. Accordingly, the usual position should be that it is unlikely that the details of any internal investigation would become publicly known. Such an approach is consistent with the position under the Sexual Offences (Amendment) Act 1992, victims in cases of rape and certain other specified offences are entitled to anonymity in reporting of the case. Once an allegation of one of the specified offences has been made, nothing can be published which is likely to lead members of the public to identify the victim. The rationale underlying this legislative provision is that potential complainants should not be deterred from reporting that they have been the victim of a sex crime. This serves to highlight the importance of preserving confidentiality for complainants under the policy.

38. As for the bearing which an internal investigation may have on the potential evidence available for a criminal trial and the likelihood of a prosecution, it is necessary by way of background to say something about the approach adopted by prosecuting agencies following a criminal investigation. The position is governed in England and Wales by the Code for Crown Prosecutors (“the Code”). The Code is applied by prosecutors when a criminal investigation has been completed in order to determine whether a prosecution should be brought (there being no law of automatic prosecution in this jurisdiction). The relevant test to be applied under the Code is known as the Full Code Test. The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Under the evidential stage of the Full Code Test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. The finding that there is a realistic prospect of conviction is based on the prosecutor’s objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty. If the evidential stage is met, a prosecutor must then go on to consider whether a prosecution is in the public interest having regard to all the circumstances, including the seriousness of the offence, its consequences, the status of the victim, the status of the perpetrator, the perpetrator’s role in the conduct, and any other relevant factors.

39. In relation to the question of whether an internal investigation may affect the likelihood of a later prosecution, the following points arise:

- i. As noted above, the law of evidence in criminal proceedings is extensive, whereas the policy does not envisage any restriction on the type of evidence which an investigator may take into consideration in any internal investigation arising from a Formal Complaint. It follows that certain types of evidence available to an investigator under the policy may not be admissible in any subsequent criminal proceedings.
- ii. However, there is no reason in principle why, for example, a witness statement taken in the course of an internal investigation could not form the basis of what a witness has said for the purposes of a subsequent criminal investigation and, potentially, a prosecution. Equally, there is no reason why other sources of evidence gathered by an investigator (for example CCTV footage) could not be used both in an internal investigation and criminal proceedings, and this would ordinarily be the case.
- iii. The availability and quality of available material is a matter which is considered by a prosecutor at the evidential stage of the Full Code test. In circumstances where criminal proceedings were to follow an internal investigation a prosecutor would be in a position to place the material potentially available to the prosecution in the context of the preceding internal investigation – and, if necessary, obtain evidence to address any difficulty arising from that prior investigation. A prosecutor would not be placed at any particular disadvantage (in making a decision of whether to prosecute under the Full Code test) where an internal investigation had been conducted and it is relevant to note that it is commonplace for employment proceedings to have been concluded before criminal proceedings commence.
- iv. It is noted that concerns have been raised in other contexts<sup>36</sup> that an internal investigation into sexual misconduct may pose a substantial risk to later criminal proceedings in that it may involve an element of “rehearsal” of evidence, with the potential for memories to be tainted or, in some cases, may lead to accounts being altered following certain matters coming to light in the course of an investigation. This risk is not to be overestimated, and should not inhibit an investigator under the policy. It is also to be considered that the risks may be mitigated by the introduction of certain safeguards, for example, video or tape-recording interviews with key witnesses (including an alleged perpetrator), such that the recordings are available to any subsequent investigation and, in general, ensuring that detailed notes are taken throughout the process and that the evidence given at any hearing is properly recorded (by tape recording, for example).

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36 See for example the Guidance for higher education institutions: how to handle alleged student misconduct, 21 October 2016 <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/guidance-for-higher-education-institutions.aspx>

40. It follows from the above that the risk that an internal investigation under the policy may prejudice the evidence available to a criminal investigation and possibly a prosecution may be adequately managed and should not be overstated.

41. Notwithstanding the discussion above, it may be that in certain exceptional circumstances practical considerations mean that it is preferable to postpone disciplinary proceedings behind a criminal investigation, in particular in the most serious cases. For instance:

- i. An alleged perpetrator may not wish to cooperate with any internal investigation on grounds that it may generate inculpatory material in respect of his or her case, or may require him to disclose at an early stage details of his or her defence to an allegation.
- ii. A potential complainant may fear that any prior internal investigation poses an unacceptable risk of tainting the available evidence and jeopardising any future criminal proceedings.
- iii. Either party may consider that there is an unacceptable risk of the confidentiality of the process being breached and attracting the attention of the media.
- iv. It may be considered that, in any event, disciplinary proceedings should take into account the outcome of a criminal investigation and/or a prosecution: for example, there may be certain advantages to commencing disciplinary proceedings following the conviction of a person for a sexual offence (for example, avoiding the need to conduct any internal investigation and risk re-traumatising a victim).

## Summary of Conclusions

42. It follows from the above that our conclusions may be summarised as follows:

- i. Disciplinary proceedings and criminal proceedings are wholly distinct in their purposes and procedures.
- ii. There is no reason in principle why an internal investigation cannot be carried out prior to any criminal investigation or prosecution.
- iii. There is no particular procedural (or other) significance to a decision by a complainant to report a matter to the police, so far as parallel disciplinary proceedings may be concerned.
- iv. Equally, there is no significance per se, in respect of criminal proceedings, to a decision not to commence an internal investigation.
- v. There are minimal risks in an internal investigation preceding a criminal investigation, provided sensible steps are taken to ensure that the investigation is properly documented and the evidence of witnesses is recorded and retained.

- vi. In some exceptional circumstances there may be practical reasons why it is preferable to adjourn disciplinary proceedings which are likely to become the subject of a criminal investigation.
- vii. As the policy rightly envisages, detailed and reliable records of the proceedings should be taken and preserved.

43. We hope that what we have written above is helpful but we would, of course, be happy to address any questions arising in conference.

**6KBW College Hill**  
**EC4R 2RP**

**David Perry QC**  
**Katherine Hardcastle 29 June**  
**2018**

## Annex F—Announcement and Terms of Reference of the Inquiry into the Bullying and Harassment of House of Commons Staff led by Dame Laura Cox QC

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Dame Laura Cox QC Appointed to Conduct Independent Inquiry into the Bullying and Harassment of House of Commons Staff

Dame Laura Cox DBE QC has today been appointed to conduct the independent Inquiry into the Bullying and Harassment of House of Commons Staff.

Her appointment follows a decision by the House of Commons Commission on 19th March to task its two non-executive and non-Parliamentarian members, Jane McCall and Dame Janet Gaymer, with identifying an independent expert to look at the issue and agree suitable terms of reference for the Inquiry.

The findings of Dame Laura's inquiry will be laid before the House of Commons. It is hoped that preliminary findings will be available before the summer recess with a final report produced in the Autumn.

The Inquiry will consider issues impacting directly on House of Commons staff (those employed directly by the House of Commons rather than by Members of Parliament). It is an inquiry, not an investigation. Dame Laura will not be investigating any individual complaints or reopening past cases. The Inquiry will, however, consider what options are available for resolving current or historical allegations and the support available to those affected. No Parliamentarians will be involved in the conducting of the Inquiry.

Dame Laura has today written to all current employees of the House of Commons asking them to come forward with any information as to perceived bullying or harassment. Those House staff, both present and past, who have experienced it, or have information about it, will be able to submit written information to Dame Laura directly, by email or post, and to speak to her in private and confidential meetings to be arranged.

No contributor to the Inquiry will be identified and all submissions will be treated in complete confidence.

Announcing the appointment, Dame Janet Gaymer said:

“In appointing someone of the calibre and expertise of Dame Laura Cox, we are demonstrating our intention that those working for the House of Commons can be confident that the appropriate processes are in place to ensure that they are treated appropriately and fairly at all times.

“It is vitally important that this Inquiry is wholly independent of any political or parliamentary influence so that everyone can be assured that it is conducted fairly and with the sole purpose of protecting those employed by the House”.

**ENDS**

## Notes to Editors:

1. **Dame Laura Cox DBE** served as a Justice of the High Court from 2002 until her retirement in November 2016. She was previously the Head of Barristers' Chambers at Cloisters in the Temple, London, where she specialised for many years in equality law and employment law. She was appointed as Queen's Counsel in 1994 and appeared in many of the leading cases in her specialist areas in both domestic and European courts. Serving on the Bar Council, she was instrumental in ensuring the effective implementation of the first Equality Code for the Bar.
2. In addition to advising and representing both employees and employers in numerous court cases involving harassment at work, and subsequently hearing appeals in such cases as a judge, she has carried out a number of investigations in cases involving such allegations. In December 2002, Dame Laura received a "lifetime achievement" award from the organisations 'Liberty' and 'Justice' for her commitment to equality and human rights over 25 years at the Bar. She is a Bencher of the Inner Temple and an Honorary Fellow of Queen Mary, University of London.
3. In 2017 she accepted an invitation from the Fawcett Society to chair a panel of equality experts, reviewing the scope and effectiveness of our current gender equality laws. The report, addressing a broad range of issues and making many recommendations for change, was published earlier this year to considerable acclaim.
4. Since her retirement from the Bench, she has re-joined Cloisters as an Associate Tenant and will run the independent Inquiry from her office there.
5. Current and past employees of the House of Commons who wish to raise matters of relevance to the Inquiry are being invited to submit written information and, if so wished, to seek a meeting with Dame Laura via her office at Cloisters by 8th June 2018.

**The Inquiry's Terms of Reference** are as follows:

### Objectives

The objectives of the inquiry are—

- to establish the nature and extent of bullying and harassment (including sexual harassment and any systemic behaviours) of past and present House of Commons staff;
- to identify any themes and patterns regarding how previous complaints about such behaviour were handled or how complainants were treated, or, if no formal or informal complaint was made, the reasons for this;
- to assess previous, existing and any proposed policies and procedures relating to bullying or harassment and to complaints about such behaviour, comparing them to current best practice, with a view to making any

recommendations for improvement in the way in which such complaints are handled or will be handled in the future, including the availability of appropriate internal or external support; and

- to consider and comment upon the House of Commons as a place of work with regard to ensuring the treatment of staff with dignity and respect and maintaining an open and supportive culture.

### Scope and Methodology

- The Inquiry will invite past and present House of Commons staff and others with relevant perspectives (including staff representatives) to offer in person or in writing their experiences of perceived bullying and harassment, including sexual harassment.
- All contributions will be treated in strict confidence and will not be published or liable to release. Any references to such information in any Report arising from the Inquiry will be anonymised. No individual will be identified or identifiable.
- It is not the purpose of the Inquiry to reopen past complaints of bullying or harassment or to investigate new ones against particular individuals. It is hoped that the opportunity offered to House of Commons staff to reflect on the House of Commons as a place of work and to present their experiences to an independent third party in confidence may help them to achieve closure, where appropriate.
- No existing route of complaint open to staff will be affected by the Inquiry, and those submitting experiences will be given details of any existing routes which may be pursued, and of available support or counselling services or other pathways for the resolution of such complaints.
- The Inquiry will be provided with all necessary resources under the auspices of the two non-executive members of the House of Commons Commission, who will provide any necessary guidance and support as requested by the Inquiry in order to help it achieve its objectives.
- The Inquiry will aim to present preliminary findings to the House of Commons before the summer recess, depending on the numbers of people who come forward, and a Final Report as soon as reasonably practicable thereafter.

**THE BULLYING AND HARASSMENT OF HOUSE OF COMMONS**

**STAFF**

**INDEPENDENT INQUIRY REPORT**

**DAME LAURA COX DBE**

**15<sup>th</sup> October 2018**

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### **Statement from Dame Laura Cox**

*“We are proud to work in the House of Commons, but when we are abused those who lead us should support us, not abandon us to our fate and cover up the traces. And those who abuse us should be held accountable. Establishing a new complaints and grievance process won’t come close to solving the problems in this place. We need a seismic shift. But the institution is worth fighting for.”*

*Member of House of Commons staff*

These words, spoken by someone employed by the House, reflect the very essence of the views expressed by so many who contributed to this inquiry:

- the sense of pride that members of staff feel in working for the House of Commons;
- the lack of support given to those who have been bullied, harassed or sexually harassed;
- a culture that has actively sought to cover up such abusive conduct;
- a palpable lack of protection for individuals reporting such abuse;
- a lack of accountability for that abuse; and
- the belief that a new complaints process will not begin to solve these problems.

Abusive conduct of this kind is pervasive and no workplace is immune, but the culture in which it has been able to take hold in the House of Commons and the ineffective mechanisms for dealing with it make this a particularly serious case.

The nature and extent of the allegations of bullying, harassment and sexual harassment, made against other members of House staff as well as against some Members of Parliament, are disturbing, and the effects of such misconduct have been exacerbated by the inadequate procedures in place to tackle them. Extensive experience in the field of employment law over several decades, involving many

different public and private sector employers, marks the House out as a stark reminder of how bad things used to be.

Throughout this inquiry I have been struck by the professionalism, care and thoughtfulness of those who contributed. These were not people set on revenge or out to malign either individuals or the reputation of the House itself. Those present or former members of staff who came forward care very deeply that the place regarded as the heart of our democracy is failing to live up to the standards to be expected of any 21<sup>st</sup> century workplace.

And “workplace” is the appropriate term. While some contributors were at pains to point out that the House is a “*unique institution*,” ultimately, it is a place of work. Admittedly it has some unusual features, but it is a place where over 2,000 people are employed and to whom their employers owe a duty of care.

Members of Parliament are elected representatives, but their mandate does not entitle them to bully or harass those who are employed in the House to support and assist them.

Amongst current and former staff alike there is an obvious pride and affection for the House and its status. Working there is, for many, a privilege – whether as a member of House staff or as an elected Member of Parliament - and there is an expectation of loyalty to the institution they serve. But that sense of loyalty has been tested to breaking point by a culture, cascading from the top down, of deference, subservience, acquiescence and silence, in which bullying, harassment and sexual harassment have been able to thrive and have long been tolerated and concealed.

This is not to demonise the entire institution, but unacceptable behaviour by some, whether elected Members or House staff, inflicts damage on everyone and undermines the legitimacy and authority of the House of Commons. Parliament is diminished.

In attempting to deal with these issues to date and in establishing this inquiry, I believe that many people have acted with the best of intentions. And I do not believe that the problems are insurmountable. But these are urgent and serious problems that the House now needs to tackle properly, once and for all.

Underpinning all the recommendations in this report is the need for broad cultural change in the House and the need to restore the trust and confidence of the staff and of the wider public. Delivering fundamental and permanent change will require a focus and a genuine commitment on the part of the leadership of the House. However, the inescapable conclusion from the views expressed during this inquiry is that it will be extremely difficult to build confidence that there will be fundamental change when the levers of change are regarded as part of the change that is needed.

Whoever is ultimately responsible for delivering this change, there has to be, at the outset, an honest and open acknowledgment at senior level of the failings of the past and of the need to rebuild trust and restore the confidence of all those who work for the House.

I would like to express my gratitude to everyone who has contributed to this inquiry. I hope they feel that this report does justice to their contributions. I emphasise that this has been an inquiry into the nature and extent of the problems, not an investigation into individual allegations. Contributions have been made in confidence, in accordance with agreed terms of reference, but the quantity and quality of those contributions provides a firm basis for the findings and recommendations made.

There is now an institutional responsibility to act to restore public confidence in the central institution of our representative democracy. The findings in this report and the recommendations made will, I hope, be of real assistance in that task. My duty, at the end of this independent inquiry, is to lay this report before the House. In doing so, it is now for others to consider its contents and the recommendations made.

For those looking to see if changes are being made over the coming weeks and months, I would suggest that they look for progress as regards the following fundamental recommendations, which merit urgent consideration without waiting for the six month review of the new Independent Complaints and Grievance Scheme, which is due to take place in January 2019:

- The “Valuing Others Policy” and the “Revised Respect Policy” should both be abandoned as soon as possible, and members of House staff wishing to complain about bullying, harassment or sexual harassment should no longer be required to use them.
- The new Independent Complaints and Grievance Scheme should be amended, so as to ensure that those House employees with complaints involving historical allegations can access the new Scheme.
- Steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.

Laura Cox

October 2018

## **A. Introduction and Terms of Reference**

1. The House of Commons Commission is the statutory body responsible for the administration and services of the House of Commons. Chaired by the Speaker, as the Chief Officer and highest authority in the House, it comprises several Members of Parliament, the Clerk of the House as its principal constitutional adviser, the Director General, and two external non-executive directors. The Commission provides the strategic and supervisory governance of the House, but the day to day management of the services provided is the responsibility of the Commons Executive Board, on which sit the Clerk of the House, the Director General and the senior managers heading the various teams and offices in which the staff all work. In all there are around 2,300 members of staff, who work across the House in all its different areas alongside the 650 MPs whom they support.
  
2. As elected representatives Members of Parliament are not employed by anyone, but are generally regarded as individual office holders. They perform important work, for which they receive a salary and expenses, paid by the Independent Parliamentary Standards Authority.
  
3. The House staff are not civil servants but are employed by the House of Commons. They are formally appointed by the Commission, which is responsible for their pay and conditions but delegates to the Board the task of ensuring that staff terms and conditions are consistent with the Commission's statutory duties. The House of Commons Administration Act 1978 provides that those terms and conditions must be kept broadly in line with the Home Civil Service. The Staff Handbook states at Chapter 2, paragraph 1.2 that, "*Parliamentary staff are excluded from some aspects of employment legislation. However, wherever reasonably practicable, the House seeks to reflect the provisions of employment law even in cases where the legislation does not strictly apply.*" The

employment provisions of the Equality Act 2010 apply expressly to staff employed in the House of Commons.

4. The staff of the House also perform important work, and they do so in a wide range of roles providing, with complete impartiality, specialist, executive, administrative and key support services. Their work, professionalism and expertise are essential to the smooth running of every aspect of the functions carried out in the House of Commons. As the House Governance Committee observed, in their report of 17 December 2014, *“The staff of the House are its most important resource.”*
5. That sentiment now sits uneasily with news reports in March 2018 of serious allegations of bullying and sexual harassment being made against some male MPs by members of House staff, almost all of them women, and of a culture in which staff have been unsupported, expected to put up with it and without effective procedures in place to air their complaints. No workplace is immune from pervasive misconduct of this kind and it was perhaps not surprising that such allegations had emerged in the world of politics, where the inherent imbalance of power creates obvious vulnerabilities. The reported allegations have all been denied. Nevertheless, the nature and scale of the reported abuse and of the lack of support were disturbing and a matter of serious concern.
6. On 19 March 2018 the Commission decided that there should be an inquiry into the nature and extent of bullying and harassment, the procedures available to address them and the general culture of the House as a place of work, the “culture” referring to those unspoken norms existing in any organisation, that define behaviours, shape attitudes and direct people’s thoughts and actions.
7. It was agreed that this inquiry should be carried out independently. The tasks of appointing someone to conduct the inquiry and of agreeing

appropriate terms of reference were therefore delegated to the two non-executive members of the Commission. On 23 April I was appointed to conduct this inquiry and asked to lay my report before the House at its conclusion.

8. I bring to this inquiry what I regard as valuable experience, in terms of service as a member of the High Court judiciary, an extensive background in employment and equality law and many years' experience of representing, advising and training both employers and employees on bullying and sexual harassment in the workplace and on the policies, procedures and leadership skills required to address these issues effectively. I have drawn on this experience in considering all the information provided to this inquiry and in making recommendations about what needs to be done.

#### **Terms of Reference**

9. The agreed terms of reference for this inquiry are as follows:

#### **Objectives**

*The objectives of the inquiry are –*

- *to establish the nature and extent of bullying and harassment (including sexual harassment and any systemic behaviours) of past and present House of Commons staff;*
- *to identify any themes and patterns regarding how previous complaints about such behaviour were handled or how complainants were treated, or, if no formal or informal complaint was made, the reasons for this;*
- *to assess previous, existing and any proposed policies and procedures relating to bullying or harassment and to complaints about such behaviour, comparing them to current best practice, with a view to making any recommendations for improvement in the way in which such complaints are handled or will be handled in the future, including the availability of appropriate internal or external support; and*

- *to consider and comment upon the House of Commons as a place of work with regard to ensuring the treatment of staff with dignity and respect and maintaining an open and supportive culture.*

### **Scope and Methodology**

- *The Inquiry will invite past and present House of Commons staff and others with relevant perspectives (including staff representatives) to offer in person or in writing their experiences of perceived bullying and harassment, including sexual harassment.*
- *All contributions will be treated in strict confidence and will not be published or liable to release. Any references to such information in any Report arising from the Inquiry will be anonymised. No individual will be identified or identifiable.*
- *It is not the purpose of the Inquiry to reopen past complaints of bullying or harassment or to investigate new ones against particular individuals. It is hoped that the opportunity offered to House of Commons staff to reflect on the House of Commons as a place of work and to present their experiences to an independent third party in confidence may help them to achieve closure, where appropriate.*
- *No existing route of complaint open to staff will be affected by the Inquiry, and those submitting experiences will be given details of any existing routes which may be pursued, and of available support or counselling services or other pathways for the resolution of such complaints.*
- *The Inquiry will be provided with all necessary resources under the auspices of the two non-executive members of the House of Commons Commission, who will provide any necessary guidance and support as requested by the Inquiry in order to help it achieve its objectives.*
- *The Inquiry will aim to present preliminary findings to the House of Commons before the summer recess, depending on the numbers of people who come forward, and a Final Report as soon as reasonably practicable thereafter.*

### **B. Participation and Patterns**

10. This inquiry has been conducted entirely independently and without any political or parliamentary involvement or influence. I have had contact throughout only with the two non-executive members of the Commission, and only in respect of any necessary administrative matters. In accordance with the terms of reference, current and former members of House staff were invited to provide information to the inquiry in

complete confidence. After the original announcement as to the inquiry and its terms, a personal message was sent out in early May in which I encouraged all staff to participate and explained the arrangements for the inquiry.

11. All the information from those coming forward has been dealt with in strict confidence, in accordance with the terms of reference. Private meetings were held away from the parliamentary estate. I had some independent administrative assistance to assist with arranging those meetings, but that person did not attend them. I have complied with the GDPR provisions in respect of all the data submitted and appropriate privacy notices have been provided.
12. The extent to which it was possible to invite former House staff to participate depended on the accuracy of the contact details retained on the House database. This went back only as far as 2012, but I am assured that everyone who was on the database was contacted. In the event, I also received information from people who had left their employment before 2012, but who had heard about the inquiry from other sources. Those members of House staff who had signed settlement agreements or non-disclosure agreements when they left were also invited to participate and a number did so, on the basis that this was a confidential process.
13. There has been extensive engagement with this inquiry from both current and former members of staff. The reliving of traumatic experiences can be painful and distressing and I am extremely grateful to everyone who came forward and provided such helpful information and observations. The large number of people who wished to contribute and the sheer volume of information they provided was such that the information gathering phase of the inquiry continued until the end of July. It was therefore not possible to present any preliminary findings before the

House rose for the summer recess, as was originally contemplated in the terms of reference.

14. I have received information from over 200 people. A number of those people provided information not only on behalf of themselves but also on behalf of others in the team or office where they are currently employed, and with their knowledge and consent. I also received information from Workplace Equality Networks in Parliament and from trades unions on behalf of identified members.
15. The total number of contributors to this inquiry, including those who gave information and made their views known indirectly in this way, is therefore considerably higher. Only one person chose to provide information anonymously. I should record, in addition, that some staff expressed regret for being unwilling to come forward, either because they found their experiences too upsetting to relate and relive, or because they were afraid of losing their job, despite the assurance as to confidentiality.
16. The information came from present or former staff members working at all levels and pay grades, from the most senior members of staff at SCS grades, through grades A to E and the catering grades. And it came from staff employed across the House in all the different teams and offices, including:
  - Chamber and Committees;
  - Communications;
  - Corporate Services;
  - Governance;
  - In-House Services;
  - Participation;
  - Private Offices;

- Research and Information;
  - Strategic Estates; and
  - The bicameral offices for Parliamentary Security and the Parliamentary Digital Service.
17. The contributions therefore contained information from across the House, from staff working at all levels, as to the prevailing culture in the House, incidents of alleged bullying, harassment and sexual harassment, the availability of support for those subjected to such treatment, the adequacy of complaints procedures and views about necessary changes.
  18. The contributions described allegations not only against some MPs, but also against members of House staff. None of those allegations was based on hearsay. The accounts given related to incidents in which the contributors had themselves been directly involved, or that they had witnessed happening to others. Many of those coming forward have worked, or had formerly worked in the House for many years.
  19. The majority of the contributors, approximately 68%, were women. And 70% of the contributions came from staff currently employed in the House. The majority of the former members of staff who came forward had left the House within the last 10 years. Some information came from staff who had either previously worked for, or had left the House to go and work for large public or private sector organisations, and who were able to contrast the problems existing in the House with their experience of those other organisations.
  20. A small number of individuals were external contributors. They included people who had witnessed incidents of bullying and harassment, or who had experience of working with Members of Parliament or House staff over a sustained period and were able to offer some useful insight, both as to particular events and as to the general culture. One current

Member of Parliament and one former Member independently contacted the inquiry, and each attended a meeting and provided helpful information. I should emphasise that neither of them was involved in any of the allegations featuring in the news reports.

21. Throughout this report I have referred variously to ‘the senior administration’, ‘senior managers’, ‘senior levels of management’, ‘the House authorities,’ the House leadership’ or other similar phrases. In doing so, unless the context indicates otherwise, I am referring collectively to all the offices of leadership within the House including, predominantly:
  - the Clerk of the House;
  - the Director General;
  - the Executive Board;
  - the House of Commons Commission;
  - the Speaker’s Office.
  
22. I also received some helpful information on legal issues relevant to the terms of reference from the Equality and Human Rights Commission (EHRC) and from the Centre for Women’s Justice (CWJ). The CWJ contributed information on behalf of a group of women still employed or formerly employed by the House, each of whom had already provided information individually and independently. Neither the EHRC nor the CWJ were aware of any of the confidential information provided to the inquiry by those who participated.
  
23. I emphasise that this has been an inquiry, not an investigation. The allegations of bullying and sexual harassment featuring in the news reports have been denied. Disputed allegations require due process and a fair hearing for both sides in order to determine the facts, and I am not in a position in this inquiry to determine or re-open any individual complaints. Nevertheless, the number and wide range of the

contributions have yielded a great deal of information and some invaluable insights. They also revealed some clear patterns and themes. They provide, in my view, a sound basis for the findings and recommendations set out in this report.

24. Throughout this report, I have included a number of direct quotes from contributors, which are italicised. These put into words, better than my own, the depth of feeling and the genuine concerns of those employed by the House. Each quote is generally representative of views that many others also expressed.
  
25. In accordance with the assurance as to confidentiality, there is nothing in this report which could lead directly or indirectly to the identification of any contributor. The giving of information in confidence in this way is sometimes criticised as providing a platform for malevolence, or for revenge attacks by disgruntled employees. The compelling counter-argument however, as is now well understood, is that people who have been bullied or sexually harassed, or who have seen this happen to others, are generally reluctant to come forward and report it. People with genuine concerns or complaints, or who fear for their jobs or for their well-being, may not speak out unless they can speak in confidence. And we should also bear in mind that employees who are not operating at the senior levels of an organisation see things rather differently in this respect from those who are.
  
26. That does not mean that I did not examine all the information provided with appropriate rigour. Forensic experience over many years facilitates the assessment of accounts untested by cross-examination in an adversarial system. However, a feature of this inquiry has been the remarkable consistency in discrete accounts, in relation both to particular incidents and to more general themes and views. And in a number of cases I was shown contemporaneous documentation including, for

example, email threads, diary entries or exit interviews, which tended to support accounts concerning specific incidents.

27. Overall, the information given to the inquiry has been detailed, thoughtful and measured. There was a general lack of exaggeration and a willingness to acknowledge personal failings on occasion, which indicated some careful reflection. In general terms everyone who attended meetings spoke freely and frankly. People welcomed the opportunity to speak about matters and were fully cooperative. Much of what they had to say reflected the pride that members of staff have in working for the House and in the service they provide, but that generally served to emphasise the level of resentment and unhappiness that only now have they felt able to air what are clearly long-standing and serious concerns.
28. There were just six individuals who described entirely positive experiences in their time as members of House staff, and who were anxious that *"the whole institution should not be demonised"* as a result of the reported allegations. That is clearly right and I am sure that there are many others who hold that view. As might be expected, I heard glowing tributes paid to the skills and leadership abilities of some line managers, formerly or presently employed in the House. And individual contributors readily acknowledged that the vast majority of Members of Parliament are, and have in the past been hard-working, conscientious, courteous and entirely respectful of the House staff. I heard glowing tributes paid to some of them too.
29. Yet, as the Nolan Committee observed in their report in 1995, not only must Members of Parliament maintain the highest standards of conduct, but *"it is essential for public confidence that they should be seen to do so."* Misconduct by some inflicts serious damage on the dignity and standing of the House as a whole and contributes to the undermining of its legitimacy and authority. Bullying, sexual harassment and the abuse of

power by some MPs damages the reputation of them all. And the bullying or harassment of staff by some managers, or their failure to prevent or deal with such misconduct by others, can rapidly become contagious if the culture of the organisation allows it to go unchecked.

30. The unhappy fact is that the overwhelming majority of contributions, from staff working across the House, reveal widespread, enduring and profound disaffection with a culture that is as embedded as it is shocking. They indicate that bullying, harassment and sexual harassment of members of staff, both by other members of staff and by some MPs, has been known about and tolerated for far too long, despite efforts by some, including recognised trade unions, to persuade the senior administration to take it seriously. Rather than professional, collaborative relationships of mutual respect and an open and supportive atmosphere, such misconduct has been able to thrive over many years, and to become entrenched as part of an excessively hierarchical, 'command and control' and deferential culture, which has no place in any organisation in the 21<sup>st</sup> century.
31. This is defined by a collective ethos at the senior levels of the organisation, which sets the tone for a culture that permits abuse. The acquiescence of senior management, the institutional minimising of complaints, the lack of effective procedures to address them, and the lack of support for those targeted for such treatment has resulted in the stifling of potential, the blighting of careers and the loss of talented and dedicated employees, many of them women. And the information reveals that the problems are continuing. This is not a problem of the past.
32. Many of those providing information regard the culture in the House as essentially unchanged over many years. More worryingly for the House, they regard it as unlikely to change in the future. The optimistic belief

proffered by a small number of contributors, that the problems of bullying and harassment in the House were probably no worse than those in *“the average public or private sector organisation,”* was undermined by those with experience of employment in such organisations. Others saw this belief as a further example of the high degree of *“denial and complacency”* said to exist at the most senior levels of management. And many people considered that Parliament should be leading the way, irrespective of what happens in other organisations. Many expressed frustration with what are seen as repeated failings at the most senior levels of the House to commit to tackling these issues and to take action, rather than merely to promise change, produce *“tick-box”* policies and then just allow everything to return to normal.

33. Some attributed these failings to a lack of understanding of the importance and the impact of bullying and harassment, on the part of some of those in senior management who have never worked anywhere else, and who have continued to function while *“20<sup>th</sup> century employment rights and our changing society have passed by unnoticed.”* Whatever the reasons, however, one person summarised the views of many in observing that, *“in senior management you have people who don’t want to rock the boat, people who want to tell you their own perspectives about being previously bullied themselves, as if that’s supposed to make you feel better, and people who will write high level papers on the issue and pontificate about zero tolerance and unacceptable behaviour, but none of them will actually tackle it personally at local level.”* For some members of staff there is a genuine desire for something positive to come out of all this, but others regard this inquiry with a sense of resignation and world weariness, and as unlikely to effect any real change. The House is undoubtedly presented with a serious challenge.
34. I start by describing the context for this inquiry, including events leading up to it and the further developments since it began. I do so because

they are highly relevant to the House of Commons as a place of work, the general culture that has been described by those contributing and the recommendations I make for change.

### **C. Context and Culture**

#### **The House of Commons as a Place of Work**

35. There had been earlier news reports appearing in October 2017, which referred to allegations of bullying and harassment against some MPs, made not by House staff but by members of staff directly employed by MPs at Westminster. Once again most of the complainants were women. The Independent Parliamentary Standards Authority is responsible administratively for paying the salaries of such staff, the costs being paid through each MP's staffing expenditure budget, but each MP is the official employer of any staff engaged to assist them with their parliamentary duties.
36. Allegations and denials of misconduct filled the airwaves for a few days. However, what was not in dispute, and what emerged as perhaps the most troubling and surprising aspect of these reports, was the fact that there was no responsible HR department and no policy or complaints process in place, to which any of these directly employed members of staff could have recourse if they were bullied or sexually harassed by the MP for whom they worked. Further, the Code of Conduct for Members of Parliament was silent on the specifics of this type of misconduct.
37. Another element emerged. The people making these allegations spoke of their profound fear of complaining about such abuse, irrespective of any procedures that might be put in place. This fear of being disbelieved, of losing their job, of being unsupported, isolated and ostracised, and of struggling to find work again after being branded a "troublemaker" all

compounded the original allegations of abuse. And this “culture of fear” has found echoes in many of the contributions to this inquiry from the House staff.

38. These original reports, and calls for a complaints procedure that was credible, enforceable, accessible, transparent and independent, were met by strong statements in the House as to “*zero tolerance*” of bullying and harassment, and as to the need to ensure that everyone who worked in the House was treated with respect and dignity, and that there were proper complaints procedures in place together with effective support mechanisms for complainants.
39. Speaking in the House on 30 October 2017, the Leader identified an “*urgent issue*” needing to be addressed, and observed that “*...the public expect MPs to display the highest standards.*” On 14 November a cross-party, bicameral Working Group, chaired by the Leader, was convened by the Prime Minister to establish “*a new independent complaints and grievance procedure.*” Some interim measures were announced relating to the provision of HR advice and support for staff who requested it.
40. Over the following three months, as set out in their report, the Working Group received information from “*parliamentary officials and employees, MPs, Peers, staff of MPs and Peers, parliamentary bodies, unions, academics, experts on sexual violence and lawyers.*” In addition, a short survey was commissioned, which was open to “*a wide range of people working in or with Parliament.*” This survey, together with the surveys of MPs’ and Peers’ staff and the other information before the Group, revealed that the scale of the problem was significant. The Group arrived at the shocking conclusion that “*...bullying, harassment and sexual harassment have been a feature in the lives of many who work in or with Parliament.*”

41. The Group also acknowledged the *“well-documented risk of under-reporting by those experiencing sexual or other forms of harassment or bullying,”* and referred to the lack of confidence among staff that any complaint *“would be dealt with satisfactorily.”* The Group emphasised the need for appropriate support to be provided to all those involved in the new complaints system, and for confidentiality to be maintained. They concluded that *“a change in workplace culture is both urgent and essential.”*
  
42. While the impetus for this work was the bullying and harassment alleged by staff employed directly by MPs, the Working Group clearly became aware of similar problems affecting staff employed by the House of Commons. The view of the Group was that the new complaints scheme to be devised should eventually apply to everyone who worked in the House, thus including all members of the House staff. However, whereas staff employed directly by MPs had no complaints procedure at all available to them at that stage, the Group understood that if House staff wished to complain about being bullied or harassed by an MP they were able to use the *“Respect Policy”* currently in force as part of their terms and conditions of employment. And for complaints of bullying or harassment in internal staff relations there was a separate policy available, known as the *“Valuing Others Policy.”* As regards the Respect Policy, the Group’s understanding at the time was apparently that the Policy was working well and that the House staff were satisfied with it.
  
43. The information provided to this inquiry shows that this was certainly not the case. Both the Valuing Others Policy and the Respect Policy, which was first introduced in 2011 and then revised in 2014, have been the subject of extensive criticism, as will appear later on in this report. So far as the Respect Policy is concerned, it became clear at an early stage in this inquiry that the vast majority of those coming forward had no confidence in it whatsoever, and that this had been the position for a

number of years. Only three people considered that it “*struck a good balance,*” or that it was “*essentially sound.*” Nobody else has advocated either its effectiveness or its retention. And in my view it is a wholly ineffective policy, for reasons which will appear later on. In fact, the policy does not specifically address sexual harassment. And for those who described being bullied the general feeling has been that, “*to invoke the Respect Policy was viewed as a symptom that you were weak and unable to deal with MPs. It would have been career suicide.*” For people subjected to serious or sustained bullying the Policy is considered “*utterly hopeless*” and “*dead in the water,*” and staff have been choosing not to use it to raise complaints. There was candid acceptance by some senior members of staff that “*Respect 2014 was doomed from the start*” or was “*tainted beyond saving.....a fatally damaged brand*” and that they had known this for some time.

44. Yet in February this year the Working Group took the view that “*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.*” It was acknowledged that the omission of sexual harassment from its terms required urgent correction. But the decision at this stage was that, since further consultation with the recognised trade unions would be needed to amend the Respect Policy and to enable House staff to be covered by the new scheme, the Respect Policy was to remain in force for the use of House staff, pending their eventual assimilation into the new complaints scheme. As will also appear later on, defects in the Respect Policy have unfortunately been replicated in the new Complaints Scheme published in July this year.
45. The Group’s agreed report and recommendations were published on 8 February 2018. The Leader presented them to the House on 28 February.

46. They recommended that there should be: (1) a new Behaviour Code covering bullying and harassment and sexual harassment, that applied “*to all persons working for or with Parliament, or who are lawfully on the parliamentary estate;*” (2) an independent complaints and grievance scheme to underpin the Code, with associated policies, appropriate sanctions and the contractual and procurement arrangements necessary for delivering the scheme; (3) particular procedures to deal with reports of sexual harassment; and (4) a system of training to support the Code. There were recommendations too for an HR support service for staff employed directly by Members of Parliament or jointly by political parties, to be delivered by a third party provider, and for a handbook to be available for these members of staff; and for the identification of any necessary amendments to Standing Orders and to the Code of Conduct for Members.
47. During the debate in the House on 28 February there was frank acceptance by some MPs that the culture of an organisation was the responsibility of its leaders, that there had been “*a failure of our own governance*” and that “*a culture of tolerance towards bullying and harassment had become embedded and left substantially unchallenged until now.*” There were repeated references to the need for Parliament to lead the way and to set the example in relation to ensuring dignity at work for everyone. The need for there to be public confidence in the standards imposed, together with “*rigorous implementation*” and “*rigorous monitoring*” was repeatedly emphasised, as was the need for MPs to be offered appropriate training on these issues and to be persuaded to attend it. Some noted that those who were most resistant to such training were often those who most needed it.
48. At the conclusion of the debate the House approved and endorsed all the recommendations and asked the Commission to authorise House officials to undertake the work necessary to implement them, reporting regularly

to the Steering Group (comprising most of the members of the original Working Group). The Steering Group decided that all the necessary work should be completed urgently, with a view to the new Code, policies and complaints scheme all being presented to the House for approval and adoption before the House rose for the summer recess in July.

49. In welcoming the Working Group's report in his published letter to the Leader of 27 February, the Chairman of the Committee on Standards sounded a note of caution in these terms, "*....The standards system has evolved as a series of reactive measures, the new arrangements will likely work alongside existing systems, and it will be important that care is taken to address overall coherence. It should be a priority that the new aspects generate confidence that complaints will be dealt with fairly and impartially.*"
  
50. The reference to "reactive" measures reflects the fact that measures to address misconduct by MPs have been implemented ad hoc over the years, usually by way of response to discrete crises that enveloped Parliament for a time and resulted in calls for change. In recent years the "cash for questions affair" in the mid-1990s, led to the formation of the Nolan Committee to review standards in public life and the arrival of the Nolan principles of conduct for those holding public office. The subsequent "Parliamentary expenses affair" in 2008/9 led, ultimately, to legislation establishing the Independent Parliamentary Standards Authority as the wholly independent body now responsible for administering MPs' pay and expenses.
  
51. This reactive approach seems also to have been adopted in relation to staff issues in the House. The Respect Policy, in both its original 2011 and revised 2014 forms, was itself a reactive measure, introduced to deal with growing discontent about the bullying of staff by some MPs and the way in which complaints and complainants had been dealt with.

52. This cycle of repeatedly reacting to crises only after they have developed into crises, and sometimes only after unwelcome publicity, is a perilous approach to adopt for any organisation, but it is completely hopeless for a place of work. And the House of Commons, for all its unusual features, is ultimately a place of work for everyone, including MPs, their staff, and all the House staff appointed by the Commission.
53. The problems of bullying, harassment and sexual harassment in the workplace have been well documented and well understood for decades. The law reports bear testimony to the development of the jurisprudence in these areas, much of it the result of legislation by Parliament, the irony of which was not lost on many contributors to this inquiry. At common law a duty of care is owed to members of staff by those who employ them, to ensure their safety and dignity at work, and most employers have long had policies, procedures and training programmes in place to tackle this kind of behaviour.
54. Leaving aside the level of dissatisfaction with the Respect Policy, it is frankly astonishing that there was no formal or transparent mechanism in place to deal with complaints of bullying and harassment of House staff by MPs until 2011, and that there was nothing at all in relation to sexual harassment, even after revision in 2014. Even the Valuing Others Policy, governing the conduct of staff relations, was apparently introduced only in 2007. And in terms of effectively tackling the problems, neither policy is up to the task for a number of reasons, as will appear. The regrettable result is that over many years the procedures in place to prevent the bullying and harassment of staff, and to deal with it effectively if it occurs, have been both inadequate and ineffective.
55. Some regard this state of affairs as being due to *“a general lack of competence and understanding of the problem or of the need to do anything about it at the most senior levels,”* or to *“the glacial pace of any*

*changes in the House, and a devotion to process and language rather than to effectiveness.”* However, expert advice and assistance regarding bullying and harassment in the workplace has been readily available for many years now and the duty of care owed to staff should have prompted much earlier action. The vast majority of people coming forward lay the blame for this failure squarely on the culture that has long been in place in the House and that has governed every aspect of the work carried out there. The description of the House as an institution whose *“structure and leadership prevent the active resolution of such problems”*, or as having a *“working culture that is out of step with other working cultures and with where society is,”* and with a *“structure of the senior staff that is very dated – there is an aloofness”* reflect the general trend of the contributions.

56. Bullying, harassment and sexual harassment are insidious and pervasive. Misconduct of this kind, whether by Members of Parliament or House staff, needs vigilance and constant attention. Ensuring the safety and dignity of all those employed by the House, at every level and in every area, requires a pro-active and coherent approach. It requires a fully resourced, clearly visible, regularly monitored and updated programme of action, with detailed standards of behaviour and effective procedures aimed at preventing bullying and harassment in the first place and, if appropriate, nipping it in the bud when it occurs, and certainly before it deteriorates and becomes corrosive.
57. If there is a formal complaint, independent investigations must be carried out promptly and fairly, by people with specialist expertise, with a range of effective sanctions available for cases where the complaint is upheld. A pro-active approach requires easily accessible, reliable and confidential support mechanisms for both the complainant and the alleged perpetrator, right from the start and throughout any investigative process. And it requires regular, comprehensive and intensive training

programmes for everyone in the workplace, including focused leadership and management training, to ensure full understanding of and adherence to the standards and procedures in place. More than anything else, and essential to securing the trust and confidence of everyone concerned, a pro-active approach of this kind needs total, genuine and constant commitment to it at the very top of the organisation.

58. The information provided to this inquiry leads inexorably to the conclusion that there has been an institutional failure over many years to understand the need for such action and to commit to it, and a collective blindness to the developing seriousness of the situation. Putting it right will require a substantial investment of time, resources and personnel. The burden on the House to take effective action to turn this around is a heavy one, and the first step towards discharging it is a willingness to acknowledge the scale of the problem.
59. These institutional failings are symptomatic of the general culture that has long existed in the House, and that has led to the present inquiry. It is a culture in which bullying and sexual harassment can thrive. As one contributor expressed it, reflecting the views of many others, “...*in relation to bullying and harassment, the culture of the senior administration is generally to bury their heads in the sand, to hope that the problem goes away, to seek to ensure that there is the minimum of disruption to the business of the House, to cover backs, to cover up and to conceal problem behaviour, as necessary, to protect the reputation of the House rather than the safety of the individual, and to move the problem on elsewhere rather than tackle it head on. Gradually and inexorably more and more members of staff become disaffected. And because they are unsupported, bullying and harassment becomes normalised. A bubble of anger and discontent builds and then eventually bursts.*”

60. In relation to staff employed by the House, that bubble burst in March 2018, when the further news reports appeared of allegations of bullying and sexual harassment by some MPs, over many years, and of a culture of fear of reporting or complaining about it due to a lack of support from senior managers and a lack of faith in the procedures available. This time, however, the allegations came from female members of the House staff, a number of whom held or had previously held senior and responsible positions.
61. Many of those coming forward to this inquiry have stated that the media were in fact only reporting what people already knew had been going on for years. And plainly the warning signs had been there for some time. Just over three years earlier, in late 2014, the Governance Committee had noted in their report that the governance arrangements for the House had developed over time, often in response to particular issues or events, and that this had resulted in the complexities inherent in the House being *“compounded by layers of interventions which have built on and adapted what went before rather than rationalising or restructuring it.”* There had been three separate management reviews of the House since 1978. Governance and structural changes recommended by the Committee in 2014 have since been put into effect, including the welcome appointment of non-executive directors to the Commission, but the Committee had also emphasised in their report the need for the changes to the governance of the House to be underpinned by a change to the organisational culture.
62. This necessary cultural change had a number of aspects, many of which have also featured in the information given to this Inquiry, suggesting that little has in fact changed culturally either before or since 2014. They include problems caused by custom and deference, the hierarchical, siloed and inflexible nature of the House Service, a perceived *“gradist culture”* and a *“culture of aloofness”*; a general unwillingness to challenge

things robustly; a preference for consensus building accompanied by a clear lack of accountability; the general absence of an open and more collegiate working culture; a tension between the traditional approach of the “*guardians of the procedural*” and those seeking to introduce a more “*corporate management culture*”; and alongside this, a tension between the customer service approach now advocated (meeting the needs and wants of individuals and groups) and stewardship of the institution (protection of the wider good).

63. Diversity also plays an important role in all this. The Governance Committee noted that the House had “*struggled to make significant progress in respect of diversity*” at both Member and staff level and that, despite some progress in recent years, there was “*much more to do.*” In her report “*The Good Parliament*” in 2016, Professor Sarah Childs noted that the hierarchy of the institution remained “*disproportionately white, male and elite,*” and she recommended a number of steps to be taken as a blueprint for a more representative and inclusive House of Commons. There is clearly a great deal of good work being done in the House in terms of trying to improve diversity generally but still, in 2018, there is much more to do.
  
64. The benefits of embedding diversity and inclusion in the workplace are well-documented and are considerable, not least in ensuring that people are valued and treated with respect, leading to a better motivated workforce and a decrease in incidents of bullying and harassment generally. In terms of gender, although the disparity in the numbers of men and women working in the House is not significant, men are disproportionately represented on the Commission and the Executive Board and there are significantly fewer women working at the SCS grades. The view expressed by many was that “*management remains disproportionately influenced by a small number of individuals drawn from a limited number of public schools and the Oxbridge universities.*”

*The organisation of the institution remains traditionally hierarchical, with significant power held by MPs and by senior Clerks to the detriment of the lower grades and those employed outside of the Clerks' Department.... There is a calculated aloofness and a kind of sniffiness at anything external, which is part of the template for sustaining the institution and concealing its problems."*

65. In 2014 the Governance Committee concluded that there was a requirement *"...to move to an environment in which clarity and openness, in terms of decision-making and accountability, are the key elements."* Significantly, in the course of their work, they had received written submissions from House staff and held evidence sessions with over sixty staff members, offering them the option of anonymised submission, and thus providing a rare opportunity for staff to speak about the House as a workplace. While the focus then was obviously reform to the governance of the House, the Committee had noted the evidence of *"a lack of accountability and a tendency to pass the buck"* and they made the following observation: *"No system in which officials are encouraged to take responsibility and to be accountable for decisions delegated to them can work, if accountability becomes synonymous with blame. In our discussions with staff, we were told about some examples of disrespectful behaviour by a few Members. In the summer all parts of the House agreed to a new Respect policy covering both sides of the Member/staff relationship. We welcome this but policies alone do not solve cultural problems."*
66. Consideration of governance and structural arrangements in the House is well beyond the terms of reference for this inquiry. I have received a mix of views as to the success or otherwise of the new arrangements, including working relationships between members of the senior administration, the extent to which power is still retained by *"the old guard,"* the *"spans and layers of management"* exercise, said by some not

to be delivering a smaller group of better managers, and how these various factors may be said to be contributing to the current problems. Some suggest, for example, that *“the current corporate and customer service agenda”* has led to *“an increased and unhelpful level of subservience to MPs,”* and has led away from a public service ethos to *“an obsessive, pseudo-corporate, target-driven management style, where there is little room for humanity or empathy.”* Others believe that this agenda and the new arrangements have yet to be fully understood, implemented and bedded down before they can work successfully.

67. I express no view on these matters, but structural and governance arrangements have changed several times over the years, while the organisational culture has apparently remained firmly in place. Governance and structural arrangements alone do not account for the problems described to this inquiry.
68. The unique dynamic arising for consideration in this inquiry is the relationship between House staff and elected Members of Parliament. At their core bullying and sexual harassment are about power inequalities, which enable one person to exploit another. The mix of employer/staff relationships and political power structures in the House create an environment which requires firm handling and prompt action if staff are to be protected from abuse and supported when it occurs. Managing workload and political tensions in an adversarial environment can create obvious pressures and conflicts, but that does not excuse unacceptable behaviour of the kind described to this inquiry. At senior management level, the culture of tolerance towards bullying and harassment by some Members, and the failure to tackle it has influenced both the substance and implementation of the Respect Policy, in which many members of staff have no confidence.

69. For Members, the very individual nature of their role inhibits collective action to tackle misconduct of the kind alleged against some of their number. Once elected, it is essentially for each Member to decide how best to carry out their role and traditionally there has not been a great deal of information or advice available as to how to proceed. There will be party advice and guidance for new Members and there is general House guidance too in the form of the Members' Handbook, first provided in 2010 and updated last year. This draws attention to the various "mandatory standards" with which Members must comply, including adherence to the rules of conduct set out in the Members' Code of Conduct.
70. The "cash for questions" affair in the mid-1990s led the then Prime Minister to set up the advisory Committee on Standards in Public Life, which recommended the adoption of a code of conduct. The Code, first agreed by Resolution of the House in 1995 and amended on several occasions since then, applies to Members in all aspects of their public life. Until the arrival of the new Complaints and Grievance Scheme and Behaviour Code in July this year, the duties of Members under the Code have included "*a duty to uphold the law, including the general law against discrimination,*" and a duty to "*act on all occasions in accordance with the public trust placed in them*" and to observe the "*general principles of conduct identified by the Committee on Standards in Public Life...as applying to holders of public office.*"
71. These principles, the "Nolan principles," emphasised amongst others the need for the "Accountability" of Members for their actions and the need for "Leadership and example." But there was otherwise no focus in the Code on the personal behaviour of Members. As we shall see, that has now changed with the additional requirement in the Code that Members should observe the principles set out in the Behaviour Code including respect, understanding others' perspectives and courtesy.

72. In relation to what Members can expect from the House Service and to what is expected in return, the Handbook advised in 2010 that, *“House staff must treat Members with courtesy and respect. They must behave in a way that promotes dignity and respect at work at all times and under all circumstances. House staff are entitled likewise to be treated with dignity, courtesy and respect. Members must not discriminate against, victimise, harass or bully any member of staff.”* Aware of some of the problems that were happening, the guidance continued, *“Members should avoid public criticism of individual members of House staff since members of staff are not able to respond to such criticism publicly...Members can expect House staff to do what is asked of them as long as any request is one which is proper and reasonable within the parameters set by the House of Commons Commission, and that sufficient resources are available to meet it. House staff must refuse to comply with requests which conflict with House policy.”*
73. This guidance was repeated in 2017, with reference made expressly to the Respect Policy in the case of complaints by staff. Regrettably, the information given to this inquiry indicates that this guidance has not been heeded by some MPs, and, to compound the problem, that no effective action was taken when staff complained that they had been subjected to serious abuse.
74. I was provided with a copy of the comprehensive Strategy for the House Service for 2016 – 2021 and the current Corporate Business Plan for 2017/18. These published documents include admirable commitments to *“strengthen diversity and inclusion, leadership and management,”* to *“break down silos,”* to improve *“the level of public perception of the House of Commons”* and to *“create a working environment in which everyone’s contribution is recognised, rewarded and valued.”* There is express recognition that *“Staff of the House, at all levels, are essential to*

*the success of the organisation” and that steps must be taken “to ensure that they feel well trained and well supported.”*

75. However, many a strategy has been confounded by the culture in an institution, that subliminal mix of unspoken behaviours, mindsets, assumptions, motives and social and hierarchical patterns, which permeate every level and shape attitudes in enduring ways. People are effectively hard-wired to respond to it instinctively, and the more embedded it has become the more it is resistant to change. And leadership and culture are inextricably linked. In relation to bullying and harassment, it is not enough to proclaim a zero tolerance standpoint, or to draft strategies and policies recognising the value and importance of members of staff. Unless those in the most senior leadership roles acknowledge and understand a culture’s power and dynamics, and do what is necessary to change it, such strategies are usually doomed.
76. Some contributors, referring to a recent “*Town Hall*” (whole staff) meeting, described what they identified as “*a defensive attitude to the recent publicity*” by the senior administration and as “*a begrudging attitude that they must grasp the nettle and be seen to be doing something.*” These criticisms are directed not at individuals, but at the collective ethos, “*the senior managers are not heartless men, but choices have been made at the highest level to take the path of least resistance.*”
77. The House strategy therefore risks being thwarted without a change in the culture necessary to deliver it. And a similar fate awaits any new policies and procedures put in place to prevent the bullying and harassment of staff and to deal with their complaints. The prospects of restoring the trust and confidence of the staff, of maintaining an open and supportive environment and ensuring that staff are treated with dignity and respect are all dependent on that change.

78. A good example of the problem is to be found in the initial response of the House to the news reports in early March. The reports caused a swell of anger and consternation in some quarters, and I repeat that the specific allegations featured in the reports have all been denied. However, the fact that usually reticent individuals chose to speak to the media about these matters is, in itself, some evidence as to the extent of their distress at the lack of support they had received from the House and their lack of faith in the people and the procedures in place. Many of those contributing to this inquiry spoke of their relief that there had been this publicity. Some hoped that it would lead to significant change, and others described their regret that, in the continuing absence of any internal process in which people had confidence, it had taken exposure of this kind to make people sit up and take notice.
79. However, the initial statement issued by the House in response on 9 March exacerbated an already volatile situation. Rather than openly acknowledging that there were serious problems needing to be addressed, it provided further evidence of the general “*complacency, cover up and denial*” culture that people have described. Suggesting that there was no longer any problem, the news reports of a culture of fear were said to be a “*grotesque exaggeration.*” The House of Commons was said to be a “*a responsible and supportive employer*” that “*does not tolerate bullying or harassment of any kind.*” The welfare of their staff was described as being taken “*extremely seriously*” and they “*strongly reject any claims to the contrary.*” This statement, in both content and tone, was wholly out of kilter with the strength of feeling of many members of staff, and with the findings of the Working Group just a few weeks previously. And the contributions to this inquiry reveal that it has caused enduring anger and distress.
80. On 12 March there was a change of tone. In his personal letter to staff the Clerk of the House admitted that they had “*got it wrong in giving the*

*impression that we were in denial,” saying “There is no doubt in my mind that there are unresolved issues over bullying and harassment, including sexual harassment, which need to be addressed. The public testimony of colleagues confirms that.” While still encouraging staff to use the Respect Policy, he acknowledged that there was discontent with its terms, and that “we must look at our policies to see how we can improve them.” He stated that, “in consultation with you, the TUs and Members, we will revisit and renew the Respect Policy.”*

81. He ended with these words, *“The only ultimately acceptable outcome will be a workplace culture free of bullying and harassment. I am conscious that revised procedures and processes are no substitute for cultural change. I believe that we are moving in the right direction. The majority of working relations between Members and you are harmonious, mutually respectful and professional, and Members have a high regard for the House service. I also recognise that where things have gone wrong in the past they have not always been properly dealt with. They must, and will, be properly addressed in the future.”*
  
82. This clearly expressed determination to change the culture is obviously to be welcomed. However, the level of trust and confidence in the senior House administration to deliver on that promise is now so low that few contributors to this inquiry consider it likely to happen, at least not within the foreseeable future. The level of fatalism and of cynicism among those coming forward was palpable and, for any organisation seeking to change an unhealthy culture and to restore confidence, deeply troubling. Many people said that they were contributing because they felt they should come forward and that they *“owed it to colleagues to do so,”* but that they nevertheless had *“very low expectations.”* People referred to there being *“probably two or three generations to go at the top before anything will really change,”* and felt that they would be *“very surprised if House management allows your report to prompt any real change.”*

83. Despite the conciliatory statements made at senior level, many consider that there is still no genuine understanding that things need to change. Some consider that the senior officials view matters *“too much from the perspective of the effect on their own careers,”* and that they *“still regard the bullying and harassment issue as a distraction from the real work of the House.”* Some consider that the senior administration is viewing this whole issue as *“a local crisis to navigate around and make some limited gestures”* or *“as a temporary blip which is unpleasant and inconvenient, but once the news has moved on, they will be able to get back to the important business and everything will return to normal.”* The failure to grapple with the acknowledged mistakes of the past and look only to the future has been the subject of particular criticism, many people observing that *“unless you deal with the past you don’t move forward.”*
84. The general description is therefore of a corrosive culture, in which bullying and harassment, in particular of women, have become normalised and which cascades down through the structures. This misconduct involves not only relations between MPs and House staff, but between senior and junior House staff and between House staff working at the same level. As some members of staff see that other staff and MPs can bully people and not be held to account, they feel able to bully others in turn, without fear of adverse consequences, or feel that this is the best way to achieve results, and the problem soon becomes embedded. Bullying becomes legitimised and complaining about it is regarded as *“likely to make matters worse,”* or as *“career suicide.”*
85. Many people described receiving strong advice from line managers not to pursue a complaint about being bullied *“if you value your job.”* Some managers indicated that they had struggled in dealing with some of these issues without effective help, and said that *“the House asks a great deal of its managers, but does not do enough to support them.”* Other contributors spoke of deficient management and leadership capabilities

in general needing to be addressed, at line management level and above, and of a general lack of transparency and an *“absence of testing of aptitude for high office”* in selection for senior appointments, unlike the sophisticated recruitment techniques and psychometric tests now commonly used for senior professionals or executives in large organisations *“in the real world.”*

86. On 12 March 2018, during the debate in the House that followed the news reports, the Leader of the House acknowledged that, contrary to the position originally understood by the Working Group, *“...it is clear that the Respect policy may not be sufficient to protect House staff”* and that there were *“unresolved issues over bullying and harassment, including sexual harassment,”* that needed to be addressed. She stated that she would be recommending to the Commission *“a short, independently led inquiry....looking into allegations of systemic bullying of parliamentary staff,”* and that the inquiry *“should hear from past and current staff members about their experiences and help to provide them with closure wherever possible.....and that it should take soundings from current and former House staff on whether the Respect Policy is fit for purpose and whether House staff would be better served by having access to the new independent complaints and grievance policy from day one.”* Staff were told that they would be able to come forward and provide information to this inquiry about these issues entirely in confidence and without fear of repercussions.
87. It is against that background that on 19 March the Commission, chaired by one of the other Members in the absence of the Speaker for this item, decided that this inquiry should be initiated immediately. My appointment was announced on 23 April.
88. The Leader had previously emphasised in the House, on 15 March, that this was to be a systemic inquiry and that the person conducting it would

not be carrying out any investigations into individual cases or reopening past cases. This was initially the subject of some criticism from those coming forward and questions were asked as to why I was not considering individual cases and making findings. But, as I have already stated, this has been an inquiry, not an investigation, which would require a very different approach. My terms of reference contained no provision which could permit any expansion, so as to enable investigations of specific allegations made against particular individuals. Nor did they contain any provision which would have enabled me to expand them unilaterally, or even to ask for them to be expanded. By the conclusion of this inquiry this appeared to be understood, at any rate by the majority of those who participated. And the quantity and quality of the information I have received has enabled me to form a clear view and to make recommendations, in accordance with the agreed terms.

89. However, the timing of events has meant that the work being done by the Steering Group on the new scheme was taking place, completely separately, at the same time as this independent inquiry was proceeding. The need for this inquiry to ensure its independence from any political involvement meant that it would have been entirely wrong for me to become involved in that work while simultaneously engaged in gathering, in confidence, information which was relevant to that work.
90. It was hoped initially that the information gathering phase of this inquiry would have concluded and that I would be able to provide some preliminary findings by the end of June, so that the Steering Group would have had the benefit of them and so that these findings could inform the proposed Code and new Complaints Scheme before they were finalised. The sheer volume of contributions to this Inquiry, however, rendered that timetable unworkable and it became clear that my report would not be ready before the autumn.

91. A number of those providing information to this inquiry expressed the firm hope that the Steering Group would wait until my report was delivered before finalising the proposed Code and new Complaints Scheme. The decision was taken, however, to stick to the timetable and to present the new Scheme to the House for approval before the summer recess.
92. That is in fact what happened. The Steering Group finalised a new Behaviour Code, binding the 'Parliamentary Community,' and a new Independent Complaints and Grievance Scheme, with a Bullying and Harassment Policy and a separate Sexual Misconduct Policy. On 19 July these documents were all adopted and endorsed by a motion in the House, together with the necessary changes to the Code of Conduct and Standing Orders. However, it was also decided, with the agreement of the House Trade Union Side, (though I should emphasise not with the agreement of the First Division Association), that these new procedures should apply forthwith to all members of the House staff. In addition, the House adopted the Group's proposals for there to be reviews of these new arrangements, by a body to be set up by the Commission, at periods of 6 months and 18 months, each review to take into account the findings of this inquiry.
93. In accordance with my terms of reference I have therefore assessed these new policies and procedures as 'existing', rather than 'proposed' procedures, as set out later in this report. It is most unfortunate however that, having set up this independent inquiry into the problems affecting House staff, the Steering Group did not have its findings before them when new procedures now governing members of House staff were still at a formative stage, and therefore at the optimal time for those procedures to be informed by them, in accordance with principles of fairness and transparency.

94. Many of those who made contributions to this inquiry understood that this report would form part of the material taken into account in the drafting of these important new procedures. Given the acknowledged need to restore trust and confidence and to change the culture, this marks an unhappy beginning to that process. It is clear that the prospect of a review 6 months down the line has not mitigated the concern or the disappointment felt by members of staff.
95. The need for urgency is understood, and once again the House was designing reactive measures to deal with the problems revealed in the media reports. However, some serious concerns have been expressed relating to these new measures, given the need for coherence and for people to have confidence that their complaints will henceforth be dealt with fairly, impartially and effectively.
96. These concerns are:
- the rapid pace at which all this work has proceeded and the limited time to think carefully about the issues, or about how the procedures are all to work in practice;
  - the challenging conditions under which staff were required to work to deliver the new procedures in the time limit set;
  - the unlikely prospect of necessary procurement and contractual arrangements being in place to enable the new procedures to operate effectively within a reasonable time;
  - the lack of clarity surrounding some of the measures described;
  - the provisions regarding confidentiality and anonymity;
  - the procedures put in place to deal with complaints about MPs, which are said to be blighted by the same flaws as in the Respect Policy; and
  - confusion as to what should happen to those unreported or unresolved historical complaints pre-dating the new Scheme, which have been the subject of particular concern during this inquiry.

97. The general message conveyed has been that, while new policies and procedures to address bullying and sexual harassment in the House are to be welcomed, and there is much of value in some of these new arrangements, it is more important to get it right than to get it done in haste, in accordance with self-imposed deadlines and with results that many now regard as unlikely to deliver coherence or restore confidence.

#### **D. The Nature and Extent of the Problem: Bullying and Harassment**

98. I need to deal first with definitions. The terms “bullying” and “harassment” can mean different things to different people and it is important to understand what they mean in this context, and what I mean in using these terms. I deal with sexual harassment later on, but it is important to bear in mind that it is not always possible or sensible to try and compartmentalise misconduct of this kind. Some of those contributing to this inquiry described behaviour which would fall within more than one category.
99. I will summarise the current legal position, because the legal requirements are relevant to the policies and procedures in place to address this behaviour and there are obligations and potential liabilities arising from the information provided to this inquiry.
100. There is, first, an overriding obligation at the European level to protect the health, safety and dignity of all workers, and bullying behaviour is recognised as harming both the safety and dignity of those at work. The EU Charter of Fundamental Rights, which by virtue of article 6(1) of the Treaty of the EU has the same legal effect as an EU Treaty, provides in Article 31 that “*Any worker has the right to benefit from working conditions respective of his health, security and dignity.*” And the EU Health and Safety Framework Directive (89/391/EEC) obliges employers in

a number of respects to “*ensure the safety and health of workers in every aspect related to work.*”

101. There is obviously considerable overlap between the terms “bullying” and “harassment”, and employment policies that address them often use the terms interchangeably. If there is harassment of an employee on the basis of a protected characteristic, as an act of discrimination, the Equality Act 2010 is engaged and I shall refer to that again later on.
  
102. There is no direct statutory protection for an employee who is the target of harassment where there is no discriminatory element. Under the Protection from Harassment Act 1997 it is unlawful for someone to pursue a “*course of conduct*” (thus involving two or more incidents), which they know or ought to know would be harassment. The term “harassment” is not defined in the Act since it can take so many different forms, but section 7(2) provides that it “*includes alarming the person or causing the person distress,*” and “*conduct*” includes “*speech.*” The actions complained of do not need to be violent. The courts have stated that “harassment” describes conduct targeted at an individual, which is calculated to cause alarm or distress, and that to be actionable it must cross “*the boundary between unattractive or even unreasonable conduct and conduct which is oppressive and unacceptable*” (*Conn v Sunderland City Council [2007] CA Civ 1492*). A member of House staff who acts unlawfully in this way could therefore be held liable individually, as could a Member of Parliament. And the House of Commons, as an employer, could be held vicariously liable, under section 3, for a course of conduct by one of its employees that amounted to harassment in breach of the Act.
  
103. Employers have obligations under the Health and Safety at Work Act 1974 to ensure, so far as reasonably practicable, the health, safety and welfare of their employees, including protecting from ‘work-related

violence,' defined so as to include acts of bullying and harassment. In addition, there is at common law a well recognised and well-established, non-delegable duty of care owed by employers to their employees, which requires them to establish a safe system of work. That duty includes taking reasonable steps to prevent foreseeable harm, which would include foreseeable acts of serious bullying or harassment by those with whom employees come into contact in the course of their work, if they suffer injury or other damage as a result.

104. A member of House staff who suffers injury, as a result of bullying or harassment, could therefore bring a personal injury claim against their employer for a breach of that duty of care, and the House could be held liable for their injuries and loss. At common law, if the bullying involved an assault or battery, an individual member of staff or a Member could be liable, an assault being an act causing another person to apprehend the infliction of immediate, unlawful force on his person, and a battery involving intentional direct physical contact with someone without consent or lawful excuse.
105. The term "bullying" covers a wide spectrum of behaviours and a degree of flexibility is required when classifying such behaviour. In my view one of the most helpful descriptions of bullying at work is that formulated by the late Tim Field and those at the Andrea Adams Trust, who carried out much of the pioneering work in this field, namely that it is "*behaviour that cannot be objectively justified by a reasonable code of conduct, and whose likely or actual cumulative effect is to threaten, undermine, constrain, humiliate or harm another person or their property, reputation, self-esteem, self-confidence or ability to perform.*"
106. More recently ACAS have described bullying and harassment together 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 or harassment may be by 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. It may be persistent or an isolated incident. It can also occur in written communications, by phone or through email, not just face to face. Whatever form it takes, it is unwarranted and unwelcome to the individual.”*

107. The typical features of bullying and harassment are therefore that the behaviour is unwarranted, unwelcome, intimidating, degrading, humiliating or offensive. The important question is whether the actions or words are viewed as detrimental and unacceptable to the target. It is the deed itself and its impact on the target that matters, not the intention of the perpetrator. And it is usually preferable to describe someone being bullied as a ‘target,’ rather than a ‘victim.’ The latter term tends to be associated with negative notions of someone unable to take responsibility for themselves, or needing to be ‘rescued’ from a situation. Bullies often respond to complaints about their behaviour by describing the target as having a “victim mentality,” with all the negative imagery that phrase invokes.
108. Bullying and harassment can affect anyone, in any career, at any time, at any level and within any workplace, and this inquiry has perhaps served as the paradigm of their reach. Such behaviour can take the form of easily noticed, physically threatening or intimidatory conduct with immediate impact, or it can take place behind closed doors, or be much more subtle or camouflaged and difficult to identify, at least at first. It can start, for example, with what appear to be minor instances, such as routine ‘nit-picking’ or fault-finding with someone’s performance, but which become cumulative or develop into more serious behaviour over time, enabling the perpetrator to isolate and control the person and

eventually, on occasion, to apply conduct or capability proceedings inappropriately in order to bring about their dismissal.

109. Some bullies lack insight into their behaviour and are unaware of how others perceive it. Others know exactly what they are doing and will continue to bully if they feel they are unlikely to be challenged. Bullying and harassment can sometimes be overlooked, as a result of common euphemisms being used by way of explanation or justification, referring to someone as having a “poor management style” or a “bad attitude,” for example, or to the problem being due to a “personality clash.” The information provided to this inquiry has demonstrated all these different features.
110. The inquiry is concerned with the nature and extent of bullying and harassment alleged against both MPs and House staff. I deal first with the allegations made against members of the House staff, though a number of the points made about the nature and normalisation of such behaviour, about its effects, and about disempowerment, fear, self-blame and the unwillingness of people to report it are obviously of general application.

#### **D. 1. Alleged Bullying and Harassment by House Staff**

111. In relation to the allegations of bullying made against House staff, a number of people referred to the need to distinguish between behaviour that is truly bullying and behaviour that is no more than “assertive” or “firm” management. They referred, similarly, to the need to distinguish between harassment and legitimate supervision. I agree that it is important to recognise these distinctions, although there can sometimes be a fine line and both managers and those whom they manage need to be trained to spot the difference.

112. A good line manager can manage or supervise someone firmly and be assertive without bullying or harassing them, and I heard several examples of good line management in this respect during the inquiry. Firm management does not demand an overbearing or oppressive style. Firmness and resoluteness are not inconsistent with an open and inclusive style, encouraging direct communications with employees and regular feedback on performance, which are invariably more motivating.
113. It is also important to distinguish between bullying behaviour and reasonable management responses to actual or perceived misconduct, or to poor performance by an employee. A few contributors described instances when managers who had instigated appropriate conduct or performance management proceedings found themselves on the receiving end of a grievance accusing them of bullying. This had immediately brought a halt to the proper management of the employee's conduct or performance. The original deficiencies were then lost during the months taken up in dealing with the grievance, expending precious resources, causing distress to the manager accused and inhibiting other managers from tackling poor performance. Sometimes there had been earlier failures to manage the employee effectively and they had simply been moved on to other departments, where the manager who eventually sought to address the poor performance was then unfairly accused.
114. There will obviously be occasions when an allegation of bullying is wrongly or unfairly made, as a response to legitimate conduct or performance management. Anyone working in this area will have seen this and will know the signs. I identified a few instances amongst all the information provided where I considered that this was the most likely scenario. And I recognise that a manager on the receiving end of such an allegation will be justifiably upset and angry.

115. The other side of the coin, however, is that performance management proceedings are sometimes misused as a means of controlling or humiliating someone, or even to terminate their employment. There were a number of examples of that referred to in the contributions. A key part of the necessary training and awareness raising on these issues is ensuring (a) that managers understand the difference and that they are properly equipped to tackle poor performance confidently, sensitively and effectively; and (b) that employees also understand that a manager's right to manage is not to be confused with bullying.
116. In this respect it is the whole picture that is important. Looking at the various incidents described in this inquiry, for example, when introducing new standards of performance, a good manager will usually involve all the members of the team in agreeing them, rather than seek to impose them without discussion and with accompanying threats of disciplinary action if they are not met. Positive contributions and improvements in performance will be monitored, acknowledged and rewarded openly, rather than dealt with arbitrarily, involving obvious acts of favouritism, or just ignored altogether.
117. A failure by someone to achieve the required standards will be dealt with initially as a performance-improvement issue, the employee being treated with civility throughout and with the provision of appropriate support, rather than pressure to conform being exerted using sarcasm, ridicule, threats or humiliation, often in the presence of others in the team. And the employee will know from the start that their conduct is under investigation and why, rather than learning only after the event that it has been under investigation for some time, and that disciplinary action is imminent, as appeared from some of the information given.
118. In general terms, accusing someone of bullying is a serious matter and such an accusation should not be made lightly. It is always right to

consider whether the “perpetrator” was under acute pressure and just having a bad day, for example, and whether this was just an isolated outburst with no lasting effects and the behaviour was out of character, or whether such incidents had happened before. Patterns of behaviour are extremely important in tackling this effectively. It is therefore important for organisations to maintain reliable records and to log reported incidents and their outcomes accurately, and to have systems in place to enable patterns to be picked up and their historical and systemic significance understood.

119. Many people were highly critical of poor record keeping and poor follow up in the House in respect of such incidents, and of the consequent inability of those responsible for dealing with such allegations to do so fairly or effectively. Poor record keeping, or “*just holding some things on file and taking no action*” were constant themes in the contributions, and some senior personnel frankly acknowledge that there have been, and still remain serious deficiencies in this respect. While recognising the abilities and the dedication of some individuals working in HR, the HR department collectively was the subject of severe criticism in a number of respects, not least the maintaining of records, breaches of confidentiality, conflicting advice being given by different HR personnel, and a general lack of follow up of reported incidents.
120. Senior managers acknowledge that “*HR has had a terrible reputation in the House for years,*” that people don’t come to HR because of that reputation, and that there is a need for vast improvement in this area. They point, however, to the huge caseload for advisers and to the volume of work they are expected to deal with. The service was apparently restructured two years ago, which has probably added to the difficulties. A more streamlined Staff Handbook and less complex policies and procedures, with better online resources and e-learning modules for

managers and staff would all help with these problems and I return to policies and procedures later on in this report.

121. However, in the information provided several names of members of House staff were referred to independently on a number of occasions, by both present and former employees, in connection with serious incidents of alleged bullying. This indicates both that the policies in place to prevent such behaviour are not working, and that this is not a problem of the past. There would appear to be particular individuals, and particular pockets or teams in the House that are already on the radar, where there are known to be particular problems in this area and where warning lights should certainly be flashing.
122. The “silo” nature of the functioning of different teams, each team being “*sovereign to itself*” is likely to conceal some of what is happening, but the signs are usually there to be discovered and there needs to be a much higher level of awareness and of monitoring. A previously valued employee may suddenly have an uncharacteristic drop in performance, for example, or go on sick leave with “stress” or “depression,” take early retirement unexpectedly, or leave in unsatisfactory circumstances with the true reason hidden behind a compromise agreement with a confidentiality clause. A number of those signs featured in this inquiry. And a number of people coming forward told of discovering, after they left, that a number of their predecessors had similar experiences to relate. “*Everyone knows who the bullies are, they walk among us*” was a common observation.
123. Some areas of the House were described as having a particularly bad reputation for sexist or racist attitudes and “*banter*”, or were known to have “*bad or dysfunctional management*,” or a “*macho culture in which women in particular are not welcome*,” or where some managers run their teams “*like fiefdoms, while others turn a blind eye*” and “*regard*

*themselves as untouchable.*” Some women described always being asked to buy the coffee or make the tea, or take notes of meetings, for example, or being humiliated in front of colleagues by comments about why they needed to work or have a career if they had a husband, or “*why do we need another woman in here, we already have two.*” Some members of staff from “BAME” backgrounds reported racist abuse, or being frequently challenged as to their right to be in particular parts of the estate. In such conditions can bullying and sexual or racial harassment flourish and the accounts indicate some serious problems in some areas.

124. The effects of bullying on those employed in an organisation and on the organisation itself can be devastating, and the contributions contained numerous accounts of its destructive results, in relation to alleged bullying by both House staff and by MPs. People who believed themselves to be strong, capable individuals suddenly found that they were unable to eat or sleep properly, or they were shouting at their children or partners, or were prone to sudden bouts of crying or panic attacks. Their social interaction was reduced. People gradually lost all belief in themselves and some have suffered lasting physical or mental ill health as a result. Bullying can damage or even destroy careers, relationships and lives.
125. Poor employee relations, inefficiencies, prolonged staff sickness, increased employee assistance and occupational health costs, loss of respect for senior managers if the bullying is not tackled effectively, and reputational damage for the institution are all well-documented consequences. Bullying is recognised as a health hazard and it should therefore be approached, risk assessed and managed with the same diligence as is applied to fire safety, cyber attacks, or any of the other recognised workplace hazards.

126. Research has shown that people who are bullied may be unwilling to ascribe that word to what is happening to them, or may underplay it, or even blame themselves for it. There were clear examples of this in the contributions too. Some accounts, the substance of which indicated classic bullying, were prefaced, for example, by the words, *“I’m not sure this is serious enough for your inquiry, it sounds trivial but.....”* And a common sentiment was *“I keep thinking it must be me and that I must have done something wrong.”* I identified feelings of embarrassment and shame in a large number of cases and some people found describing the details of the behaviour very difficult and distressing. It is a common feature of workplace bullying that the target feels useless, guilty and to blame for what is being done to them. And those responsible for dealing with reports or complaints about such behaviour have to be trained to recognise the signs, to approach the matter fairly and objectively, but to know how to elicit information sensitively from the person reporting it, how to probe beneath the service when speaking to the alleged perpetrator, and how to look for clues elsewhere.
127. Many people criticised the inadequate responses of managers or HR personnel when they reported bullying behaviour. They were told, for example, *“it’s just X, he’s like that with everyone,”* or *“she probably didn’t mean it, you shouldn’t let her upset you,”* or they were advised starkly *“there is no evidence to support your allegations.”* Some were asked *“what had you done to make X do that?”* or *“are you sure you weren’t just imagining it?”* Many said that the usual response to their reports was to move them on to another post, rather than to tackle the bullying at source. The failure to take such reports seriously and to deal with them effectively means that the problem continues unchecked. And it invariably compounds the harm that has been caused to the individual by the bullying itself, and that was the case in a number of the accounts.

128. A frequent criticism was that the person reporting the bullying was expressly advised against bringing a complaint, *“it’ll only make things worse for you,”* or *“it’s pointless, you won’t get anywhere”* being responses described by a substantial number of people. There was some criticism too of the trades unions for failing to provide adequate advice and assistance on occasions. There were frequent references to these problems being generally *“swept under the carpet,”* enabling bullying and harassment to continue unchecked. And it means that no reliance can properly be placed on the fact that there have been few complaints, or on staff surveys that fail to reveal the true scale of the problems. In fact, even allowing for the low response rates, staff surveys between 2014–2016 suggested that bullying by an MP or a member of House staff had allegedly been experienced each year by a sufficient number of those who responded to prompt further inquiry and action.
129. Almost all the allegations of bullying by members of House staff in this inquiry were made against someone in a more senior position, consistent with the typical pattern of bullying cases. Management style is closely linked to organisational culture, and there were many examples of behaviour described that would fall within the category of workplace bullying. A single incident of some of these may be unlikely to be characterised as such, but a few incidents taken together or occurring repeatedly over time can indicate a pattern suggestive of unacceptable bullying.
130. These grey areas can sometimes cause difficulty, which is why it is important for employers to provide clear and specific examples of what is unacceptable behaviour in their policies and procedures.
131. In the accounts given by those contributing, the member of staff was frequently undermined, belittled or patronised, or shouted at in front of others in the team, or they were overloaded with work, had unrealistic

goals set for them, or had tasks taken away from them without any explanation, or their job was suddenly “*redefined*.” Requests for annual leave or for compassionate or study leave, or for training to assist with their duties were refused without explanation, or the response to their requests was unreasonably delayed. People were marginalised, ignored or excluded from team events or discussions, or some were singled out for harsher treatment than others who had made comparable mistakes. Work-related information was withheld and guidelines or instructions were suddenly changed. There were unfounded comments about someone’s job security, or personal insults and demeaning remarks about their appearance. Some of the behaviour alleged took a particularly sinister form, namely betraying confidences to other members of staff, or spreading malicious rumours about people or making them the subject of gossip in the department, with the apparently deliberate aim of causing distress or damaging their reputation.

132. Many of those who are bullied feel unable to stand up for themselves when it is happening and some people find it difficult to understand why that is. The reasons are complex but this too is a well-recognised feature of workplace bullying. And it is certainly not confined to someone who has a “*vulnerable personality*” or who is regarded as being “*over-sensitive*,” or as one person suggested, “*a bit of a delicate flower*.” A young female contributor, describing bullying behaviour by one manager, observed simply, “*I was just scared of him, we all were*.”
133. Disempowerment, bewilderment, shame and embarrassment are powerful allies in preventing someone from speaking out, in particular, as in this inquiry, when accompanied by the fear of being disbelieved, or of being unsupported, or branded “*a member of the awkward squad*,” or losing their job. Even if someone eventually decides to confront the perpetrator, being told behind closed doors, as several people reported, “*No-one will ever believe you*” can have a chilling effect.

134. And the bullying can increase or involve retaliatory measures if the target tries to challenge their treatment and stand up for themselves or complains about it. A denial of the allegations accompanied by the bringing of counter-allegations against the target can follow and I heard several accounts of this happening in addition. Grievances and counter-allegations may then be “resolved” by the suggestion that there should be “*a clean slate*” or that the protagonists should “*start afresh,*” with the result that the substance of the original alleged bullying behaviour is lost, and no record is kept of the allegations.
135. Sometimes, the target can eventually be coerced into leaving employment they enjoyed, through enforced “*ill-health retirement,*” or dismissed for specious allegations of misconduct or for incapability, following proceedings which are said to have been “*fully in accordance with process.*” Cases may appear to have a superficial legitimacy but, on analysis, may reveal significant shortcomings.
136. In this inquiry one case in particular was considered sufficiently egregious for several witnesses to come forward, independently, to provide information about what each of them regarded as “*appalling bullying management behaviour*” towards one employee and “*deliberate and successful efforts to manage them out of the House,*” before the individual concerned reluctantly came forward to speak about it themselves.
137. Many people will have been reluctantly retired on medical grounds without there being any background of bullying behaviour. But those involved in the decision-making in such proceedings need to be alive to the risks. Long experience has shown that those who bully can sometimes manipulate the various stages of “process” and a number of contributions raised this issue. Employers must be astute to distinguish between the valid use of process in the case of genuinely poor

performance or illness, and manipulation, when the procedures can themselves become vehicles of bullying. Bullies can be articulate and confident. An overworked and under-resourced HR department may too readily accept the bully's version of events over that of the target, who may be in distress and unable to articulate what has been happening to them. Witnesses may be too afraid to come forward and support the target's account, even though they know it to be true. One contributor remains ashamed of their "*complete failure to say something when X needed my help.*"

138. The results of any process can be skewed by a carefully prepared and documented management account, coupled with an institutional fear of legal action if the target's account is accepted and, sometimes, by the perceived greater value to the organisation of the alleged perpetrator than the target. These attitudes and influences will often operate at a sub-conscious level, which is why awareness of and training on these issues is so important.

#### **D. 2. Alleged Bullying and Harassment by Members of Parliament**

139. Many people paid tribute to the courtesy and respect shown to members of staff by the vast majority of Members of Parliament who have, over the years, regarded the staff of the House Service as its most valuable asset and who have worked collaboratively and respectfully with them, often under considerable pressure, making reasonable requests for assistance and gratefully accepting the advice given.
140. Members and staff can work long hours. Workload, tiredness and stress can provoke rudeness and angry outbursts on occasion. We have all been there. Some Members are known to be more demanding, or more impatient and short-tempered than others, but that is all part of the general pattern of relationships at work generally and no complaints

were made about isolated “flashpoint” incidents, or about behaviour which would be within the normal range to be expected and accommodated in any place of work.

141. However, the accounts given of alleged behaviour by some Members towards staff reveal behaviour going far beyond that range and which would come well within the category of bullying or harassment. For some people its effects have been acutely distressing, long lasting and, in some cases, devastating. Some MPs were alleged to be “*serial offenders*” and there was said to be widespread and long-standing awareness internally of their behaviour, but some of those contributing anonymised the incidents described in order to preserve confidentiality. It is therefore not possible to put a precise figure on the number of MPs who are alleged to have behaved in this way, but the accounts indicate that alleged bullying behaviour has been a more widespread problem than one limited to a few individuals. And, while some of the allegations relate to the past, others reveal that it continues to be a problem.
142. Most of the incidents in the past are said to have occurred within the last 10 years, though some go back even further than that. Others are of more recent origin and some are said to be occurring fairly regularly at the present time. I have no doubt that the vast majority of Members of Parliament will wish to condemn such behaviour, and to ensure that it is dealt with effectively wherever it occurs.
143. Many of the allegations involve numerous ‘low level’ incidents, which nevertheless cross the line into bullying behaviour in some cases as a result of their frequent repetition and their cumulative effect on those targeted. However, some allegations involve more serious behaviour and some, most of them made by women, describe bullying and harassment of the most serious kind. Some of the allegations involved shocking and

abhorrent behaviour, which would evoke outrage in any place of work but which has profound implications for the House of Commons.

144. Some of the accounts concern Members who are now no longer in the House, but others relate to those who are currently serving as the elected Members for their constituencies. The alleged behaviour is not the preserve of any one political party and allegations have been made against both men and women, though the vast majority have been made against men. It involves those who have been Members for both lengthy and shorter periods of time.
145. Many consider that the present situation is *“the result of a system in which Members know they are free to act as they wish towards House staff. In part this is because there are no consequences and they have never feared any sort of discipline over bad behaviour. Members can act as they wish and they know that they will keep their job and we will have to continue to provide them a service. There is also a culture which reinforces this behaviour. When a new intake arrives after an election some begin by being friendly and polite to everyone, but as they see how more established Members behave towards staff, some become significantly less polite themselves.”*
146. As some have observed, and as the Working Group acknowledged earlier this year, *“Members of Parliament occupy a position of unique privilege and influence in public life.....as law-makers and as our elected representatives it ought to be expected that they lead by example and are held to the highest standards of conduct.”* In light of the obligation as to confidentiality owed to those contributing to this inquiry I cannot describe the alleged incidents other than in general terms, but the information provided indicates a significant level of misbehaviour of this kind. The allegations have come from people working in all those areas of the House where there is interaction between staff and Members. And

there appears to be a widely held and divisive belief that certain senior people *“regard themselves as a special breed and as the elite. They should therefore be able to manage and control MPs’ behaviour, but in fact they seem to have no influence over them at all and invariably adopt a ‘give them what they want’ approach, however unreasonable the request being made.”* There is a strongly held view that this sets the tone for what happens to staff in the rest of the House.

147. It is difficult to overstate the impact that the existence of all these allegations has on the level of respect for Members and the authority of the House of Commons as a whole, or the damage being done to its dignity and standing and to public confidence in our Parliament.
148. Many of the accounts described almost daily examples of some Members:
- shouting at or belittling staff;
  - swearing at them face to face or over the phone; or
  - being *“routinely unpleasant, overbearing or confrontational,”* towards them and *“treating us like servants.”*
149. The ‘non-deskbound’ services and those with operational functions feel that they bear the brunt of this behaviour, though the allegations of this pattern of behaviour came from those working in other teams too; *“It is as though we are invisible to some of them. We are generally ignored unless there is a problem and then we will be screamed or shouted at, usually in front of people. It is very upsetting.”*
150. In a few cases Members have apologised to the members of staff concerned, but the pattern is usually frequent episodes of *“low-level rudeness”* with less frequent but extremely unpleasant *“volleys of abuse and aggressive or insulting language and behaviour”* on occasions, for which no apology is forthcoming, and which are cumulatively regarded as

*“very wearing and demoralising.”* Some contributors described *“an air of entitlement and arrogance”* displayed by some Members, who *“get really angry with us if we don’t instantly recognise them.”*

151. Certain services and facilities in the House are reserved for Members only, or for Members and certain grades of staff only. Grading and status are plain from passes, which must be worn at all times. Some contributors regard these visible signs of hierarchy as reinforcing the two-tier status accorded to Members and staff, and as contributing to an unhealthy *“us and them”* culture generally, and to the arrogance displayed by some Members, who are encouraged to jump queues, for example, or to ask for lifts to be cleared for them to use. Some staff, described being told to leave a table in one of the bars because they were *“just staff”* and could go and drink elsewhere, or being told aggressively to *“get out of the lift now”* because some MPs wanted to use it. I have no doubt that there may be good reasons why, on some occasions such as during Divisions, Members need urgently to use a lift, but aggressive demands to staff to leave, rather than polite requests, are reported to be frequent occurrences.
152. In general, unnecessary restrictions of this sort also serve to reinforce the grade-based divide amongst the House staff about which complaint is made. Staff report being told off for using the *“wrong”* toilet, or being stopped and challenged to prove their status and their entitlement to be where they are. If there is to be real culture change, the removal of such unnecessary restrictions should be an early priority.
153. Members of Parliament shouting abuse at staff was something frequently referred to, with the abusive phrase *“you’re f\*\*\*ing useless,”* shouted at close quarters, being described independently, by a number of people working in different departments, as a regular event. This abuse was often in public and occasionally it was accompanied by grabbing someone

by their hand or arm. The possible role played, in some of these cases, by a ready access to alcohol in the various bars on the premises was referred to by several contributors. The steps taken so far to restrict access to alcohol during working hours may need to be revisited.

154. When first arriving in the House, staff described being warned about what to expect from some Members and to be on their guard. *“I was told to expect rudeness and anger, and I remember being taken aback at how it was considered acceptable both to be shouted at and not to take action against it.”* A number of people referred to the desensitising effect of frequent rudeness and abuse of this kind, when it came to recognising incidents involving more serious or sustained bullying. *“There was a certain inevitability about abuse from Members, and it soon started to feel like something that was not worth reporting even if it was more serious.”*
155. At the heart of all these accounts lie what staff regard as the inherent imbalance of power and the prevailing culture in the House Service, long established and perpetuated by the senior administration, which many regard as crossing *“the boundary between appropriate respect for those duly elected in the democratic process and an unhealthy level of servility approaching genuflection.”* Some senior members of staff are clearly stung by this criticism and suggest that it is misplaced. The vast majority of contributors to this inquiry, however, regard it as an accurate description, and they respond to these suggestions as providing further examples of the *“culture of denial”* and of the disconnect between members of staff and the senior administration.
156. A number of people, coming to work at the House after experience of working in other organisations, described being *“shocked by the almost God-like status accorded to MPs, who must always be treated with kid-gloves, and shocked by the level of deference of staff, which fell into the*

*obsequious category more often than not, and by a service mentality in which MPs are not effectively challenged by staff.” While accepting without question the respect due to those elected to serve as Members of Parliament, the general theme is that this has developed into a “deeply unhealthy power dynamic between Members of Parliament and staff, in which the elected status of Members versus ‘unelected bureaucrats’ is seen as excusing even the most flagrant behaviour on occasions.” Some attributed this culture, in part, to generational and societal differences, or to the “more reserved, cautious and scholarly characteristics of the senior managers, as contrasted with the more dominating, goal-oriented, action-not-words style of many ‘time poor’ and ambitious Members.”*

157. Whatever the reasons for it, the general description of the prevailing culture is that, rather than collaborative and professional relationships of mutual respect between MPs and House staff, *“the dynamic is set to master and servant, regardless of the seniority or status of the member of staff, and although this system of service has largely vanished from the modern world this strange hierarchy persists in Parliament.”* The phrase “master and servant” last appeared in the legal textbooks in the 1960s and early 1970s and it is disconcerting to see it deployed so frequently in this inquiry. Some contributors describe the true principle underpinning the work of the House Service as one of stewardship rather than servitude. They consider that this guiding principle has become distorted somewhere along the way, due either to the advancement of the customer service agenda, in which the MP “customers” are always right, or to a variety of other causes. Whatever the cause, however, the view that *“Members need to understand that we are stewards of the institution rather than their own personal servants”* and that *“the institution is worth fighting for”* was a common theme.
158. Some of the most serious allegations related to the conduct of some MPs when away on visits abroad or when working on Select Committees,

sometimes when members of staff were giving them unwelcome but correct advice about the rules or procedural requirements of the House, or when they were being regarded, inappropriately, as a resource for MPs' personal use. Since 2010 the appointment of Members to chair these committees has been by election in a secret ballot of the House. And the House endorsed the principle that political parties should elect members of the committees in a secret ballot *"by whichever transparent and democratic method they choose."* Following elections within parties, the successful candidates are formally proposed to the House by the Committee of Selection.

159. The staff working with those Committees will source and analyse evidence, advise the Chair and Committee members and generally manage the process of inquiries so as to enable the Committee's work. Regrettably, this work has resulted in reports of some completely unacceptable behaviour. Some Members are said to *"cross the line between an acceptable level of rudeness and strong-arm tactics, humiliation or intimidation,"* and some Members are described as *"mavericks, who try to use the committee for their own ends."* Those coming forward described the nature, range and frequency of this behaviour, some of which was serious and sustained, and in some cases the treatment meted out was regarded as *"nothing less than a campaign of bullying and harassment."*
160. The behaviour alleged by members of House staff included the following:
- frequently targeting a member of staff with personal abuse;
  - constantly criticising or making derogatory remarks about their work;
  - shouting or speaking aggressively at staff, and often junior members of staff, for not doing something they wanted, or not doing it sufficiently quickly;
  - telling them they are useless and humiliating them in front of others;

- taunting, mocking or mimicking them;
- deliberately belittling them in front of other Members;
- making offensive personal comments about their appearance or perceived characteristics, or questioning them repeatedly about their personal life;
- using offensive or discriminatory language about other staff or MPs;
- challenging the staff member's authority if asked to follow a particular procedure or rule;
- belittling someone's junior status;
- obstructing staff from properly carrying out their job;
- imposing wholly unrealistic and inefficient work demands or deadlines;
- questioning their annual leave entitlements or telling staff to remove themselves from contractual rotas/responsibilities or from scheduled training courses;
- suddenly holding unscheduled meetings or making new demands at a time when they knew that staff had to leave because of childcare commitments, and in a way that was described as "*poisonous, vindictive and deliberate;*" or
- repeatedly subjecting them to lengthy and humiliating tirades of criticism and abuse in front of colleagues.

161. Some of those on the receiving end of such abuse became extremely unwell. *"I felt physically sick....I would find myself crying in the toilets, I wasn't able to eat or sleep properly and I began to feel consistently unwell."* Members of staff observing such incidents described them as *"very disturbing...I will never forget them."* And a senior external contributor, witnessing such an incident, described it as *"humiliating and mortifying to watch."*

162. Many members of staff who have reported such allegations of bullying regard the prevailing culture in the House as the principal reason for the complete lack of support said to have been shown to them by their senior managers, in either seeking to prevent such behaviour or dealing with it effectively, and as the reason for the ineffective policies in place to address it. It has *“always been part of the culture of the House Service that we accept that some Members will be over-demanding, difficult or just plain rude and unpleasant. Working with these Members is to be regarded as counter-balanced by the pleasure of working with the many polite, grateful and respectful Members.”* The lack of support when something goes wrong is particularly wounding given the strong professional ethic, among Clerks in particular, that they should be *“seen but not heard”* and should *“always provide seamless support,”* whatever the provocation. These traditional functions *“suppress any ‘fight or flight’ response in relation to the behaviour of some Members.....our job is to secure the process of business, so when publicly subjected to humiliating abuse, we stay quiet, we try and smooth things out, we don’t confront at the time, but we pay a ransom.”*
163. The willingness of managers to take action seems, in some cases, to depend on the level of seniority, status or influence of the particular Member of Parliament. A long-standing motto in one team has apparently been *“Be strong with the weak and weak with the strong.”* As a method for taking the path of least resistance, that adage has much to commend it. As an effective way of preventing bullying behaviour by MPs and protecting members of staff, it is obviously hopeless.
164. In general, resilience and fortitude in the face of unacceptable behaviour, together with not making a fuss or creating difficulties for senior colleagues, are seen as valued competencies. The ability of employees to cope with such behaviour is seen as *“a significant route to promotion”* or as a *“badge of honour”* with *“the mindsets of a number of senior*

*managers so behind current thinking that they say things people in their 30s would never dream of saying and they have belittled the experiences of those who have been harassed, mostly subtly and perhaps subconsciously, but it has been a huge surprise to me.”* Those who buckle are seen, and consequently see themselves, as not being up to the job. In such circumstances have self-confidence and self-esteem been eroded and the abilities of capable and talented staff lost to the institution. Unprompted observations from some people formerly employed in senior positions that, looking back, their duties to younger colleagues may have been neglected, indicated reflection, awareness and genuine regret for this unacceptable state of affairs.

165. In most cases, the failure to be supported by previously respected senior managers has significantly compounded the effects of the alleged bullying behaviour, and it has caused widespread disaffection. *“It was taboo to talk to managers about such things. They just looked shifty and embarrassed. Even when serious incidents were reported, managers would listen with sympathy but do nothing, save suggest that I should be moved to another job. I became completely demoralised.”* ..... *“The way in which I was denied support and undermined seemed like an exercise in ‘gaslighting’ and it made the Member’s treatment of me so much worse.”*
166. In relation to reported serious behaviour by some Members, presumably those regarded as “strong,” senior managers sometimes took the view that there was little point in anyone pursuing a complaint under the revised Respect Policy because it would have no impact whatsoever on the Member’s behaviour. It is perhaps hardly surprising that so many members of staff have expressed the view, at least in relation to more serious or sustained forms of bullying behaviour, that the Respect Policy *“is not worth the paper it’s written on.”*

167. Rather than trying to tackle the problem at source, the default response appears to be to move the person complaining of being bullied away from a job that they were otherwise doing well and enjoying, and that could enhance their career prospects. The result, however, has been that the allegation has been unresolved, and the problem really needing to be tackled has been allowed to continue unchecked. It has been the individual member of staff who is seen as making a fuss, or as the person presenting the problem that needs to be resolved. The view generally expressed is that *“MPs will continue to get away with unacceptable behaviour because the very senior staff will, in the end, always give way to them, not wanting to jeopardise their own careers, not wanting to bring the House into disrepute with bad publicity and not wanting to confront senior MPs....The answer invariably is to remove the person complaining and not to stop the behaviour.”*
168. At senior level, moving someone on is clearly viewed, in part, as *“an act of kindness”* and as a way of *“solving the problem, keeping the show on the road and ensuring the smooth running of the business of the House.”* But members of staff ask, rhetorically, at what cost? Not only is this not solving the problem at all for the individual employee affected, but it means, almost inevitably, that a new member of staff will subsequently be required to work in a position where their employers are already on notice that they too are potentially vulnerable to such behaviour. This is indeed an unhappy scenario for any employer having careful regard to his duty of care. As one contributor expressed it, *“It is evident to me with hindsight that my employers were abrogating their duty of care to me, but when I was going through this I was at my most fragile and I feel they took advantage of that weakness in failing to act. They let me down completely.”*
169. If members of staff are bullied or harassed by people with whom they are required to work, they are entitled to expect their managers to support

them and to act to defend them. *“When we have been subjected to intolerable abuse it is so important to us, when our advice to Members has been sound and courteously delivered, that we always have support from the senior administration. Sadly that just does not happen.”*

170. In many organisations senior managers, often assisted by sophisticated training programmes, are used to tackling this sort of behaviour and to holding difficult conversations confidently, and without damaging their working relationships or professional reputations. Mutual trust and respect are obviously essential in ensuring effective working relationships between Members of Parliament and senior managers, but an appropriate intervention to prevent bullying is not inconsistent with the continuance of mutual trust or an effective working relationship.
171. One contributor, relating his previous experience in another organisation, of being bullied by a very senior professional from elsewhere, contrasted the *“subservient and hand-wringing”* approach of managers in the House with the firm, prompt and effective intervention of his previous manager in declaring, *“You can be as rude as you like to me. But you will not be rude to a member of my staff.”* The problem was solved and the manager and the professional resumed their relationship and dealt effectively with the business of the day.
172. The inability of some senior managers in the House even to contemplate such an intervention seems to me to be demonstrated by the frank observation of one person that, *“I need, as a senior manager, to work with senior and influential politicians and to have a relationship based on trust and the sharing of confidential information. That does not sit very well with me telling them off for bad behaviour.”* This seemed to me to betray not only a lack of understanding about the role and responsibilities of management, but also a genuine discomfort as to how it could be done.

173. A firm and timely conversation by a senior member of the House Service with a Member of Parliament, in order to stop them bullying a member of staff, is not at all inconsistent with according due respect to the Member's elected status, or with maintaining a good and collaborative working relationship with them, based on trust and confidence between two individuals of senior status and influence. This example seems to me to epitomise some of the problems and cultural issues at play.

### **D. 3. The Gender Dimension**

174. There is an additional feature which is relevant to the information presented to this inquiry. The bullying and harassment alleged, both against Members of Parliament and other members of House staff, and the complaints of lack of support from senior managers have an obvious gender dimension. The majority of the allegations, and almost all the allegations of sexual harassment, which I deal with below, are made by women still employed in the House, or who were formerly employed there. Some women have described incidents which would involve all these forms of misbehaviour. This gender dimension was also reflected in the short survey carried out by the Working Group in February this year.

175. I make it clear that the accounts of those coming forward to this inquiry show that both men and women make allegations of bullying and harassment, and such behaviour is obviously to be condemned whatever the gender of the target. However, the gender breakdown of those contributing and the information they have submitted indicates that, in relation both to MP/House staff relations and to internal House staff relations, it is women in particular who have been targeted.

176. The alleged abuse has included demeaning references to their gender, for example; more women than men have not been taken seriously when

they complained, or have been advised against complaining about it, or criticised for *“not being tough enough to do the job.”* Attitudes at the senior level towards women are described as having generally been *“paternalistic”* and *“patronising”* over the years, with male senior managers *“treating their ‘girls’ in an avuncular way, but at the same time doing plenty to block their careers because ‘it wasn’t their turn,’”* and with *“some of the women trying desperately to be ‘one of the boys’ so as to fit in, and advising us to do the same.”*

177. More women than men have found their work undermined and their performance increasingly criticised, or have had tasks reassigned without explanation; and more women than men have had their careers constrained or diverted, losing respect within the House Service and failing to fulfill their potential as a result.

178. The prevailing notion is that bullying is gender-neutral. However, academic research in 2013, referred to by the CWJ, has suggested that there is a clear relationship between gender and bullying, with gender differences found both in reported prevalence rates and forms of bullying, and in the way in which targets and third parties respond to bullying. (see *“Workplace bullying as a gendered phenomenon”*, Salin and Hoel, *Journal of Managerial Psychology*, Vol.28 Issue:3, @235-251). This research has obvious implications for the way that managers, representatives and policy makers address and prevent such behaviour. Consistently with the finding that women are more likely to be susceptible to workplace bullying in places which have been dominated historically by men, some of those coming forward have expressed serious concern that, over the years, *“female staff in the House have been disproportionately exposed to abuse, victimised and humiliated; the bullying they encounter is often gendered in its language even when it does not take the form of sexual harassment or assault; and the procedures available to deal with it have routinely failed in relation to*

*complaints being made by women.*” The information submitted to this inquiry tends overall to support that view. In terms of public confidence and the message it sends to women in the workplace generally, the fact this is alleged to be happening in the House of Commons is deeply damaging.

#### **E. The Nature and Extent of the Problem: Sexual Harassment**

179. Sexual harassment in the workplace, so often excused as “just a bit of fun,” or “harmless banter” is a form of unlawful discrimination and has been for decades. Many of the incidents of reported touching could also be legally classified as sexual assault. It affects both men and women, but it has always been a form of misconduct disproportionately affecting women at work, and almost the entirety of the allegations made to this inquiry came from women. Its effects in the workplace are far-reaching. It hampers efforts being made to advance gender equality, blights working environments and relationships, and robs those affected of their dignity and well-being. And it is now well understood that most of those affected by it do not report it, usually because they are afraid to do so. Sexual harassment is frequently more about power than it is about sex. And it is an abuse of power of the most insidious kind. Employers need to take active steps to prevent it, to deal with it effectively when it occurs and to ensure that support is available for those affected.
  
180. There is a clear legal framework prohibiting harassment and discrimination in the workplace, both at the international and domestic level, and there are increasing efforts being made to tackle this problem. I summarise the relevant provisions because, as in relation to bullying, they are clearly relevant to the obligations of the House as an employer and to the policies and procedures put in place to address this behaviour.

181. As a member of the International Labour Organisation (ILO), the United Kingdom has ratified the Discrimination (Employment and Occupation) Convention 1958 (No.111) and is therefore required, by Article 2, to “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.” Understanding the need specifically to protect workers from harassment and violence, the ILO intends to adopt a new international treaty in 2019, which proposal has been supported by the United Kingdom Government.
182. In Europe, there are obligations placed upon states to take measures to combat sexual harassment in Article 40 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which came into force in 2014 and which the United Kingdom has signed and intends to ratify.
183. The principle of equality between men and women has long been recognised as a fundamental principle of EU law and the principle has been reinforced throughout the EU treaties. Article 21 of the EU Charter of Fundamental Rights prohibits sex discrimination and provides, in Article 23, that equality between men and women must be ensured in all areas, including employment, work and pay. The issue of sexual harassment was first addressed in a concerted way as long ago as 1991, with the adoption of a Commission Recommendation on the dignity of women and men at work and a Code of Practice on measures to combat sexual harassment. After earlier legislative measures addressing the problem and recognising that sexual harassment is a form of sex discrimination, the current EU definition of sexual harassment is now set out in the 2006 Equal Treatment Directive (2006/54/EC) as occurring *“where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of*

*a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”*

184. In domestic law, sections 26 and 39 of the Equality Act 2010 together provide protection against discrimination in the workplace and recognise harassment on the basis of any of the protected characteristics as an act of discrimination. Under section 83 members of House of Commons staff are employees for the purposes of the Equality Act and they are expressly protected by its provisions. Their employers therefore have obligations in this respect and are potentially liable for acts of harassment on the grounds of a protected characteristic as an act of discrimination. The EU (Withdrawal) Act 2018 provides that, in so far as the Equality Act 2010 and relevant EU Directives will be considered retained EU law after ‘Brexit,’ these provisions will continue to bind and the general principles will remain central to their interpretation.

In addition to sexual harassment, there are two other forms of harassment in section 26. A woman may be harassed unlawfully on the grounds of sex if, for example, she feels humiliated, offended or degraded by unwanted behaviour which does not fall within the definition of sexual harassment. The EHRC give an example of a manager making comments to a team of his employees that there is no point in promoting women because they go off and have children all the time. Even though he doesn’t direct those comments at a particular employee, a female employee in the team finds his comments offensive and degrading. A woman may also complain of harassment if she is treated less favourably because she refuses to put up with sexual harassment, where, for example, her manager invites her home after they have been out for a drink and, after she refuses, he humiliates her by turning her down for promotion a week later. Under section 27 of the Act a woman may also complain of the separate, unlawful act of victimisation if she is subjected

to a detriment because she has done a “*protected act*,” such as complaining about an act of harassment.

185. Under the Act, drawing on the EU definition, sexual harassment is deemed to occur where one person engages in unwanted conduct of a sexual nature, and that conduct has the purpose or effect of either violating someone’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned. Conduct of a sexual nature comprises an extremely broad range of verbal and physical treatment, including sexual comments or jokes, sending emails of a sexual nature, touching or more serious assault. Even if unwanted conduct is not intended to cause distress, it can still have the effect of violating a person’s dignity or creating an offensive environment. Whether it has that effect depends on the perspective of the person subjected to the unwanted conduct, and whether their reaction is reasonable in all the circumstances. And there does not have to be a course of conduct. One incident can constitute sexual harassment.
186. Section 40 of the 2010 Act prohibits employers from harassing their employees. Under section 109 employers can also be found vicariously liable for acts of harassment committed by their employees, if they are carried out in the course of their employment and the employer has not taken all reasonable steps to prevent such conduct. Anything done in this respect by an employee “*must be treated as also done by the employer.*” Provisions originally in the Act relating to the liability of employers for the acts of third parties (sections 40(2) – (4)) were repealed in 2013 although, as the CWJ point out in their submissions, employers can still be potentially liable for acts of third parties who were acting as their agents within the meaning of section 109(2). Anything done by an individual as agent for a principal is treated as also done by the principal, regardless of whether the acts were done with the principal’s knowledge or approval.

187. The survey recently conducted by the EHRC revealed that a quarter of those reporting harassment stated that the perpetrators were third parties, such as customers or clients. In their report *'Turning the Tables: ending sexual harassment at work'* (March 2018) the EHRC noted, in relation to this problem: *"A common theme was a lack of management support, with sexual harassment and assault apparently being viewed by some employers as a 'normal' part of the job. A number of those experiencing sexual harassment by customers felt that they had no option but to put up with this if they wanted to continue in their job."* There are uncomfortable parallels with the alleged incidents reported in this inquiry, albeit that some of the "customers" against whom allegations are made are Members of Parliament.
188. The need for urgent and robust action by the Government to tackle sexual harassment has recently been emphasised by the Women and Equalities Committee in their report published in July this year (*Fifth Report of Session 2017-19, HC 725*). Echoing the recommendations of the *Fawcett Society Review of Sex Discrimination Law*, published in January this year, the Committee have called for legislation to place a positive duty on employers *"expressly to protect workers from harassment by third parties and to ensure that employers can be held liable for failure to take reasonable steps to protect staff from third party harassment."* Calling, in addition, for a new duty to be placed on employers to prevent harassment, among a number of other steps designed to put sexual harassment *"at the top of the agenda,"* they concluded that *"Providing a workplace where employees have safety and dignity is no less important than other corporate responsibilities such as preventing money-laundering and protecting personal data."*
189. They also recognised, at paragraph 15, that the House of Commons was among the workplaces in which allegations of sexual harassment had been made. Noting that work was being carried out to investigate the

scale of that sexual harassment and the systems for handling reports, the Committee stated, *“We are not in a position to make comment on that work here, except to say that we all want to see our own workplace held to the highest of standards.”*

190. There can be few in the House who would disagree with that wish and expectation. However, as with bullying and harassment generally, the nature and extent of the sexual harassment of staff alleged to be happening in the House of Commons, together with descriptions of the lack of support for those affected and of the inadequate procedures in place to deal with it, paint a bleak picture. While some of the allegations relate to incidents in the past, which were either not reported or not effectively resolved, others suggest that this is a continuing fact of life for women working in the House.

#### **E. 1. Alleged Sexual Harassment by Members of Parliament**

191. The vast majority of Members of Parliament will doubtless be horrified by the conduct alleged against a minority of their number. Once again, it is not possible to put a precise figure on the number of MPs alleged to have behaved in this way. The most serious allegations related to the alleged *“predatory”* conduct of a few individuals, but overall the allegations indicate that sexual harassment has been a more widespread problem, and it crosses the political sphere. All of the allegations were made against men. Some are no longer in the House but others continue to serve as elected Members.
192. Women spoke of comments frequently being made during the course of their work, in either positive or negative terms, about their appearance, their dress or their *“physical attributes”*, and to them being the butt of joking exchanges about such matters between Members, in their presence and often in front of others.

193. There were allegations of:
- frequent inappropriate touching;
  - the invasion of someone's personal space;
  - repeatedly initiated physical contact, for example men patting women's heads, putting their arms around women, leaving a hand on their knee for an uncomfortably long time, trying to kiss them, grabbing their arms or bottoms or stroking their breasts or bottoms;
  - women being abused in vulgar, gender-related terms if they failed to do something that had been requested, or did it in a way that was considered inadequate or took too long;
  - women being repeatedly propositioned; and similar allegations from some men.
194. There were reports too of groups of male MPs becoming increasingly boorish on occasions when they were together, of frequent sexual innuendos, lewd comments or sexual gestures, or women repeatedly being asked questions about their sex lives, or about their personal lives generally, which they found offensive and humiliating.
195. Some men who came forward spoke of witnessing "*some atrocious treatment of young women by MPs,*" and of "*some women being treated as their personal servants, with veiled threats to have them moved if they failed to comply with requests.*" Some men also spoke of their shame, looking back now, that they had stayed silent at the time when such incidents occurred, and that they had not done more to help.
196. A few women described prompt and successful efforts by their line managers to deal informally with their complaints of sexual harassment and to stop it happening. However, the majority of women alleged that reports to line managers produced evasive responses, in which either their reports were questioned, "*are you sure you didn't do anything to*

*cause it?"* or belittled, *"it's not much to make a fuss about is it,"* or efforts were made to persuade them not to pursue a complaint. Some managers would ask, *"But what do you expect me to do about it?"* inappropriately transferring the burden of dealing with it from the employer to the individual employee.

197. In many cases reported derogatory sexual comments were trivialised, or the woman was advised, for example, that she was being *"over-sensitive,"* or needed to *"toughen up"*, or was told, *"you know what he's like,"* or *"you should be pleased that people find you attractive,"* or even *"when I was a clerk you hadn't earned your stripes until you'd been harassed."*
198. In some cases women described advice being given informally by colleagues to avoid particular Members, or to make sure they were *"never in a room alone with them."* Ultimately, the solution in many cases, if the woman complained, was to move her away from the job she was doing, to her detriment. Some women were told by their managers that they would not be asked to work in a role involving contact with particular Members because of their *"general reputation with women."* Otherwise, women reported that they were *"just expected to put up with it and get on with it."* The culture of resilience was said in this way too to have normalised behaviour which would plainly fall within the definition of sexual harassment.

## **E. 2. Alleged Sexual Harassment by House Staff**

199. Many of the allegations made against House staff involve similar forms of unwanted sexual behaviour towards women by their male line managers, or by other men in more senior positions. However, there were also allegations of increasing verbal, non-verbal and physical acts of sexual harassment by junior male staff towards their female colleagues, or towards more senior women. In the context of a *"macho"* culture said to

run generally through some areas in the House, some women described their acute discomfort at having to walk along corridors past groups of male employees, who audibly make comments and gestures about their appearance, and who make it clear that they are doing so. Young women graduates in their first job have been particularly shocked and upset by such treatment when “*running the gauntlet*” in this way.

200. I should also mention that some of the allegations, from both men and women, involved conduct which would clearly be regarded as both sexual and racial harassment, or harassment based on someone’s sexuality. Such conduct demonstrates the multiple layers or intersectionality of discrimination that can occur in any organisation and that need to be addressed in the policies and procedures in place to tackle it.
201. The allegations of sexual harassment against House staff included the following:
- inappropriate and repeated invasion of a woman’s personal space;
  - inappropriate touching, with men putting their hands on women’s arms, legs, or bottoms during meetings or social functions, or putting their arms around their shoulders or waists or pulling them into corners for close personal contact;
  - frequent comments about women’s appearance, suggestions that they should wear sexier clothing or more make up; and
  - derogatory or lewd comments about women’s anatomies or about women generally, often made in front of other people in the team and in such a way as to deliberately offend and humiliate.
202. Some of the most serious alleged conduct of this kind concerned a small number of House staff who were said to be known as “*serial predators*,” and there appear to be particular pockets of bad behaviour in this respect in addition, in a number of areas.

203. There is a widely held view among contributors that behaviour of this kind, whether alleged against Members or House staff, has simply not been tackled effectively over many years. Many women feel angry and let down as a result. The anxiety that women feel generally about reporting such behaviour has frequently been aggravated by the general lack of support and the feeling that such behaviour is regarded as “*the norm*” in the House.
204. For those who reported it, the strong advice given to them by some managers was that they ought not to contemplate bringing a complaint. Women’s lack of confidence in the procedures in place for complaints was also a factor in what are clearly long-standing failures to address sexual harassment in the House. And there is acceptance too by some managers that they have not tackled it effectively, and that they have felt unable to act, or have lacked the confidence to act when such behaviour was reported to them.
205. The fact that allegations of this kind have been made against some Members of Parliament is profoundly disturbing. Some consider that the power Members hold and those democratic traditions that serve to emphasise Parliamentary privilege have combined to create “*a toxic environment of deference and impunity, which some Members have exploited.....The more we indulge this behaviour and don’t stand up to it and name it, the more we endorse it by omission.*” There may well be other workplaces or other environments which are also regarded as toxic in this respect, but the nature and extent of these problems, and fact that they are happening in the House of Commons, is obviously completely unacceptable and makes this a particularly bad case.
206. At the root of all these problems lies the prevailing culture in the House and that culture finds expression, in part, in the policies and procedures

in place to tackle these issues, including the new Complaints Scheme introduced in July 2018.

207. In my terms of reference I have been asked to comment on the previous and the existing policies and procedures relating to bullying or harassment, and to complaints about such behaviour, comparing them to current best practice with a view to making recommendations as to how they could be improved.
208. I do so in the sections below. Regrettably for the reader, some of my recommendations are technical or may appear overly legalistic, and they do not make for good reading! Firstly, however, they are important in order to enable the House to create a process that is workable and effective. And secondly, this exercise seems to me to demonstrate the extent to which these policies are a microcosm of the cultural difficulties that pervade the functioning of the House as an employer.
209. The new Scheme introduced in July has much in it that is of value. Unfortunately the fundamental flaws that remain require me now to analyse and comment upon three separate policies, two of which I regard as wholly unfit for purpose in their current form, and the most recent of which has, in my view, been put in place without sufficient time to consider properly how it should operate, so as to deliver what it is seeking to achieve.

## **F. Complaints: Policies and Procedures**

### **F.1. Regulation of Members' Conduct**

210. Members of Parliament are required to adhere to the rules of conduct set out in their Code of Conduct, referred to earlier on in this report. Of the three main systems available to national parliaments for monitoring and

enforcing such codes, namely self-regulation, co-regulation and external regulation, the mechanism adopted in the United Kingdom is a hybrid. Through the appointment of an independent Parliamentary Commissioner for Standards, the House of Commons introduced an element of external regulation, while retaining the benefits of self-regulation.

211. Parliamentary self-regulation has traditional constitutional foundations, the judiciary recognising not only the legislative supremacy of Parliament but also, through Parliamentary privilege, the right of Parliament to manage its own affairs. Over the centuries the two Houses of Parliament have assumed the responsibility and the right to define and maintain their own standards of conduct. However, after serious public concerns about a decline in standards of behaviour, the Nolan Committee considered that a significant independent element would bolster public confidence in the ability of the House to regulate itself effectively, and the first Commissioner for Standards was appointed by the House in 1995.
  
212. The Commissioner's role includes monitoring the operation of the Code and investigating complaints of alleged breaches of the rules in that Code by Members of Parliament. However, her powers are presently circumscribed by Standing Orders, which provide for her to report to the Committee on Standards and for that Committee to retain oversight of her work. If the alleged breach occurred more than seven years earlier, the Commissioner may begin an inquiry into it only with the consent of the Committee on Standards. If the Commissioner carries out an inquiry and upholds a complaint of misconduct under the Code, and if the case is too serious for "rectification", for example by an apology, she must write a report and refer the matter to the Committee on Standards. Since 2016 the membership of this Committee has comprised seven Members of

Parliament and seven lay members, but the lay members do not have a vote.

213. The Committee considers the Commissioner's report and reaches its own conclusion on whether there has been a breach of the rules; and, if so, it may recommend to the House any sanction it considers should be applied to the Member. This may be a written apology from the Member to the House; an apology to the House by means of a point of order; an apology on the floor of the House by means of a personal statement; suspension from the service of the House for a specified number of days; or in the most heinous cases, the Committee may recommend the Member's expulsion.
214. Before July this year the policy that has been in place to address complaints by members of House staff about bullying, harassment or sexual harassment by Members is the Revised Respect Policy. However, the Commissioner's remit for investigation did not allow her to investigate any allegation of bullying, harassment or sexual harassment by a Member unless it fell within the Code definition of "*action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.*" As will be seen, this was an entirely inappropriate threshold for determining allegations of misconduct of this kind.

### **The Arrival of the New Scheme**

215. The new Scheme Delivery Report endorsed in July this year comprises a number of elements, as follows: (1) a "*statement of principle and cultural intent*" through a Behaviour Code, to apply to everyone in the "*Parliamentary Community*" (all staff employed by both Houses, MPs and their own staff and interns, those with security passes but employed by external organisations, and Peers and their staff); (2) an Independent

Complaints and Grievance Procedure (ICGP) to underpin the Code, with independent services to be procured for specialist investigations and informal dispute resolutions; (3) a Bullying and Harassment Policy; and (4) a separate Sexual Misconduct Policy.

216. A system of training is promised, to be available for everyone, to support the Code and to tackle bullying, harassment and sexual misconduct, including training on management practice. Independent reporting helplines for both complainants and respondents in respect of bullying or sexual misconduct concerns have now been published in the Staff Handbook, and a tender exercise is under way for a long-term Human Resources support service for staff employed by MPs or jointly by political parties. Workshops on management practice for MPs are to be available. The Behaviour Code is viewed as *“a tool for culture change in the House,”* addressing the acknowledged significant power imbalances in the House and improving working relationships. There is to be a *“language to challenge”* campaign to *“share advice on challenging poor behaviour,”* supported by both House Administrations, and a communications strategy has been identified for the Scheme generally. The Code of Conduct for Members has been amended, with Members now being *“expected to observe the principles set out in the Parliamentary Behaviour Code of respect, professionalism, understanding others’ perspective, courtesy and acceptance of responsibility.”*
217. The Commission agreed, in consultation with the House Trade Union Side, that these new policies and procedures would apply forthwith to all staff employed by the House. The Scheme is to have reviews, after 6 and 18 months, to monitor the progress of the new Scheme and which, according to observations in the Foreword to the report, will take into account the findings of this inquiry.

218. The Steering Group also announced that there would be a further *“independent review of historic allegations that will be open for six months to hear any complaints from Members’ staff, MPs or Peers who have experienced bullying, harassment, or sexual misconduct.”* That wide-ranging review has yet to begin and its likely duration is difficult to estimate, but the focus in this report is the position of the staff employed by the House of Commons. Having regard to the need to restore confidence and to the legal obligations owed to members of House staff by their employers, some of the recommendations made in this report need more urgent consideration than will be possible if a decision is made to wait until the first review due in January 2019, or to await the findings of that further review in addition, which is unlikely to be completed by January 2019. I strongly recommend that the recommendations in this report should be considered as a matter of urgency and certainly before January 2019.
219. In their Foreword to the Delivery Report the Steering Group described this as being *“a once in a generation opportunity to make the change needed to ensure that we all consider what we can do to promote dignity and respect.”* In a statement issued by the House at the end of July this year, it has been acknowledged that, *“We are aware that in the past the House has not had a robust process in place to deal with instances of bullying and harassment.”* And confidence was expressed in the new ICGP as meaning that allegations will now be able *“to be dealt with effectively and sensitively.”* The Behaviour Code states expressly that *“Unacceptable behaviour will be dealt with seriously, independently and with effective sanctions.”*
220. However, pending finalisation of the arrangements for the operation of the new ICGP, the Staff Handbook has now been amended (at Part I, Chapter 6, section 3) to state that the policies and procedures already in place, namely the Valuing Others and Revised Respect Policies, will

continue to operate *“as alternative procedures for the time being.”* That may take some months, given the on-going work and the procurement and tendering exercises that must take place.

221. In addition, the House endorsed the Steering Group’s proposal that the new ICGP investigation procedures should apply only to complaints about incidents that occurred after the start of the present Parliament in June 2017. The Staff Handbook now states therefore that the previous Valuing Others and Revised Respect Policies will continue to apply to complaints about allegations that pre-date the start of the 2017 Parliament.
  
222. In cases where at least one incident in a series of incidents post-dates June 2017, it appears that the complainant *“may be able to include previous incidents of inappropriate behaviour in their complaint where such behaviour amounts to a continuing act. In addition, the investigators may also be able to consider reports of allegations prior to the Scheme as evidence when considering complaints.”* However, in the case of complaints about serious incidents of bullying, harassment or sexual harassment pre-dating June 2017 where, due to failings of management and lack of support, members of staff have not previously felt able to report them, or where staff were dissuaded by line managers from bringing complaints that they did report, or where the complaints brought were not dealt with appropriately, the procedures that were in place at the time of the incident remain their only option.
  
223. Given that, in their statement issued in July, the House appears to accept that these policies do not provide *“robust processes for dealing with bullying and harassment”* this is a deeply unattractive option for those staff with historical complaints. The House is effectively requiring those whom it employs to use procedures accepted to be inadequate and ineffective for that purpose.

224. Referring to “*Pre-Scheme Cases*” at section 7 of the Scheme Delivery Report, there is recognition by the Steering Group that historical complaints generally may be up to seven years old and that the Parliamentary Commissioner for Standards can already consider such cases under the current Code of Conduct, if she considers it appropriate to do so. There was no proposal to change that procedure. However, those members of staff who have historical complaints of bullying or sexual harassment are apparently to be dealt with differently.
225. They are informed that the key to such cases is “*providing information, advice and clarity about the routes open to people and listening to and counselling individuals to support them to gain closure.*” Referring to the effects of the passage of time on the availability of evidence and quality of recollections, the report then continues “*....personal resolution is not a straightforward matter and we will therefore ensure that there will be skilled and experienced support available to help people identify what personal resolution looks like and how they might be able to achieve it.*” Those with historical complaints are to have access to the two independent helplines, now referred to in the Handbook, which it is hoped will assist them to “*achieve closure.*”
226. It is not yet clear how this service will operate, and whether those providing help will be qualified individuals capable of providing counselling services themselves, or whether staff with historical allegations will have access to other services, and whether the House will fund such services if they are recommended in individual cases. Some of those contributing to this inquiry are former members of staff with historical complaints, who are still suffering serious effects as a result of both the original alleged abuse and the lack of support and assistance from the House in dealing with it. It is unclear, at the time of writing this report, whether the helplines or access to other appropriate services are to be made available for these individuals in addition, but dealing fairly

and effectively with the failings of the past will be crucial to the success of all the measures now being introduced to change the culture of the institution and move forward. Greater clarity is required in relation to what is proposed.

227. All this recent activity and the arrival of the new Scheme now raises some serious questions over the coherence of all the current arrangements in place for dealing with these cases; over their ability to generate confidence among House staff that their complaints will be dealt with effectively; and over the independence and effectiveness of the procedures, in so far as they deal with complaints involving the conduct of Members of Parliament and complaints involving historical allegations. Issues of substance, fairness, independence, inconsistency and confusion all now risk combining to limit, rather than to increase the prospects of important internal procedures successfully addressing individuals' rights, dealing with the past effectively and meeting employment obligations. As things stand at present, I do not consider it can properly be said that unacceptable behaviour will now be dealt with "*seriously, independently and with effective sanctions,*" as the new Behaviour Code suggests.
228. I shall return to the fundamental questions of independence and effectiveness later on, but the terms of reference for this inquiry require me to assess both the previous and the existing policies and procedures relating to bullying or harassment, and to make recommendations having regard to best practice. Since all the policies remain in play, what follows is regrettably lengthier and more complex than would otherwise be required but will, I hope, fulfill that task. However, I make this general observation at the outset, which applies to any procedures put in place to tackle misconduct of this kind and therefore applies to all the policies and procedures now in place in the House.

229. Any policy tackling bullying, harassment and sexual harassment needs to have:

- an acknowledgment at its head that these forms of behaviour are problems for the House;
- a clear statement at the head that such behaviour is unlawful and will not be tolerated;
- a clear statement of commitment at the head from the senior management;
- detailed examples of the different forms of unacceptable behaviour, and a statement that bullying and harassment by staff may be treated as disciplinary offences and when such proceedings may ensue;
- the pro-active steps that the House intends to take to prevent bullying and harassment, with the responsibilities of named senior managers, managers and supervisors identified, and training programmes described, with the requirement and expectation that these are to be attended by everyone;
- assurances as to the confidentiality of reports and formal complaints and how that will be maintained;
- the various support and counselling mechanisms available with contact details clearly visible and clearly described;
- the timescales for complaints procedures clearly identified;
- the nature of report logs and record keeping explained;
- a commitment to the investigations of complaints being carried out by independent and impartial investigators with specialist expertise, in proceedings which are fair to both sides and completed within a reasonable time frame;
- a range of effective sanctions available, and published, for cases where the complaint is upheld; and
- clear information on how, when and by whom the policy is to be implemented, reviewed and monitored.

230. I begin with the policy governing staff relations. This is currently to be found in the Staff Handbook, Section 3, Chapter 6 and it is referred to as the “Valuing Others” Policy. All the policies are available on the internet for those who wish to read them in detail.

## **F. 2. The “Valuing Others” Policy**

### **Assessment and Specific Recommendations**

231. Before this policy was introduced there was apparently no formal policy dealing specifically with bullying, harassment and sexual harassment. Former members of staff spoke of increasing problems in these areas over the years, compounded by managers trying to tackle incidents without adequate advice or support. Since its introduction in around 2007, the policy has apparently been through a number of changes, and some additional specialist helplines and support services have been communicated to members of staff in recent months, but I have focused on the policy contained in the current edition of the Staff Handbook.
232. Two members of staff described using this policy successfully to deal informally with complaints of bullying, both people praising the prompt advice and assistance of their managers as instrumental in the success of this process. Most contributors, however, confirmed the views of senior managers that staff are simply not using it. The information they provide indicates that its use has been hampered by one or more of the following factors: a lack of awareness and understanding of its terms, both by staff who have been bullied and by their managers; a lack of confidence in the convoluted processes it describes; the active discouragement of its use by some managers; and a real fear among staff that they risk losing their job if they complain, *“I took out a complaint, but I knew this was the end for me”.....“I love my job and I knew if I officially reported X’s behaviour I would make staying in my current role very difficult and would suffer*

*more stress.*" This fear appears to be widely held. It is a real barrier to progress in tackling bullying at work.

233. Information from the HR Service is that despite an increase in 'Valuing Others' complaints in recent times, including some references to *"negative management behaviours"* there have been no findings in external investigations of bullying and harassment in any of the complaints brought over the last 4-5 years. This sets alarm bells ringing when considered against the background of the contributions to this inquiry, and the frank acknowledgment of senior managers that they are aware that bullying and harassment has been going on.
234. Those contributors who have tried to use the procedure complain of the following problems: the delays inherent in the formal procedures and the unacceptable length of time it takes to achieve a resolution, delays of more than nine or twelve months being referred to; the *"variable degrees of expertise and understanding"* among external investigators; problems with maintaining confidentiality, *"everyone knew about it, I was mortified;"* the bringing of trumped up disciplinary charges against the complainant in the middle of the process; and the *"default response being just to move someone on to another post whatever the outcome.....You have to be strong and determined to see it through, most people just give up and leave. And there is no oversight. No one higher up is saying 'what on earth is going on?'"*
235. The criticisms of this policy therefore encompass substance, visibility accessibility and implementation. In my view it requires extensive and substantial amendment. In its present form it does not provide either an accurate summary of the legal position or an effective policy for dealing with bullying, harassment and sexual harassment occurring within staff relations.

236. The first oddity about the policy is its name and location. The name “Valuing Others” does not adequately explain its purpose or reach, and it appears at Chapter 6 in Part 1 of the Handbook, which is headed “*Equality and Diversity*” and which is dealing generally with the House diversity and inclusion policies. The second, striking feature is its inordinate length, having some 68 separate paragraphs, many of them with sub-paragraphs. The same criticism applies with equal force to the grievance procedures in Chapter 21 of Part 5. They are too long and too prescriptive, and as one senior manager observed, “...*they were clearly written by someone who had no experience of operating policies in any environment.*” They may lead to some sterile debates over process and whether, for example, there has been compliance with paragraphs 6.12, 6.16 bullet point 3 and 6.18 bullet point 5, but procedures in this area should above all be accessible, workable, clear and fair. All those aims are defeated by prolixity and complexity.
237. For as long as this remains in place as the policy for staff to use, it needs to be completely re-cast as an anti-harassment and bullying policy, in a stand-alone position in the Handbook, and the procedures need some vigorous pruning. Any procedure in this area must be fair, but it must also be workable. There is a balance to be struck between vague “management guidance,” which lacks transparency and is open to abuse, and a complex series of convoluted hoops leading to sterile and time-consuming debates about process, which ultimately serve nobody’s interests.
238. The definitions of both bullying and harassment at paragraph 5 need to be re-visited, having regard to the principles set out earlier in this report. There needs to be an accurate definition of harassment based on the three different forms set out in section 26 of the Equality Act 2010. And under section 26 the individual does not have to possess the protected characteristic in order for the definition of harassment to be satisfied, as

currently suggested in the second sentence of 5.1. Unwanted conduct may, for example, be directed at someone because they are perceived to possess a protected characteristic, or because they are associated with someone who possesses it.

239. Similarly, the wording in para 5.2 does not accurately reflect the legal definition of harassment, and use of the terms “unjustified” and “unreciprocated” to describe the conduct cause confusion. Reciprocation may be some evidence that conduct was not unwanted, but it is not itself the key test. Use of the word “unjustified” suggests that there may be a justification defence, but unwanted conduct of this kind cannot be justified. If the purpose is to explain that managers who are undertaking appropriate and properly conducted performance management procedures will not be harassing someone, then that needs to be more clearly explained. And caution is required in this respect, having regard to the reported abuse of performance management procedures referred to earlier on in this report. Finally, the seriousness of an isolated incident may be an indicator of whether that incident amounts to unwanted conduct or not, but it is not the sole measure. If X has subjected Y to unwanted conduct, then if that conduct had the purpose or effect of violating Y’s dignity and Y’s perception of the conduct was reasonable, it will be harassment, regardless of seriousness.
240. At para 5.5 one of the examples of bullying behaviour is said to be “victimisation,” but this is an entirely separate category of unlawful act under section 27 of the 2010 Act, as set out above. Given that the fear of victimisation for speaking out is recognised as one of the main barriers to reporting harassment, and that fear of victimisation for reporting or complaining about bullying and harassment is a striking feature of the contributions to this inquiry, it should be addressed in a separate section of the same policy, and defined in accordance with the wording of section 27.

241. Caution is necessary in relation to paras 5.7 and 5.8 dealing with “unfounded, malicious or vexatious complaints,” and thought should be given to amending the current wording. Bringing disciplinary proceedings against someone because they make a complaint of harassment “*without sufficient foundation*” will be an act of victimisation unless it can be demonstrated that the complaint was made in bad faith. It is unwise to use the phrases “without sufficient foundation,” or “without foundation or substance” in this context. And many acts of verbal harassment take place behind closed doors, as suggested by the information given to this inquiry. Such phrases could deter complaints from people who have no evidence other than their own statement to support an allegation. And a complaint will not be made in bad faith merely because it has previously been resolved. Bringing disciplinary proceedings against someone who raises an historical complaint of harassment in good faith because they believe that it was previously dealt with badly by management could amount to victimisation.
242. The advice for dealing with negative behaviours at para 5.9 emphasises speedy resolution, and in those cases where it is appropriate to step in quickly and nip it in the bud, that is of course desirable. However, cases will vary in their complexity and seriousness. The advice should explain that sometimes a speedy resolution may not be possible and that an interim solution may be required pending resolution.
243. One of the frequent complaints in this inquiry has been the removal elsewhere of the person reporting or complaining about the misbehaviour, either before or after resolution. If the complainant suffers detriment as a result, that too can give rise to a complaint of victimisation. In some cases, transfer or suspension of the alleged perpetrator may be more appropriate, and careful thought should be given to that and how to incorporate it into the policy.

244. At paras 5.10 and 5.11, too much emphasis is placed on the individual complainant as having the responsibility to look carefully at the definitions of bullying and harassment and to decide whether the treatment that has upset them falls within those definitions, or whether it is just *“normal and acceptable workplace disagreement.”* The first step should be for them to raise it informally with the appropriate person and to discuss with them the nature of the behaviour and what may be the best route to a resolution in all the circumstances.
245. Paras 5.12 – 5.16 set out the categories of support and advice available both for individual complainants and for those alleged to have bullied or harassed someone. The first in the list is the individual’s line manager. The House policies generally place considerable reliance on complaints, grievances or concerns generally being brought first to the attention of the line manager as *“the best person to take these problems to initially.”* If the line manager is the person alleged to be bullying or harassing the individual, and that was the case in many of the contributions to this inquiry, the advice is to speak to the next person in the line management chain.
246. However, that advice assumes a level of competence, responsibility, impartiality and judgment on the part of line managers and the next manager in the chain, which is not always present, as the information provided to this inquiry has so vividly revealed. The acknowledged existence of significant deficiencies in this respect is a real barrier to the operation of any procedures which have line management responsibilities at their heart. That is obviously a wider problem needing to be tackled at a more fundamental level, but until it is the emphasis on informal resolution and line management as the first port of call for anybody targeted in this way needs some readjustment. And that applies wherever line management responsibilities are built into the procedures.

247. The next names in the list are the “*Harassment and Bullying Contacts*” (HBCs), described as “*volunteer members of staff who have been specifically trained in working with cases of harassment and bullying,*” whose contact details are said to be available from the HR Advisory Service, and who are said to be able to offer support and advice on all the options. This sounds an admirable initiative, and I am told that some people have spoken to an HBC over the years, but most of those contributing to this inquiry were unaware even of their existence, including people who had recently worked in HR. And none of those contributing had ever been advised to contact an HBC or given anyone’s contact details.
248. I understand that this was an initiative introduced some years ago, and that around 12-15 members of staff volunteered, were appointed and had some initial training on bullying and harassment, though not on sexual harassment. However, the HBCs have always operated on an individual basis. There has been no monitoring of the system so as to assess its use or success, or to enable reports to be followed up or to enable identification of potential problem areas, or problem individuals in the House. Over the years, some HBCs have left the House or have been unable to continue for a variety of reasons, and they have not been replaced. The numbers have therefore dwindled to a number too small to have any impact and no refresher training has been provided.
249. I accept that from time to time other “*on trend*” initiatives may come along, and that “*coaching,*” for example, will attract HR time and attention, but that will inevitably disadvantage an initiative such as this. If HBCs are to be retained and to operate as the policy presently indicates, then there need to be many more of them and they need to be properly supported and regularly trained to do what is asked of them. And the scheme must be regularly monitored to assess its impact and usefulness.

250. Similar problems of visibility and accessibility apply to the “*Welfare Officer,*” said to be able to offer “*confidential support and counselling for both parties.*” And there were mixed reviews as to the value of the help given by some representatives of the trade union side and by some HR advisers, who are the other sources of support and advice appearing in the list.
251. The Welfare Officer service referred to forms part of the Parliamentary Health and Wellbeing Service, described at Chapter 5 of the Handbook as providing a “*professional, independent advisory service to management and staff,*” and offering “*specialist advice on all aspects of occupational health and welfare in the workplace.*” A number of contributors had sought help, including counselling help, from that service in relation to anxiety and depression caused by incidents of bullying and harassment, and there was praise for its compassion, support and professionalism, as far as it went. However, the waiting time for access to counselling services has been far too long, there is concern as to whether those working in occupational health have maintained a sufficient degree of professional separation from HR, and the level of follow up has generally been poor. Staff seem to be unaware of the exact nature of the services provided or how best to access them.
252. The criticisms levelled at this service at present are that it is overworked, under resourced, under promoted and undervalued by the senior administration. This is regrettable. A service of this kind is becoming increasingly important in the workplace and its work deserves to be expanded and promoted. In my view it merits a much greater visibility in the House and greater support at senior management level than it has received hitherto. The absence of a Health and Wellbeing Strategy for the House is a curious deficiency, which could be readily corrected, and would mainstream the service, emphasising the importance of its role and integrating it fully into the current strategic People Programme.

253. The availability and quality of the internal support mechanisms identified in the policy therefore appear to be sporadic and variable. To tackle bullying and harassment effectively, this is simply not good enough. Advising people in written policies to seek support and as to where they may find it is important, but for the policies and initiatives to work they have to be taken seriously and be properly promoted and resourced. And the advice has to be accurate. External advice is said to be available from the Equality and Human Rights Commission, but the EHRC does not operate a helpline advice service. Such a service is provided by the Equality Advisory Support Service, who may refer cases to the EHRC for action if considered appropriate.
254. In recent months staff have been told about access to counselling services provided by Health Assured, and given contact details for various specialist external sexual harassment or sexual violence services and for the dedicated House police team. Recent amendments to the Handbook, at paragraph 3 of Chapter 6, now incorporate reference to the new Scheme and to the Independent Sexual Misconduct Advice and Bullying and Harassment Helplines. There has therefore been a recent flurry of activity in relation to help and support services for staff. However, if internal support services are to work as intended, they must all be properly supported and resourced.
255. The complaints procedures under the Valuing Others Policy are set out at para 6. The emphasis is on informal resolution, but the responsibility is placed first on the individual complainant to take the initiative in dealing with bullying or harassment including, where they feel able to, raising the issue directly with the person against whom the complaint is made. This will not always be appropriate and the emphasis needs some readjustment. Informal resolution is to be supported where it is appropriate but in some cases, including any more serious case where disciplinary action may be warranted, informal resolution is not at all

appropriate. There should be an option to move straight to formal action where the individual, or those advising them, feel that it is not possible or not appropriate to resolve the matter through informal action.

256. The next step contemplated before any formal process can take place is mediation, dealt with at paras 6.9 to 6.11. However, mediation is more likely to be appropriate in resolving issues between employee and employer where, for example, a member of staff is dissatisfied with her manager's response to her complaint. In relation to complaints of bullying or harassment, mediation is only likely to be an appropriate form of resolution in those cases involving minor incidents, and it would depend on the perpetrator having accepted that what they said or did was unacceptable. It is generally very difficult to use mediation in any case of sexual harassment, or in cases involving more serious bullying or harassment. And the statement that mediation "*can only be used if both parties .....recognise that they need to make changes to their own behaviour*" is simply not appropriate in cases of harassment.
257. The formal external investigation procedures at para 6.12 are preserved only for: a single incident which could be described as gross misconduct; cases where the behaviour is repeated; cases where internal efforts at resolution have failed; or otherwise "*at the discretion of the Head of the HR Advisory Service.*" Further thought needs to be given to the wording of these paragraphs, having regard to my previous observations about informal resolution. In addition, if an individual feels that an incident of bullying is sufficiently serious to warrant disciplinary action, but not serious enough to amount to gross misconduct, they should be able to pursue a formal complaint, but they cannot presently do so given the wording of para 6.12.

258. The relevant factors to be taken into account by the Head of the HR Advisory Service 'in the exercise of their discretion' should be explained, in the interests of transparency and coherent decision-making.
259. For the reasons given earlier, I consider it unhelpful, in the paragraph dealing with the duties of the external investigator, to highlight their duty to advise the House if they suspect that a complaint is unfounded or vexatious. It places an unwarranted emphasis on the bona fides of the complainant in what will often be a tense and stressful process for both sides and could potentially discourage complaints. It is also entirely unnecessary. Any competent external investigator worth their salt will know how to conduct such a hearing and what to look for in deciding the facts. Clearly, all those instructed to undertake external investigations should be skilled in handling cases involving bullying, harassment and sexual harassment, which require specialist expertise and experience.
260. In relation to the various steps identified in the procedure, I offer the following observations. The line manager of the alleged perpetrator is unlikely to be impartial, as contributors to the inquiry have pointed out. It would be advisable for someone independent of either party to be appointed as deciding officer (para 6.16). In terms of the possible solutions identified, coaching or training for the complainant in a sexual harassment complaint is rarely going to be appropriate, especially if the complaint has been upheld (6.34). The appeal procedure may need some adjustment. The ACAS Code of Practice on disciplinary and grievance procedures provides that an appeal hearing should be arranged where an appeal is lodged, without the need for any intermediate permission to appeal stage (para 6.38). Finally, as regards para 6.39, some thought should be given to the role of the Head of the HR Advisory Service in deciding, after an appeal is granted, whether there has been a breach of procedure. That person is already extensively involved in the process at earlier stages and it is inappropriate for anyone involved in implementing

the procedure to be asked to decide whether there has been a breach of that procedure.

### **F.3. The “Respect Policy” and its Revision**

261. Until 2011, when the first Respect Policy was introduced, there was no formal or transparent mechanism in place for preventing or dealing with the unacceptable abuse of House staff by Members of Parliament. When bullying or harassment occurred, the method of dealing with it depended on the willingness of senior managers to speak to the Members themselves, or on complaints being directed through the “usual channels,” involving “*a quiet word*” behind the scenes with the appropriate person in the Whip’s Office, or if necessary with the Speaker. Such methods may have stopped the repeat of such misconduct on occasion, but the lack of transparency and accountability and the fact that it neither prevented nor penalised such behaviour was eventually acknowledged to be unsustainable.
262. The Whips are not equipped for such a role in any event, and nor should they be expected to fulfill it. Appointed by each party to “help organise their party’s contribution to parliamentary business” as the UK Parliament website expresses it, it is difficult to conceive of a less appropriate person to be charged with the task of dealing with an allegation of bullying or sexual harassment against a Member. The traditional view of the whip as the backroom fixer and silent enforcer of discipline, the gatherer of intelligence on Members, armed with a lethal cocktail of incentives and ‘punishments’ to be used as appropriate, may now have been replaced, as is suggested, by a gentler focus on persuasion, appeals to loyalty and more pastoral care, as required. But leaving aside the absence of any relevant expertise to handle these issues, the fact is that the political context in which they work and the

inevitable tensions and conflicts that can result, render them wholly unsuitable for a role of this kind.

263. The 2011 Respect Policy, introduced expressly to “*protect staff of the House Service from 3<sup>rd</sup> party harassment*” was hopelessly flawed. There is no need to refer to its provisions in any detail because that now appears to be accepted. It did not deal specifically with sexual harassment. It relied primarily on an informal process involving direct action by the individual or their line manager and moving, only if that failed, to a more formal procedure to be run internally by a senior manager as Nominated Director, and escalated to the Whips or the Speaker if necessary. However, it is accepted that those nominated “*were neither experienced nor trained in dealing with such complaints, or able to make good judgments;*” there was no obligation on Members to cooperate with any investigation; no obligation on the Whips to accept the Director’s conclusions; and no provisions for any formal sanction. Nor was there provision for any appeal by Members who were criticised. Further, it was to apply only to bullying and harassment occurring after its introduction and was not retrospective, ruling out of account any earlier allegations or patterns of persistent misconduct over time.
264. Trades unions and others in the House regarded the policy as completely inadequate at the time, and those involved in the drafting felt frustrated, “*it was really disappointing, we all felt it should have been better, but the original drafts kept being diluted and the Commission kept saying ‘the Members won’t wear it’*”..... “*We kept having to tone it down to make it palatable for the Members, right from the start it was about what the Members would be willing to agree to rather than what they needed to know to address their behaviour,*”..... “*At one of the roadshows to introduce it, a member of staff said ‘it’s toothless, what can we do to enforce it?’ and they couldn’t answer her.*”..... “*There were major difficulties in persuading Whips and other politicians to go as far as they*

*had. The policy was therefore a compromise.”* The result, however, was a policy which neither fulfilled its stated aim nor discharged the obligations to staff owed by the House as their employer.

265. The death blow was delivered by the fact that, although agreed by the Commission, this policy was never endorsed by the House itself. And in November 2012 the Commission decided to suspend the formal part of the procedures, which had proved unworkable. Many members of staff described a general disengagement at this point, *“we saw what happened to anyone who tried to use Respect and we knew it couldn’t deliver. It wasn’t worth the risk.”* Staff lost confidence in the whole process. And until the introduction of the revised policy in July 2014, the only protection afforded to staff was via its informal mechanisms. This was obviously unacceptable.
266. Revising the policy, eventually introduced in July 2014, was an extremely difficult exercise. The negotiations proved intractable and those involved still bear the scars, *“the whole process was tortuous and once again it was governed throughout, not by decisions as to what was right, but by considerations of what Members would be prepared to accept.....It seemed to be taken for granted that no effective sanction could be imposed on any Member for bullying a member of staff except by the House itself, through the Committee on Standards.”*
267. The revised policy now has four stages rather than two. Once again the emphasis is on informal resolution, stages one and two providing for *“raising the issue”* directly, possible external mediation and then a formal grievance process to be conducted by the Senior Responsible Officer (SRO) or nominated Head of Department. The revised policy had a *“far greater emphasis on management ownership of the policy”* with line managers being required to *“take their responsibilities seriously.”* Plans for a *“comprehensive House-wide training programme”* were announced.

268. If attempts at informal resolution fail, then the complaint can be considered at stage three by the Parliamentary Commissioner for Standards. At this stage *“The Commissioner will consider whether the complaint is within her remit and whether there is sufficient evidence to justify an investigation by her. This involves her considering whether the Member concerned has behaved in such a way as to breach the MPs’ Code of Conduct and that such a breach is sufficiently serious to cause significant damage to the reputation and integrity of the House as a whole or of its Members generally. In practice, the Commissioner could only be expected to investigate either complaints that there had been a single very serious incident, or complaints involving repeated incidents or a sustained and damaging pattern of behaviour. She would not be concerned by a complaint of a brusque response in a highly charged political situation.”* (para 9.3.)
269. If the Commissioner accepts a complaint for investigation she is required to conduct one confidentially in accordance with stage four. She will then (a) dismiss the complaint; or (b) consider, if she concludes that there may have been a breach of the Code, whether the matter can be resolved through rectification, such as an apology; and (c) if not, report the facts and her conclusions to the Committee on Standards. The Committee will then decide on *“the appropriate course of action,”* and if appropriate will report to the House *“under its normal procedures,”* which are subject to parliamentary privilege.
270. The threshold to be crossed before the Commissioner can even consider a complaint, linking her involvement to paragraph 17 of the current Code of Conduct, is an extremely high one. The guidance given by the Committee on Standards in relation to her investigations states at paragraph 2(iv), *“This is a very high hurdle, which the Committee expects to be met only in extreme and extremely limited circumstances.”* In their first report on the revised policy, published on 10 June 2014,

recommending that it be endorsed by the House, the Committee described it as a policy which was fair to all parties given the role of the Commissioner, *"...who is independent of both House management and of Members. Her fixed term, non-renewable contract acts as a safeguard of that independence in all her investigations, however sensitive."*

271. However, the expectation was clearly that the Commissioner would rarely be troubled. *"If the new policy is effective, complaints should be resolved at an early stage. Indeed, it is possible there will be no role for the Parliamentary Commissioner for Standards and the Committee on Standards. Nonetheless, there needs to be an effective mechanism in place to deal with serious problems. The partial suspension of the current Respect Policy has left the House without such a mechanism for a significant period."*

272. The House accepted the recommendations, endorsed the policy and asked the Commission to review its operation in the next Parliament. Like its predecessor, this revised policy is not retrospective, enabling consideration of complaints only in respect of bullying and harassment occurring after its endorsement by the House in July 2014. Some written guidance and some initial training for managers and staff was provided, but it is clear from the contributions to this inquiry that the policy was doomed from the start. *"The training focused entirely on the staff. We asked 'what training are the Members getting' but we all knew the answer was none."..... "And the training we had was all about helping us to be more resilient, how to cope with the bullying and harassment without flinching, not how to call it out and complain." ..... "The idea that senior management would back us if we complained was laughable, it was never going to work. No-one trusted it."*

273. I'm afraid that the Revised Respect Policy badly fails the test it was set. It is simply not an effective policy for addressing the bullying, harassment or

sexual harassment of members of staff by Members of Parliament. Despite the view of some contributors that “*the reality is that Members will not tolerate anything else,*” reliance upon this policy as discharging the duty to ensure the safety and dignity of those employed in the House, and as ensuring the highest standards of conduct of Members of Parliament is sadly misplaced. There are serious issues of substance, which I shall deal with first, but there are two fundamental concerns, namely the lack of independence in the procedures dealing with such misconduct by Members, and the inability of the policy to address historical patterns of such behaviour. And regrettably these concerns apply to the new Scheme in addition.

274. The overwhelming majority of those contributing to this inquiry consider that the fundamental problems with the Respect Policy have always been as follows: the lack of retrospective effect, preventing consideration of any misconduct before its introduction; the “*ludicrously high*” threshold to be crossed before a complaint can even reach the Commissioner; and the lack of independence in relation to the making of findings on that complaint, or in deciding on an appropriate sanction. The independent Commissioner must refer cases where she considers there may have been a serious breach of the rules to the Committee on Standards, who sit in judgment on the Member concerned, decide whether there has in fact been a breach and what, if any sanction should be imposed.
275. Under the new Scheme the threshold has now gone, but serious concerns as to independence and retrospectivity remain, calling into question the effectiveness of the new procedures, which some have described as amounting only to “*Respect-Mark-3*”. Any finding or sanction in respect of the conduct of an MP, following a complaint under the new independent procedures, must yet be ratified by both the Commissioner for Standards and the Committee on Standards. The decisions taken are

therefore ultimately decisions by Members alone voting on the conduct of their colleagues.

276. And unless complaints of historical allegations of abuse are properly dealt with, they will constantly dog the new Scheme, hinder the culture change it seeks to promote and continue to serve as a poignant reminder of the previous failures by the House to provide earlier effective opportunities for complaint.
277. The importance of these issues to both Members and staff, and to the reputation of the House as a whole, is beyond dispute. And they must be resolved if this really is to be the *“once in a generation opportunity to make the change needed”* that the Steering Group describe, and if the recent reforms are truly to have value, the mistakes and failures of the past are to be acknowledged and corrected, and the confidence of staff and the wider public alike are to be restored. I shall return to these issues later on when I consider the new Scheme.

### **The Revised Respect Policy**

#### **Assessment and Specific Recommendations**

278. In relation to substance, the Revised Respect Policy suffers from the same problems as “Valuing Others” in relation to length and prolixity, some senior managers acknowledging that there are *“too many gateways to pass through before a complaint can get to the Commissioner.”* There is no specific consideration of sexual harassment, and there is acceptance at senior level that *“it is not adapted to deal with such cases.”* The definitions of bullying and harassment need once again to be revised, so as to accurately state the law, and to identify victimisation as a separate unlawful act. The definition section in this policy is even briefer than that in the Valuing Others policy.

279. The prohibition on anonymous complaints (para 3.4.) needs to be reconsidered in the light of current thinking. The EHRC has recommended the development of anonymous complaints mechanisms for harassment, regarding it as a valuable tool in addressing harassment in larger organisations and in the regulated professions. They are right to do so. Such mechanisms enable employers both to facilitate safe reporting and to develop a picture of a person's pattern of behaviour. Anonymous complainants can be informed in cases where there have been multiple complaints, and asked whether they wish to make a formal complaint alongside others. In their recent report, "Turning the Tables," the EHRC refer to the work being done by the Ministry of Justice with the organisation "Safely Spoken" to develop support for employees in reporting abuse, using an online tool based on the Callisto Project. This is a helpful initiative, which merits careful consideration.
280. There is once again far too great an emphasis in this policy on informal resolution and mediation. Such methods will in some cases be inappropriate, for the same reasons referred to in relation to the Valuing Others policy (see above). For more serious cases, the involving of senior management in the required grievance process for complaints about Members is inconsistent with the necessary elements of expertise and of independence in resolving such grievances. And the suggested line management involvement and support at the earlier stage is hampered by the same disadvantages as those already referred to above, in terms of current levels of capability and competence.
281. Under this policy, where the allegation is being made against a Member of Parliament, the imbalance of power between the complainant and the alleged perpetrator is that much greater, and it is wholly unrealistic and unreasonable to require individual employees to try to resolve the matter themselves in this way. Some contributors to this inquiry regard the repeated emphasis on informal resolution as almost amounting to

improper pressure on them to try to resolve what are already very difficult and stressful situations. *“The focus should be on what the member of staff’s views are, not what is thought to be in ‘everyone’s interests.”*

282. The notion that the Commissioner for Standards should only become involved in ‘extreme and extremely limited circumstances’ is unacceptable in a policy addressing allegations of abusive conduct against Members of Parliament. Linking it to the broader concept in the Code, of damage causing significant damage to the reputation and integrity of the House as a whole or of Members generally, is completely inappropriate. The recent amendment to the Code, requiring Members to observe the principles in the new Behaviour Code, would indicate that this is now accepted.
283. The focus in any policy addressing abusive conduct should be upon determining the most appropriate method of resolving a complaint in each individual case. And the list of alternative scenarios said to require the Commissioner’s involvement ought to cater for a wider range of incidents between those identified in the policy.
284. Finally, in relation to holding a hearing, rather than it being a matter of discretion for the Commissioner the expectation should be that a complainant always receives a hearing, so that the full details of the complaint and all the nuances of the described behaviour can be properly understood. Complaints involving bullying, harassment or sexual harassment are rarely black and white. There may be grey areas and nuances of behaviour, which those charged with investigating such complaints need to be sensitive to and trained to understand. It is necessary to have regard both to the perception of the complainant and to all the other circumstances, including the conduct and point of view of the alleged perpetrator and of any witnesses to what occurred.

285. A clear indication of the ineffectiveness of this revised policy appears from the extent to which it has been used. Since its introduction in 2014, no complaint has ever reached the Commissioner. Nor has any complaint of sexual harassment been pursued. Information provided to this inquiry is that during its two first years of life there were around nineteen complaints, brought by staff from several different teams, all brought under the informal procedures, and that the numbers of complaints have dwindled since then. One of them involved a complaint against a member of staff directly employed by an MP, also covered by the policy. However, senior management frankly admit that none of the complaints against Members involved more serious or sustained bullying or harassment of the kind now described by staff contributing to this inquiry. They admit too that the policy *“is not equipped to deal well with such cases.”*
286. All these earlier complaints involved *“flashpoint”* incidents, such as outbursts of temper or abusive language, for which a verbal or written apology was given in most cases. In those cases where no apology was forthcoming, the complainant chose not to take it further. The assertion in the House statement issued on 9 March that the complaints made under this policy had been *“resolved to the satisfaction of the complainant”* must therefore be understood in that light. The absence of complaints in respect of more serious abuse is illustrative of the lack of confidence in this policy expressed by staff, *“Where are the sanctions? There aren’t any, complaining is pointless,”* and of the limited impact the policy has had on preventing or dealing effectively with such behaviour by Members. A short, internal review of the policy in late 2017, which the Commission asked to be *“light touch,”* revealed none of the dissatisfaction now voiced by so many members of staff, and candidly acknowledged as valid by some senior managers.

### **Conclusion regarding “Valuing Others” and “Respect” Policies**

287. In conclusion, the clear picture that emerges from the information provided is that both the “Valuing Others Policy” and the “Revised Respect Policy” have failed in their task of ensuring that the safety and dignity of members of House staff are respected and protected. They have failed too in providing staff with an effective means of dealing with instances of abusive conduct when they have occurred.
288. The prospect of a new Scheme was therefore greatly to be welcomed in principle, because it would demonstrate recognition by the Steering Group, and by the House as a whole if it was endorsed, that change was both necessary and long overdue. However, the questions now are whether the new Scheme that has been introduced can fulfill its aims in practice, whether it can assist in bringing about the “*urgent and essential change*” required in workplace culture, and whether it can ensure that the House of Commons meets “*the highest ethical standards of integrity, courtesy and mutual respect.*” The fundamental concerns as to its independence, and as to how the House proposes to deal with historical allegations where the complainants do not have access to this Scheme are central to those questions.

### **F.4. The Independent Complaints and Grievance Scheme Delivery**

#### **Report: July 2018**

#### **Assessment and Specific Recommendations**

289. There is much to be welcomed in this new Scheme, reflective of the careful attention paid to current good practice in these areas. The development of a code of behaviour, bullying and harassment and sexual misconduct policies, and recognition that sexual harassment is a separate and distinct form of harassment are significant improvements. So too are the following: the introduction of anonymous reporting to the helplines

for monitoring purposes; the stated intention to provide greater support for those wishing to pursue complaints; and recognition that unfounded complaints should not be conflated with malicious complaints. The tendering process for both the specialist investigation and dispute resolution services is apparently under way and the independence of those services is a significant improvement.

290. The emphasis on the use of informal means and mediation as appropriate ways of resolving complaints has been reduced, but realistically the prospect of someone who has been bullied feeling able to speak up about their treatment, as envisaged, will obviously depend on the extent to which there is a real change in the culture presently operating in the House. The "*language to challenge*" campaign will be important, but it will require clear commitment at the senior levels if it is to be effective.
291. Given these obvious improvements, it is a matter of regret that serious concerns as to how complaints of historical allegations are to be dealt with, and as to the lack of independence in procedures involving Members of Parliament, are serving to damage the prospects of success for this new Scheme, in generating staff confidence that their complaints will be dealt with fairly and impartially, and in restoring public confidence.
292. I shall deal first with the contents of the Scheme and the proposals for its implementation. In general terms, the comments I have already made, both in this section of the report and throughout the report, may be of some assistance when the Scheme is reviewed, in terms of considering improved content and wording in some areas. I don't repeat all those observations here, but I have some additional specific comments as follows.

293. The Bullying and Harassment Policy at Annex B should also contain a separate section on victimisation, to bring it into line with section 11 of the Sexual Misconduct Policy at Annex C. And it would be helpful for the definition of victimisation under section 27 of the Equality Act to be outlined at section 11, to set the prohibition on victimisation in context. At para 4.1 of Annex C, the definition of harassment should be improved by setting out more clearly the definitions of sexual harassment in section 26(2) of the Equality Act, and less favourable treatment because of rejection of or submission to sexual harassment in section 26(3). This would serve to set the context for the examples which follow in the final sentence. At sections 4 and 5 it would help to explain that unwanted conduct does not have to have the purpose of violating a person's dignity, and that it is the perception of the individual that matters.
294. More significantly, it is unfortunate that no thought appears to have been given to the gender dimension of the bullying behaviour to which I have referred earlier on in this report. It is expressly acknowledged in the Sexual Misconduct Policy (Annex C, page 77) that more women than men are affected by sexual misconduct, and that the various protected characteristics under the Equality Act may intersect with each other in ways which create specific issues, such as racialised sexual harassment. Under the Bullying and Harassment Policy someone's identity is recognised to be an aggravating factor and as potentially relevant to sanctions (Annex B, para 6.3). But there is not as yet any recognition of gendered bullying, which has been such a clear feature of the behaviour described during this inquiry. Both gendered bullying and intersectionality may well be relevant to the investigations of complaints under this Policy and it would be helpful for this to be referred to expressly in the Scheme.
295. I also recommend a change to the right to be accompanied, provided for in relation to hearings. A complainant and a respondent may presently

bring a colleague from the Parliamentary Community, or a trade union representative. Otherwise, representation is said to be at the discretion of the independent Case Manager. However, as disclosed in the information given to this inquiry, the importance of these proceedings and the issues that can arise may in some cases justify legal representation. Certainly, if legal representation is permitted for the respondent in any case, and that may well happen if the respondent is a Member, fairness and equality of arms would justify this entitlement also being extended to a complainant, and it ought then to be dealt with as a matter of right, not of discretion.

### **Confidentiality**

296. The decision to make the investigative stage of the process confidential is to be welcomed, if that is what the complainant wants. One of the recurring themes in this inquiry has been the acute distress caused to some people by the failure to maintain confidentiality in the complaints process. In these cases, where the complainant objects to publication of the nature of the allegations and of the alleged perpetrator, confidentiality should be maintained throughout the process. The interests of the individual complainant and the right to respect for their private life should be paramount.
297. However, where no objection to publication is raised, the retaining of confidentiality of the investigative proceedings should in my view depend on the stage of the process reached and the nature of the allegations. Confidentiality should be retained in all cases until a decision has been made that there is a case to answer and the complaint has been sent for full investigation by the independent investigator. I do not consider that a complaint which involves, for example, an alleged incident of “low level” rudeness, which is capable of being resolved informally with an apology, requires publication of the incident or the identity of the alleged

perpetrator. However, in those more serious cases, where the allegations indicate a pattern or a series of abusive acts over a period of time, or where there is a single but more serious allegation, then in my view the name of the alleged perpetrator and the nature of the allegations made should be published if the matter proceeds to full investigation. In cases involving serious or persistent abusive conduct, there is in my view a legitimate public interest in transparency and in public awareness of alleged misconduct in violation of the Code.

298. I deal below with complaints which raise historical allegations. The approach to the preservation of confidentiality in these cases should, in my view, be the same. If the complainant objects to publication, then confidentiality should be maintained throughout the process. Where no objection is raised, publication should depend on the age and/or the seriousness or persistence of the alleged misconduct. It is not possible to be more specific in this respect because I am not dealing in this inquiry with individual complaints and cannot comment on specific allegations. Allegations of a persistent course of abusive conduct over many years are likely to fall on the publication side of the line. So too would a single but very serious sexual assault alleged to have taken place, say, ten years ago. A single historical allegation of unwanted and offensive language may fall on the other side of the line. The criteria to be applied in determining the issue of confidentiality should be considered carefully, in consultation with the Commissioner for Standards, having regard to the legitimacy of the public interest in such allegations.

### **General Recommendations**

#### **Implementation**

299. A policy is only ever as good as its implementation, and this applies with equal force to all the policies and procedures in place and which are now

apparently to co-exist. Given the problems of the past, a radically different approach needs to be adopted in the House. The anti-harassment and bullying policies need high visibility, regular promotion and constant attention throughout the workplace. Tucking them away in Chapter 6 of the Handbook and on the intranet will not suffice. There need to be posters in offices, lifts and canteens, and promotional “*anti-bullying/harassment weeks*,” all drawing attention to the policies and to helplines and other available support. And targeted bullying, harassment and sexual harassment training will be essential to its success. Merely publishing policies and guidance and asking everyone to read them is wholly inadequate.

300. Accurate and reliable record-keeping will be an extremely important part of the new Scheme. A record of complaints, and of the decisions made in each case will enable patterns of such conduct to be identified and assist in the decision-making in these cases. And it will also provide data which can be used to monitor the effectiveness of the whole process. Poor record-keeping has been a feature of the criticisms in this inquiry and the systems now in place must remedy that failing.

### **Ownership**

301. The new Scheme is to apply to everyone within the “Parliamentary Community,” which is a noble aim, but it is unclear at present who exactly is to have ownership of the new Scheme and where responsibility for its success or failure will lie. Accountability is crucial. Those with responsibilities for its delivery and for monitoring its progress should be identified within the policy itself, and it is essential in this case that ownership of the new Scheme in its entirety is invested at the highest levels of the House, with the obligations for the Speaker, the Commission, the Clerk of the House and the Director General all clearly identified.

302. The Delivery Report refers in general terms to members of the Steering Group and “*senior leadership groups*” within each House acting as “*champions*” of the Behaviour Code, but greater clarity is needed as regards the individual personnel with responsibilities and exactly what those responsibilities are. Similarly, responsibility for the review process should be clarified. It is presently unclear who is to participate in that process and it will be important for staff to be included, including through the relevant trades unions, and independent external input may also be of benefit.

### **Training**

303. Training will be essential if the new Scheme is to work, and there has to be a commitment to training at the most senior levels. High quality induction and continuation training, together with rolling programmes of senior leadership and line management development training, is time-consuming and resource intensive, but it delivers. During this inquiry I identified a “*we’re all much too busy*” approach to allocating sufficient time to training, coupled with the inevitable “*no more money in the budget*” response, but “*bite-size modules*” or short, voluntary self-referral sessions are insufficient.
304. In addition to the new Scheme, for as long as the Valuing Others and Respect Policies continue to operate for both present and historical complaints, and certainly following any revisions as recommended in this report, there will also have to be continuing training provided for staff and managers, either stand-alone or as part of the new Scheme training, on how these policies are to operate and co-exist in future, who has responsibility for them and how they are to be accessed and supported. Members of staff now wishing to pursue serious complaints about bullying or sexual harassment that occurred, for example, in November 2016 or May 2017 cannot access the new Scheme and the rights of both

complainants and respondents in such cases must be properly catered for.

305. For the new Scheme, the intention is for training is to be “available” to underpin the new Behaviour Code and to tackle bullying and harassment, but it is unclear from the Delivery Report to what extent this training will be voluntary, and how often the training will be refreshed. People who really need training of this kind, addressing behaviour, attitudes and understanding others’ perspectives, tend not to volunteer or self-refer. The training should certainly be mandatory for all staff, including those at the most senior levels. And the induction sessions should be followed by regular continuation or refresher training. Implementation of the Behaviour Code should form part of every manager’s annual performance management appraisal, with appropriate rewards or commendations for steps taken to advance its impact.
306. And if it is to work, the training ought to be for everyone, including Members of Parliament. Changing attitudes and behaviours, making all who work in the House think about their behaviour and its impact, and restoring the confidence of staff in the senior administration requires nothing less.
307. Those contributing to this inquiry described very poor levels of attendance by Members of Parliament on training courses generally, even in relation to courses which they had specifically requested, on cyber security for example. The present prospects of securing a better level of attendance on training courses for the new Scheme are therefore low. The workload of Members and the obvious time constraints will, for some, render attendance at training courses unattractive on this basis alone. But there are likely to be other reasons for this poor attendance.

308. Some will be hostile to the whole concept of training, seeing it as an interference with their independence and elected status. Some will be hostile to training of this sort, questioning its value or its necessity. Some may just be uneasy about being seen to attend training courses. Members are under close public scrutiny, not least at the ballot box and in the Commons Chamber. The need to appear confident, in control and in full possession of all facts may lead some to view training as highlighting inexperience or uncertainty, and therefore as something to be avoided.
309. Similar problems used to exist among parts of the judiciary. Back in the 1970s some judges regarded any training as an interference with their independence and were implacably opposed. Others regarded it as unnecessary, or too time-consuming, or as suggesting to the public that they weren't up to the job, or as unlikely to be of any value. Such was the level of unease that the new body set up to provide such training had to be called the Judicial "Studies" Board rather than the Judicial "Training" Board, as originally intended. Fortunately, 40 years of training have brought enlightenment. The Judicial College now offers in its prospectus a wide range of high quality seminars. Judicial training generally, and in particular practical skills and ethics training, is enormously popular. Training is seen as a professional entitlement as well as a professional obligation. And an important part of that training is the sharing of good practice.
310. Members of Parliament are a diverse group of people, with different backgrounds, interests and experiences, and the skills they need to do the job well are many and varied. Tensions between interests, conscience and allegiances all add to the complexities of the important work they do. They should be better supported than they currently appear to be. Running an office effectively, employing staff, public speaking, media engagement, sitting on or chairing select committees and questioning

witnesses, working respectfully with House staff and understanding the relationships and boundaries, adhering to ethical standards and the requirements of the Code of Conduct are all matters that good training can help everyone with, taking account of needs and priorities.

311. There is little opportunity for sharing of good practice, due to the very individual nature of their role and the competitive environment in which they work. There is no strong sense of corporate responsibilities and they must wrestle with conflicting loyalties and allegiances. Regarding each Member as an individual office holder can obscure the wider collective responsibility to act. This new Scheme is for the House as an institution to own. Fire safety training is mandatory for all Members, and this training should be approached in the same way. Even those Members most implacably opposed will gain from it, despite any current intransigence.

### **Effectiveness and Independence**

#### **(a) Dealing with the Past: Complaints against House Staff and Members of Parliament**

312. This inquiry has received information from both present members of House staff and staff who were formerly employed there. Some of the incidents described related to events that happened some time ago. The time span was broad, covering in the main events occurring within the last ten years, but some were even older. This is not unusual in cases involving bullying and harassment, particularly sexual harassment. For some people, the ability to talk freely and in confidence about distressing incidents that happened to them in the past may have been of some assistance. I hope that is the case. For others, the re-living of such experiences was obviously difficult and unpleasant, as I witnessed for myself.

313. Some people may decide, ultimately, that they do not want to take matters any further, but for others, what happened to them remains an open wound that time has not healed, and that time alone is now unlikely to heal. As the Clerk of the House recognised in his letter to staff of 12 March, there are *“unresolved issues over bullying and harassment, including sexual harassment, which need to be addressed.”* Many people whose experiences happened some years ago, but who had not previously reported them or pursued a complaint, or whose complaint was mishandled, were anxious to know what their options were.
314. Views commonly expressed were *“We should be given a voice....we were badly let down and there should be an acknowledgement and a genuine apology.... if someone commits an unlawful act they should be held accountable.... It’s about repairing what has been done wrong... wiping the slate clean will be a complete betrayal.”* It is difficult to overstate the strength of feeling there is on this issue. And I anticipate that there may be other members of staff who did not come forward but who are in the same position, and who have been waiting to see the new Scheme, or this report. *“Pathways for the resolution of such complaints”* are one of the matters I have been asked to consider.
315. In these circumstances, the decision that the new Scheme will apply only to complaints about misconduct occurring since June 2017 is a regrettable one and I strongly recommend that it be urgently re-considered.
316. It is unclear from the Scheme Delivery Report exactly why this decision has been arrived at. At section 7, the Steering Group appear to recognise the fact that *“unacceptable behaviour can have devastating long-lasting consequences for people”* and express their determination that the new Scheme should not be *“a ‘day zero’ approach that ignores the problems of the past.”* In relation to older incidents the essence of their reasoning

is at paragraph 88: *“It is incumbent on us to not raise expectations that are unlikely to be met and which may add to the distress and frustration that people may already be feeling. The unfortunate reality is that the further back in time you go the further the availability of evidence, the quality of recollection and the possibility of achieving natural justice for either party recedes. The advice we have taken from Tom Linden QC is clear that an investigation of a complaint will be more difficult the further into the past you go. That is why we have selected the start of this Parliament for the retrospective application of investigations under the Scheme.”*

317. However, there are now to be different pathways for resolution available to complainants, depending on when the events to which their complaint relates arose. Some examples of the unfortunate and arbitrary results that flow from the application of the criteria reveal their obvious unfairness.
318. A woman who has a complaint about a Member of Parliament arising from incidents occurring in July 2017 can use the new Scheme. So too can a woman who complains about a course of conduct by that Member, which started before June 2017 but continued until July 2017; and she will be able to include all the earlier conduct as part of her complaint.
319. A woman whose complaint relates to a course of conduct by the same Member but which ended in May 2017 will also be able to raise a complaint, but she must use the procedure that was in place at the time that the events occurred, namely the Revised Respect Policy which, as seems to be accepted, was an unsatisfactory policy with no retrospective effect, in which staff do not have confidence and which they will not use. If her complaint is one of sexual harassment, she is being required to use a policy which senior management accepts is not adapted to deal with such misconduct. Alarm bells should be ringing in terms of employment

obligations. It would also appear that an employee's complaint raised in July 2018 regarding events that happened in May 2017 will be barred under the new Scheme, whereas a complaint raised in July 2019, but concerning events in July 2017 will not.

320. If this undesirable state of affairs is believed to be the consequence of leading counsel's advice, then that belief is wholly misplaced and the matter can be readily corrected. The advice has been published as Annex D to the Delivery Report. Counsel was instructed to advise on whether the common law presumption against retrospective effect would *of itself* prevent the new Scheme being used to investigate complaints relating to events which occurred before the date when new Scheme came into force. His conclusion, with which I entirely agree, is that it would not, and that it is debatable whether the presumption against retrospective effect has any relevance at all in these circumstances.
321. Essentially, the new Scheme does not set any new rules or standards for Members, which did not already apply at the time when older complaints arose. The new Scheme is to be used to investigate complaints about bullying, harassment and sexual harassment, and abusive conduct of this sort has always been unacceptable behaviour in Parliament. There may not have been written policies in place expressly prohibiting such conduct, but it is obviously not the case that such conduct was acceptable among the Parliamentary Community in the past and will now be rendered unacceptable by the new Scheme. A Member who bullied or sexually harassed members of House staff in 2010, 2014, 2016 and again in June 2017 could not sensibly say that the first three occasions involved behaviour which was acceptable and permitted, but that the last one did not.
322. The law does not protect against subsequent procedural changes where the substantive standards have not changed. As counsel points out,

where procedural changes in the decision-making process occur through legislation, the presumption is that they are in the interests of justice because they will improve the quality of that decision-making. The aim of this new Scheme is to ensure better quality of decision-making in relation to complaints of bullying and harassment. Consequently, using the new Scheme to investigate older complaints would be more rather than less fair, to both the complainant and the alleged perpetrator.

323. Clearly, therefore, there is no legal bar to investigating historical complaints under the new Scheme. On the contrary, the imposition of a cut-off date is an arbitrary measure, which fails to have regard to the serious disadvantages that will result to individual employees, most of whom are likely to be women. Older employees may also be disproportionately disadvantaged by this rule, raising potential questions of indirect age discrimination. If older complaints are to be investigated, and the intention is that they are, it would be fairer and more in accord with principles of consistency and coherence to use the new Scheme for all complaints. The same applies to employees who may have older complaints under the Valuing Others Policy, which is also deficient in a number of respects and has been the subject of much criticism by staff.
324. Some contributors expressed concern that the success of this new Scheme, in terms of its operation and reputation, could be put at risk if it was to be weighed down in the first years of its life by historical complaints, which proved time-consuming and complex to resolve. But the complexities, reputational damage and necessary resources would seem to me to be magnified tenfold if complaints requiring resolution had to be determined simultaneously using separate policies, involving different personnel and timescales depending on when all the events complained about happened and whether there was a course of conduct.

325. Dismissive or inadequate treatment of a new complaint of an historical allegation of sexual harassment under ineffective policies could potentially be an act of discrimination itself. Far from sweeping away all the problems of the past, the likely problems and disputes would make things infinitely worse. A change in the culture of the institution is accepted as urgent and necessary and this is hardly likely to assist in that process.
326. Leading counsel rightly identified the real question in all these cases as being one of practicality and fairness, in terms of the ability of the alleged perpetrator to respond effectively in an investigation where the allegations relate to events that happened a long time ago. But that is a general observation regarding the fairness of investigating older complaints under any procedure, and not specifically the fairness of using the new Scheme for such complaints. The Steering Group referred to the desirability of achieving natural justice in these cases. The key question in this respect is not when the incident complained about occurred, but whether it is possible to arrive at a fair outcome in all the circumstances of the case.
327. For all these reasons I consider that there should be no cut-off date imposed for access to the new Scheme and I recommend its removal. The real issue is fairness, and how best these cases can be managed so as to be fair to everyone involved. The observations and recommendations that follow, if they are accepted, can be translated into appropriate guidance, so that everyone knows where they stand.
328. Experience in the criminal courts shows that even where the burden and standard of proof is high, many cases involving historical allegations of sexual offences proceed to a fair trial and a just conclusion. As a general principle, the response of employers to staff complaints of historical allegations should be of the same high standard as their response to

current ones. Historical allegations generally need to be investigated in broadly the same way as more recent ones.

329. If it came to light that ten years ago a senior employee still in post had committed an act of gross misconduct going to the heart of the employment relationship, had accepted bribes for example, the House would undoubtedly take action. The same approach should be adopted towards these cases. Not only do they have an equal if not greater ability to cause damage to the reputation of the House, but the person accused of bullying or harassment in the past may well have continued to treat others in this way since and may still be doing so. The allegations may not be isolated ones and other employees may be at risk.
330. However, these cases will vary in their complexity and viability. There may well be insurmountable obstacles as a result of the passage of time, though the passage of time of itself will often be more relevant to sanction than to the process of investigation. The employer needs to find out what the position is rather than make assumptions. There is a need to take stock in each case before a full investigation takes place, having regard to the wishes of the complainant and to the need for fairness to both parties.
331. The first priority will be to provide immediate support to the complainant through the relevant specialist support services now being put into place. Being listened to and taken seriously, having choice and a voice in the decision-making about their case are all essential elements. Not all complainants will want their complaint to go forward to a full investigation. Some may wish only that a record is made so that the House is aware of the allegations and better able to identify any patterns, and so that, if appropriate, action can be taken to prevent it happening again.

332. I have considered carefully whether there should be a published limitation period, requiring anyone wishing to have a historical complaint investigated to lodge their complaint within that period, and outside of which people can be told that no further historical complaints will be considered. In this case, while it is reasonable for the House to know how many such complaints they will need to deal with and to be able to allocate resources appropriately, the problems of the past militate against the imposition of a fixed period without room for a discretionary extension. There will always be cases on the margins, which will need to be considered on their merits.
333. The Steering Group rightly emphasises the need for those with older complaints to have access to skilled and experienced support, with information, advice and clarity about the options open to them. I see no objection, if it were thought appropriate, to a requirement that if, after having had access to that advice and support, a complainant wishes to have the complaint investigated, the complaint should be lodged with the investigation service within a reasonable period after that advice and support phase has ended. What that period should be will be a matter for discussion and agreement.
334. The current time limit for lodging complaints about sexual harassment with an employment tribunal is three months from the date of the incident, but the need to avoid any further delay may well justify a shorter period in these cases. I recommend that there should also be a discretion retained, to allow a complaint lodged late for acceptable reasons to be pursued.
335. For those who want their complaint to proceed to a full investigation, the complaint should be accepted under the procedure in the normal way and be considered by the independent Case Manager, who is to be the first person involved under the new Scheme.

336. Before any decision is taken as to whether it is possible to investigate the complaint, the allegation should be put to the alleged perpetrator. Not all those who are complained about always dispute everything, and a fair resolution with acceptance and an apology may be possible in some cases. A genuine apology and an expression of remorse is always important to those who have suffered abusive treatment of this kind. Obviously, support should also be available to the person against whom the complaint has been made, and that may help in achieving a resolution.
337. If the allegations are disputed, there will need to be a preliminary assessment by the Case Manager in each case before proceeding to an investigation, taking into account the following factors: **(1) The age of the events complained about.** Different issues may arise in relation to events between 2 and 4 years old and those between 8-10 years of age. **(2) The seriousness of the allegations.** The more serious they are, or where persistent or repeated misconduct is alleged, the more important it is for them to be investigated, especially if the decision is a fine one weighing up all the other factors. **(3) The extent to which evidence is still available on both sides.** Witnesses may no longer be available, or their memories may have faded over time, and contemporaneous documentary evidence may no longer exist. In some cases, it may no longer be possible to conduct a fair investigation, but in others, HR and other records may still be retained, memories may be assisted by diary entries or the like and a fair hearing may well be possible. **(4) The complainant's own wishes.**
338. Investigations in these cases can be stressful and distressing for everyone. The conduct of any investigation will obviously be a matter for the specialist independent investigator. I have commented upon the representation provisions in the new Scheme, but in general, in these historical cases especially, scheduled breaks and interviews in writing or

over the telephone may need to be carefully considered and directions given in advance.

339. Despite all these steps, it sometimes happens that the complainant decides after proceedings have started, that she no longer wants to participate in the process. That, however, should not automatically bring an end to the proceedings. Once seized of the details and the seriousness of the allegations, it may be considered appropriate that the investigation should continue to its conclusion.
340. Based on the information provided to this inquiry, there are a number of reasons why there may now be complaints of historical allegations coming forward to be dealt with, and there may be other reasons in addition. Some members of staff may have raised a written complaint some years ago but allege that it was badly handled under the policy in place at the time and that it was not satisfactorily resolved. They may wish to have their complaint properly determined under the new and fairer Scheme.
341. Some complainants may have been actively discouraged by their line managers from pursuing complaints at the time, and may wish now to have the matter resolved. Others may have been deterred from coming forward at the time because of the undue emphasis on informal resolution in the policies then in place, and the responsibility placed on them to try to tackle the problem themselves. Enabling these employees to have access to this Scheme and to have their complaints now considered properly and, if possible, investigated fairly, will undoubtedly do a great deal to restore the trust and confidence of staff and the reputation of the House.
342. There will, however, remain a cohort of individuals whose complaints about serious bullying or harassment in the past cannot now be fairly

investigated due to the failings of the past, where the previous handling of their complaints was hopelessly ineffective or deserving of censure, where they were inappropriately asked to sign Non-Disclosure Agreements or where systemic failures within the House mean that evidence was not adequately recorded or is now no longer available.

343. The older the incidents are, the less likely it is that these individuals will be able to seek redress. The systemic failures that have led to this situation have featured extensively in this report: the absence of any proper procedure for investigating complaints about abusive conduct by MPs before the Respect Policy; the absence of any formal procedure available under that policy, from its suspension in 2012 until the revised version was introduced in 2014; the ineffectiveness of the policies that were in place, for the reasons already set out; the mishandling of complaints that were brought; and the compounding of these deficiencies by the lack of protection and support given to those affected, and by efforts by managers to deter any formal complaint at all.
344. For those individuals who have been significantly disadvantaged by these failures, more damage has been caused to relationships, trust and respect than was caused by the original conduct complained about. Feelings of anger, bitterness and disillusionment remain firmly in place.
345. I have considered carefully what to recommend to the House in respect of these individuals, some of whom have come forward and provided information to this inquiry, but whose complaints could not be investigated or re-investigated as part of the terms of reference, and whose circumstances cannot therefore form any part of its findings.
346. I do not anticipate that there will be many in the cohort but some, at least, are extremely serious cases. Consigning them to oblivion is not at all consistent with restoring confidence, rebuilding trust and changing the

culture. An important part of that culture change for the future should be examining, acknowledging and learning from the failures of the past.

347. In particular, the systemic failures of the House were responsible for taking a bad situation and making it infinitely worse for those who reported this abuse. While it may now be too late to revisit the original allegations of abuse in some cases, it is not too late for the House to acknowledge the serious errors that were made in its treatment of the individuals concerned.
348. I therefore recommend that the House authorities should devise and implement an internal, stand-alone participatory reparation process, to be open and accessible for a fixed period of time, in which these individuals can be heard in confidence, regardless of any inappropriate Non-Disclosure Agreement they may have signed, so that mistakes and systemic failings can be acknowledged, their impact recognised and an apology extended.
349. Such a step would, in my view, offer the most hopeful way forward from a situation that will otherwise remain unresolved, and that will continue to thwart the genuine attempts now under way to ensure the success of the recent reforms.

### **Effectiveness and Independence**

#### **(b) Complaints against Members of Parliament:**

350. The current state of disquiet over this issue reflects the increasing pressures on the system of self-regulation over the last twenty years, In research conducted in 1997 (*“Regulating the Conduct of MPs. The British Experience of Combating Corruption”, Political Studies (1997), XLV 539*),

Professor Dawn Oliver observed that it was the combination of external pressure from the media and the *“impeccable independence”* of the Nolan Committee that led to all that Committee’s recommendations for reform being implemented. Without it, she considered that *“vested interests in Parliament”* may have refused to accept that problems existed and that steps may not have been taken to address the public disquiet. She highlighted *“...the importance to the effectiveness of the system of self-regulation of external involvement, responsiveness to change and effective public accountability.”*

351. The level of public disquiet reached new levels in 2009, when information about expenses claims made by MPs entered the public consciousness. In 2015 the Committee on Standards noted in their sixth report (Session 2014-15) that *“Public trust in MPs is low”* and that *“the expenses scandal was hugely damaging.”* There is no doubt that the status and respect that derives from the right to regulate themselves remains important to Members of Parliament, and they guard it closely, but self-regulation will only work effectively where the public have confidence in it as a system that is genuinely capable of ensuring both adherence to the rules of conduct and accountability for any breach.
  
352. Members are ultimately accountable to the electorate for their conduct, and some may consider that is sufficient guarantee that they will comply with required standards of conduct. But there has been a gradual dawning that democratic accountability at the ballot box or on the floor of the House is not a sufficient or satisfactory mechanism for holding Members to account. The appointment of an independent Commissioner of Standards, the inclusion of lay members on the Committee on Standards, and, after the expenses affair, the statutory creation of an entirely independent, external organisation to set and regulate Members’ salaries, costs and expenses, all reflect a recognition that independence is

an essential requirement in monitoring and enforcing standards of conduct.

353. The aim of the Independent Parliamentary Standards Authority, in regulating MPs' salaries and expenses, is first and foremost *"to assure the public that MPs' use of taxpayers' money is well regulated."* Members may not welcome such an intrusion into their self-regulatory arrangements, but the perceived necessity for independence and transparency in any future transactions involving public funds won the day, *"Some Members hate it, they don't like anything that they don't control themselves, but IPSA is here to stay, and it works,"* was a typical observation from those contributing to this inquiry.
354. The IPSA Board comprises five members, one of whom must be a former High Court Judge. And IPSA has its own, detailed and self-contained investigation procedure for investigating complaints that a claim under the expenses scheme may have been wrongfully paid to an MP, or that a sum due to an MP has not been paid. The Compliance Officer for IPSA is an independent statutory office holder, who will conduct investigations under the published procedures, make findings and issue Repayment Directions and Penalty Notices, as appropriate. There is a right of appeal against those Directions or Notices to the First Tier Tribunal and provision for publication of the findings and Notices.
355. Clearly, the House has now recognised, entirely correctly, that allegations of bullying and sexual harassment raise complex issues, that complaints of such abusive conduct have special features requiring special treatment, and that previous policies in the House were inadequate to protect staff or to deal properly with their complaints. That is a commendable advance from the previous sorry situation. There has been recognition too that the same standards of behaviour should apply to everyone within the Parliamentary Community.

356. The vital question is whether the new procedures for maintaining and enforcing those standards in the case of Members of Parliament are sufficient to command the trust and confidence of the staff and of the wider public, or whether, as in relation to expenses claims, we have now arrived at a point where something more radical is required to deal with misconduct of this sort. I consider that point has now been reached.
357. Conduct in public life is now subject to scrutiny as never before. The expressions of outrage that followed the reports of bullying and harassment in the House of Commons testified to the serious level of public concern about such misconduct and the inadequacy of the systems in place to address it.
358. The Committee on Standards in Public Life recognised the dangers in their report in December 2017, calling for Members of Parliament *“...to show leadership in upholding ethical standards, so that their behaviour does not undermine or call into disrepute the institution of which they are part...High profile Parliamentary scandals involving a significant number of MPs, including the expenses scandal in 2008 and the sex and harassment scandal in 2017, demonstrate the immense damage done to public institutions and to public trust caused by breaches of ethical standards. Due to the high profile and representative nature of their role, MPs have a particular responsibility to uphold the highest standards of ethical conduct. They should consistently and reliably demonstrate high standards of ethical behaviour, openness and accountability, and recognise that even small lapses can have a disproportionately damaging effect on public perceptions.”*
359. The overwhelming majority of those contributing to this inquiry regard complaints about the abuse of House staff by MPs as now requiring enforcement mechanisms which are entirely independent of any political input or influence. These calls for independent and impartial procedures

for investigation and sanction are driven, essentially, by the principle that justice must not only be done, but that it must also be seen to be done, and by the belief that only such mechanisms will restore the confidence of staff and public alike.

360. Application of that principle in this context is apposite, because of the need for public trust in the system. And its application exposes the fundamental weakness in the system of enforcement for the new Scheme. Members of Parliament on the Committee of Standards will continue to sit in judgment on their colleagues in these difficult and sensitive cases. A careful analysis of all the material presented to this inquiry leads to the firm conclusion that the internal mechanisms for adjudicating on complaints in these cases are no longer tenable.
361. The need for structures that are genuinely capable of ensuring both adherence to the new requirements of the Code and effective accountability for any breach dictates a change. I agree that the need for the appearance of independence and impartiality and the restoration of confidence are the drivers for that change, but I would add a third and vital consideration, which is that any change should also command the respect and confidence of Members of Parliament. The vast majority of Members will rightly condemn the abuses of power of some of their number because of the damage it does to the reputation of them all and they will want to do the right thing. They are all entitled to a system that commands their respect and that guarantees fairness, integrity and “impeccable independence.”
362. To meet those standards and to command public trust, the essential requirement is that investigations must throughout be, and also be seen to be, carried out by someone whose independence, impartiality and competence is beyond question. They must also be carried out within a reasonable time. And they must be fair to both sides, protecting the

interests of both the complainant and the respondent, and ensuring that the process is not tainted by any political influence. At their conclusion a range of appropriate and effective sanctions must be available for those cases where a complaint is upheld.

363. In my view, the new Complaints Scheme does not meet these tests.

### **The Problems with the Present Process**

364. The Steering Group took the view, when designing the new Scheme, that the new complaints and investigation processes “*had to be constructed in a way which fitted with the House’s existing disciplinary arrangements.*” They decided that the independent Commissioner should be responsible for the conduct of the investigation process and that those carrying out independent investigations will be acting on behalf of the Commissioner, who is to “*retain oversight of the whole process.*” However, the practical effect of the procedures is that the Commissioner’s role is heavily circumscribed by the Committee on Standards, which retains overall control and decision-making power in relation both to the original findings of the independent investigator and the imposition of sanctions on any Member against whom a complaint has been upheld. In that sense, little has changed.
365. In respect of both new procedures, for Bullying/Harassment and for Sexual Misconduct, a formal complaint against a Member will be initially assessed. If there is a case to answer, it will be passed to the Commissioner, who will be able to facilitate an informal resolution if that is possible. If it is not, she will commission an independent specialist investigator to undertake the full assessment, and she will also have oversight of that investigation. A complainant may ask the Commissioner to “review” a decision that there is no case to answer, or a decision not to

uphold the complaint, but only if the correct procedure was not followed, or if substantial new evidence has since become available.

366. However, if a complaint is upheld after formal assessment, it is to be *“reviewed by the decision-making body (e.g. via a hearing/interview under their own policies and procedures). The respondent will have an opportunity to represent any concerns they had about the investigation conducted...”* The precise nature of the procedure at this stage and the powers on a “review” are unclear, since the Delivery Report (at para 55) refers to reviews as “appeals.” In the case of Members, the decision-making body is *“the Commissioner for Standards in conjunction with the relevant committee [the Committee on Standards] for the most serious cases.”*
367. So where, after full assessment, a complaint has been upheld by the independent specialist investigator, there will first be a review by the Commissioner. If the complaint remains upheld, the Commissioner will have power to impose sanctions if she sees fit, but these are limited to *“Rectification to restore and maintain working relationships, including but not limited to an apology, behaviour agreement and compulsory training.”* Standing Order changes are proposed, to give the Commissioner *“the power to agree remedies within a framework agreed by the Committee on Standards.”*
368. If a Member resists the remedy/sanction or if their behaviour *“warrants a stronger sanction, the Commissioner will prepare a memorandum for the Committee on Standards, which will be able to recommend stronger sanctions to the House.”* These are identified as suspension, which can be recommended to the House by the Committee, or recall, the process by which an MP is to lose his or her seat, which requires compliance with the complex provisions of the Recall of MPs Act 2015. At present there is

nothing identified by way of possible sanction between those at apology level and the suspension or recall of an MP.

369. However, the Committee on Standards will also be able to *“hear appeals against a finding of the Commissioner, raised by either the responder or the complainant”* (although the complainant can only appeal on the restricted grounds referred to above). It is anticipated by the Steering Group that *“such appeals would not necessarily require a hearing. If a hearing is required, we note that the Committee on Standards has power to work through sub-committees, and could appoint such a sub-committee if it considers a complainant might be intimidated by appearing before a fourteen member committee.”*
370. It therefore appears that if a member of staff formally complains of serious incidents of sexual harassment by a Member of Parliament, her complaint will be initially assessed and, assuming there is a case to answer, fully investigated by an independent specialist investigator. A written report containing the investigator’s reasoned decision must then go to the Commissioner for review. If the Commissioner finds that the decision to uphold the complaint is sound and that there is no basis for interfering with it, she must refer the matter to the Committee on Standards because if it is serious it will warrant a stronger sanction than she is permitted to impose. However, the Member can appeal to that Committee against the Commissioner’s finding on review of the investigation decision, as well as appeal against her decision on sanction, and he can apparently appeal on any basis, presumably on the basis that he simply disagrees with the independent investigator’s decision and considers that it is wrong.
371. The complainant will be faced with the prospect of the full Committee on Standards being asked by the MP respondent to overturn a decision by an independent sexual misconduct investigator, following a full and

specialist assessment of the evidence. I imagine it will be of little comfort to her to know that she can ask for this important matter to be determined by a sub-committee if she feels intimidated by appearing in front of its fourteen Members. The Member can also appeal against the Commissioner's decision on sanction, including a decision that the Member should apologise to the complainant, attend training or complete a behaviour programme.

372. Many of those members of staff speaking to this inquiry will have probably given up by this stage. And these are not idle hypotheses. As some contributors to this inquiry observed, "*Members are not usually slow to challenge any adverse findings against them. These new procedures are unlikely to prove any exception.*" The commendable aims underpinning this Scheme, to ensure that these cases are dealt with appropriately and sensitively, by independent and specialist investigators, and within a reasonable timescale will be seriously frustrated by the prospect of a non-specialist Committee of Members of Parliament and lay members, re-examining the entire process and considering whether to allow the appeals of a fellow Member against both findings of fact and sanction.
373. This is also too much to ask of the Committee on Standards. Despite the regulatory expertise and diverse backgrounds of the lay members, their specialist experience in these areas will be variable, and the Members will certainly not be trained specialists. Unless they re-run the entire hearing, and try to form their own view of the evidence, they will not sensibly be equipped to assess evidence from witnesses that they will not have seen. The vast majority of decisions on this Committee have in the past been achieved by consensus. In these cases there may be disagreement, but ultimately the lay members have no voting rights and the Members' votes will always carry the day. The prospect of lay members being able to place on record an "indicative vote" will be of little comfort to a

complainant who succeeded in full before the independent investigator many months before, but who now sees that decision overturned by a decision taken by Members of Parliament with whom some lay members disagree.

374. The lack of trust and confidence in procedures, which has so damaged the reputation of the House, will hardly be alleviated by such a process. And it risks bringing the Committee into serious disrepute.
375. I have no doubt that the equal number of lay members on the Committee and the diversity of their backgrounds have added a valuable dimension and a wider external perspective to the Committees' discussions and decision-making. They doubtless have their own views on the strengths and weaknesses in their role. However, some valuable insights were offered in this respect in the *"Final Reflections of the first lay members at the end of their appointment period December 2012 – March 2017."*
376. They identified some uncomfortable realities in the work of the Committee and in the House regarding standards generally. The fragmented responsibility for standards issues, pressures of time and problems over prioritising standards, problems in the Committee's processes and the absence of clear and meaningful penalties are all said to combine to form *"significant barriers"* to the current arrangements for standards in the House.
377. Of particular concern in the present context are the following observations: *"32. [The fact] that MPs are placed under such significant time pressures when in London seems, we reflect, totally contrary to the aim of producing sound judgment. We have commented previously on the attendance of MP members at Committee on Standards meetings and how they are often expected to be in more than one place at any one time. Individual MPs are clearly heavily time constrained. ....Making time*

*for Committee on Standards issues can be difficult, particularly when they are faced by conflicting demands of party, constituency and individual interests....the ability of individual elected members to devote additional times to meetings which would move beyond 'fire-fighting' mode is, in our view, still limited.....39. During the period of our appointment, MPs both serving on the Committee and elsewhere in the House, have told us that many elected members are reluctant to sit in judgment on colleagues and therefore membership of the Committee is unlikely to be a route to advancement in the House or party. In our opinion, as long as the Committee operates in a reactive mode, dealing mostly with cases resulting from complaints, this reluctance to join the Committee is likely to remain."*

378. That last observation raises an issue which attracted much attention during this inquiry, namely the general reluctance of Members to judge the misconduct of other Members, or even to assist in the investigations by others into such misconduct. The Nolan principle of Leadership requires all holders of public office to be willing to challenge misconduct or inappropriate behaviour, wherever it occurs.
379. But many contributors testified to this general unwillingness to condemn a fellow MP, and to *"the omertà that many MPs practice in respect of bad conduct by one of their number. This is partly the result of a prevalent perception among MPs that the world outside does not understand or appreciate them as a group and therefore that they must surround any one of their members who is under attack with a waggon train of mutual support."* .... *"Members are generally unwilling to criticise a fellow MP despite political differences, there is an esprit de corps which means that they always support each other" ... "Behaviour which would unhesitatingly fall within the definition of bullying or harassment was suggested by some Members to be due to the employee being 'over-sensitive' or to the MP 'just being awkward'" ... "I asked a Member for help*

*because he'd witnessed what happened, but he said he wasn't willing to get involved in anything that involved criticising a fellow MP" ....*

*"Members turn a blind eye to dishonourable behaviour by others, and they have perpetuated a system where they remain largely judge and jury in respect of their own conduct."*

380. There can perhaps be no better demonstration of how inappropriate it will be for Members to be asked to sit in judgment on appeals from fellow Members found to have bullied or sexually harassed a member of House staff, or to determine an appropriate sanction. Despite the contribution of lay members, the reality is that it will be Members of Parliament deciding these matters. And all the difficulties inherent in the process would not be alleviated by the giving of full votes to lay members, which will in any event require primary legislation and which some contributing to this inquiry consider *"is unlikely to happen."*
381. This is not to criticise the important and valuable work of the Committee, or the expertise and commitment of any of its individual members. But the system now in place fails the fundamental tests of independence and impartiality. Members of staff contributing to this inquiry after publication of the new Scheme regard it as *"building on the same flawed premise as the existing Respect model for complaints"..... "It's such a shame after all this effort. If the outcome of a complaint is still in the hands of the politicians, that will undermine all the good work to date ... and sanctions must have teeth. This risks further reputational damage for the House. To have credibility the system has to be independent, both for investigations and for sanctions."* I agree.
382. The next question is whether there is any bar to the creation of an independent system for dealing with complaints against MPs for misconduct of this kind and imposing appropriate sanctions. That raises

the question of parliamentary privilege, but in my view privilege presents no bar in relation to dealing with misconduct of this kind.

### Privilege

383. Parliamentary privilege is a protection for the “proceedings of Parliament,” a safeguard to ensure that parliamentarians are able to carry out their duties to the best of their ability. There are two main aspects to privilege, namely the right to freedom of speech, ensuring that Members of Parliament can speak freely in debates, and the right of each House of Parliament to regulate its internal affairs without interference from the courts, including the right to regulate their own Members.
384. That right of exclusive jurisdiction over its own affairs is sometime referred to by its ancient term “exclusive cognisance.” But this right does not mean that Members of Parliament are exempt from the ordinary law. Where the conduct of an MP does not relate to “proceedings in Parliament,” even if it takes place within Parliament’s physical premises, it is within the jurisdiction of the courts and the law will apply to them in the same way as it does to anyone else.
385. In seeking to devise a complaints scheme which “*fitted in with the House’s existing disciplinary arrangements,*” some contributors think that the Steering Group may have been under a misapprehension as to the reach of parliamentary privilege in this context. They consider that, in this respect, the Group may have been influenced by the senior administration’s understanding that the principles of “exclusive cognisance” must be interpreted broadly. I need to address this issue, but I can do so shortly, because I do not regard privilege as presenting any barrier to the development of independent procedures to govern complaints of bullying and harassment by Members of Parliament.

386. The consequence of the privilege of immunity from outside interference is that, historically, it has prevented any independent scrutiny of the conduct of Members of Parliament. Proposals for change have always been resisted. Respect for parliamentary privilege and strict adherence to the principle that all Parliamentary communications are inviolable has informed all the thoughts and actions of the senior administration in the House, and this respect has been cascaded down to all those employed as Clerks. Some now consider that this has had a “*historically chilling effect on complaints and/or the pursuit of civil proceedings*” by those who, over the years, have been subjected to bullying or sexual harassment by Members of Parliament.
387. It is not clear from the Delivery Report whether any thought was given to the applicability of privilege in this context. If it was assumed to apply this may, at least in part, explain the fact that the Steering Group did not consider any alternative, independent model for dealing with complaints against Members in these cases.
388. However, the privilege extends only to “proceedings in Parliament,” and the courts have generally adopted a narrow approach to the interpretation of that phrase. In *R v Chaytor [2011] 1 AC 684 2009* three former MPs were prosecuted in relation to false expenses claims. They sought, unsuccessfully, to argue that the submission of claim forms formed part of proceedings in Parliament. By virtue of Article 9 of the Bill of Rights 1689, freedom of speech and debates or proceedings in Parliament could not be impeached or questioned in any court or place out of Parliament; and they therefore argued that the courts could not try them because the criminal proceedings would infringe parliamentary privilege. The Supreme Court dismissed that argument comprehensively. In doing so they considered the meaning of the phrase “proceedings in Parliament.”

389. In his judgment Lord Phillips quoted with approval the definition of “proceedings in Parliament” in the well-known passage in *Erskine May, Parliamentary Practice, 23<sup>rd</sup> ed (2004)*: “*The primary meaning of proceedings...is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual Member takes part in a proceeding usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking.*”
390. Rejecting the argument that the submission of expenses claims amounted to “proceedings in Parliament” he observed, “*...the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament.*”
391. Criminal conduct by MPs has long been recognised as not falling within the ambit of the privilege, even if it takes place on Parliament’s premises. An MP who punched someone while on House premises would be liable to be prosecuted for assault. In *Attorney General of Ceylon v de Livera [1963] AC 103* Viscount Radcliffe, giving the advice of the Judicial Committee of the Privy Council, addressed the extent of the privilege of a member of the House and the complementary question, what is a proceeding in Parliament. He said that the answer depended upon consideration of this question, “*in what circumstances and in what*

*situations is a member of the House exercising his 'real' or 'essential' function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see those privileges do not cover activities that are not squarely within a member's true function."*

392. If the privilege cannot be not a charter for concealing criminal conduct by an MP, no more can it be used to conceal the sexual harassment of staff, or to conceal other bullying or harassing conduct towards staff while he is on Parliamentary premises, being conduct of a kind which would be considered unlawful in any other place of work. Both forms of misconduct may simultaneously involve criminal conduct, and both devalue and undermine the reputation of Parliament in the same way. In *Chaytor*, holding that the submission of claim forms did not qualify for the protection of privilege, Lord Phillips stated that, "*Scrutiny of claims by the courts will have no adverse impact on the core or essential business of Parliament, it will not inhibit debate or freedom of speech. Indeed it will not inhibit any of the varied activities in which Members of Parliament indulge that will bear in one way or another on their parliamentary duties. The only thing that it will inhibit is the making of dishonest claims.*"
393. Exposing to independent scrutiny complaints about bullying or sexual harassment by MPs in the workplace that is the House of Commons cannot reasonably be said to impact adversely on freedom of speech in Parliament. Nor will it impact adversely on the core functions of Parliament. What it may well do, however, is inhibit further misconduct of that kind, and hopefully eradicate it altogether.
394. It is unfortunate that the Steering Group do not appear to have considered these issues in their report. It is not clear to me, given their genuine wish to see real change and the intensive efforts made to improve things for complainants, that they would have dismissed out of

hand an alternative independent model for resolving complaints, had they considered it. The fact that they did not consider it is even more unexpected, given the precedent that already exists for independent investigations of MPs' conduct, through the creation of the Independent Parliamentary Standards Authority.

395. The Nolan principle of accountability requires that holders of public office have to be accountable to the public for their actions and must submit themselves to the scrutiny necessary to achieve this. Though resisted at the time, IPSA was established because of the perceived need urgently to restore public confidence in Parliament in the aftermath of alleged economic wrong-doing. The nature and extent of the personal misconduct alleged against Members in this inquiry must surely command no less a standard of response from the House in deciding how best to restore public confidence.

### **Independence**

396. Different views have been advanced as to how best an independent system may be achieved, and the principle would have to be accepted before the practicalities of delivering it could be carefully considered in conjunction with all the relevant parties. Some contributors advocate a system based on the IPSA model, with an independent organisation established to determine these complaints; and with a specialist investigator to conduct the investigations and report with recommendations as to sanction to a panel of independent decision makers, to include legally qualified members, in order to determine the appropriate sanction. Such a system would clearly meet the requirements of independence and fairness.
397. Others, recognising that this model would require legislation, and with an eye on the current crowded legislative timetable, consider that the role of

the Commissioner for Standards should be reformed in these sensitive cases, with amendments to Standing Orders so that she herself can exercise appropriate powers, as an independent office holder, and so that she can be extricated from the requirement of oversight by the Committee on Standards.

398. I have given some thought to how such a system might work in these particular cases, and obviously the views of the Commissioner herself would be crucial in all this. But the starting point of advantage is that the Commissioner for Standards is entirely independent of Parliament and bears responsibility for adherence by MPs to the Code of Conduct. Independence is a requirement of the post, safeguarded by the requirement in Standing Orders that the Commissioner can only be dismissed following resolution in the House. Monitoring the operation of the Code of Conduct and investigating allegations that MPs are in breach are part of her key responsibilities. A complaint made to her office by a member of House staff, for example, that she had been sexually harassed or assaulted by an MP would now be an allegation requiring investigation.
399. There is no reason why the Commissioner should not retain her present powers of informal resolution for those cases which are appropriate for such a course, where the complainant agrees, or which are insufficiently serious to require full investigation.
400. Where it is necessary to proceed to a full investigation, the investigation process should oblige all parties to participate, and render them subject to penalties for failure to do so. The standard of proof would be the balance of probabilities, as it is now. But in my view some adjustments would need to be made to the current investigation procedure as set out in the Scheme.

401. The investigation into the conduct of a Member of Parliament should be carried out by someone whose status, independence, expertise and experience are beyond question, and who has power to take evidence and require the production of documents. Distinguished senior lawyers or retired judges, highly experienced in handling these sensitive cases and in analysing evidence and finding facts, would ensure that the investigations and conclusions were treated with respect. Such a system would, or should command the confidence of any Member who considers that he or she has been falsely accused.
402. The investigator would send a provisional report to both parties, enabling them to comment on factual accuracy, and then provide the full report with reasoned findings to the Commissioner. And such an investigator, who has heard the evidence, conducted a fair investigation and given a reasoned decision upholding the complaint is more than capable of recommending an appropriate sanction.
403. The decision as to sanction would then be taken by the Commissioner herself, as the independent officer for standards in the House. Before that decision, there could be provision for either party to make written or oral representations to the Commissioner about the investigation or the report, or to make representations about sanction, with an oral hearing before the Commissioner as appropriate, either on her own or sitting with an independent legal adviser, to determine whether the report should stand and to consider sanction. If the report stands, the Commissioner can proceed to sanction. And her decision is final.
404. One of the problems with the current system is the absence of a range of specified sanctions for cases where these complaints are upheld. Leaving aside the extreme case of triggering a recall petition, with all its difficult democratic implications, there is obviously a broad range of possible sanctions to be considered, apart from apologies or attendance on

training or behaviour programmes, including for example the imposition of fines, disqualification from, or suspension of membership of select committees or membership of overseas delegations; the withdrawal of services by House staff, or the withdrawal of financial support for visits abroad or other activities. Only if a very serious question was raised during the process as to someone's fitness to serve as a Member should consideration be given to a report to the House to determine any question of recall.

405. These brief observations are offered simply to assist in any consideration of how an independent process might work, and to indicate that there are no insuperable barriers to such a process. Others may have different views as to how such a process could work. But the keys to reform are independence and impartiality, if the staff are to have faith in the process and if public confidence is to be restored. And an independent investigation by someone whose status, integrity and expertise are beyond question is a process in which all Members of Parliament can have confidence, and which I would regard as providing safeguards which are very much in their best interests.

#### **G. The House of Commons as an Employer: Fitness for Purpose**

406. The terms of reference for this inquiry have meant that the issues considered are extensive and wide-ranging. Recommendations for reform have been addressed in context, in each of the sections dealing with particular subjects, and no useful purpose is now served by a further list of specific recommendations outside those contexts.
407. There are, in summary, recommendations for mandatory, targeted training for everyone on bullying, harassment and sexual harassment, and for leadership and management training programmes, at all levels of

management. Training should now be a priority for the House, with adequate resources made available for regular induction and continuation training, to ensure adherence to and effective implementation of the standards of conduct in the Behaviour Code and the procedures in place to deal with complaints.

408. There are recommendations too for improvements in respect of record-keeping and in relation to the operation of the Human Resources Department generally, having regard to the problems addressed in this report. The Health and Wellbeing Service merits greater recognition and support, and its role should be expanded, promoted and adequately resourced. And the efforts being made to improve diversity at all levels of the House should be maintained.
409. In relation to the new Complaints and Grievance Scheme, the key recommendations are for the creation of an entirely independent process for the determination of complaints by House staff against MPs in these cases, and for the removal of the cut-off date for access to the new Scheme, so that all those wishing, after receiving specialist support and advice, to pursue complaints of historical allegations, can do so using the new procedures. For those unable to pursue complaints due to the previous systemic failings of the House to provide support or effective policies, provision should be made for an internal participatory reparative process to enable those failings and their impact to be acknowledged and apologies extended.
410. Other recommendations relate to revised definitions and wording in the new Scheme, changes to the right to representation and to confidentiality, and express recognition of the concept of gendered bullying. There are recommendations as to the need for properly resourced support services, clearer delineation of ownership and responsibility under this new Scheme, the maintaining of accurate

records of complaints and decisions made, and for regular and comprehensive training programmes and promotional work to maintain awareness of the importance of the Scheme and of the Behaviour Code which it underpins.

411. In relation to the previous policies, the main recommendation is that from now on neither the Valuing Others Policy nor the Revised Respect Policy should continue to be used. They would both require extensive revision if they were to stay, but operating them alongside the new Scheme will create confusion and incoherence and staff are unlikely to use them. It remains my view that neither policy provides an effective procedure for staff seeking to complain about abusive conduct of this kind, and that in all the circumstances it is unreasonable to require staff to use them.
412. The problem with merely summarising a set of recommendations at the conclusion of this lengthy report is that it seems to me to undervalue the deep-rooted problems that lie at the heart of all these issues. The introduction of new strategies and initiatives, or of new policies and procedures can only go some way towards addressing the core, cultural context in which all the problems I have described are manifest.
413. Having commissioned this inquiry, I fear that the House may fail those it is trying to help and sustain further damage to its reputation and to its credibility as an employer if this report leads only to another series of initiatives and process changes. A significant number of those members of House staff who came forward regard the status quo as untenable and express the view that “it will take several generations until the senior administration are capable of delivering the necessary changes”.
414. On this basis, I find it difficult to envisage how the necessary changes can be successfully delivered, and the confidence of the staff restored, under

the current senior House administration. As one contributor put it, “*We need to press the reset button, but I’m not sure the senior administration understand that, or even know what it means.*”

415. I have been struck throughout this inquiry by the professionalism and dedication of those contributing, at all levels, and by their pride in the House as an institution. Nobody who reads this report can fail to be dismayed by the nature and extent of the problems it has revealed. The legitimacy and authority of the House and the respect and pride which everyone should feel in its existence is seriously undermined by the information that has been provided and that is described in this report.
416. As the report makes clear, I was presented with a series of serious allegations of abusive conduct made against particular individuals – both House staff and elected Members – some of whom were referred to independently on a number of occasions and some of whom were regarded as “*serial offenders.*” I do not name particular individuals, having regard to my terms of reference, the guarantee of confidentiality and the absence of any process in this inquiry for fairly investigating individual complaints.
417. Some of those against whom allegations of misconduct have been made in this inquiry may yet be the subject of complaints under the new Scheme, requiring any disputed allegations to be determined in accordance with the procedures established. However, when reading this report some people may privately recognise their own behaviours in some of the alleged abusive conduct I have described. I would hope that a process of reflection leads them to consider what, if anything, they should now do in the best interests of the House.
418. In relation to allegations made against Members of Parliament, it is readily acknowledged and should be emphasised that the overwhelming majority of Members behave entirely appropriately and courteously

towards members of House staff. However, their collective reputation is being damaged by the allegations of unacceptable behaviour made against some of their number and by the inadequacy of the procedures in place to deal with complaints. I have no doubt that they will regard this as intolerable.

419. If approached for advice by a constituent who was the victim of bullying or sexual harassment in their own workplace, I am confident that they would not hesitate in assisting them to take forward their complaints. I therefore hope that the recommendations I have made will receive the active support of those elected Members who will be appalled by the abusive conduct alleged against some of their number, but who will also be anxious to ensure that any process for determining disputed allegations is independent, effective and fair to both sides.
420. I have also referred throughout this report to systemic or institutional failings and to a collective ethos in the House that has, over the years, enabled the underlying culture to develop and to persist. Within this culture, there are a number of individuals who are regarded as bearing some personal responsibility for the criticisms made, and whose continued presence is viewed as unlikely to facilitate the necessary changes, but whom it would also be wrong for me to name, having regard to the terms of reference for this inquiry. I hope, however, that the findings in this report will enable a period of reflection in that respect in addition.
421. In considering how best to progress the change in culture that is accepted as essential, and how best to take forward the recommendations in this report, it may be that some individuals will want to think very carefully about whether they are the right people to press the reset button and to do what is required to deliver that change in the best interests of the

House, having regard both to its reputation and its role as an employer of those who are rightly regarded as its most important resource.

Laura Cox

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