



Independent
Complaints
and Grievance
Scheme

Sexual Misconduct Procedure for UK Parliament

parliament.uk

Edition 2021

1. Introduction

1.1 This is an outline of the procedure for making a complaint under the Sexual Misconduct policy. You can use it to find out:

- How to make a complaint about sexual misconduct;
- What to do if someone has made a complaint of sexual misconduct about you;
- How complaints of sexual misconduct 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.

1.2 This outline should be read together with the guides produced by the ICGS team on procedures for making a complaint under the Sexual Misconduct Policy, which give further details of the processes and time scales.

1.3 There are three distinct pathways

- Pathway 1: ICGS helpline
- Pathway 2: Informal Resolution
- Pathway 3: Formal Complaint

1.4 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, or neither, is used.
- Pathway 2: Is an optional pathway for complainants who wish to seek informal resolution with the respondent, through a facilitated process.

- Pathway 3. At any point during this pathway, up to the point when a draft formal assessment report is produced for a factual accuracy check, the complainant will have the option to withdraw the complaint and seek resolution through Pathway 2.

2. Pathway 1: Support from an ISMA through the ICGS helpline

- 2.1 The ICGS helpline provides support and guidance on the options available to callers. The helpline provides access to accredited and experienced Independent Sexual Misconduct Advisers (ISMAs) who will provide specialist support, advice and advocacy in relation to sexual misconduct.
- 2.2 Those contacting the ICGS helpline to discuss sexual misconduct will be logged anonymously or with identifying details, depending on the wishes of the individual, and their information will be kept confidential. The support of an ISMA is offered and the complainant can choose whether to access this support.
- 2.3 One of the aims of the ICGS helpline is to enable the complainant 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.
- 2.4 Where risks to the complainant or others are identified, the ISMA will assess and manage risks in accordance with agreed protocols.
- 2.5 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

2.6 Confidentiality will be maintained in relation to contacts made via the ICGS helpline, 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.

2.7 In these circumstances, the ISMA will seek the permission of the complainant 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: Informal Resolution

3.1 This pathway offers an option to address issues informally as an alternative to making a formal complaint under Pathway 3.

3.2 At any time after contacting and receiving advice and support from ICGS helpline, the individual (referred to here as the complainant although no formal complaint has been made) may decide that they wish to take action to help remedy their situation through informal resolution.. 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, an ISMA who has had no prior involvement will help broker and facilitate interventions.

3.4 Informal resolution might include (non-exhaustive list):

- A facilitated telephone conversation between the complainant and the respondent.
- Communication in writing from the complainant.
- A face to face meeting, facilitated by the ISMA with the respondent.

- Intervention by another appropriate individual, such as the manager of the respondent.

3.5 Desired outcomes might include (but are not limited to):

- An apology from the respondent.
- Acknowledgement of the behaviour by the respondent.
- A behavioural agreement outlining what is considered appropriate/inappropriate behaviour moving forward.
- Training:
 - o for the respondent to increase awareness of inappropriate/appropriate behaviours, their impact and expectations going forward.
 - o for an area/team to deal with an inappropriate culture or to train a particular team, which doesn't target a particular individual.
 - o for the complainant to help them cope and deal with any future inappropriate behaviours.

3.6 The complainant may decide at any time to end or halt the progress of this pathway.

3.7 If a resolution is agreed under this pathway, no finding of fault will be recorded in respect of the respondent. Details of both parties will be kept confidential.

3.8 If the complainant requests informal resolution it will be necessary to involve the respondent, and possibly other members of the Parliamentary Community as necessary. These individuals will be contacted only with the permission of the complainant.

4. Pathway 3: Formal Complaint

Considerations

4.1 The key principles of any investigation will be fairness, due process and proportionality:

- The complainant, respondent and any witnesses will be treated fairly and with dignity.
- The respondent 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 (i.e. that the incident complained of is more likely than not to have occurred).
- Efforts will be made to avoid any re-traumatisation of the complainant.

4.2 It is recognised that there may be occasions when safeguarding and protective obligations, including the duty to protect the complainant from retaliation or victimisation, may inform the degree of disclosure to the respondent 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 complainant, such as risk of violence or retaliation.
- The immediate safety of the respondent.
- Whether there is a substantial risk that the respondent 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 Independent Investigator will also escalate a case if they believe the complaint of sexual misconduct might amount to a serious criminal offence. In that case, the Scheme may share 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.

5. Pathway 3: Investigation process

Stage 1: Initial Assessment

5.1 Making a formal complaint of sexual misconduct can be done by contacting the ICGS helpline.

5.2 Formal complaints can be made in writing by the complainant using the ICGS Complaint Form. The ICGS helpline may also complete a form on behalf of the complainant over the phone. . The helpline will, with the complainant's consent, forward the complaint to the ICGS team, who will appoint an independent investigator to contact the complainant.

5.3 The Independent Investigator will first make an initial assessment of the complaint to determine whether the allegation should progress to a formal assessment. To do this, they will check that the complaint meets the conditions for being reported under the ICGS Sexual Misconduct Policy (e.g. that the complaint is made by and against people who are covered by the 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 reaches the threshold for sexual misconduct. Finally, they will consider whether the complaint has been or is being considered in a different forum (e.g. in a workplace disciplinary process or an employment tribunal). Complaints that, in the Independent Investigator’s opinion, have already been fully and fairly examined in another forum, or which are in the process of being considered in another forum, may not also be considered under the ICGS. In some cases, this initial assessment stage will need to include contacting the respondent or the decision-making body for either the complainant or the respondent.

5.4 The outcome of the initial assessment could be as follows:

Case should progress to formal assessment	The case should not progress to a formal assessment	
The complaint can be made under this Policy and the incident(s) warrants further investigation (i.e. may constitute sexual misconduct).	The conduct complained of would not constitute sexual misconduct	The complaint cannot be made using this policy because it does not meet the relevant conditions, or it has already been fully examined (e.g. in the employment tribunal)
The complainant and the decision-making body for the respondent will be notified. The ICGS helpline remains available to offer ongoing support and advice.	The complainant and, if the respondent is aware of the case, the decision-making body for the respondent will be notified. The ICGS helpline remains available to offer ongoing support and advice.	The complainant and, if the respondent is aware of the case, the decision-making body for the respondent will be notified. The ICGS helpline remains available to offer ongoing support and advice.

5.5 Where an initial assessment has found that the allegation should progress to a formal assessment, the decision-making body for the complainant should consider any management actions that may be appropriate as the

complaint is managed (e.g. temporary changes to working hours or responsibilities).

5.6 The complainant also has the option to withdraw their complaint or to take no further action after the initial assessment (but see paragraph 1.4 above).

6. Stage 2: Formal Assessment

6.1 Before starting a formal assessment, the Independent Investigator will contact the appropriate decision-making body, who will notify the respondent of the complaint. 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 an MP, the Commissioner for Standards will have been notified of the complaint as soon as the initial assessment is complete. She has oversight under the Standing Orders of the House of Commons of the investigation from the receipt of the initial assessment until delivery of the final report, and of any proposed informal resolution.

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 recording details of the complaint, the evidence that has been gathered to enable the Investigator to make an assessment of whether there has been sexual

misconduct by the respondent, the Investigator’s analysis of that evidence and the recommendation to uphold or not uphold the complaint.

6.6 If the complaint is upheld, the assessment will be sent to the relevant decision-making body, identifying the Investigator’s recommendation and the reasons for that assessment.

6.7 The report will make an assessment, the outcomes of which may be:

Recommendation to uphold the complaint	Recommendation not to uphold the complaint	
The investigator finds facts which he or she assesses as supporting the allegation of sexual misconduct.	The investigator’s assessment is that the evidence does not support the allegation of sexual misconduct.	The complaint is potentially malicious, vexatious or deliberately false
The complainant and the respondent will be notified. Further action can be taken by the decision-making body for the respondent.	The complainant and the respondent will be notified.	The complainant and the respondent will be notified. Further action can be taken by the decision-making body for the complainant.

7. Stage 3: Decision and Action

7.1 Once the Independent Investigator has completed the formal assessment, the decision-making body for the respondent will review the report. If there has been an assessment of sexual misconduct by the Independent 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 will be dependent on the relevant decision-making body.

Aggravating factors

7.3 If the following aggravating factors are uncovered in the course of any fact finding or investigation, they will be reported in the formal assessment and may affect the sanctions imposed by the decision-making body:

- The increased impact that sexual misconduct on a person targeted because of a particular protected characteristic (or perceived characteristic) under the Equality Act 2010;
- Retaliation or victimisation as a result of the complaint;
- Breaches of the confidentiality of the complaint by the respondent;
- Failure to comply with measures previously agreed by informal resolution or imposed by an earlier ICGS report;
- Refusal to engage with the investigation;
- Additional breaches of the Behaviour Code.

8 Reviews

What if I don't agree with the outcome of an initial assessment?

8.1 If an initial assessment finds the allegation should not progress to a formal assessment the complainant can ask the ICGS team to review the outcome. If the ICGS team agrees that a review is appropriate, it will be conducted by an Independent Investigator who has had no previous involvement in the case. A review may be requested only once, and must be requested within 14 days of receipt of the initial assessment.

8.2 For complaints against an MP, in addition to any review requested by the complainant a review of an initial assessment will be carried out by the Parliamentary Commissioner for Standards. If a review finds that the decision on the initial assessment was flawed, the case will generally be re-assessed by a different Independent Investigator.

What if I don't agree with a draft formal assessment?

8.3 The independent investigator must send the draft assessment to the parties for a factual accuracy check, in accordance with paragraph 7 of the Sexual Misconduct policy.

9. Arrangements for initial and formal assessment meetings

9.1 This section of the outline Procedure contains information for complainants, respondents and witnesses.

Notification of meetings

9.2 If you are a complainant, respondent or a witness involved in an assessment, you may be invited to meeting(s) with the Independent Investigator.

The right to be accompanied

9.3 If you are a complainant or respondent, you can be accompanied in any meetings under this Procedure by a colleague from the Parliamentary Community, the ISMA, an interpreter or a trade union representative. Further information about what a person accompanying you can or cannot do is available from the ICGS team.

9.4 If you are interviewed as a witness, you would not usually be accompanied in the meeting. However, the Independent Investigator 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

9.5 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. In the event of continuing failure to attend, the Independent Investigator may treat the complaint as withdrawn. If the respondent fails to attend, the Investigator may complete the report on the basis of the evidence available and without hearing the respondent's evidence.

Confidentiality

9.6 Complaints under this policy will be treated confidentially and will only be discussed with those who are involved in resolving it by the ICGS helpline, ICGS team 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 except as provided in paragraph 10.2. Likewise, if you are involved in informal resolution outside this procedure in any capacity (e.g. as a line manager or HR adviser), you should maintain confidentiality, as appropriate. Note that in exceptional circumstances information may be disclosed in order to safeguard the welfare of another person (who could be the complainant, the respondent or a witness).

9.7 Formal complaints 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 ICGS helpline.

9.8 During the course of initial and formal assessments, relevant extracts of statements or notes from meetings with the complainant, respondent and witnesses may, if the investigator thinks fit, 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

9.9 If you are a complainant, respondent or witness, you will be provided with a copy of the notes 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 notes, a record of this will be kept.

10. Support for those involved in complaints

10.1 The ICGS helpline can provide information about sources of support for complainants, respondents and witnesses, both within the Parliamentary Community and externally.

10.2 Whether you are a complainant or respondent, we encourage you to let your manager, HR service, party whips or other relevant people (e.g. your trade union representative) know that you are involved in an ICGS complaint. 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).

11. Timescales

11.1 The intention is always that complaints made under this procedure are dealt with promptly. However, complaints of sexual misconduct can vary in complexity and circumstance, so some complaints may take longer to resolve than others. Details of the standard timescales are annexed to this procedure, and further information is available from the ICGS team.

12. Sanctions

12.1 Sanctions are a matter for the relevant decision-making body.

12.2 Where a person has ceased to be a member of the Parliamentary Community, the decision-making body will be the body which would have been the decision-making body for that person immediately before the person's departure. However, the range of sanctions available will be much reduced, and in some cases no sanction will be available.

13. Tools and resources

The following tools and resources are also available

- 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.

Annex: standard timescales

Stage of procedure	Responsibility	Timescale
Acknowledgement of complaint	Independent Investigator	Within 5 calendar days of the complainant's request
Notice of meetings with the Independent Investigator	Independent Investigator	A minimum of 5 calendar days before the meeting
Provision of draft minutes from meetings	Independent Investigator	Within 5 calendar days of the meeting
Agreement of minutes of investigation meetings	Complainant, respondent or witness	Within 7 calendar days of receiving the minutes
Comments on formal assessment (see para 8.3 above)	Complainant and respondent	Within 14 calendar days of receipt of the draft report
Response to comments	Independent Investigator (and/or the Parliamentary Commissioner)	Within 14 calendar days of receipt of comments from the parties.