

From: [\[Redacted\]@gov.scot](#)>  
Sent: 11 December 2018 09:38  
To: [\[Redacted\]@gov.scot](#)>; [\[Redacted\]@gov.scot](#)>; Director Communications, Ministerial Support & Facilities  
<[\[Redacted\]@gov.scot](#)>; Richards N (Nicola) <[\[Redacted\]@gov.scot](#)>; Lloyd E (Elizabeth) <[\[Redacted\]@gov.scot](#)>; Davidson S (Sarah) <[\[Redacted\]@gov.scot](#)>  
Cc: [\[Redacted\]@gov.scot](#)>; [\[Redacted\]@gov.scot](#)>  
Subject: RE: Update from LA/Sol Gen meeting

Resending to include Sarah Davidson

[\[Redacted\]](#)

[\[Redacted\]](#)

From: [\[Redacted\]@gov.scot](#)>  
Sent: 11 December 2018 08:37  
To: [\[Redacted\]@gov.scot](#)>; Director Communications, Ministerial Support & Facilities <[\[Redacted\]@gov.scot](#)>; Richards N (Nicola) <[\[Redacted\]@gov.scot](#)>; [\[Redacted\]@gov.scot](#)>; Lloyd E (Elizabeth) <[\[Redacted\]@gov.scot](#)>  
Cc: [\[Redacted\]@gov.scot](#)>; [\[Redacted\]@gov.scot](#)>  
Subject: RE: Update from LA/Sol Gen meeting

Thanks [\[Redacted\]](#).

This is a fair summary.

The LA was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk – which we all know and understand – that he may be forced to hold that there were faults in the way it was applied in the particular case.

I would just add that the sense of how this would play out is that there are two distinct strands of this issue – the objective meaning of para 10 of the procedure and the suggestion of apparent bias in the role of the IO on whether, in the circumstances of her role and level of engagement, it was not possible for there to be an impartial gathering of the facts by her (in the eyes of a reasonable and objective observer).

I'm adding [Redacted] and [Redacted] as copy recipients, as attendees yesterday. [Redacted] has in place or is at an advanced stage of putting arrangements in place for the affidavit finalisation for Nicky & Judith.

[Redacted]

**From:** [Redacted]@gov.scot>

**Sent:** 11 December 2018 08:10

**To:** Director Communications, Ministerial Support & Facilities <[Redacted]@gov.scot>; Richards N (Nicola) <[Redacted]@gov.scot>; [Redacted]@gov.scot>; Lloyd E (Elizabeth)

<[Redacted]@gov.scot> **Cc:** [Redacted]@gov.scot>

**Subject:** Update from LA/Sol Gen meeting

**Importance:** High

[Redacted] gave me a read out of the meeting last night – [Redacted] is [Redacted] this am so quick update from me ([Redacted] I've updated Perm Sec). [Redacted] please shout if I have misrepresented any of this.

Meeting went well. Lasted 1 ¾ hours.

LA/Sol Gen very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not

intended to convey that he didn't think we have a stateable case....

They tested most of the arguments including the appointment of the IO and concluded that we have credible arguments to make across the petition.

The argument on the appointment of the IO will turn on the extent to which we can persuade the court that there is an credible alternative to the objective reading test of para 10 of the procedure which is that what we had in mind was that the IO should not have had any prior involvement in the 'matters under investigation' – i.e. the events being complained about. Nicky's affidavit will be key to that.

Discussion about Judith's Affidavit concluded that it should be finalised and submitted to demonstrate what her role actually amounted to and that her contact didn't result in bias – or the impression of bias ([Redacted] will be able to elaborate on that – and put the wheels in motion).

Counsel followed up the question of what Perm Sec knew about the approaches from staff by late November. While we are clear that there isn't a procedural bar to her knowing the detail at any point they are constructing an argument to the effect that early exposure to the detail resulted in her being predisposed to find against FFM. The paper work doesn't shed much light on that .

My understanding from Nicky and Barbara is that she had been told that approaches had been made on the back of her staff messages; they concerned FFM; and they related to sexual harassment – but with little or no further detail. Counsel have asked us to confirm what, if anything she was told beyond that – I'll follow that up with Perm Sec today.

Some thought was being given to whether an Affidavit from Perm Sec was needed to address the point – I think [Redacted] was less convinced than others that would be helpful or necessary. [Redacted] and I will talk to Perm Sec today.

[Redacted]

SPSGHHC