

From: [Redacted]
To: Evans L (Leslie)
Cc: Cackette PH (Paul); [Redacted] [Redacted]
Subject: FW: JR: Consultation Update: PRIVATE - NEXT STEPS
Date: 04 November 2018 13:11:35
Sensitivity: Private

Leslie

Counsel's note with proposed adjustments for consideration. This has also gone to FM, LA and Sol Gen. There is discussion in the note about the options for acting in advance of the hearing on Tuesday or waiting re our "adjustments" which cover the who was aware of what when in advance of formal complaints being made.

This note is based on Counsel having seen all further material requested and provided yesterday, and the material they saw on Friday from James on our interpretation of Paragraph 10, namely: 'that person will have had no prior involvement with any aspect of the matter being raised'. (attached and "for point 2" doc) and Nicky appointment of JM as IO. I've attached the Nicky and James material in case you want to see. The further material Counsel saw yesterday (number of emails etc.) has - initial view - been neither helpful or unhelpful, though - as you'll see in paar 10.2 of Note - raised a point on the involvement of the compinres in the development of the Procedure.

The Note appears to have moved firmly into the space where the option of not adjusting is not an option. At Friday's consultation this was the sense of the room - and the views from Counsel and Sol Gen were all that better to be up front, and including that the inclination of the LA is for patent candour and that counsel would far rather matters were out rather than being dragged out of us.

However, Paul and I consider this is ultimately a decision for you, on the basis of all the advice received. Counsel have assessed whether they have a duty to do this, both in terms of the call and their general duty of candour and said they were satisfied that neither required them to proceed as proposed. But they - as with the feeling in the room - felt it better, more credible and less shifty-looking if we proceed as proposed. That was on the basis it will probably all end up being out there anyway (since a specification of documents is likely) and better to face it transparently than having this dragged out reluctantly and portrayed as a failed attempt at a cover up.

Counsel's note is quite "legal" and talks of hearings and evidence, and when gets to effect on prospects says can't tell us yet. But if we are clear that decision is we do need to adjust it seems to be down to a question of doing that tomorrow lunchtime, or saying to court on Tuesday going to do that. And there are risks/ advantages in both. The timing decision is, as we understand it, the second decision to be taken.

We have been talking of decisions being taken tomorrow morning in the margins of travelling Cabinet in Roslin, but although Cabinet likely to be short it still doesn't start till 10:45.

So it would be good to get this into a clearer space today?

Sol Gen understands all, seen all material has said she is about the weekend for advice. Paul and I can both meet/ speak about this today. And Liz has also said that she is sure FM would speak to you at any time.

[Redacted] and Paul

[Redacted]

From: Evans L (Leslie)
Sent: 03 November 2018 13:11
To: [\[Redacted\]](#)>
Cc: Cackette PH (Paul) <[\[Redacted\]@gov.scot](#)>; [\[Redacted\]](#)> **Subject:** RE: JR: Consultation
Update: PRIVATE
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This sounds like progress albeit still a big issue. I suggest I look at counsel advice tomorrow and we can decide if we two need further chat on phone then- and about Monday .
Ok?
L

Sent with BlackBerry Work
(www.blackberry.com)

From: [Redacted]
Date: Friday, 02 Nov 2018, 7:55 pm
To: Evans L (Leslie) <[\[Redacted\]](#)>
Cc: Cackette PH (Paul) <[\[Redacted\]@gov.scot](#)>, [\[Redacted\]](#)>

Subject: JR: Consultation Update: PRIVATE

Brief Update from this pm's consultation (copied to Paul in case inaccuracies/ things to add)

- While there was an argument that the answers we have given about "when, by what means and in what terms the complainers first initiated their complaints" – namely both in January when made formal complaint are sufficient – it leaves us unacceptably susceptible if we are asked it later. Views (Counsel, LAs and Sol Gen were all that better to be up front.
- Counsel seen further info from James, Nicky and Judith on interpretation of provisions about appointment of IO, and what the terms of engagement between JM and individuals was ahead of Jan. Slightly more positive about making case that that was ok. But still an issue.
- Clear consensus that if we could make statebale case on the point we would do in JR – and no question of not proceeding.
- Counsel asked for sight of all info on engagement with Ms A and B from JM (emails etc. as want to make sure nothing else – as this is what other side would get if may asked. That has been requested from JM and we should get tonight/ tomorrow am to then pass to Counsel
- Counsel will then draft adjustment showing what being up front will look like. Should get this

on Sunday

- In timing is tight. Option
 - a) we get our adjusted answers to FFM's agents lunchtime Monday. They then either say ok and say to court all fine for 16 Jan, or say to court they need more time because we gave info so late Think latter more likely.
 - b) we go to court on Tues and say need more time – and maybe get short extension (couple of days).

Either option will be portrayed as our fault.

Clear to Counsel that final decision on approach (inc. content of adjustments) with you and FM and that time really short. And that oppn at Cabinet for you, FM and Sol Gen (LA back in country but only just) to discuss.

Current plan is to get you and FM Counsel's draft asap and take it from there.

V happy to talk though – out of action for next couple of hours but tomorrow am if helpful?

Can decide on coming to Cabinet etc. but can agree that on Sunday.

[Redacted]