

**PRIVILEGED AND CONFIDENTIAL LEGAL ADVICE – NOT FOR PUBLICATION**

## JOINT NOTE BY SENIOR AND JUNIOR COUNSEL

for the Respondents in the Petition of Alex Salmond, Petitioner, for Judicial Review

**Answer 6**

- 1 Further to our note issued on 3 November and the responses to the questions raised in that note, the text annexed contains the adjustments shown in **bold underline** that we propose be made to answer 6.
- 2 [Redacted]
- 3 [Redacted]
- 4 [Redacted]

Roddy Dunlop QC

Christine O'Neill, Solicitor Advocate

5 November 2018

**Annex – Answer 6**

Admitted, under explanation to follow, that the Procedure was written in about December 2017. Admitted that the petitioner ceased to be a Minister in the Scottish Government in November 2014. The first respondent's letter of 7 March 2018 and the Procedure are referred to for their terms. *Quoad ultra* denied. Explained and averred that the Procedure was drafted by Scottish Government officials following a review of the Scottish Government's policies and procedures for handling complaints of bullying and harassment made by Scottish civil servants. The review was initiated by the interested party, in October 2017. She asked the first respondent to undertake a review of the Scottish Government's policies and processes to ensure that they were fit for purpose. The existence of that review was made known to the Scottish Parliament by the Deputy First Minister, Mr Swinney, at Topical Question Time on 31 October 2017. On 2 November 2017 the first respondent issued a Staff Message to all Scottish Government staff entitled "Sexual harassment – message from the Permanent Secretary". That message is produced and incorporated herein *brevitatis causa*. It invited anyone who wished to "help inform consideration of our approach or share concerns about current cultures or behaviours" to make contact. **It provided contact details for members of staff in the second respondent's HR function together with information about sources of support.** Separately, the first respondent received a letter from Sir Jeremy Heywood, Head of the Civil Service, of 3 November 2017, addressed to all Permanent Secretaries directing them, *inter alia*, "to work with your HR Directors, staff networks and others to satisfy yourselves rapidly that: information on conduct and on how to raise a concern is clearly and easily accessible for staff; channels for raising a concern are well publicised and easy to use, and that staff feel positively encouraged to speak up; and processes for investigating concerns and, where relevant, taking follow up action, are working well and ensure timely resolution". The letter narrates its context as being "extensive media coverage" of "allegations of sexual harassment and inappropriate behaviour in several industries and sectors, particularly in respect of those in powerful positions over others". Sir Jeremy Heywood's letter of 3 November 2017 is produced and incorporated herein for the sake of brevity. On 13 November 2017 the first respondent issued a further all staff message which is produced and incorporated herein *brevitatis causa*. **In that message she advised staff that the sources of support referred to in the message of 2 November remained in place and explained that, in addition, she had asked Gillian Russell to act as a confidential sounding board for individuals who had experienced sexual harassment. Ms Russell is the second respondent's Director of Safer Communities. On 8 November 2017 Complainer B contacted**

Barbara Allison. Ms Allison is the second respondent's Director of Communications, Ministerial Support and Facilities. Complainer B discussed with Ms Allison events involving the petitioner [Redacted]. She did not at that time make a formal complaint. On 22 November 2017 Complainer A spoke to Gillian Russell and Barbara Allison to discuss events involving the petitioner [Redacted]. She did not at that time make a formal complaint. [Redacted]. In addition a number of members of staff of the second respondents approached Ms Russell to discuss concerns about the behaviour of non-ministerial colleagues. Ms Russell, with the consent of Complainer A, shared the fact of the approach by Complainer A and the nature of the information provided by her with the first respondent's Director of People, Nicola Richards, and Deputy Director of People Advice, Judith Mackinnon. Ms Allison, with the consent of Complainer B, shared the fact of the latter's approach and the nature of the information provided by Complainer B with Ms Richards. Ms Richards advised Ms Russell and Ms Allison to ask Complainers A and B respectively whether they wished to speak to the HR team. They did so on 29 November 2017. In December 2017 Ms Richards and Ms Mackinnon met with Complainer A and Ms Mackinnon [Redacted] to Complainer B. In each case the discussions concerned the options available to each complainer and their preference for how their concerns should be handled. Complainers A and B each indicated that they wished to reflect on what to do next. The Procedure was agreed by the interested party on behalf of the second respondent by email on 20 December 2017 at which time it came into effect. Complainer A made a formal complaint on 16 January 2018 and an Investigating Officer was appointed the same day. The complaint received from Complainer B was received on 24 January 2018. The Procedure is one of a number of mechanisms by which the second respondent as an employer discharges its duty of care to staff and by which it fulfils its responsibility to provide a workplace free from harassment and to provide an effective grievance procedure. The review initiated by the interested party was not restricted to consideration of complaints against ministers and former ministers. It also resulted in revisions being made to the second respondents' Fairness at Work Policy to address sexual harassment complaints more generally. It was carried out in consultation with the Council of Scottish Government Unions. Reference is made to Fairness at Work (2018). The Procedure is also a means by which concerns that a minister or former minister has failed to adhere to the standards of behaviour expected by the

Scottish Ministerial Code can be addressed by that minister, the First Minister and/or a former minister's party leader.

SP  
SG  
HHC