

Wed 24/06/2020 @ 23:13

From: Kenneth Hogg

Subject: OFF-SEN: Draft Committee statement on JR

To: Permanent Secretary, Andrew Bruce

Cc: Lesley Fraser, [redacted], [redacted], [redacted]

Perm Sec

I attach a working draft of the next written statement, about the judicial review, due to be submitted to the Parliament's Committee on SG Handling of Harassment Complaints. The Committee has asked for this statement plus supporting documents to be submitted by mid-July, and your input is sought at this stage to inform how we develop the draft further, [REDACTED]

[REDACTED]

- in its letter of 19 May 2020 the Committee asked for this statement and asked that this statement should cover:
  - o the roles and responsibilities in relation to the Scottish Government's conduct of litigation generally and in this case in particular;
  - o the extent to which the Scottish Government kept emerging details and prospects of success under review; and
  - o how the decision to settle was taken, including the timing of the decision and what factors contributed to the cost of settlement.

[REDACTED]

The draft will be developed further, following any feedback which you wish to give, and shared more widely with officials for comment, before also being sent to DFM and [REDACTED] for comment on overall approach.

With thanks

Kenneth Hogg



From: Kenneth Hogg  
Sent: 12 August 2020 @ 16:30  
To: Deputy First Minister  
Cc:  
Subject: RE: SGHHC letter from Convener – oral and written evidence

DFM

Purpose:

- to provide advice on the handling of two letters (attached) sent yesterday by the Committee Convener, including on the point which you highlighted below about the position of civil servants;
- to seek your agreement to a draft interim reply (attached) for the Permanent Secretary to send to the Convener today. It is proposed that a separate Ministerial reply from you to the Committee, providing a substantive response on legal privilege and other matters, would follow later this week and a draft of that will be provided separately.

Timing: immediate. The Permanent Secretary's letter should issue this evening.

Discussion and advice

The 2 letters cover a variety of issues. The Permanent Secretary's reply deals with some of them and [redacted].

[redacted]. You will recall that the Committee had written previously to [redacted] senior SG officials and the Chief of Staff, all of whom are bound by the terms of the Civil Service Code, asking them to reply on an individual basis to the Committee [redacted]. This was agreed by the Convener in her letter of 31 July, subject to the addition of some narrative description of events, and the Permanent Secretary agreed to that modification of the proposal in her letter of 7 August. The letter which was received yesterday changed the Committee's position: they now want both the Scottish Government's timeline and individual responses – essentially taking us back to square one. [redacted].

Recommendation: [REDACTED]

Kenneth Hogg,  
Director, Organisational Continuity

From: [REDACTED]  
Organisational Continuity  
16 June 2020

Deputy First Minister and Cabinet Secretary for Education and Skills  
[REDACTED]

## **RELEASE OF EXTRACT OF CABINET MINUTES TO COMMITTEE ON SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS**

### **Purpose**

1. To seek the Deputy First Minister's [REDACTED] consent to release an extract from the Scottish Cabinet minutes of 31 October 2017 to the Committee on Scottish Government Handling of Harassment Complaints ("the Committee"). Also to seek a view from the Deputy First Minister on whether the First Minister's consent should be sought.

### **Priority**

2. Immediate

### **Committee request**

3. In a letter to the Permanent Secretary of 30 April 2020 (**Annex A**), the Committee requested a statement covering the development of the Scottish Government procedure entitled *Handling of Harassment Complaints Involving Current or Former Ministers* ("the procedure"), as well as relevant documentation. A later letter asked for this material to be provided in time for consideration ahead of the Committee meeting on 22 June 2020.

4. This will be the first of three statements requested by the Committee.

5. A full response to this request will be sent to the Deputy First Minister for clearance later this week, [REDACTED], ahead of proposed response to the Committee on Friday 19 June.

6. One document proposed for release to the Committee is an extract from Scottish Cabinet minutes from 31 October 2017 (**Annex B**) – paragraphs 35-40. This covers discussion of actions relating to sexual harassment, including the First Minister's having asked the Permanent Secretary to undertake a review of SG policies and processes. [redacted].

[redacted].

### **Conclusion**

7. The Deputy First Minister [REDACTED] asked to consent to the release of paragraphs 35-40 of the Cabinet minutes of 31 October 2017 to be released to the Committee on Scottish Government Handling of Harassment Complaints.

8. The Deputy First Minister [redacted] asked to decide whether the First Minister's consent is required for the same.

**[REDACTED]**

Organisational Continuity

16 June 2020

Copy list:

Permanent Secretary

DG Constitution and External Affairs

DG Organisational Development and Operations

David Rogers, Constitution and Cabinet Director

Kenneth Hogg, Director, Organisational Continuity

James Hynd, Head of Cabinet, Parliament and Governance Division

[Redacted]

[Redacted]

[Redacted]

Colin McAllister, Special Adviser

**ANNEX A**

**ANNEX B**

Some of the information you have requested is available from:

- <https://www.parliament.scot/HarassmentComplaintsCommittee/20200430ConvenetoPermSec.pdf>
- <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2020/07/foi-202000049070/documents/foi-202000049070-information-released---fn7/sp-sghhc1-yy093---3---redacted-or-watermarked-version/sp-sghhc1-yy093---3---redacted-or-watermarked-version/govscot%3Adocument/SP%2BSGHHC1%2BYY093%2B-%2B3%2B-%2BRedacted%2Bor%2BWatermarked%2BVersion.pdf>

Under section 25(1) of FOISA, we do not have to give you information which is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website(s) listed, then please contact me again and I will send you a paper copy.

## OFFICIAL SENSITIVE

Permanent Secretary

### **SG HANDLING OF HARASSMENT COMPLAINTS: NEXT STEPS**

**Purpose:** in advance of our discussion on 8 April, to set out a number of issues for further consideration. In summary the issues are:

- contextual information about possible timescales and scope of the Scottish Parliament's Committee inquiry;
- [REDACTED]

**Timing:** routine. This note is designed to highlight issues relevant to a number of decisions you might take over the coming days and weeks.

#### **Background: general**

1. Following the conclusion on 23 March 2020 of criminal proceedings against Alex Salmond, it is now appropriate to consider other processes which have been suspended during those proceedings. The First Minister has made clear that the Government's top priority currently is dealing with the current COVID-19 emergency and that at present attention and resources are being focussed on responding to that rather than on other issues. She has also welcomed the opportunity that will arise at a later date for the Scottish Government to address issues which will be raised by the Parliament's Committee on the Scottish Government's Handling of Harassment Complaints. It would be helpful now, insofar as time and resources available permit, to consider options for action which the SG may take in the future so that any necessary preparatory steps can be taken as soon as practicable.

#### **Background: Scottish Parliament's Committee on the Scottish Government's Handling of Harassment Complaints**

2. The Committee was established a year ago; it has met regularly over the period since then; and corresponded with you during 2019 primarily about the retention of documents. The main point of significance for the purposes of this paper relates to timescales. The Committee will not now meet until after Easter Recess, and the position will be reviewed at that point. Given the Covid-19 circumstances, it may be that the Committee is not in a position to take oral evidence face to face until after the summer recess. [REDACTED].

3. [Redacted]. (In March 2019 the Committee's Convener asked that the Scottish Government retain all documentation which may be of interest to the Committee, including all documentation which would ordinarily not be kept as part of the official record under our document management procedures.). At present the Organisational Continuity Team is preparing to lead and coordinate across the Scottish Government the document handling task which lies ahead.

[REDACTED]

### **Issues for consideration**

[REDACTED]

### **Staff resourcing to support this activity**

3. The Organisational Continuity Team (OCT) can continue to offer support in document management, and can continue to be the first point of contact for all external requests for information about related matters, including from the Scottish Parliament Committee and all FOI requests. [REDACTED] If agreed, OCT would also be well placed to carry out a cross-SG coordination role in respect of future activity related to these matters.

4. It is likely that in addition there will continue to be resource impacts on People Directorate, Legal Directorate, and the Communications team. Work is under way to assess likely requirements within People Directorate in particular.

[REDACTED]

### **Timescales**

5. It would be helpful to take strategic decisions about the way forward on the issues discussed in this note during the course of April. [REDACTED]

Kenneth Hogg  
6 April 2020

Copy to: DG OD&O  
Nicky Richards  
Barbara Allison  
[redacted]  
[redacted]

OFFICIAL – SENSITIVE

From: Kenneth Hogg  
Director, Organisational Continuity  
27 May 2020

Deputy First Minister

**SG HANDLING OF COMPLAINTS ABOUT ALEX SALMOND: RELATED WORKSTREAMS**

**Purpose**

1. This note provides an update and advice on three workstreams relating the SG's handling of complaints made about Alex Salmond:

- the Parliament's Committee on SG Handling of Harassment Complaints;
- [REDACTED]
- [REDACTED]

2. It suggests a further discussion with you and relevant officials by Friday 5 June. [REDACTED]

**Priority:** urgent. You will wish to be sighted in advance on the approach being taken to respond in June to requests for documents from the Committee which will require your clearance. [REDACTED]

**Impact of COVID-19 response**

3. Before discussing the individual workstreams it may be helpful to be explicit about how the SG's COVID-19 response is limiting the pace at which the SG can engage in this work. In deciding what we commit to we need to bear in mind the following:

- individuals who played significant roles in the events relating to Alex Salmond, and whose input is therefore required in the SG's engagement with the workstreams, are currently playing central roles in the SG's COVID-19 response. This affects the First Minister, Special Advisors and officials, and limits their availability to engage with anything else;
- other individuals, including you and other Special Advisors, who did not play a significant role in the events relating to Alex Salmond but who are overseeing our engagement with the workstreams are also playing central roles in the SG's COVID-19 response, and this limits their availability too;
- remote working slows down our ability to respond and engage, particularly when it comes to document handling. My advice notes of 16 and 23 April dealt with this, but the core point is that processing requests for documents requires collaborative team working: searching for and finding relevant documents; redacting them with legal input; reviewing and quality assuring those judgements; organising the documents electronically and ensuring document security; and approving the release of documents at official and

Ministerial level. That task requires collaborative input from many people, and is made much more difficult without hard copy papers to work from and with a team not being physically co-located. The task is also made more time-consuming because of the Committee's previous request in 2019, to which we agreed, that SG retain all documents of potential relevance to the Committee's remit including documents which would ordinarily not be kept as part of the Official Record in line with our document retention policies. As a result, whereas the number of documents of potential relevance to the general subject matter stored in the Official Record is around 27,000, the total number of items of data stored electronically (not all of which are documents and many of which will be duplicates) is over 195,000. Action was taken in 2019 to secure that data, but - rightly - it could not be processed (eg redacted) for the Committee's purposes until now.

[REDACTED]

### **Committee on SG Handling of Harassment Complaints**

4. The Committee's letter to the Permanent Secretary of 30 April was responded to 13 May following discussion with you. Copies of both letters are attached. The 30 April letter explained that the Committee wishes to examine information in 3 categories: SG's development of its new harassment procedure; SG's subsequent handling of complaints under that procedure; and SG's involvement with the related judicial review. The 30 April letter said that "the Committee has agreed as an initial approach to consider the issues under inquiry on a chronological basis. This is intended to keep the information flow manageable and an attempt to consider the issues in manageable portions." However a subsequent letter of 19 May (also attached) from the Committee partially altered that approach. In that 19 May letter the Convenor expands significantly on the Committee's initial request of 30 April. In summary, it asks the SG:

- to follow a common approach in respect of the 3 categories of information sought: ie for each one providing a written statement plus relevant documents;
- to provide by end-May expected timescales for the SG providing categories of information for which the Committee has not set a specific deadline (see below), and to set out the timescales for the SG's review of its application of the harassment procedure and for the FM's self-referral under the Ministerial Code. It says the Committee will meet in early June to consider our response to these questions in deciding how to proceed further;
- to provide by end-June a written statement plus relevant documents in respect of the first category of information (development of the new harassment procedure) and also a written statement in respect of the third category of information (judicial review). It isn't clear whether supporting documents are also requested for the third category by end-June;
- to set out the "approach you [SG] are likely to take to issues relating to data protection, confidentiality and court or other legal restrictions so that we can ensure we are taking all relevant factors into account in developing our approach to these matters." The implication in the letter is that we are requested to do this in our response asked for by end-May. SG solicitors are already in contact with the Parliament's solicitors to ensure clarity about the relevant legal considerations.

5. Further advice will be provided on each of the individual draft responses to the Committee. It would be helpful to discuss further with you our overall approach to this work. A meeting before Friday 5 June would be ideal.

[REDACTED]

## **Conclusion**

12. No decisions are requested from you at this stage. Further advice will follow [REDACTED]. The first substantive response to the Committee is due by end-June. It would be helpful for lead officials to discuss these workstreams with you further. A meeting by Friday 5 June would be ideal.

Kenneth Hogg  
Director, Organisational Continuity  
27 May 2020

Copy to:  
Permanent Secretary  
DG Organisational Development and Operations  
DG Education, Communities and Justice  
[REDACTED]  
Barbara Allison  
Nicola Richards  
James Hynd  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Colin McAllister

From: DG OD&O  
24 April 2020

Permanent Secretary

## **FUTURE ACTIVITY RELATED TO COMPLAINTS MADE ABOUT ALEX SALMOND: STRATEGIC OVERVIEW**

**Purpose:** to provide a strategic overview of future activity within the Scottish Government; to highlight specific areas where advice is being provided separately; and to outline respective roles, responsibilities and governance arrangements. [REDACTED]

**Timing:** routine. A meeting with you on Monday 27 April provides a first opportunity to discuss this advice.

### **Background**

1. In discussion with you on 8 April we identified specific issues on which further advice would be provided. This note refers briefly those issues, on which detailed advice is provided separately, and proposes a strategic overview of the corporate approach to guide all relevant workstreams across the Scottish Government over the next few months.

### **Specific advice**

[REDACTED]

### **Strategic overview**

#### Values and principles

4. Following the conclusion of the criminal proceedings against Alex Salmond, the Scottish Government will over the next few months be involved in a number of other processes, including participating in the inquiry by the Scottish Parliament's Committee on the Scottish Government's Handling of Harassment Complaints. In engaging with these it may be helpful for our approach to be informed by a number of values and principles:

- the Civil Service values of honesty, integrity (personal, professional and organisational), objectivity and impartiality;
- the values at the heart of the National Performance Framework:
  - treating all our people with kindness, dignity and compassion;
  - respecting the rule of law;
  - acting in an open and transparent way.
- ensuring the safety and wellbeing of individuals in the organisation;
- professionalism including good governance and strong risk management.

5. In practice we would for example want to demonstrate these values in how we engage with a range of processes related to this subject matter, including: how we answer FOI and other requests for information; how we engage with the Scottish Parliament and

other reviews of the Scottish Government's actions; and in how we communicate with and support our staff.

### Strategic purpose

6. The following strategic purposes should guide our approach:

- internally – to ensure that learning from historic events strengthens SG employees' capacity to:
  - work in a positive working culture;
  - feel able to raise concerns about bullying and harassment where they arise;
  - have trust in organisational processes and leaders.
- externally – to maintain high levels of public trust in the civil service, the Scottish Government, and to be seen to live the values and standards of behaviour set out in the Civil Service Code.

### Communication

7. As part of our good governance and professionalism, we will wish to ensure clear and consistent communication internally and externally. The content of communication should reflect the particular contextual circumstances, but some key messages should underpin what we say. For example:

on internal SG processes:

- we have a duty of care to listen to and investigate complaints raised;
- the Scottish Government was ahead of other civil service organisations by putting a process in place to enable these sort of complaints to be investigated;
- we will learn lessons to ensure our policies and procedures are as fair and robust as possible.

on the specific complaints made about Alex Salmond:

- the SG did the right thing, in line with its obligations as an employer, by investigating those complaints even if we didn't always do it perfectly;
- Mr Salmond's advocate accepted in court that some of his actions when he was First Minister were "inappropriate". Our priority now is to learn any lessons from the past and ensure that within the SG now and in the future inappropriate behaviour is always addressed promptly;
- to maintain anonymity afforded to the complainers in the criminal proceedings and to comply with a court order made during the judicial review proceedings about the SG's internal investigations, the SG will not comment on individual cases or on specific evidence which might in any way contribute to the identification of the complainers.

on the wider relationship between Ministers and civil servants:

- in Scotland and across the UK, the relationship between Ministers and civil servants is a complex one unlike the usual relationship between employees, even those of different seniority. It requires commitment and respect on all sides;

- for the Civil Service to fulfil its duty of care to its staff, Ministers must ensure their behaviour fulfils the requirements set out in the Ministerial Code and civil servants' behaviour towards each other should be consistent with the Civil Service Code;
- we are clear on our enduring Civil Service values, and we will work with Ministers, unions and other civil service organisations to learn and chart a way forward.

## **Roles, responsibilities and governance**

8. Input will be required from different Directorates in taking forward the various pieces of related activity. The Organisational Continuity Team (OCT) can:

- continue to offer specialist capacity and capability in document management and data governance, and can continue to be the first point of contact for, and coordinate responses to, all requests for information about related matters, including from the Scottish Parliament Committee and all FOI requests;
- carry out a cross-SG coordination role in respect of all activity related to these matters, providing light touch programme management including to ensure that dependencies between different workstreams are identified and risks managed.

9. People Directorate will continue to lead on a number of significant workstreams. In addition to activity related specifically to previous harassment complaints, its work will include a range of activity more akin to 'business as usual' including: continued work on organisational culture such as through the SG2020 programme; the inclusion narrative that has shaped Perm Sec's and People Board's communications; action to tackle bullying and harassment and set standards of behaviour; work to embed an early intervention approach to our policies and processes; and reviews of specific policies such as Fairness at Work. These will be led by People Directorate, working closely with the SG2020 team and Corporate Communications.

10. The Communications team will continue to be at the heart of managing internal and external communications. We can expect the staff resource demands to be significant. [REDACTED]

[REDACTED]

## **Timing and COVID-19**

14. [REDACTED] However, the impact of COVID-19 has made all of those things impossible at this point in time: the overriding priority for SG and Parliament is dealing with the pandemic; all organisational resources are supporting that over-riding priority; and social distancing has introduced logistical challenges. You may therefore wish to discuss, with officials and with FM, where the optimal balance lies between the timing of undertaking necessary and important work in relation to harassment complaints, to which the SG is fully committed, and the practical limitations imposed by the COVID-19 pandemic.

## **Conclusion**

15. You are invited to consider the proposed overall strategic approach set out in this minute, within which separate advice about more specific issues can also be considered.

Lesley Fraser  
DG OD&O

24 April 2020

Copy to:  
Kenneth Hogg  
Nicola Richards  
Barbara Allison  
[Redacted]  
Maureen Bruce  
[redacted]  
[Redacted]  
[Redacted].

From: Lesley Fraser, DG OD&O and  
Senior Information Risk Officer (SIRO)

Deputy First Minister

## **THIRD SUBMISSION OF DOCUMENTS TO THE SCOTTISH PARLIAMENT COMMITTEE ON SG HANDLING OF HARASSMENT COMPLAINTS: MINISTERIAL CODE**

### **Purpose**

1. To seek your agreement to release the attached written statement to the Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee"). This will be the third such submission of documents made to the Committee.

### **Priority**

2. Urgent: the Committee Convener has asked to receive this information by the end of Parliament's summer Recess. We plan to submit the information to Parliament on Monday 10 August.

### **Background**

3. In her letter to the Permanent Secretary of 30 June, the Committee Convener asked for a written statement plus supporting documents in relation to the Ministerial Code and the First Minister's self-referral under that Code. This request was in addition to requests made previously for three other written statements, each accompanied by relevant documents, in relation to:

- the development of the Scottish Government's procedure on '*Handling of Harassment Complaints Involving Current or Former Ministers*'. This was submitted on Friday 19 June 2020;
- the SG's participation in the judicial review process. This was submitted on Monday 20 July 2020; and
- the SG's handling of complaints under the procedure. The Permanent Secretary has told the Committee this is unlikely to be submitted before end-August 2020 and has explained why - principally because of necessary but time consuming data protection requirements.

4. In relation to the statement on the Ministerial Code, the Convener's letter of 30 June to the Permanent Secretary said: "The Committee is also now seeking information in relation to the Scottish Ministerial Code and the events that led to the First Minister's self-referral under the Code. The Committee seeks to establish who knew what and at what point, and to consider the nature of the meetings between the First Minister and Alex Salmond. In particular, the Committee seeks to establish how the distinction was drawn between Government and Party matters. In which case, we wish to obtain details of how meetings were set up involving the First Minister and Alex Salmond and the extent to which the First Minister's private office was involved. The Committee therefore asks to receive the communication between you and the First Minister during the period of events which

led to the First Minister's self referral together with any communication you may have been copied into or are aware of having taken place in this context. This communication is in whatever form, whether on work or personal devices. This element of the inquiry will also give general consideration as to whether the Code is fit for purpose; whether it is clear what course of action is required; whether there is too much discretion in its operation; and ultimately whether it protects integrity of public life." [My underlining]

## **Approach**

5. A draft statement plus three supporting documents in response to the request are attached. The draft statement has been drafted to respond to the issues set out in the Committee's letter, and to provide sufficient contextual information so that it is capable of being understood without any wider knowledge. Supporting documents are linked at specific points through footnote references in order to substantiate the positions set out in the statement.

6. As for the other written statements being prepared by the SG for the Committee, the process of developing the draft statement and set of supporting documents has been coordinated by the Organisational Continuity Team, members of which have had no previous involvement in the matters that were the subject of complaints made under the procedure, or in the development of the procedure, or in the subsequent handling of those complaints. The Organisational Continuity Team has access to all relevant documentation. In this instance the statement has been prepared with significant input from James Hynd, who is the lead senior SG official on all matters relating to the Ministerial Code.

## **Content of the draft written statement**

7. To a significant extent the issues which the Committee is seeking information about are issues which are properly the subject of the Independent Advisor's considerations under the Code, and the SG has not sought to duplicate that work at its own hand in order to inform this draft statement. In addition, the three documents which it is proposed to release to the Committee are the only three documents which the Scottish Government holds in relation to the issues which the Committee has asked about. (They have not been previously released by the SG.) So there are very few official documents attached to this statement. This is perhaps not surprising given that the First Minister has explained to Parliament that her meetings with Alex Salmond which are the subject of her self-referral under the Code were undertaken in her capacity as party leader. The Scottish Government does not hold party information.

[REDACTED]

## **Data protection**

9. In preparing the statement and documents for submission to the Committee, officials have considered, on a case by case basis, whether to release names or other information which could identify individuals (and therefore to release personal data under GDPR). As the data controller the Scottish Government must be satisfied that there is a lawful basis to disclose this personal data before disclosure is made. In this case the lawful basis is the "public task" of the Scottish Government accounting to Parliament for its

actions. To carry out that processing of personal data the Scottish Government must conclude that disclosure of each name (or information which could identify the individual) is necessary for it to perform that specific public task. The Government must also consider the impact of disclosure on each individual by considering their reasonable expectations of whether their name would be disclosed to the Committee, and whether disclosure could cause them unwarranted harm.

10. Having carried out this process in respect of each individual named or identified in the original documents, in my capacity as the Scottish Government's Senior Information Risk Owner I have decided that it is necessary to release the names of the Permanent Secretary and one Special Adviser, and their names have therefore not been redacted in the supporting documents. [Redacted] .

11. The documents will be submitted to Parliament using the same secure electronic system which SG has used for the two previous tranches of data provided to the Committee

### **Communications**

12. It is not proposed to proactively issue a media statement on Monday saying that the documents have been submitted to the Committee, but if asked we propose to confirm that we have done so. Our suggested top lines are:

- the information requested by the Committee's letter of 30 June about the Ministerial Code has been provided to the Committee;
- the Scottish Government welcomes the opportunity which the parliamentary inquiry will bring to address issues which have been raised, but we will not pre-empt that process.

### **Recommendation**

13. I recommend that you approve the attached statement at Annex for submission to the Committee on Monday 10 August.

14. I invite you to note that I will approve the release of the three documents attached as the Scottish Government's Senior Information Risk Owner.

LESLEY FRASER

7 August 2020

Copy to:

Permanent Secretary

DG: Constitution and External Affairs

Kenneth Hogg, Director, Organisational Continuity

[Redacted]

Barbara Allison, Director, Communications, Ministerial Support and Facilities

David Rogers, Director, Constitution and Cabinet

Nicola Richards, Director, People Directorate

[Redacted]

James Hynd, Head of Cabinet, Parliament and Governance Division

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Colin McAllister, Special Adviser

Sent: 16/07/2020 @10:42

From: Lesley Fraser

To: Deputy First Minister

Cc: Colin McAllister, Kenneth Hogg, Permanent Secretary, [Redacted], [Redacted], [Redacted], DG Organisational Development and Operations

Subject: OFFSEN: Update on, and planned communications with, the Parliamentary Committee on handling of harassment complaints.

[REDACTED],

#### Action

I would be grateful if you please ensure that this update is drawn to DFM's attention, along with the text of an email I plan to send to [Redacted] Parliament, tomorrow morning. Many thanks, and I am happy to discuss.

#### Update

Kenneth Hogg, [Redacted] and I had a useful discussion with [Redacted] and colleagues at the Parliament yesterday. This provides an update on [Redacted].

By way of background, as we previously discussed, I also attach above a summary of the position for civil servants when appearing in front of Parliamentary Committees. This sets out the requirements for us under the Civil Service code, and our terms of employment. We sent this to [Redacted] and colleagues to inform yesterday's discussion and to assist them in their planning, and we hope it gives them a good explanation of how we can – and cannot – usefully contribute.

[Redacted]

- We agreed to explore whether there are ways to further assist the Committee in understanding the reason for our redactions (where that doesn't compromise a legal constraint) and with the order of documents.

#### **Recommendation**

This was a positive meeting in our view, with the potential for real progress. [Redacted].

I am happy to discuss this.

L

Lesley Fraser

.....

[REDACTED]

From: Lesley Fraser  
Subject: Update on work for the Harassment Complaints Committee  
To: Permanent Secretary; Leslie Evans  
Cc: DG Operational Development and Operations

Sent: 14/05/2020 @ 13:03

Leslie

I wanted to give you an update on the work over the last couple of days to comply with the request by the Committee for submission of the phase 1 material by 22 June, and to outline the key areas of work for next week. I aim to be in a position to send material (which you would see again in final form), cleared by DFM, to the Committee by Friday 19 June, if possible, to comply with the new deadline.

I also want to let you see in near final draft the principles, roles, responsibilities and processes (including for managing potential conflict of interest, for example) which I suggest should underpin our engagement with the Committee. I am very grateful to [redacted], OCT and other colleagues for their contributions to its development. I await some final operational comments from People Directorate, but, given the shortened timescale for the Committee's request, I plan to circulate this on Monday for colleagues to use with immediate effect. We would then rely on this approach for our work next week and thereafter. I'd be happy to discuss if helpful.

Update on progress:

- DFM has had the opportunity to review the material over the weekend and has commented that he thinks this is an excellent piece of work, which provides a very clear narrative of the formulation of the procedure. [Redacted].
- The team is currently on track with document checking and redaction to meet this new timescale, although, as we foresaw, it is placing considerable pressures on colleagues including those who are involved in the Covid response. I am very grateful to everyone who continues to go above and beyond to complete this work to a good quality. I will continue to review the resourcing impact, implications and risks with key Directors next week, and as we have agreed, we will continue to draw on all available routes to boost capacity. I will also feed this work into the current resourcing discussions/ data gathering with Cab Secs ahead of the planned Cabinet resourcing discussion.

### **Priorities for next week**

In addition to completing the work above, the clear priority is ensuring that we have the appropriate, practical communications and support available for colleagues affected by these events, the JR and the trial. The circumstances now are different to those surrounding the trial, [redacted], and we want to ensure that colleagues feel as well supported as possible at a difficult time. Work continues on that as a priority, led by People Directorate (with inputs as required) and coordinated by OCT. [Redacted] and Comms colleagues are putting the internal Comms plan in place for

that work. I plan to outline the timetable and the broad support package with TU colleagues tomorrow at one of our regular meetings. It might be helpful for us to review that package of support for colleagues in more detail – maybe on Tuesday, if you agree?

[Redacted]

Otherwise, we are also planning the communications required before this material is sent to the Committee and thereafter. That includes people outwith SG who need to be alerted in advance (including former colleagues, UKG, Parliament, TU colleagues etc).

I am very happy to discuss any of this today/tomorrow, if helpful, and suggest that we review the package of support for colleagues on Tuesday. Please do also let me know if you have any questions or queries about the principles and process approach that I plan to circulate for use tomorrow.

Many thanks

L

***Lesley***

Lesley Fraser | Interim Director General  
Organisational Development and Operations

OFFICIAL SENSITIVE

From: DG OD&O

1 May 2020

Permanent Secretary

**SG HANDLING OF COMPLAINTS ABOUT ALEX SALMOND: IMPACT OF COVID-19**

**Purpose:** further to our conversation with you on 27 April, to suggest some points to raise in discussion with the First Minister. A draft note which you could send to FM is attached at Annex A for your consideration.

**Timing:** urgent – a conversation in the next few days could inform the line you take in a holding reply next week to the Convenor of the Parliament's Committee on SG Handling of Harassment Complaints

**Background**

1. At our meeting on 27 April we proposed an overall strategic approach to various activities related to the SG's handling in 2018 of complaints received about Alex Salmond. We agree it would important to seek the FM's view on a number of issues:

- overall impact of COVID-19 on SG's capability to engage with other activity, including the Parliament's Committee inquiry;

[REDACTED]

2. On 30 April Linda Fabiani MSP, Convenor of the Committee on SG's Handling of Harassment Complaints, wrote to you (copy attached), commencing the Committee's substantive enquiries and requesting an initial written statement about some of the events being considered by the Committee. Again, COVID-19 will impact the speed with which a substantive response can be sent to the Committee's request.

**Overall impact of COVID-19 on SG's capacity to engage with other activity, including the Parliament's Committee inquiry**

3. The key question is: to what extent, in the current circumstances, can the Scottish Government engage fully with the Committee's inquiry in line with our previous commitments in 2019 to do so?

4. Some SG staff resource has been ring-fenced (within the Organisational Continuity Team (OCT)) to ensure that relevant documents have been maintained, to provide document-management support in responding to requests for information, and to coordinate related activity across the Scottish Government. However, a significantly wider group of SG personnel than the OCT will require to be involved, and several COVID-19 impacts are already evident:

- the top priority for Ministerial and senior officials' attention is responding to COVID-19. Given the scale of that challenge there is limited corporate capacity to focus on any other issues;
- several individuals who played key roles in developing the new harassment procedure and in handling complaints received under the procedure are also at the heart of the SG's response to COVID-19, and have limited scope to engage with anything else;
- the negative impact on staff productivity of physical distancing, home working and home schooling/child care: tasks which require collaborative team working in particular take significantly longer, and may not be possible beyond a certain level of complexity. [Redacted] and would impact on any future requests from the Committee for documents.

[REDACTED]

## **Recommendation**

11. [REDACTED]

Lesley Fraser  
1 May 2020

Copy to:  
Kenneth Hogg  
James Hynd  
[Redacted]

ANNEX A

DRAFT CONTRIBUTION TO A NOTE FROM PERM SEC TO FM

I'd appreciate the opportunity to discuss our overall approach in the current COVID-dominated context to engaging with several workstreams which relate to the Scottish Government's handling in 2018 of harassment complaints made about Alex Salmond. The Parliament's Committee Convenor wrote to me yesterday formally commencing their substantive enquiries and requesting, as an initial step, a written statement describing the SG's actions in one specific phase of the events they are looking at: the establishment of a new harassment procedure between October and December 2017. They have not at this stage asked the SG to release relevant documents, [redacted]. The request also proposes a chronological approach to the Committee's work, and at this stage confining their requests to only the first stage. [Redacted]

[Redacted]

Sent: 03/08/2020 @ 23:42

From: James Hynd

Subject: Scottish Parliament Committee: Written Report on Ministerial Code Referral

To: Deputy First Minister

Cc: DG Organisational Developments and Operations; Kenneth Hogg; [redacted]; [redacted]; Colin McAllister

Deputy First Minister

As you will be aware, in its letter of 30 June to the Permanent Secretary, the Committee asked the Government to provide it with a written statement and documents in relation to the events that led to the First Minister's self-referral under the Ministerial Code. The full extract of the Committee's request in this regard is set out below. The Committee has asked for a response no later than the end of recess, effectively Sunday 9 August.

I have prepared the attached draft response. [REDACTED]

[REDACTED]

Extract from Committee Letter

'Scottish Ministerial Code

The Committee is also now seeking information in relation to the Scottish Ministerial Code and the events that led to the First Minister's self-referral under the Code.

The Committee seeks to establish who knew what and at what point, and to consider the nature of the meetings between the First Minister and Alex Salmond. In particular, the Committee seeks to establish how the distinction was drawn between Government and Party matters. In which case, we wish to obtain details of how meetings were set up involving the First Minister and Alex Salmond and the extent to which the First Minister's private office was involved.

The Committee therefore asks to receive the communication between you and the First Minister during the period of events which led to the First Minister's self-referral together with any communication you may have been copied into or are aware of having taken place in this context. This communication is in whatever form, whether on work or personal devices.

This element of the inquiry will also give general consideration as to whether the Code is fit for purpose; whether it is clear what course of action is required; whether there is too much discretion in its operation; and ultimately whether it protects integrity of public life.

We will be contacting a range of witnesses, including the First Minister, seeking their written views and supporting evidence.

I would be grateful to receive a written statement and accompanying information which addresses these points no later than the end of the summer recess but preferably by the end of July. For clarity, accompanying information can include but is not limited to letters,

emails, text messages, WhatsApp messages, social media messages, and records of phone calls.

James

James Hynd

[REDACTED]